

## **AESTHETICS HEALTH PROFESSIONAL v ALLERGAN**

### **Promotion of Botox on social media**

The owner and medical director of an aesthetics clinic, complained about the promotion of Botox (botulinum toxin type A) on social media by Allergan Limited. Botox was indicated for, *inter alia*, the temporary improvement in the appearance of facial lines at or above eye level when the severity of those lines had an important psychological impact in adults.

The complainant alleged that Allergan had persistently de-medicalised the aesthetics industry and promoted prescription only medicines to the public. The company's latest activities represented a downward spiral and trivialisation of what was a medical treatment with a prescription only medicine.

The complainant noted that a posting on Instagram about Juvederm (a dermal filler registered as a medical device) contained a Botox pack shot and in that regard alleged that Botox had been promoted to the public. Similarly, Allergan had reposted a video on its own Juvederm patient-facing Instagram page. The video again contained a Botox packshot which thus promoted the product to the public. The complainant submitted that by reposting third-party generated material on its own social media channels, Allergan had endorsed both Juvederm and Botox to the public.

The complainant alleged that Instagram live streaming posts and videos from an awards event were uploaded onto a senior employee's personal Instagram page. The postings referred to Botox as 'Injectable Product of the Year ...'. The complainant alleged that this appeared to be an arrogant approach, as though the employee was above UK rules and regulations. Other members of the employee's team loaded the same material referring to Botox onto their own Instagram accounts.

When asked if he/she had any conflicts of interest, the complainant stated that he/she was, *inter alia*, a trainer for organisations affiliated to Merz and Allergan.

The detailed response from Allergan is given below.

The Panel noted that the use of social media, including Instagram, to provide information to the public was a legitimate activity if the material complied with the Code. Each case had to be considered on its own merits. The Code covered, *inter alia*, the promotion of medicines to health professionals and the provision of information about prescription only medicines to the public; the Code did not cover the promotion of devices.

The Panel noted that Allergan had a Juvederm Instagram account to publish information on Juvederm facial fillers and aesthetics in general.

The Panel noted although the two stories reposted on the Juvederm Instagram account were predominately about Juvederm, both contained pack shots of Botox – in the still image story the pack shot was in the foreground and in the video image story it was in the background in the final 4 seconds of the video. Neither story was online for more than 24 hours. The Panel considered that regardless of the prominence of the pack shots, the brevity with which they were visible, the length of time that the posts were available or the number of people who were likely to have seen the posts, Botox had been referred to on a social media platform known to be used by members of the public and thus the product, a prescription only medicine, had been promoted to the public. A breach of the Code was ruled.

The Panel noted that a senior manager had reposted on his/her personal Instagram account news from the awards that Botox had been awarded injectable product of the year. That post had, in turn, been reposted by a colleague from the salesforce. Allergan had submitted that those who followed the accounts of the two individuals were predominately either other Allergan staff or health professionals. In the Panel's view, however, that did not rule out the possibility that some followers would be members of the public. In referring to Botox's success as 'Injectable Product of the Year' the Panel disagreed with Allergan's submission that the posts contained no claims for the product. The Panel again noted Allergan's submission about the brevity of the posts and the number of people who could have potentially viewed them but it considered that as Botox had been referred to on social media then, on the balance of probabilities, it had been promoted to the public. A breach of the Code was ruled.

The Panel noted that twice on the corporate Juvederm Instagram account and on two personal Instagram accounts, through employees' failure to follow company policy, Botox had been promoted to the public in breach of the Code. In that regard the Panel noted that the policy regarding reposting material on the corporate Instagram accounts was not a formal standard operating procedure (SOP) and so records on who had been trained on it were not accurately maintained. Further, the policy also only required the material to be reviewed by the authorized person who intended to repost it. The Panel considered that it thus might be difficult for one person to be responsible for the account and balance the positive endorsement from Allergan to repost content to build a strong visual presence on social media with the need to make an objective judgment about what could be reposted. The SOP on personal use of social media made no reference to prescription only medicines. In the Panel's view, given the difficulties which could arise, particularly when a company promoted devices and prescription only medicines in the same therapy area, Allergan's social media policy documents needed to be much more robust and explicit with regard to prescription only medicines. Although the company had quickly deleted the personal Instagram posts and had reminded all staff of the requirements around social media and prescription only medicines, the Panel was concerned that four times company policy had not been followed by a number of people, including once by a senior manager. The Panel considered that high standards had not been maintained and, on balance, Allergan had brought discredit upon and reduced confidence in the pharmaceutical industry. Breaches of the Code were ruled, including Clause 2.

