CASE AUTH/3221/6/19

MEDICINES INFORMATION PHARMACIST v COLONIS

Promotion of Melatonin Oral Solution

A medical information pharmacist in an NHS trust, complained about a letter (ref UK-CPL-121-008) promoting Melatonin 1mg/ml Oral Solution sent by Colonis Pharma Limited. Melatonin 1mg/ml Oral Solution was indicated for the short-term treatment of jet-lag in adults.

The complainant noted that the claims 'Melatonin 1mg/ml Oral Solution should be prescribed over unlicensed alternatives' and 'Specials should not be supplied on the basis of cost or convenience if Melatonin 1mg/ml Oral Solution satisfies the patient's clinical need' were both referenced to a publication from a named NHS clinical commissioning group (CCG) titled 'Unlicensed, off-label medicines and specials'. The complainant alleged that the cited reference did not properly support either claim as there was no mention of melatonin. The reference cited gave the claims misleading and unwarranted weight.

The complainant further noted that Colonis Pharma data on file was cited in support of the second claim above. In the complainant's view it was meaningless and ridiculous for a writer to state anything they liked and reference it to Data on file. It was misleading as it implied that the claim was supported by another credible authority rather than Colonis effectively referencing itself. The complainant was puzzled by what 'data' could support the claim.

The detailed response from Colonis is given below.

The Panel noted that the claims at issue appeared in a promotional letter sent to announce that Melatonin 1mg/ml Oral Solution was now licensed. The licensed indication 'for short-term treatment of jet-lag in adults' was stated in black bold regular sized font in the first sentence of the letter. The letter claimed, *inter alia*, in larger green bold font, that Melatonin 1mg/ml Oral Solution should be prescribed over unlicensed alternatives and that 'Specials' should not be supplied on the basis of cost or convenience if Melatonin 1mg/ml Oral Solution satisfied the patient's clinical need; the latter claim was highlighted within a box.

The Panel noted that the claim 'Melatonin 1mg/ml Oral Solution should be prescribed over unlicensed alternatives' was referenced to a document from a named CCG document which referred to, *inter alia*, decision guides and responsibilities of health professionals in relation to the use of unlicensed medicines, off-label medicines and 'Specials'; it did not refer to any specific product in detail and there was no reference to melatonin.

The Panel noted Colonis' submission that the claim 'Melatonin 1mg/ml Oral Solution should be prescribed over unlicensed alternatives' was implicit that unlicensed products as a group were being referred to rather than Melatonin Oral Solution specifically.

In the Panel's view, the claim at issue, referenced to the named CCG document, as an integral part of a promotional piece about Melatonin 1mg/ml Oral Solution, implied that the CCG document specifically discussed the preferential use of Melatonin 1mg/ml Oral Solution over unlicensed alternatives which was not so. The Panel considered that the claim was misleading and could not be substantiated by the reference cited. Breaches of the Code were ruled.

The Panel noted that the second claim at issue 'Specials should not be supplied on the basis of cost or convenience if Melatonin 1mg/ml Oral Solution satisfies the patient's clinical need' was referenced to the same named CCG document, guidance about the prescribing of 'Specials' from the Royal Pharmaceutical Society and Colonis data on file.

The Panel noted that the Code did not prohibit the use of data on file as a reference in promotional material. It appeared that the complainant had not requested a copy of the data on file from Colonis.

The Panel noted that the data on file was correspondence between Colonis and the MHRA in relation to Melatonin 3mg Tablets and made no reference to Melatonin 1mg/ml Oral Solution. In the correspondence, the MHRA stated that it was important for marketing authorization holders to understand that there may still be reasons for using an unlicensed product after a licensed equivalent has become available.

The Panel noted that the cited guidance from the Royal Pharmaceutical Society was general guidance in relation to prescribing specials and made no reference to melatonin.

The Panel noted its comments above and considered that it was misleading to cite general advice about the principles of using unlicensed medicines or 'Specials' in a way which implied that such documents specifically discussed the preferential use of Melatonin 1mg/ml Oral Solution over 'Specials'. Together the cited references implied to the reader that the claim 'Specials should not be supplied on the basis of cost or convenience if Melatonin 1mg/ml Oral Solution satisfies the patient's clinical need' was based on robust, product specific advice which was not so. The Panel considered that the claim was misleading in this regard and ruled a breach of the Code. The Panel did not consider that the named CCG document, the Royal Pharmaceutical Society document or the email trail with the MHRA substantiated the claim which was specifically about Melatonin 1mg/ml Oral Solution and a breach was ruled. A further breach was ruled as Colonis had failed to maintain high standards.

A medical information pharmacist in an NHS trust, complained about a letter (ref UK-CPL-121-008) promoting Melatonin 1mg/ml Oral Solution sent by Colonis Pharma Limited. Melatonin 1mg/ml Oral Solution was indicated for the short-term treatment of jet-lag in adults.

