

CASE AUTH/3434/12/20

COMPLAINANT v A.MENARINI

Alleged promotion to the general public on LinkedIn

A complainant who described him/herself as a concerned UK health professional, complained about a press release by the Menarini Group posted on LinkedIn.

The complainant noted that the LinkedIn post had been 'liked' by UK-based staff and named an employee and provided a link to the named employee's personal LinkedIn account. The complainant alleged that the LinkedIn post promoted to the public.

The detailed response from A.Menarini is given below.

The Panel noted A.Menarini's submission that the press release in question, which had been generated and placed on the Menarini Group LinkedIn account by global colleagues, had appeared on the UK employee's personal LinkedIn feed as he/she followed the Menarini Group. According to A.Menarini the UK employee had accidentally 'liked' the post. The Panel considered that the UK employee's engagement with the post, on the balance of probabilities, had proactively disseminated the material to his/her connections which would likely be a predominantly UK audience and had thus brought the LinkedIn post and associated press release within the scope of the UK Code.

The Panel considered that there was a difference between making a press release available only to the press, to be published or not, and sharing it or proactively disseminating it, albeit accidentally, on a publicly accessible social media platform with the inevitability that a wider audience would read it.

The Panel noted that the press release reported positive pharmacodynamic data for the experimental compound SEL24/MEN1703 which was being investigated for the treatment of acute myeloid leukaemia; the following statement was attributed to a senior executive, Menarini Ricerche:

'We are pleased with the preliminary, positive results observed with SEL24/MEN1703, a PIM/FLT3 inhibitor under investigation for the treatment of AML. As outlined in our ASH poster presentation, the dose escalation phase of the DIAMOND-01 trial showed that SEL24/MEN1703 has a manageable safety profile and results in a meaningful target engagement in peripheral blood and bone marrow blast cells from patients treated with SEL24/MEN1703. We look forward to continuing our investigation of SEL24/MEN1703 as a potential new treatment for this aggressive and hard-to-treat cancer, as part of our commitment to develop effective innovative therapies that can make a difference in the lives of cancer patients'.

The Panel considered that it was clear from the press release that the compound was an investigational product in development, that the results were preliminary, and that further investigation of the compound was planned. The Panel noted that the product was not classified as a prescription only medicine when the LinkedIn post and associated press release at issue were 'liked' by the UK employee (December 2020). Clause 26.1 only applied to prescription only medicines. On that very narrow technical point the Panel ruled no breach of the Code.

The Panel understood that employees might feel inclined to endorse articles related to their senior colleagues on LinkedIn or their company's corporate social media posts but noted that depending on the content such activity might or might not fall within the scope of the Code; companies would be well advised to cover the possibility of that activity in their social media policies. This was particularly important if UK employees were likely to follow the social media accounts of overseas affiliates which might have Codes, laws and regulations that differed to the UK.

The Panel noted that A.Menarini had a UK Internet and Social Media SOP which instructed employees not to comment, at any time, about company products on social media. A local (UK) Social Media Behaviours document, sent in September 2020, stated that in general the recommendation for social media was not to 'like', share or comment on anything related to the company that was produced outside an official UK channel or else that could constitute a breach of the Code. The Panel noted A.Menarini's submission that the employee in question had been trained on the SOP in May 2017.

In the Panel's view, it was not necessarily unacceptable for a company to refer in general terms to its pipeline products or work it was doing. However, tone, content, context, location, layout, intended audience and overall impression were important factors. The Panel queried if a social media platform such as LinkedIn was the appropriate forum to share such information. The Panel noted that one UK employee had, albeit accidentally, in contravention of company policy and his/her training, 'liked' the LinkedIn post by global regarding the positive results of a pharmacodynamic assay with an investigational compound under examination for the treatment of acute myeloid leukaemia resulting, on the balance of probabilities, in its subsequent proactive dissemination to all of his/her connections. The Panel considered that high standards had not been maintained in that regard and a breach of the Code was ruled.

