CASE AUTH/3499/4/21

COMPLAINANT v DAIICHI-SANKYO

Promotion of Efient and Lixiana on Daiichi-Sankyo website and breach of undertaking

An anonymous complainant, who was originally contactable but later became non-contactable alleged that Daiichi-Sankyo had promoted medicines to the public via its website in breach of its undertaking given in Case AUTH/3107/10/18.

The complainant stated that the mention of products by brand name, generic name, indication and further details on mechanism of action on the webpage at issue were clear promotion to public as the public could access the content freely. The complainant submitted that the other major concern was that this same website was found in breach of promotion to the public in a previous case, Case AUTH/3107/10/18, which was alleged to be promotion to the public. Therefore the undertaking had not been complied with. In addition, for health professionals seeing the page, it was promotional content so prescribing information was needed. Lastly, as per Case AUTH/3107/10/18, the webpage should not have been available for a member of the public to access. The complainant was very disappointed that Daiichi-Sankyo had not improved their compliance issues and regularly continued to fall foul of the Code. The complainant submitted that the PMCPA needed to review Daiichi-Sankyo standards in view of the high risk to patient safety with its poor compliance practices and culture internally.

The detailed response from Daiichi-Sankyo is given below.

The Panel noted Daiichi-Sankyo's submission that as part of a website review in March 2019, the antithrombotic agent section and its relevant sub-pages were disabled, no longer approved for use and not visible directly on the Daiichi-Sankyo UK website. The Panel noted Daiichi-Sankyo's submission that, unbeknown to both Daiichi-Sankyo UK and Daiichi-Sankyo Europe, the webpage at issue was, as a result of human and technical error, incorrectly set as live at the back end of the wireframe and was thus accessible externally at the time of the complaint.

The Panel noted Daiichi-Sankyo's submission that the webpage in question was not easily accessible; it was not available through the website navigation in the footer of each live page, however, it could be found if certain terms were searched for via the website search function. The Panel had no information as to what terms needed to be entered into the website's search function to find the webpage at issue but noted Daiichi-Sankyo's submission that since notification of this complaint, the page in question was deleted and product name searches via the search function would now direct the user only to Daiichi-Sankyo UK approved pages.

In the Panel's view, the webpage at issue promoted Lixiana (edoxoban) and Efient (prasugrel) and would potentially be seen by a broad audience including members of the

public. The Panel considered that the website might encourage members of the public to ask their health professional to prescribe a specific prescription only medicine. The Panel therefore ruled breaches of the Code as acknowledged by Daiichi-Sankyo.

The Panel noted its comments and rulings above. It appeared to the Panel that any user of the website could access the webpage in question if certain terms were searched for in the website's search function and the intended audience for the webpage was not identified. The Panel noted, therefore, that the promotional material was not restricted to health professionals and other relevant decision makers and a breach of the Code was therefore ruled.

The Panel did not consider that the complainant had established that the webpage at issue was intended for patients taking Efient or Lixiana and therefore the requirement to include the information about reporting side effects was not relevant and no breach was ruled.

The Panel ruled a breach as Daiichi-Sankyo had failed to maintain high standards by promoting prescription only medicines to the public. The Panel did not consider that the particular circumstances in this case warranted a ruling of a breach of Clause 2. No breach of Clause 2 was ruled.

The Panel considered that the webpage at issue contained promotional information about Efient and Lixiana and thus the requirements of the Code in relation to promotional material would apply in that regard. The Panel noted Daiichi-Sankyo's submission that the webpage had not been reviewed by a medical signatory and therefore the Panel ruled a breach of the Code.

The Panel considered that it was likely that health professionals would access the website for information about the company's medicines and thus that Efient and Lixiana had been promoted without prescribing information as required by the Code; the Panel therefore ruled a breach of the Code.

The Panel noted its comments and rulings above and considered that Daiichi-Sankyo had failed to maintain high standards by not providing prescribing information or certifying the material as required by the Code and a breach was ruled. The Panel noted that Clause 2 was a sign of particular censure and reserved for such use. The Panel did not consider that the particular circumstances of this case warranted a ruling of a breach of Clause 2 and ruled no breach accordingly.

