

Medicines Australia Code of Conduct Quarterly Report July - September 2008

Medicines Australia Code of Conduct

The quarterly report of determinations of the Medicines Australia Code of Conduct and Appeals Committees

The Medicines Australia Code of Conduct was introduced in 1960 and is currently operating under Edition 15 (Effective 6 December 2006).

This report covers all complaints finalised between July and September 2008. Complaints finalised during this period were in relation to materials or activities conducted under Edition 15 of the Code.

Quarterly Reports preceding this Report are available from the Medicines Australia website <http://www.medicinesaustralia.com.au/pages/page30.asp>

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How do I obtain a copy of the Code?

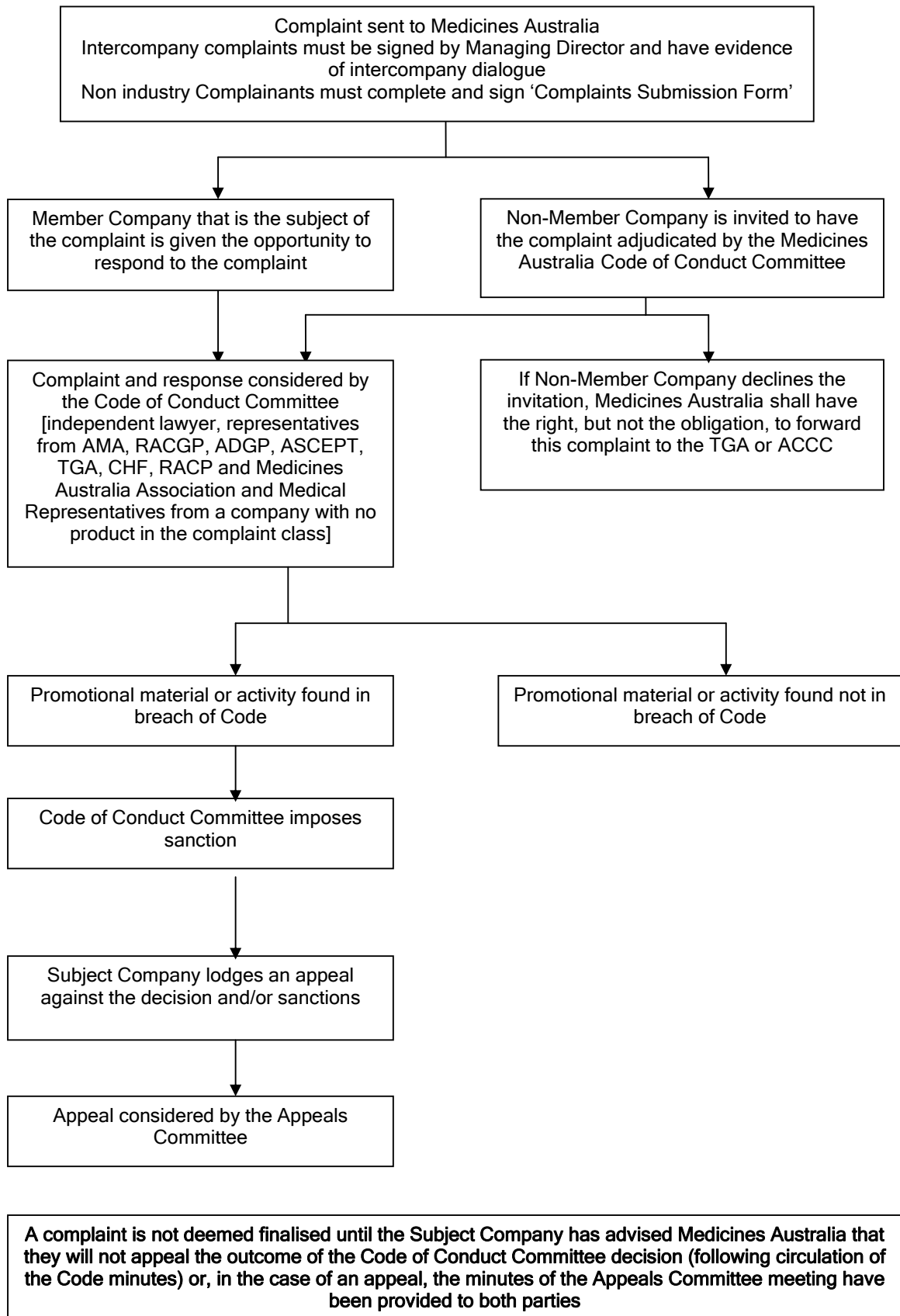
Hard copies of Edition 15 of the Code are available from Medicines Australia.

The Code of Conduct and the Guidelines that accompany the Code are available from the website (www.medicinesaustralia.com.au).