COMPLAINT

The complainant noted that the claims 'Melatonin 1mg/ml Oral Solution should be prescribed over unlicensed alternatives' and 'Specials should not be supplied on the basis of cost or

convenience if Melatonin 1mg/ml Oral Solution satisfies the patient's clinical need' were both referenced to a publication from a named NHS clinical commissioning group (CCG) titled 'Unlicensed, off-label medicines and specials'. The complainant alleged that the cited reference did not properly support either claim as there was no mention of melatonin. The reference cited gave the claims misleading and unwarranted weight.

The complainant further noted that Colonis Pharma data on file was cited in support of the second claim above. In the complainant's view it was meaningless and ridiculous for a writer to state anything they liked and reference it to data on file. It was misleading as it implied that the claim was supported by another credible authority rather than Colonis effectively referencing itself. The complainant was puzzled by what 'data' could support the claim.

When writing to Colonis, the Authority asked it to consider the requirements of Clauses 7.2, 7.4 and 9.1 of the Code.

RESPONSE

Colonis submitted that the letter in question was sent to hospital pharmacists, procurement pharmacists, medicines optimisation teams and clinical commissioning group (CCG) medicines management teams on 25 June 2019 to announce the availability of Melatonin 1mg/ml Oral Solution, its licensed product for use when it satisfied the clinical needs of a patient in preference to the previously widely available unlicensed 'special' products.

Colonis submitted that the claim 'Melatonin 1mg/ml Oral Solution should be prescribed over unlicensed alternatives' was such that it was implicit that unlicensed products as a group, were being referred to rather than Melatonin Oral Solution specifically. This was further qualified by the supporting sentence immediately below which stated 'If there is a genuine clinical need, licensed products should be used off-label instead of unlicensed alternatives'; this clearly reinforced the reference to licensed products as a group, not least as there was no mention of Melatonin Oral Solution.

Similarly, Colonis submitted that it was implicit in the context in which it appeared that the claim 'Specials should not be supplied on the basis of cost or convenience if Melatonin 1mg/ml Oral Solution satisfies the patient's clinical need' clearly referred to licensed products as a group, rather than to Melatonin Oral Solution.

Colonis submitted that it was clear that it was referring to unlicensed products as a group in all three statements, rather than to Melatonin Oral solution and thus the statements were not misleading; the company denied a breach of Clause 7.2.

Colonis refuted the assertion that the claims did not state that licensed medicines, either on- or off-label, should be used instead of unlicensed products, and that specials should not be supplied on the basis of cost or convenience if a licensed product satisfied the patient's clinical needs.

The cited reference from the named CCG: (Unlicensed, Off-label medicines and specials – version 2 – March 2019) stated in the summary 'Decision guide to reviewing a patient on an unlicensed medicine' algorithm that 'Special liquid medicines should only be used if there's no licensed medicine that meets the patients' needs'. It also stated in the section headed 'When

might a Special be appropriate?' that supply of unlicensed medicines (including Specials) for reasons of cost or convenience was not acceptable and was not a special clinical need.

Colonis stated that the CCG document was used instead of the source document which was the Medicines and Healthcare products Regulatory Agency (MHRA) Guidance Note 14 (The Supply of Unlicensed Medicinal Products ('Specials')) as the Code generally prohibited reference to the MHRA. The CCG document was in the public domain and contained the well-established MHRA 'hierarchy of risks' depiction.

Reference 5 (Royal Pharmaceutical Society 'Guidance for the prescribers of Specials' April 2016) also stated in its introduction: 'Specials, like all unlicensed medicines, should only be prescribed when there is no available licensed medicine which fully meets the patient's special clinical needs' – and also reiterated that 'A special clinical need does not include reasons of cost or convenience'.

Colonis submitted that it was therefore clear that the two claims at issue were aligned with the content of references 2 and 5, and thus they were not misleading and were capable of substantiation and consequently complied with Clauses 7.2 and 7.4.

Colonis noted that it was permissible to provide unpublished information as 'data on file' on request. Had the complainant requested a copy of the 'data on file', he/she would have seen that it referred to email correspondence between Colonis Pharma and the Senior Pharmaceutical Assessor (Unlicensed Medicines Imports), Inspection and Standards Division at the MHRA. Colonis submitted that it was granted permission to cite the correspondence in support of a statement relating to the principle of supplying a licensed melatonin product which met the specific clinical needs of the patient rather than using an unlicensed product. Consequently, the 'data on file' reference was valid and appropriately supported the claim. Colonis submitted that the claim was thus not misleading and was capable of substantiation; the company denied breaches of Clauses 7.2 and 7.4.

In summary, Colonis submitted that it had shown that the claims about the use of licensed medicines were not misleading and were well substantiated and were therefore not in breach of Clauses 7.2 and 7.4.