The Panel noted that in Case AUTH/3107/10/18, Daiichi-Sankyo was ruled in breach of the Code as a webpage on the corporate website advertised prescription only medicines to the public and access to that webpage had not been restricted to health professionals and other relevant decision makers; Daiichi-Sankyo's undertaking, accepting the Panel's decision, was dated February 2019. Turning to the present case, Case AUTH/3499/4/21, the Panel ruled breaches of the Code because the webpage in question promoted prescription only medicines to the public and access to the webpage had not been restricted to health professionals. The Panel considered that there had thus been a failure to comply with the undertaking given in Case AUTH/3107/10/18 and a breach of the Code was ruled.

The Panel noted Daiichi-Sankyo's submission that it took all the necessary steps to ensure that the material in question with regards to Case AUTH/3107/10/18 was discontinued, removed and no longer in use. The Panel further noted Daiichi-Sankyo's submission that the corporate website page at issue was never intended to be externally facing and was visible only as a result of an undetected backend error when it was mistakenly enabled as a result of human and technical error.

The Panel noted that inadequate action leading to a breach of undertaking was an example of an activity likely to be in breach of Clause 2. Whilst the Panel was concerned that Daiichi-Sankyo had only became aware of the availability of the webpage at issue on receipt of this complaint, noting its comments and rulings above, it 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 was reserved for such use. On balance, no breach of Clause 2 was ruled.

An anonymous complainant, who was originally contactable but later became non-contactable alleged that Daiichi-Sankyo had promoted medicines to the public via its website in breach of its undertaking given in Case AUTH/3107/10/18.

COMPLAINT

The complainant submitted that the webpage (https://www.daiichi-sankyo.co.uk/research-development/antithrombotic-agents) was last updated on 7 December 2018. The complainant referred to important content in reference to promotion to the public on the webpage, this being that:

> 'Daiichi-Sankyo has already launched the antiplatelet agent Effient® / Efient® (Prasugrel), which targets platelet aggregation in arteries. The anticoagulant LIXIANA® (Edoxaban) is an oral, once-daily, direct factor Xa (pronounced "Ten A") inhibitor. Factor Xa is one of the key components responsible for blood clotting, so inhibiting this makes the blood thin and less prone to clotting. Once-daily LIXIANA® received European Commission approval in June 2015 for the prevention of stroke and SE in adult patients with NVAF with one or more risk factors, such as congestive heart failure, hypertension, age ≥ 75 years, diabetes mellitus, prior stroke or transient ischaemic attack (TIA), as well as for the treatment of deep vein thrombosis (DVT) and pulmonary embolism (PE), and prevention of recurrent DVT and PE in adults. Edoxaban is currently marketed in several European countries, South Korea, the US and Japan, and was approved in Taiwan and Hong Kong. In other countries, regulatory review is ongoing.'

The complainant stated that the mention of products by brand name, generic name, indication and further details on mechanism of action were clear promotion to public. This was in breach of Clauses 26.1, 26.2, 26.3, 9.1 and 2 as the public could access the content freely. The complainant submitted that the other major concern here was that this same website was found in breach of promotion to the public in a previous case, Case AUTH/3107/10/18, which was alleged to be promotion to the public. It was hugely concerning that the signatories at Daiichi-Sankyo had not learnt from this case but instead decided to proceed with again promotion to the public. Therefore, this was a breach of Clause 29 as the undertaking had not been complied with. In addition, for health professionals seeing the content on this page, this was promotional content so prescribing information was needed. A breach of Clauses 4.1, 14.1, 9.1 and 2. Lastly, as per Case AUTH/3107/10/18, the webpage should not have been available for a

member of the public to access. This was in breach of Clauses 28.1, 28.3, 9.1 and 2. The complainant was very disappointed that Daiichi-Sankyo had not improved their compliance issues and regularly continued to fall foul of the Code. The complainant submitted that the PMCPA needed to review Daiichi-Sankyo standards in view of the high risk to patient safety with its poor compliance practices and culture internally.

When writing to Daiichi-Sankyo, the Authority asked it to consider the requirements of Clauses 2, 4.1, 9.1, 14.1, 26.1, 26.2, 26.3, 28.1, 28.3 and 29 of the Code and, in addition, Clause 2 in relation to the alleged breach of undertaking.

RESPONSE

Daiichi-Sankyo UK submitted that it took its obligations under the ABPI Code of Practice seriously, strove to maintain high standards and behaved responsibly and ethically at all times.

Daiichi-Sankyo https://www.daiichi-sankyo.co.uk/research-development /antithrombotic-agents

1 Daiichi-Sankyo UK submitted that it would like to make clear at the outset that this page was from the corporate website; the existence of this page was unknown to Daiichi-Sankyo UK until notified via the complaint. The page at issue from the corporate website was never seen or approved by Daiichi-Sankyo UK for publication.