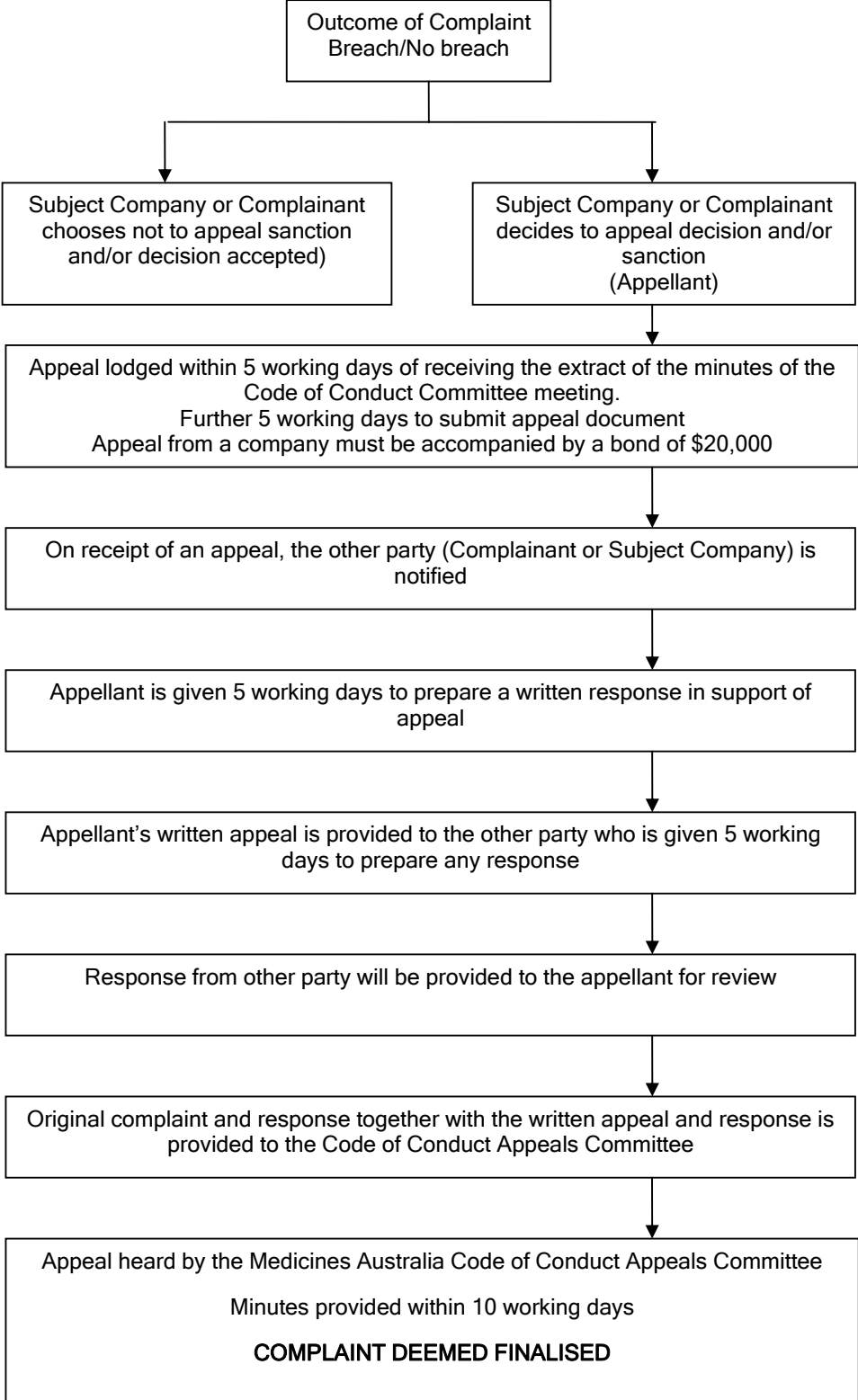
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Medicines Australia Code of Conduct Complaints Handling Process



Medicines Australia Code of Conduct Appeals Committee Procedures



Committees and Secretariat

The administration of the Code is supervised by the Code of Conduct Committee. The Code of Conduct Committee has the power to make a determination as to a breach of the Code, and impose sanctions. The right of appeal is available to both the Complainant and Subject Company. An appeal is heard by the Appeals Committee which has the power to confirm or overturn the decision.

Committee Member Biographies

Brief biographies for all Code, Appeals and Monitoring Committee members are available on the Medicines Australia website <http://www.medicinesaustralia.com.au/pages/page96.asp>

Code of Conduct Committee

Full Members (Voting rights)

- Independent Lawyer (Chairman) selected from a panel of six trade practices lawyers
- Representatives nominated by:*
- Australian General Practice Network (AGPN)
 - Australian Medical Association (AMA)
 - Australasian Society of Clinical and Experimental Pharmacologists and Toxicologists (ASCEPT)
 - Consumers Health Forum of Australia (CHF)
 - Royal Australasian College of Physicians (RACP)
 - Royal Australian College of General Practitioners (RACGP)
 - Therapeutic Goods Administration (TGA)
 - Medicines Australia Association Representatives (maximum 3)
 - Medicines Australia Medical/Scientific Directors (maximum 2)

Observers (No voting rights)

- Medicines Australia member companies' employees (maximum 2)
- Observer nominated by Medicines Australia (maximum 1)