Noting its comments and rulings above, the Panel considered that the particular circumstances of this case did not warrant a ruling of a breach of Clause 2 of the Code which was a sign of particular censure and reserved for such use. No breach of the Code was ruled.

A complainant who described him/herself as a concerned UK health professional, complained about a press release by the Menarini Group posted on LinkedIn. The post read:

'62nd ASH Annual Meeting: Menarini Ricerche presents SEL24/MEN1703 pharmacodynamic data from the dose escalation part of DIAMOND-01 trial, with the poster entitled: "SEL24/MEN1703 provides PIM/FLT3 Downstream Pathway Inhibition in Acute Myeloid Leukemia Blast Cells: Results of the Pharmacodynamic Assay in the Dose Escalation Part of First- in-Human DIAMOND Trial". Look at our last PR to get more details about it! [link] #Menarini#Research#Leukemia

COMPLAINT

The complainant provided a link to the LinkedIn post and noted that it had been 'liked' by UK-based staff and named an employee and provided a link to the named employee's personal LinkedIn account. The complainant alleged that the LinkedIn post promoted to the public.

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

RESPONSE

A.Menarini noted that the complaint concerned a press release uploaded on LinkedIn about the publication of a poster at the 62nd American Society of Haematology (ASH) Annual Meeting which had taken place virtually on December 5-8 showing the results of a pharmacodynamics assay with SEL24/MEN1703, a PIM/FLT3 inhibitor under investigation for the treatment of acute myeloid leukaemia which had been 'liked' by a UK-based member of staff.

A.Menarini explained that the press release in question was generated and placed on the Menarini Group LinkedIn account by global colleagues on 1 December 2020. It was intended to inform about the publication of a poster presenting the results of the pharmacodynamics part of a Phase I/II study that would be published at the 62nd ASH Annual Meeting. The UK company had no role in the generation, approval or publication of those posts.

A.Menarini further explained that the UK colleague referred to by the complainant had stated that he/she accidentally clicked the 'like' button when the post appeared in his/her LinkedIn feed. The employee did not actively seek the post, nor was he/she a targeted recipient; the post appeared in his/her LinkedIn feed as he/she had followed the Menarini Group. He/she had wanted to remove the 'like' immediately but did not know how to do it; the 'like' was finally deleted when he/she received instructions on how to do so.

With regard to Clause 26.1, A.Menarini noted that 'Prescription only medicines must not be advertised to the public.' The press release (copy and link provided) posted on the LinkedIn account of Menarini Group clearly did not promote the benefits of the experimental compound SEL24/MEN1703, currently in Phase I/II of the clinical development process. The post gave scientific, factual and balanced information about the results of the pharmacodynamics part of the study DIAMOND-01 currently ongoing. The post did not encourage members of the public to ask for a specific prescription only medicine nor did it raise unfounded hopes of successful treatment. Likewise, the information about safety was not misleading.

A.Menarini submitted that SEL24/MEN1703 was not a licensed product and therefore could not be classified as a prescription only medicine. Clause 26.1 only applied to prescription only medicines. Furthermore, no non-proprietary name or brand name was mentioned in the post. Therefore, A.Menarini denied that the post promoted a prescription only medicine.

The post was 'liked' by one UK Menarini employee by mistake and he/she removed it as soon as he/she was informed about how to do that. A.Menarini Farmaceutica Internazionale S.r.l policy about social media did not permit employees to comment about company products on social media irrespective of whether that was done in business or personal time.

Therefore, A.Menarini did not consider that 'liking' the post could be seen as the promotion of a prescription only medicine to the general public given the content of the post and the involuntary nature of the action. A.Menarini categorically denied a breach of Clause 26.1.