The owner and medical director of an aesthetics clinic, complained about the promotion of Botox (botulinum toxin type A) on social media by Allergan Limited. Botox was indicated for,

*inter alia*, the temporary improvement in the appearance of facial lines at or above eye level when the severity of those lines had an important psychological impact in adults.

## COMPLAINT

The complainant alleged that Allergan had persistently de-medicalised the aesthetics industry and promoted prescription only medicines to the public. The company's latest activities represented a downward spiral and trivialisation of what was a medical treatment with a prescription only medicine.

The complainant noted that a posting on Instagram about Juvederm (a dermal filler registered as a medical device) contained a Botox pack shot. In that regard, the complainant alleged that Botox had been promoted to the public. Similarly, Allergan had reposted a video on its own Juvederm patient-facing Instagram page. The video again contained a Botox packshot which thus promoted the product to the public. The complainant submitted that by reposting third-party generated material on its own social media channels, Allergan had endorsed both Juvederm and Botox to the public.

The complainant also noted that Instagram live streaming posts and videos from the Aesthetics Awards 2019 event were uploaded onto a senior employee's personal Instagram page. The postings referred to Botox as 'Injectable Product of the Year 2019'. The complainant alleged that this appeared to be an arrogant approach, as though the employee was above UK rules and regulations. Other members of the employee's team loaded the same material referring to Botox onto their own Instagram accounts.

When writing to Allergan, the Authority asked it to consider the requirements of Clauses 2, 9.1 and 26.1 of the Code.

When asked if he/she had any conflicts of interest, the complainant stated that he/she was, *inter alia*, a trainer for organisations affiliated to Merz and Allergan.

## RESPONSE

Allergan explained that in the aesthetics field it commercialised and distributed Botox – a prescription only medicine, Juvederm products – a range of dermal fillers registered and CE marked as class III medical device and CoolSculpting – a non-invasive fat reduction system registered and CE marked as a class II medical device. Unlike for prescription only medicines, it was acceptable in principal to promote medical devices to members of the public.

Allergan stated that it used social media to interact with consumers and customers, including the promotion of its medical devices. The majority of this content referred directly to Juvederm or Coolsculpting. Other content surrounded updates about Allergan or the field of aesthetics in general. Allergan had no intention or desire to promote Botox or other prescription only medicines to the public through social media or any other platform.

Allergan noted that the complainant was concerned about the reposting of third party content on its Juvederm Instagram account and the reposting of third party content on individual Allergan employees' Instagram accounts.

Allergan stated that it had a social media policy (copy provided). Those who had reposted third party content on their own Instagram accounts had been trained on this policy which stated that individuals must ensure that content met all local laws, regulations and industry codes. Copies of the training certificates of those individuals were provided. The employee responsible for reposting on the Allergan owned Juvederm Instagram account received training at the time of onboarding, including the Allergan Account Social Media Policy (copy provided), which discussed the requirement to adhere to applicable legislation and the Allergan process for reposting of third party content on its social media accounts. Unfortunately, this training was not formally documented however the individual had confirmed that he/she had been trained on it and knew about the restrictions and requirements surrounding prescription only medicines. As per the corrective actions detailed below, Allergan stated that it would implement a second review for all such third party reposts to ensure this did not occur in the future.

Allergan provided a copy of its process to support the reposting of third party content on its social media accounts. The relevant member of staff confirmed that he/she had read and understood the process, however as the process was not currently a formal standard operating procedure (SOP), training records had not been captured. The process stated that content must not mention a prescription only medicine. That fact had been made clear to the individual on several occasions and he/she had extensive experience in curating social media content.

In January 2019, Allergan conducted social media training for all staff at a company conference. This training made it clear that prescription only medicines must not be referred to on social media. It provided clear requirements not to mention Botox or any other prescription only medicine and provided examples of unacceptable content. Both individuals involved in the reposting of content on their own accounts attended this training.