Advisors (No voting rights)

- Secretary, Code of Conduct Committee
- Medicines Australia officer responsible for Scientific and Technical Affairs
- Medicines Australia Chief Executive Officer

Appeals Committee

Full Members (Voting rights)

- Independent Lawyer (Chairman) selected from a panel of six trade practices lawyers
- Representatives nominated by:*
- The College and/or Society associated with the therapeutic class of the product subject to appeal
 - The target audience to which the activity was directed eg: AMA, RACGP, AGPN
 - Consumers Health Forum of Australia (CHF)
 - Australasian Society of Clinical and Experimental Pharmacologists and Toxicologists (ASCEPT)
 - Medicines Australia Association Representatives (maximum 2)
 - Medicines Australia Medical/Scientific Director (maximum 1)

Advisors (No voting rights)

- Secretary, Code of Conduct Committee
- Medicines Australia Chief Executive Officer or delegate

Sanctions which can be imposed by the Code of Conduct Committee

Sanctions

If the Code of Conduct Committee finds a breach of the Code it may impose a sanction on the company found in breach. In order to determine an appropriate sanction the Committee will refer to the "Guidelines for determining Code sanctions" which are available on the Medicines Australia website. The following sanctions may be imposed:

Withdrawal of material or activity

Where promotional material or activity is found in breach of the Code the Committee will always require the company to cease use of the item or cease undertaking the activity.

Corrective letter

The Code of Conduct Committee will determine the audience for the letter based on the original distribution of the material found in breach of the Code.

Corrective advertisement

A corrective advertisement must be placed in the same publication as that found in breach of the Code.

Fine

Breach

Technical breach
Minor breach
Moderate
Severe breach

Fine

Maximum of \$100,000

Severe breach where activities have ceased
Breach repetitions
Repeat of previous breach

Maximum of \$200,000

Table of finalised complaints July - September 2008

| No. | Subject Company | Material Activity | Product | Complainant | Outcomes* | Sanction |
|-----|-----------------------|-------------------------|-------------|----------------------------------|--|---|
| 947 | Eli Lilly | Press Release | Cialis | Healthcare Professional | 1 x Breach 9.2, 9.4 1 x No Breach 10.8 | <ul style="list-style-type: none"> Fine \$60,000 (sanctioned together with 948) |
| 948 | Eli Lilly | Press Release | Cialis | CHOICE | 1 x Breach 9.2, 9.4 1 x No Breach 9.3 | See Complaint 947 |
| 949 | Sigma Pharmaceuticals | Supply of Starter Packs | Various | Anonymous company representative | 1x Breach 5.1.10 1x No Breach 5.1.6, 5.1.7 | <ul style="list-style-type: none"> Fine \$15,000 |
| 950 | GSK | Promotional Material | Seretide | BI + Pfizer | 1 x Breach 1.2.2, 1.3, 1.3.1, 3.12, 3.12.1, 1 x No Breach 1.7 | <ul style="list-style-type: none"> Fine \$175,000 Withdraw materials Corrective letter |
| 951 | Lundbeck | Promotional Material | Lexapro | Healthcare Professional | 1x No Breach 1.3, 9.8 | |
| 952 | Abbott | Starter packs | Synagis | John Hunter Hospital | 1x No Breach 9.4, 9.5, 9.10 | |
| 954 | sanofi-aventis | Promotional Material | Clopidogrel | Boehringer Ingelheim | 1x Breach 1.2, 1.3, 1.7 | <ul style="list-style-type: none"> Fine \$25,000 Withdraw materials Requirement for corrective ad. removed |
| 955 | Eli Lilly | Media Release | Cialis | Pfizer | 1x Breach 1.1, 1.2, 1.3, 9.6 1x No Breach 1.1, 1.2, 1.3, 1.5, 1.7, 9.10 | <ul style="list-style-type: none"> Already dealt with - see complaints 947 & 948 |
| 956 | Gilead | Promotional Material | Truvada | GSK | 1x Breach 1.1, 1.2, 1.3 | <ul style="list-style-type: none"> Fine \$75,000 Withdraw material Corrective letter |
| 957 | Solvay | Promotional Material | Lipidil | AstraZeneca | 1x Breach 1.2.2, 1.3, 1.3.1, 10.5 | <ul style="list-style-type: none"> Fine \$75,000 Corrective letter Corrective advertisement |
| 960 | Ipsen | Promotional Material | Autogel | Novartis Pharmaceuticals | 1x Breach 1.1, 1.2, 1.3, 1.7 1x No Breach 1.3.1 | <ul style="list-style-type: none"> Withdraw material Corrective letter |
| 961 | Merck Sharp & Dohme | Promotional Material | Fosamax | AMA Qld | 1x No Breach 9.4 | |
| 962 | GlaxoSmithKline | Promotional Material | Avamys | Schering-Plough | 1 x Breach 1.1, 1.2, 1.3, 1.7 | <ul style="list-style-type: none"> Fine \$100,000 Withdraw material Corrective letter |

Cialis Media Release (947) & (948)

Cialis Media Release 947

Subject Company: Eli Lilly Australia (ELA)

Complainant: Dr Ken Harvey

Product: Cialis

Complaint

The complainant stated that the press release issued by the subject company on 29 April 2008 was not bona fide 'news' but rather was promotion of a prescription medication to the general public. Dr Harvey also alleged that within this press release, ELA had quoted a health professional without revealing his association with the company.

