

CASE AUTH/3754/3/23

COMPLAINANT/DIRECTOR v NOVO NORDISK

Alleged breach of undertaking

CASE SUMMARY

This case was in relation to a booking form for the training course at issue that was found in breach in Case AUTH/3525/6/21; the form described a training webinar, run by a third-party organisation, and the health professionals who were eligible to attend.

Whilst the Panel noted Novo Nordisk's submissions about its efforts to ensure that materials were withdrawn, the Panel queried whether sufficient urgency had been demonstrated, given the importance of complying with undertakings. The Panel therefore ruled a breach of the following Clauses of the 2021 Code for failing to comply with the undertaking given in Case AUTH/3525/6/21:

Breach of Clause 3.3	Failing to comply with an undertaking
Breach of Clause 5.1	Failing to maintain high standards

The Panel considered that Novo Nordisk had, in part, been let down by the third-party organisation and that the complainant appeared to have accessed the form using a very specific search term; in the particular circumstances of this case, the Panel ruled no breach of the following Clause of the 2021 Code:

No Breach of Clause 2	Requirement that activities or materials must not bring discredit upon, or reduce confidence in, the pharmaceutical industry
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**This summary is not intended to be read in isolation.
For full details, please see the full case report below.**

FULL CASE REPORT

A complainant who described themselves as a concerned health professional alleged a breach of undertaking by Novo Nordisk Ltd. As the complaint concerned an alleged breach of undertaking and the PMCPA is responsible for ensuring that undertakings are complied with, that aspect of the complaint was taken up by the Director.

COMPLAINT

The complainant submitted that having seen the media coverage of Novo Nordisk's transgressions, their interest was piqued and they dug deeper to see if they could find further information.

The complainant was surprised that by searching on the title of the training course, the details were still easy to find online.

A single Google search for 'Free Weight Management Course (WEBINAR + PGD)' linked directly to the booking form, which the complainant expected was for the course at the centre of the complaint.

The complainant was amazed to find that the material was still available online and had not been confirmed as removed by the sponsor, Novo Nordisk, in light of the rulings. The complainant stated that this seemed a very slipshod approach but queried that it was perhaps not unexpected.

When writing to Novo Nordisk, the Authority asked it to consider the requirements of Clauses 2, 3.3 and 5.1 of the 2021 Code.

RESPONSE

Novo Nordisk submitted that the complainant in this case appeared concerned that material relating to the training at issue in Case AUTH/3525/6/21 was still available online, specifically a form that described the training webinar and the health professionals who were eligible to attend ('the form'). The complainant appeared to have accessed the form by using a very specific search term ('Free Weight Management Course (WEBINAR + PGD)') in Google rather than accessing it via the training provider's website.

As a result of the ruling in Case AUTH/3525/6/21, Novo Nordisk took multiple steps, over a significant period of time (starting in June 2022), to ensure that the third-party training company that provided the training at issue in this case no longer referred, or linked, to the training or referred to Novo Nordisk on its website or social media. These actions are listed below in chronological order:

- On 16 June 2022 Novo Nordisk requested, via email, that the training provider remove all mention of Novo Nordisk sponsorship from its website, course content and 'all other collateral of use'. The email also requested that the training provider cease sending the delegate list to Novo Nordisk. The training provider responded that these requests would be actioned.
- On 17 June 2022, the training provider emailed Novo Nordisk to confirm that 'all references to Novo Nordisk from our website, social media and course content have been removed'.
- On 20 June 2022, Novo Nordisk sent a further email request to the training provider that all posts relating to weight management were removed from the training provider's LinkedIn account. This was confirmed as actioned by the training provider on 21 June 2022 for all 2022 posts. On the same day Novo Nordisk requested a similar confirmation for 2021 posts, however, the training provider did not respond.
- On 29 September 2022, Novo Nordisk sent an urgent email request to the training provider to 'update metadata across all of your sites that mention Novo Nordisk and remove any mention of Novo Nordisk'. This was followed up by an email request from Novo Nordisk on 30 September to remove any 'hidden' pages that referred to the

training, ie, pages that could not be found on the training provider's website but might be found by a Google search using a specific term. As there was no response received to these emails, Novo Nordisk attempted to call two senior members of the training provider to discuss this matter; voicemails were left but the training provider did not respond.

- A further check was made by Novo Nordisk in November as to whether the training provider had actioned the requests made in September. It appeared they had not and on 10 November a further follow-up email request was made. Again, no response was received.
- In late November 2022 a further check was made by Novo Nordisk for any 'hidden' pages accessible via a specific Google search term ('Medical Weight Management +PGD – [company name] Training') and it appeared that there was a single page that was still publicly available, a copy was provided. The training provider was contacted again by Novo Nordisk in relation to this and at this stage the training provider confirmed that 'all references and links [to the training at issue in Case AUTH/3525/6/21] have now been removed'.

