

COMPLAINANT v AMGEN

Alleged promotion to the public

A contactable complainant who described him/herself as a health professional complained about a newspaper advertisement placed by Amgen Ltd. The advertisement featured a photograph of an older woman. Overlaid on the photograph was a highlighted boxed text which read 'Are you up to date with your osteoporosis treatment? Winter is coming. Maintain your independence, call your GP, get your flu jab alongside your osteoporosis medicine'. 'Supported by Amgen' appeared in large type at the bottom of the advertisement, with the company name in logo-type.

The complainant was concerned that Amgen had promoted its treatment to the public and had incorrectly informed patients that they would be able to access a flu vaccination with an Amgen treatment. The complainant stated that one of his/her practice's patients had brought in the newspaper clipping and asked if he/she would be able to receive a flu vaccination if switching his/her osteoporosis treatment. The complainant alleged that the newspaper clipping implied that the flu vaccination was supported by Amgen, but an internet search showed that it manufactured treatments for osteoporosis and did not have a flu vaccination. The complainant alleged that the advertisement in a national newspaper was opportunistic and unclear.

The detailed response from Amgen is given below.

In the Panel's view, the advertisement did not refer to, either directly or indirectly, a specific Amgen medicine, and therefore it did not constitute the promotion of a prescription only medicine to the public. No breach of the Code was ruled.

The advertisement might have led a member of the public to ask their health professional about their osteoporosis treatment or about receiving a flu vaccination, but not about any specific medicine. No breach of the Code was ruled in that regard.

The Panel noted Amgen's submission that the company aimed to remind patients who were invited to attend their GP practice for a flu vaccination to simultaneously seek advice about their osteoporosis treatment, thereby minimising the need for multiple visits to their GP practice. However, in the Panel's view, the advertisement at issue might be read as implying that patients seeing their GP about their osteoporosis medicine would also be able to receive a flu vaccination at the same time, which was not necessarily so. In the Panel's view, the advertisement was thus misleading and Amgen had failed to maintain high standards in this regard. A breach of the Code was ruled.

The Panel did not consider that the advertisement implied that the flu vaccine was an Amgen medicine as alleged and no breach of the Code was ruled in that regard.

The Panel did not consider that the particular circumstances of this case warranted a ruling of a breach of Clause 2 which was a sign of particular censure and reserved for such. No breach of Clause 2 was ruled.

A contactable complainant who described him/herself as a health professional complained about a newspaper advertisement (ref GB-PRO-0920-00028) placed by Amgen Ltd. The advertisement featured a photograph of an older woman who was smiling and looking to the camera. Overlaid on the photograph was a highlighted boxed text which read 'Are you up to date with your osteoporosis treatment? Winter is coming. Maintain your **independence**, call your GP, get your **flu jab** alongside your **osteoporosis medicine**'. 'Supported by Amgen' appeared in large type at the bottom of the advertisement, with the company name in logo-type.

COMPLAINT

The complainant appeared to be complaining on behalf of his/her practice partners and was concerned that Amgen had promoted its treatment to the public and had incorrectly informed patients that they would be able to access a flu vaccination with an Amgen treatment. The complainant stated that one of his/her practice's patients had brought in the newspaper clipping and asked if he/she would be able to receive a flu vaccination if switching his/her osteoporosis treatment. The complainant considered that the newspaper clipping implied that the flu vaccination was supported by Amgen, but an internet search showed that it manufactured treatments for osteoporosis and did not have a flu vaccination. The complainant stated that within the current climate, there had been a great demand for flu vaccinations, and he/she considered that the advertisement in a national newspaper was opportunistic and unclear.

When writing to Amgen, the Authority asked it to consider the requirements of Clauses 26.1, 26.2, 9.1 and 2 of the Code.

RESPONSE

Amgen considered that the advertisement at issue (date of preparation September 2020) was entirely consistent with the requirements of the Code.

Amgen stated that since the start of the global pandemic, many patients with osteoporosis, who were often elderly and had additional risk factors for Covid-19, had been unable or hesitant to attend their usual medical appointments for reasons of shielding at home, limited availability of healthcare services and, understandably, reluctance to attend visits in person at hospitals or GP surgeries. Amgen submitted that many osteoporosis patients had thus missed their treatment reviews, which was highlighted by McCloskey *et al* (2020) who observed that the daily number of FRAX online sessions, which was an assessment of fracture risk, was markedly reduced during the Covid-19 pandemic.

Amgen submitted that it was cognizant of the challenges faced by those patients, in particular during Covid-19 times, and conducted a campaign to raise awareness of osteoporosis through the use of the material at issue with the main objective of reminding patients to stay up-to-date with monitoring via their GPs, and not to neglect, their osteoporosis treatment. Osteoporosis could often take a backseat to other health priorities but could result in significant morbidity and mortality for patients who suffered a fragility fracture. The advertisement asked in bold writing 'Are you up to date with your osteoporosis treatment?', which encouraged patients to take care of their osteoporosis condition.

Amgen stated that the overlap in the demographics of patients with osteoporosis and those receiving the flu vaccination created an opportunity in the early winter period to remind patients who were invited to attend their GP practice for a flu vaccination to simultaneously seek advice about their osteoporosis treatment, thereby minimising the need for multiple visits to their GPs. This was highlighted in the advertisement with the statement 'Call your GP' when making arrangements or seeking advice.

The advertisement was published in five newspapers and magazines between 6 and 27 October 2020. No further publication or use of the advertisement occurred after 27 October 2020 and none was planned for the future as it was a time bound campaign. Amgen had received no other complaint or request for clarification in relation to the content of the advertisement other than this complaint.