2 For historical context, as part of a website review undertaken in March 2019, the antithrombotic agent section of the website and its relevant sub-pages were disabled and no longer approved for use.

3 This whole section, and its subpages, were not visible directly on the Daiichi-Sankyo UK website. However, unbeknown to both Daiichi-Sankyo UK and Daiichi-Sankyo Europe, one subpage entitled '*Antithrombotic agents*' was mistakenly enabled as a result of human and technical error. This page was not easily accessible and could only be found via the normal search function on the Daiichi-Sankyo UK website. It was not available through the website navigation in the footer of each live page. In addition, this page could not be found through the normal navigation unless certain terms were searched for. They were disabled content via the wireframe which were never intended to be viewed and not accessible thorough the normal navigation tools.

4 As soon as Daiichi-Sankyo UK was notified of the complaint, an internal investigation identified that the sub-page was incorrectly set as live at the back end of the wireframe and was immediately disabled.

5 To deliver improvements in quality control, all draft and non-live content, not subject to pre-publication compliance review, would now be deleted and removed from the corporate website wireframe (a wireframe was an image or set of images which displayed the functional elements of a website or page, typically used for planning a site's structure and functionality).

6 The content on the '*Antithrombotic agents*' page was not, and had not, been approved for publication on the Daiichi-Sankyo UK website at any point. It was not reviewed by an

appropriately qualified person or medical signatory. The page was never intended for external publication and was stored and hidden in draft format only.

7 The appearance and accessibility of this page was the result of human error and quality control issues. Remedial actions to disable all draft or non-live content has since been taken immediately and the page in question has been deleted. Product name searches via the search function would now direct the user only to Daiichi-Sankyo UK approved pages.

8 Daiichi-Sankyo UK acknowledged that because the page at issue was accessible externally at the time of the complaint, certain Code breaches might have occurred. Daiichi-Sankyo submitted that it would like to reiterate that this was a genuine technical error with no intention to promote prescription-only medicines to health professionals, other relevant decision makers, members of the public, and the like, on this corporate platform. Daiichi-Sankyo took its responsibility as a manufacturer and supplier of prescription-only medicines seriously, including the requirements and principles outlined in the ABPI Code.

9 Admission of Code of Practice breaches.

a) Daiichi-Sankyo UK acknowledged the breaches Clauses 26.1 and 26.2.

b) Daiichi-Sankyo UK further acknowledged that the breaches cited in Section 9a meant that it failed to maintain high standards, notwithstanding that this was a genuine technical mistake with no intention to promote the three prescription-only medicines to health professionals, other relevant decision makers, members of the public, and the like. For clarity, Daiichi-Sankyo UK acknowledged that it might have breached Clause 9.1 of the Code.

10 Denial of Code of Practice breaches relating to the webpage at issue:

a) Clause 4.1 – Daiichi-Sankyo submitted that the corporate website was not promotional material and was not aimed at health professionals or other relevant decision makers. Therefore, the availability of the prescribing information was not relevant in this case. For this reason, Daiichi-Sankyo UK refuted a breach of Clause 4.1.

b) Clause 14.1 – Daiichi-Sankyo submitted that the page on the corporate website page was not promotional material and was never aimed at health professionals and therefore, was not approved for use by a Daiichi-Sankyo UK Signatory. For this reason, Daiichi-Sankyo UK denied a breach of Clause 14.1.

c) Clause 26.3 – Daiichi-Sankyo submitted that the corporate website page was never aimed at patients prescribed Lixiana and Prasugrel. Daiichi-Sankyo UK would have included this information for patients about how to report adverse events if the website page was approved for such use. Daiichi-Sankyo UK website section under its UK products clearly had signposted under '*Adverse Event Reporting*', information on how to report adverse events. For this reason, Daiichi-Sankyo UK denied a breach of Clause 26.3.

d) Clause 28.1 – Daiichi-Sankyo submitted that the corporate website page was not directed or aimed at a UK audience or members of the public. This page was not openly accessible to members of the public and set live in error at the back end of the wireframe. For this reason, Daiichi-Sankyo UK denied a breach of Clause 28.1.

e) Clause 28.3 – Daiichi-Sankyo submitted that the corporate website page was not intended for members of the public and was never aimed at any specific UK audience. This page was not openly accessible to members of the public and was set live in error at the back end of the wireframe. For this reason, Daiichi-Sankyo UK denied a breach of Clause 28.3.