Allergan submitted that all of the social media accounts in question were open accounts.

The number of followers of the accounts in question were provided. The individuals in question had followers that were predominantly either other Allergan staff or health professionals. The JuvedermUK Instagram account had a mixed user base of Allergan staff, health professionals and members of the public.

Allergan explained that the JuvedermUK Instagram account existed only to publish information on Juvederm facial fillers and the field of aesthetics in general, ranging from answering frequent questions, covering events and showcasing results of Juvederm fillers. Content was published either as Grid Posts which appeared on the main account and in the main feed of its followers or Stories which were defined below and were how the two posts highlighted in this complaint were published. Both posts in question had a major emphasis on Juvederm and were surrounded by other slides that focused 100% on Juvederm.

Content was generated for the account either by Allergan or by the reposting of third party content. All Allergan generated content was reviewed and approved by the normal internal process before it could be posted. No reference to prescription only medicines was allowed – including, but not limited to, brand name, generic name, indications related to only prescription only medicines, images/pack shots, hashtags, audio etc.

Allergan stated that it had a process which allowed certain staff to repost/share/like relevant third party content (copy provided). In the same way as Allergan generated content and as per the process, none of this third party content should refer to prescription only medicines in any

way. As the process required that only content which was not about a prescription only medicine was shared, this activity occurred without prior approval subject to the guidelines in the aforementioned process. All such content was reviewed at a quarterly content review meeting. With the exception of the materials involved with this complaint, Allergan had not identified any non-compliant materials using this procedure.

Allergan reiterated that the JuvedermUK Instagram account existed only to publish information on Juvederm facial fillers and the field of aesthetics in general. Allergan had no intention or desire to promote Botox or other prescription only medicines to the public through that social media account, or any other promotional medium. The company considered that the use of social media to have a balanced and informative discussion with members of the public was useful and beneficial to the safety and well-being of consumers. The company's consistent messaging was to ensure that people interested in these procedures received a thorough consultation with accredited practitioners and as such it was the company's intention to educate and inform the public, and not, as alleged, to promote prescription only medicines.

Both posts in question on the JuvedermUK account were published as Instagram Stories - this was a feature within the Instagram app where users could capture and post related images and video content in a slideshow format. The first story was a still image reposted from a named source – hereafter referred to as the 'image story'. The second was a video reposted from another named source hereafter referred to as the 'video story'. The image story contained a promotional image and messaging for Juvederm fillers within which was a pack shot of Botox. The video story contained promotional and educational messaging for Juvederm fillers but for the last 4 seconds of the 14 second video, a Botox vial and carton were visible in the background. Allergan noted that the featured Botox carton was not an intended feature of the video and although it should have been recognised by the Allergan member of staff and not reposted, Allergan submitted that this was an honest mistake by the individual.

Content posted onto the stories feature of the JuvedermUK page was available for only 24 hours from the time of posting (less time, however, when reposting an existing story, as once the original story expired, so did any repost).

Each image or video posted into a channel's story appeared as slides in a continually advancing slideshow. In the case of images, the story (slide) remained on screen for no more than 2 seconds, before the next one was shown automatically and videos would typically be shown in full (videos would be split across multiple stories if over 15 seconds in length). Stories were designed to be a temporary slideshow of snapshots for a given day. It was, however, possible to take screenshots during the brief time that slides appeared on screen.

Although not private, content from the stories did not show up in the main feed of Instagram posts, and a follower must actively click to view the latest stories, which as explained above, were only online for a maximum of 24 hours before being automatically removed

The stories on the JuvedermUK page on average got up to 350 viewers for the first slide, and this dropped by between 10 and 20% for each additional slide. On average, there were approximately 5 stories showing on the JuvedermUK account in any 24 hour period. In both cases highlighted in this complaint, the stories were one of several showing that day.

The third slide in a story (as was the case with the image story) would attract approximately 220-290 viewers, and a seventh slide in a story (as was the case with the video story) would attract approximately 70-180 viewers.

With regards to the image story, this would have only been on screen to a viewer for around 2 seconds and with regards to the video story, the Botox packaging could be seen in the background for the last 4 seconds of a 14 second video (a copy of the video was provided).