Amgen stated that in compliance with Clauses 26.1. and 26.2, the advertisement did not refer to any specific prescription only medicine, as alleged by the complainant, and did not therefore promote any Amgen medicine to the public. Additionally, the advertisement referred to 'osteoporosis treatment' and 'osteoporosis medicine' of which there were a number.

Amgen submitted that it was never its intention to mislead or misguide patients or clinicians but only to support patients with osteoporosis. The flu vaccination period provided an opportunity to remind patients about the importance of their osteoporosis medicine and treatment adherence.

Amgen stated that it had been transparent in its involvement and the nature of its support in this disease awareness campaign, which was clearly represented at the foot of the material as required by the Code.

Amgen submitted that the material in question did not promote any Amgen prescription only medicine to the public and was clear in Amgen's support of the disease awareness campaign and was therefore not in breach of Clauses 26.1 or 26.2.

Amgen stated that 2020 had presented a number of unique challenges. In the months leading up to October 2020, there were significant periods of local and national lockdowns and a raft of Covid-19 sensitivities in the context of healthcare provision. Patients had experienced a reduction in the number of available visits to their GP or healthcare providers as well as general difficulties and reluctance to venture outside the home. For these reasons, Amgen supported the disease awareness campaign to address the risks involved in neglecting osteoporosis treatment by making the most efficient use of any time a patient had with their GP or healthcare provider. Amgen's focus had always been on what was best for the patient and the company considered that it had maintained high standards throughout the campaign and was therefore not in breach of Clause 9.1.

Amgen submitted that whilst Clause 2 related specifically to promotional activity and the disease awareness campaign was not promotional, it considered that the company had acted appropriately and in full compliance with the Code at all times. Disease awareness campaigns were a legitimate activity under the Code if performed in accordance with the safeguards required by the Code and, in Amgen's view, it had met the standards required. Amgen did not consider that the advertisement was in breach of Clause 2.

In conclusion, Amgen submitted that it was not in breach of Clauses 26.1 and 26.2, as the disease awareness campaign did not refer to any specific prescription only medicine and did not

promote any Amgen medicine to the public. Amgen submitted that it had remained true to the Code and had complied with Clauses 26.1 and 26.2 by clearly declaring the company's involvement in the disease awareness campaign.

Amgen stated that it had maintained high standards throughout and was not in breach of Clause 9.1. The company had endeavoured, through understanding the challenges faced by osteoporosis patients in these particularly uncertain times, to remind patients to take appropriate steps to stay up-to-date with their osteoporosis treatment, including seeking advice from their GPs. Finally, Amgen submitted that it was not in breach of Clause 2 of the Code as that clause related specifically to promotional activity and the disease awareness campaign was not promotional. Amgen stated that it therefore believed that it had acted appropriately and in full compliance with the Code.

PANEL RULING

The Panel noted that the advertisement at issue had allegedly been highlighted to the complainant by one of his/her practice's patients, after having seen it in a national newspaper.

The Panel noted that Clause 26.1 prohibited the advertising of prescription only medicines to the public. Clause 26.2 permitted information to be made available to the public about prescription only medicines provided such information was factual and presented in a balanced way. It must not raise unfounded hopes of successful treatment or be misleading with respect to the safety of the product. Statements must not be made for the purpose of encouraging a member of the public to ask their health professional to prescribe a specific prescription only medicine. The Panel noted that the supplementary information to Clause 26.2 stated that a company might conduct a disease awareness or public health campaign provided that the purpose was to encourage members of the public to seek treatment for their symptoms while in no way promoting the use of a specific medicine.

The Panel noted Amgen's submission that due to the Covid-19 pandemic, many osteoporosis patients had missed their treatment reviews and it therefore conducted the disease awareness campaign to raise awareness of osteoporosis with the main objective of reminding patients to stay up-to-date with monitoring via their GPs, and not to neglect, their osteoporosis treatment.

In the Panel's view, the newspaper advertisement did not refer to, either directly or indirectly, a specific Amgen medicine, and therefore it did not consider that it constituted the promotion of a prescription only medicine to the public. No breach of Clause 26.1 was ruled.

The Panel did not consider that the advertisement failed to meet the requirements of Clause 26.2 of the Code. In the Panel's view, the material might have led a member of the public to ask their health professional about their osteoporosis treatment or about receiving a flu vaccination, but not about any specific medicine. No breach of Clause 26.2 was ruled in that regard.

The Panel noted that the advertisement in question stated, *inter alia*, '...call your GP, get your flu jab alongside your osteoporosis medicine'. The Panel noted Amgen's submission that the company aimed to remind patients who were invited to attend their GP practice for a flu vaccination to simultaneously seek advice about their osteoporosis treatment, thereby minimising the need for multiple visits to their GP practice. However, in the Panel's view, the newspaper advertisement at issue might be read as implying that patients seeing their GP about their osteoporosis medicine would also be able to receive a flu vaccination at the same time,

which was not necessarily so. In the Panel's view, the newspaper advertisement was thus misleading and Amgen had failed to maintain high standards in this regard. A breach of Clause 9.1 was ruled.

The Panel noted the complainant's concern that the newspaper advertisement implied that the flu vaccination was supported by Amgen, but an internet search showed that the company manufactured treatments for osteoporosis and did not have a flu vaccine. The Panel noted that Amgen had made no specific comment in regard to this allegation. The Panel, however, did not consider that the newspaper advertisement implied that the flu vaccine was an Amgen medicine as alleged and no breach of Clause 9.1 was ruled in that regard.

The Panel disagreed with Amgen's submission that Clause 2 related only to promotional activity. The Panel, however, did not consider that the particular circumstances of this case warranted a ruling of a breach of Clause 2 which was a sign of particular censure and reserved for such. No breach of Clause 2 was ruled.

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Complaint received 7 December 2020

Case completed 7 July 2021