Novo Nordisk submitted that, as the PMCPA would be aware, the undertaking in relation to Case AUTH/3525/6/21 was signed by Novo Nordisk on 12 October 2022, by which time confirmation had been received from the training provider that all access to the training at issue in that case, and any references to Novo Nordisk, had been removed from its website and social media. Again, before the undertaking was signed, Novo Nordisk conducted a number of checks and discovered 'hidden' pages that it, again, requested that the training provider removed from the internet.

Although certain hidden pages appeared to remain accessible (using specific search terms in Google) after the undertaking was signed, including, it seemed, the form provided by the complainant in this case, Novo Nordisk denied that this amounted to a breach of undertaking on its part. Novo Nordisk submitted it took all reasonable steps to comply with the undertaking provided in Case AUTH/3525/6/21, as required by Clause 3.3, and was reassured repeatedly by the third party controlling the website that their requests to address the undertaking had been actioned; Novo Nordisk, therefore, refuted a breach of Clause 3.3. With that in mind, Novo Nordisk did not consider that there had been a breach of Clauses 5.1 or 2.

PANEL RULING

The Panel noted that the complaint concerned an alleged breach of an undertaking given in a previous case, Case AUTH/3525/6/21.

The Panel noted that Case AUTH/3525/6/21 concerned the publication of a LinkedIn Post by a third party organisation, 'the training provider', and associated training which were considered to be promotional material for Saxenda for which Novo Nordisk was responsible. Breaches of the Code were ruled including a breach of Clause 2. The company was reported by the Code of Practice Appeal Board to the ABPI Board which imposed further sanctions.

The Panel noted the complaint, received in March 2023, stated that a single Google search of the title of the training course from Case AUTH/3525/6/21, 'Free Weight Management Course (WEBINAR + PGD)', linked directly to a booking form which the complainant alleged was for the

training course at issue in Case AUTH/3525/6/21, specifically a booking form that described the training webinar and the health professionals who were eligible to attend.

The Panel noted that Clause 3.3 of the Code stated that when an undertaking had been given in relation to a ruling under the Code, the company concerned must ensure that it complies with that undertaking. Paragraph 7.1 of the Constitution and Procedure stated that respondent companies must provide a written undertaking that the activity or use of the material, if not already discontinued or no longer in use, must cease forthwith and that all possible steps will be taken to avoid a similar breach of the Code in the future.

The Panel noted the signed forms of undertaking provided by Novo Nordisk dated 22 June 2022 (Panel rulings) and 12 October 2022 (Appeal Board rulings). The signed form of undertaking dated 12 October 2022 stated that Novo Nordisk would take all possible steps to avoid similar breaches of the Code in the future.

The Panel noted Novo Nordisk's detailed submissions and supporting evidence about its efforts to ensure that materials were withdrawn from the Internet. The Panel noted Novo Nordisk's submission that it received no response from the training provider following its emails in June, September and November 2022. The Panel, noting the timelines, queried whether the time lag between these emails demonstrated sufficient urgency, given the importance of complying with undertakings. Further, it appeared that when the training provider failed to respond to an email that this was not consistently followed up. The Panel had no details of whether any other method of communication was attempted, such as telephone etc, and whether all possible steps had truly been taken.

The Panel noted that the booking form in question was available online and noting its comments above, considered that Novo Nordisk had failed to comply with its undertaking. The material found in breach in Case AUTH/3525/6/21 was still live and accessible. **A breach of Clause 3.3 was ruled.**

The Panel noted that an undertaking was an important document and compliance with undertakings was fundamental to the integrity of self-regulation. In the Panel's view, by failing to comply with the undertaking, Novo Nordisk had failed to maintain high standards and **a breach of Clause 5.1 was ruled.**

The Panel noted that the supplementary information to Clause 2 included inadequate action leading to a breach of undertaking as an example of an activity likely to be in breach of Clause 2. The Panel considered that it appeared that Novo Nordisk had, in part, been let down by the third party organisation and that the complainant appeared to have accessed the form in question using a very specific search term. The Panel considered that its concerns in relation to the breach of undertaking were, in the particular circumstances of this case, adequately covered by the breach of Clauses 3.3 and 5.1 above. On balance, the Panel, noting its comments above, did not consider that the particular circumstances of this case warranted a ruling of a breach of Clause 2 and **no breach** was ruled.

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Complaint received **18 March 2023**

Case completed **22 November 2023**