The complainant was of the view that this conduct undermined Quality Use of Medicines activities, breached several sections of the Code and ultimately brought disrepute to the industry.

Sections of the Code

Media releases alleged to be in breach of the following Sections of the Code:

- 9.2 Product Specific Media Statements
- 9.4 Promotion to the General Public
- 10.8 Discredit to and reduction of confidence in the Industry

Cialis Media Release 948

Subject Company: Eli Lilly Australia (ELA)

Complainant: CHOICE

Product: Cialis

Complaint

The Complainant alleged that the media release issued by ELA on 29 April 2008, which had been presented as news, was not genuine news and did not educate the public about the use of the medicine. CHOICE asserted that the media release was intended to promote the medicine to the general public. CHOICE also asserted that, by highlighting the potential increase in the

spontaneity and regularity of sex, this media release was intended to encourage consumers to seek a prescription for the medicine.

Sections of the Code

Materials alleged to be in breach of the following Sections of the Code:

- 9.2 Product Specific Media Statements
- 9.3 General Media Articles
- 9.4 Promotion to the General Public

Response

Eli Lilly Australia (ELA) responded that the media release was within the guidelines of the Code, providing factual and educational content to the consumer, which in no way brings discredit to the pharmaceutical industry. ELA stated that the product, 'Cialis Once-a-day' was defined as new, and as such, was announced to the press in accordance with Section 9.2.1 of the Code.

ELA noted that healthcare professionals including GPs, pharmacists and specialists had been advised about the product's availability prior to the media statement being released. ELA maintained it has stayed within the parameters defined by the Code of Conduct, and asserted that the complaints raised were without merit.

Code of Conduct Committee decision

In a unanimous decision the Committee found a breach of Sections 9.2 and 9.4 of the Code and no breach of Sections 9.3 or 10.8 of the Code.

Complaints 947 and 948 were considered together and only one sanction was applied.

Sanction

In a majority decision ELA shall

- withdraw the media release from all websites or other media within its control
- pay a fine of \$60,000.

Consideration of the complaint

The Committee raised a number of issues in relation to the national Galaxy poll referred to in the media release:

- The survey was commissioned by Eli Lilly and therefore there was the possibility that the survey could be seen as biased;

- no information on the survey was provided for example survey design, methodology and analysis. Further this information was not released in response to an enquiry by one Committee member. Therefore it was not possible on the evidence available to critically review whether the survey was adequate to support the claims made in the media release; and
- the survey results were timed for release with the announcement of the availability of Cialis once-a-day.

Members did not disagree with Eli Lilly that it is permissible to distribute a media release to announce a new product or indication. However members were of the view that the media release was promotional through the inclusion of the survey results and other statements about the positive attributes of the product. The Code permits a media release which may only be educational and not designed to promote particular treatments to the general public. The media release subject to complaint whilst announcing the approval of a new product included overtly positive statements about the benefits of a once-a-day treatment such as 'exciting news', 'important new option for men with ED' and 'a new option with 24/7 coverage will be most welcome as it will make them feel more like they did before they got the condition'.

Several healthcare professional members of the Committee commented that erectile dysfunction is an area where there is lots of embarrassment and it is a positive step to encourage men to talk to their doctor. Some general practitioners were concerned that they had not been aware of the new once-a-day treatment until patients came into their surgery after the stories had been run in the media. Members also noted that the media release did not make any reference to dosage precautions, especially cardiovascular risk factors, and did not include the most common side effect to the medicine which is headaches. It was also noted that the reference to the contraindication of using Cialis with nitrates would probably not be well understood by the media and therefore should be more clearly explained in any media statements, including the names of relevant medicines.

The Committee was of the view that the language used in the media release and reference to the survey were promotional and unanimously found a breach of Sections 9.2 and 9.4 of the Code. The Committee unanimously did not find a breach of Section 9.3 because although ELA had distributed a media release the company had not directly initiated a media article. Although members considered this to be a moderate breach it unanimously did not find a breach of Section 10.8 of the Code.

Whilst not relevant to, or taken into account when making its decision, the Committee noted that the statement on the second page of the media release 'Cialis is most appropriate for men who anticipate sexual activity at least twice a week and who have responded to the on-demand treatment regime' was referenced to the Cialis Product Information, however the PI did not reflect this statement. The approved indication is for the treatment of erectile dysfunction in adult males.

Sanction

Having found two breaches of the Code the Committee considered what sanction/s should be imposed.

In a majority decision the Committee determined that Eli Lilly Australia should withdraw the media release from all websites or other media within its control and pay a fine of \$60,000. There were some members who considered the fine should be higher and one member who was of the view that the fine should have been lower.