As noted above, these stories would only be available to view for a maximum of 24 hours, and in the case of reposted third party content such as those involved in this case, they would typically be taken down sooner. For example, Allergan understood that the image story came down within approximately 12 hours of the post being reposted to the JuvedermUK story. This could mean as few as 110 viewers saw the story.

Taken together this meant that the post would have been seen by a limited number of people and would have shown the Botox packaging for a brief period of time. There were no promotional messages related to Botox and any promotional messages were very clearly aimed towards Juvederm.

Allergan submitted that according to its process for reposting third party content, these two stories should not have been posted as they contained images of Botox packs. The individual who posted them had acknowledged the error and, as detailed below, steps were being taken to prevent this occurring again.

The reposting of third party content was to share that content with others. The awards covered all aspects of the aesthetics industry, of which the majority of activity was not about prescription only medicines.

Allergan won a number of awards at the event and the staff involved posted that information to highlight the significant successes of the company. There was no intention to advertise a prescription only medicine to the public and the posts themselves contained no promotional claims about Botox. Within the post itself, the Botox brand name was not emphasised, and the predominant feature was the Allergan company logo. The accompanying comments from the senior manager mentioned the company, not the product. The intention was to highlight the company success, not advertise Botox.

The organisation behind the awards had a combined total of approximately 24,000 followers across Instagram and Twitter. Compared to the just over 1,050 followers of the two employees who posted on Instagram, the reach and impact of the Allergan employees was clearly much less significant.

Allergan submitted that it identified and self-corrected these posts. The social media posts from the senior manager were identified and removed within 24 hours of initial posting. The senior manager, proactively, on the next working day then requested that the Allergan UK aesthetic sales force be required to review their social media activity following the awards event and remove/edit any post mentioning a prescription only medicine. All posts were removed within one working day.

Further review of the social media accounts involved confirmed that these were the only posts which referenced a prescription only medicine.

Both employees in question had completed the Allergan policy on social media activity and by posting such content had not acted in accordance with the policy.

Allergan reiterated that all posts were corrected within one working day. The two stories were automatically removed within 24 hours (and with the image story, likely within 12 hours). The third party reposting on the senior manager's Instagram account was removed the next day (a Sunday) proactively and the posts from the salesforce employee were removed on the next working day. These activities occurred within 24 hours, well before Allergan received the complaint.

Allergan stated that it continually assessed how it engaged in social media and what processes and policies should be in place to ensure it did so in a compliant manner. The company had recently revised its social media guidance for staff and would review both the content of the guidance and timing of the roll-out as a result of this complaint.

In the meantime, all staff had been reminded of the requirements surrounding social media and prescription only medicines.

Allergan stated that the guideline for reposting/sharing content on Allergan social media accounts would be made a formal SOP and rolled out to relevant staff through the company's Learning Management System, so that training records could be more accurately maintained. It would be revised to place additional emphasis on the need to avoid all reference to Botox/prescription only medicines and to require that each repost was checked by an additional person before going live. The company had also reviewed all reposted content to date to ensure there are no other mentions of prescription only medicines.

In summary, Allergan submitted that actively engaging in social media was necessary and beneficial to health professionals and customers alike. Allergan took its obligations to patients and health professionals seriously and acknowledged that in these circumstances it had failed to meet expectations of high standards and understand how the posts in question, despite having no promotional intention or messaging, would lead to members of the public seeing the Botox trademark and packaging.

Allergan noted that none of the posts contained direct promotional messages linked to Botox, that there was no intention to promote prescription only medicines, that the reach of the posts was small and of short duration, that Allergan self-corrected the posts and that a number of corrective actions had already been carried out and others identified for future implementation. For these reasons, the company denied a breach of Clause 2.

## **PANEL RULING**

The Panel noted that the use of social media, including Instagram, to provide information to the public was a legitimate activity if the material complied with the Code. Each case had to be considered on its own merits. The Code covered, *inter alia*, the promotion of medicines to health professionals and the provision of information about prescription only medicines to the public; the Code did not cover the promotion of devices.