Clause 2 – Contrary to the argument put forward by the complainant, Daiichi-Sankyo UK believed that there was no credible evidence that patient safety and/or public health had been jeopardised. This corporate website page was not directed at any UK audience as stated above. Daiichi-Sankyo UK took compliance very seriously: it immediately carried out an investigation and implemented the remediation quickly and effectively. For this reason, Daiichi-Sankyo denied a breach of Clause 2.

f) Clause 2 and Clause 29 relating to breach of undertaking:

> Contrary to the argument put forward by the complainant, Daiichi-Sankyo UK denied a breach of undertaking. Daiichi-Sankyo UK took the breach of an undertaking very seriously: it took all the necessary steps to ensure that the material in question with regard to Case AUTH/3107/10/18 was discontinued, removed and no longer in use.

As a result of Case AUTH/3107/10/18, Daiichi-Sankyo had implemented the steps and processes below to:

i) remove the product content that was subject to the original complaint
ii) update the product content to contain product name, SPC and PIL – review and certify https://www.daiichi-sankyo.co.uk/ website content on a regular and frequent basis to ensure there was no promotional content
iii) create clear policies and protocols for corporate website management, including clear lines of accountability and ownership amongst Daiichi-Sankyo UK employees
iv) ensure all relevant staff and teams responsible for non-promotional external communications and website content undertook regular internal and externally provisioned training on the ABPI Code.

The corporate website page at issue was never intended to be externally facing and was visible only as a result of an undetected back-end error. The page was never certified for use. With regard to Case AUTH/3107/10/18, Daiichi-Sankyo UK took all possible steps to comply with the breach of undertaking regarding as described above. For these reasons, Daiichi-Sankyo UK denied a breach of Clause 2 and Clause 29.

In conclusion Daiichi-Sankyo submitted that it was with regret that the errors occurred, however, it trusted that the immediate actions taken with urgency to investigate and remediate this matter demonstrated to the PMCPA that it had taken this matter seriously, and had not brought discredit on, nor reduced confidence in, the pharmaceutical industry.

PANEL RULING

The Panel noted Daiichi-Sankyo's submission that as part of a website review in March 2019, the antithrombotic agent section and its relevant sub-pages were disabled, no longer approved for use and not visible directly on the Daiichi-Sankyo UK website. The Panel noted Daiichi-Sankyo's submission that, unbeknown to both Daiichi-Sankyo UK and Daiichi-Sankyo Europe, the webpage at issue was, as a result of human and technical error, incorrectly set as live at the back end of the wireframe and was thus accessible externally at the time of the complaint.

The Panel noted Daiichi-Sankyo's submission that the webpage in question was not easily accessible; it was not available through the website navigation in the footer of each live page, however, it could be found if certain terms were searched for via the website search function. The Panel had no information as to what terms needed to be entered into the website's search function to find the webpage at issue but noted Daiichi-Sankyo's submission that since notification of this complaint, the page in question was deleted and product name searches via the search function would now direct the user only to Daiichi-Sankyo UK approved pages.

In the Panel's view, the webpage at issue promoted Lixiana (edoxoban) and Efient (prasugrel) and would potentially be seen by a broad audience including members of the public. The Panel noted the statements on the webpage at issue and considered that they might encourage members of the public to ask their health professional to prescribe a specific prescription only medicine. The Panel therefore ruled a breach of Clause 26.1 and 26.2, as acknowledged by Daiichi-Sankyo.

The Panel noted that the supplementary information to Clause 28.1 stated that unless access to promotional material about prescription only medicines was limited to health professionals and other relevant decision makers, a pharmaceutical company website or a company sponsored website must provide information for the public as well as promotion to health professionals with the sections for each target audience clearly separated and the intended audience identified. This was to avoid the public needing to access material for health professionals unless they chose to. The Panel noted its comments and rulings above. It appeared to the Panel that any user of the website could access the webpage in question if certain terms were searched for in the website's search function and the intended audience for the webpage was not identified. The Panel noted, therefore, that the promotional material was not restricted to health professionals and other relevant decision makers as set out in the relevant supplementary information to Clause 28.1; a breach of Clause 28.1 was therefore ruled.

Clause 28.3 required that information about medicines covered by Clauses 28.1 and 28.2, which was provided on the internet and which was intended for members of the public, must comply with Clause 26.2. The Panel noted its rulings of breaches of the Code in relation to material for the public as set out above and therefore ruled a breach of Clause 28.3.