Colonis also submitted that it had shown that the 'data on file' reference was valid, not misleading and substantiated the statement and therefore was not in breach of Clauses 7.2 and 7.4. Given the above Colonis also denied a breach of Clause 9.1.

Colonis submitted that the prescribing information attached to the letter was headed 'Melatonin 1mg/ml Oral Solution' but actually contained text relating to Melatonin 3mg Film-Coated tablets. This matter was taken up separately as a voluntary admission (Case AUTH/3240/8/19).

PANEL RULING

The Panel noted that the claims at issue appeared in a promotional letter sent to announce that Melatonin 1mg/ml Oral Solution was now licensed. The licensed indication 'for short-term treatment of jet-lag in adults' was stated in black bold regular sized font in the first sentence of the letter. The letter claimed, *inter alia*, in larger green bold font, that Melatonin 1mg/ml Oral Solution should be prescribed over unlicensed alternatives and that 'Specials' should not be

supplied on the basis of cost or convenience if Melatonin 1mg/ml Oral Solution satisfied the patient's clinical need; the latter claim was highlighted within a box.

The Panel noted that it was not necessarily unacceptable to draw the attention of pharmacists, medicines optimization teams and CCG medicines management teams to the relevant legal requirements, however, such material had to comply with the Code.

The Panel noted that the claim 'Melatonin 1mg/ml Oral Solution should be prescribed over unlicensed alternatives' was referenced to a document from a named CCG about unlicensed, off-label medicines and 'Specials'. The named CCG document referred to, *inter alia*, decision guides and responsibilities of health professionals in relation to the use of unlicensed medicines, off-label medicines and 'Specials'; it did not refer to any specific product in detail and there was no reference to melatonin.

Clause 7.2 of the Code stated, *inter alia*, that information, claims and comparisons must be accurate, balanced, fair, objective and unambiguous and must be based on an up-to-date evaluation of all the evidence and reflect that evidence clearly. They must not mislead either directly or by implication, by distortion, exaggeration or undue emphasis. Clause 7.4 stated that any information, claim or comparison must be capable of substantiation.

The Panel noted Colonis' submission that the claim 'Melatonin 1mg/ml Oral Solution should be prescribed over unlicensed alternatives' was implicit that unlicensed products as a group were being referred to rather than Melatonin Oral Solution specifically.

In the Panel's view, the claim at issue, referenced to the named CCG document, as an integral part of a promotional piece about Melatonin 1mg/ml Oral Solution, implied that the CCG document specifically discussed the preferential use of Melatonin 1mg/ml Oral Solution over unlicensed alternatives which was not so. The Panel considered that the claim was misleading in this regard and ruled a breach of Clause 7.2. The claim could not be substantiated by the reference cited and a breach of Clause 7.4 was ruled.

The Panel noted that the second claim at issue 'Specials should not be supplied on the basis of cost or convenience if Melatonin 1mg/ml Oral Solution satisfies the patient's clinical need' was referenced to the same named CCG document, guidance about the prescribing of 'Specials' from the Royal Pharmaceutical Society and Colonis data on file.

The Panel noted that the Code did not prohibit the use of data on file as a reference in promotional material. Clause 7.7 stated that when promotional material refers to data on file, the relevant part of this data must be provided without delay at the request of members of the health professions or other relevant decision makers. It appeared that the complainant had not requested a copy of the data on file from Colonis.

The Panel noted that the data on file was correspondence between Colonis and the MHRA in relation to Melatonin 3mg Tablets and made no reference to Melatonin 1mg/ml Oral Solution. In the correspondence, the MHRA stated that it was important for marketing authorization holders to understand that there may still be reasons for using an unlicensed product after a licensed equivalent has become available.

The Panel noted that the cited guidance from the Royal Pharmaceutical Society was general guidance in relation to prescribing specials and made no reference to melatonin.

The Panel noted its comments above and considered that it was misleading to cite general advice about the principles of using unlicensed medicines or 'Specials' in a way which implied that such documents specifically discussed the preferential use of Melatonin 1mg/ml Oral Solution over 'Specials'. Together the cited references implied to the reader that the claim 'Specials should not be supplied on the basis of cost or convenience if Melatonin 1mg/ml Oral Solution satisfies the patient's clinical need' was based on robust, product specific advice which was not so. The Panel considered that the claim was misleading in this regard and ruled a breach of Clause 7.2. The Panel did not consider that the named CCG document, the Royal Pharmaceutical Society document or the email trail with the MHRA substantiated the claim which was specifically about Melatonin 1mg/ml Oral Solution. A breach of Clause 7.4 was ruled.

The Panel noted its comments and rulings above and considered that Colonis had failed to maintain high standards and a breach of Clause 9.1 was ruled.

Complaint received **29 June 2019**

Case completed **20 December 2019**