The Committee noted that it was not appropriate for corrective advertising to be undertaken as this would provide Eli Lilly with another opportunity to discuss the product with the general public.

Supplier Starter Packs 949

Subject Company: Sigma Pharmaceuticals

Complainant: A company representative

Product: Supply of Starter Packs (various products)

Complaint

The Complainant was an employee of Sigma Pharmaceuticals and had raised concern regarding storage of starter packs with his immediate Manager, however no action had taken place, thus the issue was forwarded as a complaint to Medicines Australia.

The Complainant raised concerns with the security and storage of representative's starter packs; records of supply of starter packs; and the quantities of starter packs supplied to representatives. Allegations were made of un-secured residential storage of S4 medicines, the lack of a company policy on record keeping for delivery of medicines to the medical representative's home and the loading of S4 medicines into private cars in a public place and lack of accountability for the quantities supplied to representatives.

Sections of the Code

Conduct alleged to be in breach of the following Sections of the Code:

- 5.1.6 Quantity Carried
- 5.1.7 Records that must be kept
- 5.1.10 Security

Response

Sigma Pharmaceuticals stated that the allegations were without foundation. The company has policies regarding the reasonable number of starter packs to be supplied to representatives and procedures for recording supply of starter packs to healthcare professionals. Sigma denied that the quantity of starter packs held by any medical representative was excessive. Starter packs are stored in warehouses in each state and are distributed to representatives from there, as required. The Sigma NSW State Manager reported that no

representative had contacted him regarding the allegations, and that had such a complaint been raised, the Manager would have been required to investigate the issue.

Committee determination

- In a majority decision a breach of Section 5.1.10 of the Code was found
- The Committee was not satisfied that a breach in relation to Sections 5.1.6 and 5.1.7 had occurred.

Sanction

By a majority decision pay a fine of \$15,000

Consideration of the complaint

The Committee considered that the Sigma response was not sufficiently precise regarding the quantity of starter packs in the possession of medical representatives. Sigma stated that "representatives carry sufficient starter packs in their vehicles to last one week", however Sigma also stated that "the amount of starters we deliver to the representatives to use within a 12 month period are relatively small". The quantity of starter packs distributed to representatives at one time was more than for one week and may be sufficient for several months. Members understood that a representative would have in their possession a quantity of starter packs sufficient for an extended, but not defined, period, but would only carry enough starter packs for one week in their vehicle.

Members noted the requirement that starter packs must be stored in a manner which maintains the storage conditions on the label (Section 5.1.9 of the Code) and that representatives must take adequate precautions to ensure the security of starter packs in their possession. Section 5.1.10 of the Code also states that when starter packs are stored other than at a wholesaler, they must be stored in a locked storage facility in accordance with Section 5.1.9. The Committee noted that the complainant raised concerns about storing the starter packs in his garage where they were not secure and could potentially be accessed by his children.

The Committee found a breach of Section 5.1.10 of the Code because it considered that this residential garage did not comply

with the requirement that starter packs must be stored in a locked storage facility in accordance with Section 5.1.9 of the Code.

The Committee did express concern that starter packs were being unloaded from a truck into representatives' cars, albeit in unmarked boxes from a hired truck. Members were of the view that starter packs should be stored in a secure and temperature controlled warehouse with representatives only having in their possession sufficient stock for one week or their next business trip.

The Committee also noted advice from Sigma to its sales staff contained in Appendix 1 of the Sigma response - "Within the next week, distribute to the Drs that you've been seeing, any remaining samples that you have in your possession. So what do I mean distribute? Not to your friends, I mean giving enough to the Drs that you're visiting to ensure you have none left in your possession (car, home, warehouse) before the new stock comes in.....".

The Committee also noted that in the Sigma response a sample spreadsheet was supplied which is used to track the number of starter packs provided by representatives to doctors. However, there were no details provided of the records kept, such as requests, orders, receipts etc, of the starter packs supplied to representatives except a statement that such records are kept.

The Committee was of the view that there was insufficient information provided in either the complaint or response to make a finding in relation to Sections 5.1.6 and 5.1.7 of the Code. However despite not finding a breach of the Code in relation to these requirements members they remained concerned that appropriate procedures and processes in accordance with State legislation or the Code may not being followed.

When distributing starter packs companies must do so in accordance with principles for the Quality Use of Medicines. Some healthcare professional members of the Committee noted that some doctors consider that starter packs should be prohibited.

Sanction

Having found a breach of the Code the Committee considered what sanction/s should be imposed.

The Committee determined that Sigma should:

- Pay a fine of \$15,000

Seretide 950

Subject Company: GlaxoSmithKline
Australia (GSKA)

Complainants: Boehringer Ingelheim (BI) &
Pfizer Australia (Pfizer)

Product: Seretide

Complaint

The Complainants alleged that the claims of reduction in mortality and survival in relation to Seretide and chronic obstructive pulmonary disease (COPD) are misleading. The Complainants also stated that the PBS information pertaining to COPD use was inadequate and inconsistent with the reimbursement listing.