A.Menarini stated that A.Menarini Farmaceutica Internazionale S.r.l was committed to upholding the principles and detail of the Code. The company policy on social media was contained in a standard operating procedure (SOP) – The Internet and Social Media (copy provided). That SOP was included in the induction training course for all new employees. The named employee was trained on the SOP in May 2017 according to the company's electronic training record (copy provided) when the last version of that SOP was released. On 1 September 2020, an email (copy provided) reminding recipients not to 'like', share or comment on any post which originated from outside of the UK was sent to all employees. Therefore, high standards were clearly maintained.

A.Menarini noted that Clause 2 stated that 'Activities or materials associated with promotion must never be such as to bring discredit upon, or reduce confidence in, the pharmaceutical industry'. A.Menarini did not consider that either the press release or the involuntary 'like' promoted a prescription only medicine. Therefore, the company believed that the post and the action of 'liking' it did not reduce confidence in the pharmaceutical industry.

A.Menarini categorically denied any breaches of Clause 9.1 or 2.

PANEL RULING

The Panel noted that LinkedIn was different to some other social media platforms in that it was a business and employment-orientated network and was primarily, although not exclusively, associated with an individual's professional heritage and current employment and interests; its application was not limited to the pharmaceutical industry or to health care. In the Panel's view, it was of course not unacceptable for company employees to use personal LinkedIn accounts; the Code would not automatically apply to all activity on a personal account. The Panel noted that compliance challenges arose when the personal use of social media by pharmaceutical company employees overlapped with their professional responsibilities or the interests of the company. The Panel noted that material could be disseminated or highlighted by an individual on LinkedIn in a number of ways, by posting, sharing, commenting or 'liking'. The Panel understood that if an individual 'liked' a post it increased the likelihood that the post would appear in his/her connections' LinkedIn feeds, appearing as '[name] likes this'. In the Panel's view, activity conducted on social media that could potentially alert one's connections to the activity might be considered proactive dissemination of material. In addition, an individual's activity and associated content might appear in the individual's list of activities on his/her LinkedIn profile page which was visible to his/her connections; an individual's profile page was also potentially visible to others outside his/her network depending on the individual's security settings. Company employees should assume that such activity would therefore potentially be visible to both those who were health professionals or other relevant decision makers and those who were members of the public. In that regard it was imperative that they acted with extreme caution when using all social media platforms, including LinkedIn, to discuss or highlight issues which impinged on their professional role or the commercial/research interests of their company. Whether the Code applied would be determined on a case-by-case basis, taking into account all of the circumstances including, among other things, content and distribution of the material. If an employee's personal use of social media was found to be in scope of the Code, the company would be held responsible. The Panel considered that companies should assume that the Code

would apply to all work-related, personal LinkedIn posts/activity by their employees unless, for very clear reasons, it could be shown otherwise. Any material associated with a social media post, for example a link within a post, would be regarded as being part of that post. Companies must have comprehensive and up to date social media policies that provide clear and unequivocal guidance on what was, and what was not, acceptable and it was extremely important that employees were trained upon them and followed them.

The Panel noted A.Menarini's submission that the press release in question, which had been generated and placed on the Menarini Group LinkedIn account by global colleagues, had appeared on the UK employee's personal LinkedIn feed as he/she followed the Menarini Group. According to A.Menarini the UK employee had accidentally 'liked' the post. The Panel considered that the UK employee's engagement with the post, on the balance of probabilities, had proactively disseminated the material to his/her connections which would likely be a predominantly UK audience and had thus brought the LinkedIn post and associated press release within the scope of the UK Code.

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The Panel understood that employees might feel inclined to endorse articles related to their senior colleagues on LinkedIn or their company's corporate social media posts but noted that depending on the content such activity might or might not fall within the scope of the Code; companies would be well advised to cover the possibility of that activity in their social media policies. This was particularly important if UK employees were likely to follow the social media

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Noting its comments and rulings above, the Panel considered that the particular circumstances of this case did not warrant a ruling of a breach of Clause 2 of the Code which was a sign of particular censure and reserved for such use. No breach of Clause 2 was ruled.

Complaint received **2 December 2020**

Case completed **4 June 2021**