The Panel noted that Allergan had a Juvederm Instagram account to publish information on Juvederm facial fillers and aesthetics in general. Allergan had submitted that the account had a

mixed user base of staff, health professionals and members of the public. The company had a process whereby relevant third party social media content could be shared, reposted or 'liked' by certain authorized Allergan employees who, in that regard, were encouraged to build a strong visual presence on social media by reposting content created by influencers and regular consumers which had the potential to increase the reach of the Allergan account and help towards the education of consumers. The policy document stated that before those employees posted material on the Instagram account, they had to check the content to ensure that there was no mention of a prescription only medicine. Although Allergan submitted that 'mention of a prescription only medicine' included, but was not limited to, brand name, generic name, indications related to only prescription only medicines, images/pack shots, hashtags, audio etc, this was not stated in the policy document. Assuming there was no reference to a prescription only medicine, then there was no need for the content to be approved. The Panel noted that although the employee who had reposted the stories on the Juvederm Instagram account had been trained on the policy referred to above, Allergan had no record that that training had taken place.

The Panel noted although the two stories reposted on the Juvederm Instagram account were predominately about Juvederm, both contained pack shots of Botox – in the still image story the pack shot was in the foreground and in the video image story it was in the background in the final 4 seconds of the video. Neither story was online for more than 24 hours. The Panel considered that regardless of the prominence of the pack shots, the brevity with which they were visible, the length of time that the posts were available or the number of people who were likely to have seen the posts, Botox had been referred to on a social media platform known to be used by members of the public and thus the product, a prescription only medicine, had been promoted to the public. A breach of Clause 26.1 was ruled.

The Panel noted that Allergan had a social media policy that staff authorized to do so had to follow if they used social media to discuss Allergan-related topics in a professional and/or personal capacity (COMP-CORP-POL-104, version 1, effective December 2016). The Panel noted that the policy document stated that Allergan-related topics included, *inter alia*, anything related to an Allergan product and/or product lines; there was no reference, however, to the restrictions that surrounded the reference to prescription only medicines on social media. Section 2.2 stated that all content and communications by users had to be reviewed and approved in accordance with applicable local procedures (eg promotional review process) and section 3.2.4 stated that content had to meet all local laws, regulations and industry codes.

The Panel noted that a senior manager had reposted on his/her personal Instagram account news from the awards that Botox had been awarded injectable product of the year. That post had, in turn, been reposted by a colleague from the salesforce. Allergan had submitted that those who followed the accounts of the two individuals were predominately either other Allergan staff or health professionals. In the Panel's view, however, that did not rule out the possibility that some followers would be members of the public. In referring to Botox's success as 'Injectable Product of the Year' the Panel disagreed with Allergan's submission that the posts contained no claims for the product. The Panel again noted Allergan's submission about the brevity of the posts and the number of people who could have potentially viewed them but it considered that as Botox had been referred to on social media then, on the balance of probabilities, it had been promoted to the public. A breach of Clause 26.1 was ruled.

The Panel noted that twice on the corporate Juvederm Instagram account and on two personal Instagram accounts, through employees' failure to follow company policy, Botox had been

promoted to the public in breach of Clause 26.1. In that regard the Panel noted that the policy regarding reposting material on the corporate Instagram accounts was not a formal SOP and so records on who had been trained on it were not accurately maintained. Further, the policy also only required the material to be reviewed by the authorized person who intended to repost it. The Panel considered that it thus might be difficult for one person to be responsible for the account and balance the positive endorsement from Allergan to repost content to build a strong visual presence on social media with the need to make an objective judgment about what could be reposted. The SOP on personal use of social media made no reference to prescription only medicines. In the Panel's view, given the difficulties which could arise, particularly when a company promoted devices and prescription only medicines in the same therapy area, Allergan's social media policy documents needed to be much more robust and explicit with regard to prescription only medicines. Although the company had acted swiftly to delete the personal Instagram posts and had reminded all staff of the requirements around social media and prescription only medicines, the Panel was concerned that four times company policy had not been followed by a number of people, including once by a senior manager. The Panel considered that high standards had not been maintained and, on balance, Allergan had brought discredit upon and reduced confidence in the pharmaceutical industry. A breach of Clauses 9.1 and 2 was ruled.

**Complaint received      17 December 2019**

**Case completed         16 March 2020**