BI & Pfizer also alleged that a brand name reminder included the statement 'Seretide COPD' which is not permitted under the Code; only the brand name and active ingredient name may be placed on a brand name reminder which in this case is 'Seretide'.

An additional aspect to the complaint was a GSKA "Draft for internal use only" document left with a general practitioner and provided to a BI representative. BI and Pfizer alleged that this item was in breach of the Code.

Sections of the Code

Materials alleged to be in breach of the following Section of the Code:

- 1.3 False and Misleading Claims
- 1.7 Comparative Claims
- 3 (preamble) Promotional Material
- 3.12 Brand Name Reminders
- 3.12.1 Brand Name Reminders

Response

GSKA stated that there were a number of inaccuracies in the BI/Pfizer complaint and strongly argued that the materials were not in breach of the Code. GSKA also stated that the Complainants had misconstrued the minutes from previous intercompany dialogues and previous complaints. GSKA denied any repeat breach of the Code.

GSKA expressed its concern that a confidential internal working document for use of GSKA employees had been found at

a GP surgery. While GSKA was of the view that this document was an internal training tool and clearly not a promotional item, GSKA had initiated an internal investigation into its use with a general practitioner. GSKA argued that this piece was labelled 'draft' and therefore should not have been subject to formal complaint.

Code of Conduct Committee decision

1. Torch clinical paper summary/leave behind

1.1 Claims: Seretide improves survival vs placebo (p=0.052) and TORCH is the first study to demonstrate a survival benefit of pharmacotherapy in COPD patients

In a unanimous decision a breach of Section 1.3 and no breach of Section 1.7

1.2 Claim: Seretide produced a clinically relevant reduction in COPD mortality
In a unanimous decision a breach of Section 1.3 of the Code.

1.3 PBS Box lacking COPD restrictions

In a unanimous decision a breach of the preamble to Section 3 of the Code.

2. Seretide Draft Detail Aid

2.1 Claim: The only ICS/LABA combination therapy indicated and PBS listed for COPD
In a unanimous decision a repeat breach of Section 1.3 of the Code

2.2 Claim: Inflammation is present even in the early stages of COPD
In a unanimous decision a breach of Section 1.3 of the Code

2.3 Claim: Up to 80% of small airways in patients with mid COPD (FEV1>80% predicted) contain inflammatory CD8 cells
In a unanimous decision a breach of Sections 1.3 and 1.3.1 of the Code.

2.4 Claim: Seretide COPD reduces the risk of mortality and associated graph title: Seretide COPD reduces the risk of death by 52%

In a unanimous decision a breach of Sections 1.2.2 and 1.3 of the Code.

3. 'Seretide COPD' Brand Name Reminders
In a unanimous decision a breach of Section 3.12.1 of the Code.

Sanction

Withdraw all materials found in breach of the Code and not use them again in a manner which conveys the same or similar meaning
Send a corrective letter to all healthcare professionals detailed with the TORCH clinical paper summary/leave behind (item number PC0704076)
Pay a fine of \$175,000

Consideration of the complaint

Prior to the review of this complaint Professor Paul Seale advised that the Woolcock Institute of Medical Research where he is employed had undertaken clinical trials on behalf of all pharmaceutical companies with products in the respiratory therapeutic class. The Committee did not consider this to be a conflict of interest and that Prof. Seale should fully participate in the Committee's deliberations.

1. Torch clinical paper summary/leave behind

1.1 Claims: 'Seretide improves survival vs placebo (p=0.052)' and 'TORCH is the first study to demonstrate a survival benefit of pharmacotherapy in COPD patients'

Having reviewed the New England Journal of Medicine reprint of the two papers included with the leave behind - "Salmeterol and Fluticasone Propionate and Survival in Chronic Obstructive Pulmonary Disease" (TORCH Study) and "Treating COPD - the Torch Trial, P values and the Dodo" (editorial by Klaus Rabe) - members particularly noted the conclusions from the authors:

TORCH - "The reduction in death from all causes among patients with COPD in the combination group did not reach the predetermined level of statistical significance."

Rabe - "In the end, the trial failed to meet its goal: the P value for death from any cause was 0.052, which was higher than the pre-specified value of 0.50. All clinical trials are a gamble, and the TORCH investigators came close to winning but did not win. Thus the results of this trial are difficult to

interpret. We still need more data from even larger trials."

The Committee also noted the large number of patients that withdrew from the TORCH trial and the effect this had on the statistical outcomes.

Members noted that while Section 1.3 of the Code requires a qualifying statement if a claim might be misconstrued, and in this case a qualifying statement was provided, ("The all-cause mortality reduction did not reach the pre-determined level of statistical significance"), Section 1.7 of the Code indicates that data that does not reach the accepted level of statistical significance should not be used to generalise or indicate superiority or inferiority.

Members considered that the claim of a survival benefit from Seretide in COPD based on the TORCH study was a generalisation that could not be substantiated. Members were of the view that the claim had gone beyond what the authors had concluded. Whilst the statement 'Improves survival vs placebo (p=0.052)' might be a statement of fact, its use in combination with the claimed TORCH conclusion was misleading and in breach of Section 1.3 of the Code. Members also noted that use of an inhaled corticosteroid/long-acting beta agonist in COPD was not yet well established area of treatment and it was particularly important that all information provided to general practitioners must be educational and not be misleading.