The Panel noted that Clause 26.3 required that any material which related to a medicine and which was intended for patients taking that medicine must include the following statement or similar: 'Reporting of side effects: If you get any side effects, talk to your doctor, pharmacist or nurse. This includes any possible side effects not listed in the package leaflet. You can also report side effects directly via the Yellow Card Scheme at [a web address which links directly to the MHRA Yellow Card site]. By reporting side effects you can help provide more information on the safety of this medicine'. The Panel did not consider that the complainant had established that the webpage at issue was intended for patients taking Efient or Lixiana and therefore the requirement of Clause 26.3 was not relevant and no breach was ruled in relation to the webpage.

The Panel noted its comments and rulings above and considered that Daiichi-Sankyo had failed to maintain high standards by promoting prescription only medicines to the public and a breach of Clause 9.1 was ruled. The Panel did not consider that the particular circumstances in this case warranted a ruling of a breach of Clause 2 which was a sign of particular censure and was reserved for such use. No breach of Clause 2 was ruled.

The Panel noted Daiichi-Sankyo's submission that the corporate website was not promotional material and was not aimed at health professionals or other relevant decision makers. The Panel considered that the webpage at issue contained promotional information about Efient and Lixiana and thus the requirements of the Code in relation to promotional material would apply in that regard. The Panel noted Daiichi-Sankyo's submission that the webpage had not been reviewed by a medical signatory and therefore the Panel ruled a breach of Clause 14.1.

The Panel considered that it was likely that health professionals would access the website for information about the company's medicines and thus that Efient and Lixiana had been promoted without prescribing information as required by the Code; the Panel therefore ruled a breach of Clause 4.1.

The Panel noted its comments and rulings above and considered that Daiichi-Sankyo had failed to maintain high standards by not providing prescribing information or certifying the material as required by the Code and a breach of Clause 9.1 was ruled. The Panel noted that Clause 2 was a sign of particular censure and reserved for such use. The Panel did not consider that the particular circumstances of this case warranted a ruling of a breach of Clause 2 and ruled no breach accordingly.

The Panel noted that a form of undertaking and assurance was an important document. Companies had to give an undertaking that the material in question and any similar material, if not already discontinued or no longer in use would cease forthwith and give an assurance that all possible steps would be taken to avoid similar breaches of the Code in future (Paragraph 7.1 of the Constitution and Procedure). It was very important for the reputation of the industry that companies complied with undertakings.

The Panel noted that in Case AUTH/3107/10/18, Daiichi-Sankyo was ruled in breach of the Code, including Clauses 26.1 and 28.1 as a webpage on the corporate website advertised prescription only medicines to the public and access to that webpage had not been restricted to health professionals and other relevant decision makers; Daiichi-Sankyo's undertaking, accepting the Panel's decision, was dated February 2019. Turning to the present case, Case AUTH/3499/4/21, the Panel ruled breaches of the Code because the webpage in question promoted prescription only medicines to the public and access to the webpage had not been restricted to health professionals. The Panel considered that there had thus been a failure to comply with the undertaking given in Case AUTH/3107/10/18 and a breach of Clause 29 was ruled.

The Panel noted Daiichi-Sankyo's submission that it took all the necessary steps to ensure that the material in question with regards to Case AUTH/3107/10/18 was discontinued, removed and no longer in use. The Panel noted Daiichi-Sankyo's submission that it had updated the product content to contain product name, SPC and PIL and reviewed and certified the website content on a regular and frequent basis to ensure there was no promotional content; it created policies and protocols for corporate website management, including lines of accountability and ownership amongst Daiichi-Sankyo UK employees, and ensured that all relevant staff and

teams responsible for non-promotional external communications and website content undertook regular internal and externally provisioned training on the Code.

The Panel further noted Daiichi-Sankyo's submission that the corporate website page at issue was never intended to be externally facing and was visible only as a result of an undetected backend error when it was mistakenly enabled as a result of human and technical error.

The Panel noted that inadequate action leading to a breach of undertaking was an example of an activity likely to be in breach of Clause 2. Whilst the Panel was concerned that Daiichi-Sankyo had only became aware that the webpage at issue was available on its website on receipt of this complaint, noting its comments and rulings above, it 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 was reserved for such use. On balance, no breach of Clause 2 was ruled.

Complaint received **2 April 2021**

Case completed **6 December 2021**