The Committee was of the view that the use of the two claims was not balanced, was not able to be made on the basis of the TORCH study and was misleading to prescribers. In a unanimous decision, the Committee found a breach of Section 1.3 of the Code.

Members were of the view that as the claims were in comparison to placebo and there was no comparison with a competitor product, no breach of Section 1.7 of the Code was found.

1.2 Claim: Seretide produced a clinically relevant reduction in COPD mortality
The Committee also found that this claim went beyond what the authors of the TORCH study had concluded. The

Committee particularly noted that it was inappropriate to make a claim of clinical relevance based on a result that had not attained statistical significance. The TORCH authors had highlighted that the use of salmeterol in combination with fluticasone in COPD required further investigation and the corresponding editorial in the Journal had similarly highlighted 'the combination therapy offers no statistically significant additional survival benefit'. GSKA had not provided sufficient evidence to substantiate the claim of a clinically relevant reduction in mortality which was therefore misleading.

In a unanimous decision the Committee found a breach of Section 1.3 of the Code in relation to the claim and the associated graph.

Whilst not subject to complaint, the Committee noted that in the graph associated with this claim the vertical axis was not properly labelled as 'probability of death'. It was also noted that the final dot point under 'TORCH conclusions' referred to patients with an FEV1<60% whereas the approved use of Seretide is in patients with FEV1<50%. These matters were not taken into account by the Committee in making its decisions.

1.3 PBS Box lacking COPD restrictions

The Committee noted that the PBS box on the leave behind item stated "Restricted Benefit: Asthma only: Patients who have previously had frequent episodes of asthma while receiving treatment with oral corticosteroids or optimal doses of inhaled corticosteroids and who have been stabilised on concomitant inhaled salmeterol xinafoate and fluticasone propionate."

Members were of the view that as this leave behind was specifically about use of Seretide in COPD it should have included a statement that Seretide is not PBS listed for COPD to make it clear to a reader.

In a unanimous decision a minor breach of the preamble to Section 3 of the Code was found.

2. Seretide Draft Detail Aid

The Committee noted the GSKA statement that this document was a confidential internal working document marked "Draft for

internal use only". GSKA also stated that an internal investigation had been undertaken to identify how it had been left with a general practitioner and GSKA will take steps to improve its internal processes for the future. Further members noted that GSKA had asserted that it was not required to enter into intercompany dialogue in relation to the item as it was for internal use only.

The Committee questioned whether an internal draft document would be prepared in the same fully finished manner as an item of printed promotional material with the PI and PBS Information included. Members commented that if the document had been prepared for use in market research or testing with general practitioners any claims and supporting evidence would be expected to be fully in compliance with the Code. Members also commented that if it was an internal document it had nevertheless been given to a general practitioner and therefore should be regarded as an item of promotional material subject to the Code.

2.1 Claim: The only ICS/LABA combination therapy indicated and PBS listed for COPD As the complainants had alleged that this was a repeat breach of Section 1.3 the Committee referred to the minutes from complaint Seretide 879, which was considered in October 2007, state:

"We are now PBS listed for COPD" and "Seretide is now listed for COPD"

Members were of the view that while the mandatory PBS box appeared on the second page of the advertisement, the statements "We are now PBS listed for COPD" and "Seretide is now listed for COPD" in large font on the front page gave the impression that Seretide was PBS listed for all COPD patients, without qualification. Members commented that while it may be reasonable to expect a reader to turn the page, is was misleading to not have qualified or referenced the very large and bold statements to ensure a reader would be directed to a statement on the same page which advised that the restricted PBS benefit was for a discrete subgroup of COPD patients.

In reviewing the 'internal use only' document members noted that one of the references was "Wedzicha JA et al. Am J Respir Crit

Care Med 2007 (sic);177:19-26” which was published in this journal in 2008. Members questioned the date that the GP obtained the ‘internal use only’ document and were of the view that it would have been after the Seretide advertisement was previously found in breach (879). Although the claim was not identical to that found in breach in complaint 879, it fell within the definition of repeat of a previous breach as set out in the glossary to the Code “Where the same or similar breach is repeated in the promotion of a particular product of a company which has been found in breach”.

While the ‘internal use only’ item contained the PBS listing on a separate page, there was no qualification on the same page as the claim “The only ICS/LABA combination therapy indicated and PBS listed for COPD” that qualified that the PBS listing was restricted to a particular subgroup of COPD patients.

Members were unanimously of the view that as GSKA had previously been found in breach for failing to qualify the Seretide PBS listing for COPD patients this was a repeat breach of Section 1.3 of the Code.

2.2 Claim: Inflammation is present even in the early stages of COPD

The Committee noted the agreements between GSKA and BI/Pfizer during intercompany dialogue in 2006 in relation to GSKA not making any claims suggesting that Seretide is indicated for use in patients in the early stages of COPD and the statement from GSKA that the publication of the TORCH trial results in the New England Journal of Medicine discharged GSKA from any undertakings made in November 2006 in relation to the promotion of Seretide in COPD. However, members were of the view that the claim “Inflammation is present even in early stages of COPD” in association with the tag line “Add Seretide COPD to slow disease progression” was in breach of Section of Section 1.3 of the Code. Members considered that the claim implied use of Seretide early in the treatment of COPD which was incorrect and not consistent with the approved Product Information or with the PBS listing.

2.3 Claim: Up to 80% of small airways in patients with mild COPD (FEV1>80% predicted) contain inflammatory CD8 cells

Members were of the view that the use of claims and statements in relation to mild COPD and early stages of COPD when juxtaposed with the Seretide tagline combined to provide a message to a prescriber that Seretide can be used in mild COPD which is inconsistent with the approved indications. In a unanimous decision the Committee found a breach of Sections 1.3 and 1.3.1 of the Code.

2.4 Claim: Seretide COPD reduces the risk of mortality and associated graph title: Seretide COPD reduces the risk of death by 52%

Although a qualifying statement to the effect “The primary endpoint of healthcare utilisation exacerbations rate did not reach the pre-determined level of statistical significance” was included on the graph, the Committee remained concerned that a comparative claim was based on data that did not reach the accepted level of statistical significance. The claim of reduction of risk of mortality could not be adequately substantiated from the cited data and was therefore misleading. In a unanimous decision the Committee found a breach of Sections 1.2.2 and 1.3 of the Code.

2.5 Claim: Add Seretide COPD to slow disease progression

The Committee noted the allegation from GSKA that BI/Pfizer alleging in intercompany dialogue that this statement was in breach of Section 1.3 of the Code was vexatious as it had previously been found not in breach of the Code. While noting that this claim was not found in breach in complaint 879, members noted that the alleged breach had not been pursued in the current complaint before the Committee and therefore it was not a matter for the Committee to determine. Further, the Committee noted that a number of alleged breaches of the Code had been found by the Committee and therefore it did not consider that the complaint was vexatious.

3. Seretide COPD Brand Name Reminders

The Committee was of the view that the use of ‘Seretide COPD’ on brand name reminders was not consistent with the requirements of Section 3.12.1 of the Code which states that only the brand name and the Australian Approved Name plus a non promotional logo, device or graph may be

included on these items. It was noted that 'Seretide COPD' was not the brand name or the approved name. In a unanimous decision members found a breach of Section 3.12.1 of the Code.

Sanction

A majority of members were of the view that the totality of these matters should be considered to be a moderate breach of the Code, that is, "a breach that has no safety implications to patient's well being but may have an effect on how the medical profession will prescribe the product." A minority of members were of the view that these items should be considered a severe breach of the Code.

Having found several breaches of the Code the Committee considered what sanction/s should be imposed.

The Committee determined that GSKA should:

- Withdraw all materials containing claims found in breach of the Code and not use them again in a manner which conveys the same or similar meaning;
- Withdraw all brand name reminders containing 'Seretide COPD' and found to be in breach of the Code;
- Send a corrective letter to all healthcare professionals detailed with the TORCH clinical paper summary/leave behind (item number PC0704076); and
- Pay a fine totaling \$175,000 comprising a fine of \$100,000 for the TORCH clinical paper summary/leave behind, a fine of \$50,000 for the 'Draft internal use only' document and a fine of \$25,000 for the brand name reminders found in breach of the Code.

Lexapro 951

Subject Company: Lundbeck Australia

Complainant: Healthcare Professional

Product: Lexapro

Complaint

The complaint referred to a patient support program brochure in which it was stated that this program is “free”. The complainant suggested that this online support program had a cost associated with it - the PBS brand price premium - and alleged that therefore the term “free” was misleading and untrue.

Sections of the Code

Material alleged to be in breach of the following Section of the Code:

- 1.3 False or Misleading Claims
- 9.8 Patient Support Programs

Response

Lundbeck responded that the patient support program complies with all aspects of Section 9.8 of the Code of Conduct; and additionally that it is a high quality site that contributes to patient compliance and the quality use of medicines.

Lundbeck stated that the brochure was not in breach of Section 1.3 of the Code, since the benefits that are associated with access to the program, including access to the Panel of Experts, are free of charge.

Committee determination

- In a unanimous decision no breach of Section 1.3 of the Code
- In a unanimous decision no breach of Section 9.8 of the Code

Consideration of the complaint

The Committee was of the view that a doctor will prescribe the most appropriate treatment for a patient based on their individual needs. Their decision to prescribe an originator or generic medicine is at their discretion and in consultation with the patient.

The complainant had noted that the patient support program is not available to patients who are taking another brand of the

medicine. The Code states that a patient support program is only for patients who have been prescribed a particular medicine. The Code does not permit material developed by a company for a specific medicine to be available to patients on other products. It would be a breach of the Code for a company to provide information on a specific prescription medicine for people who are not taking that medicine.

While some members of the Committee considered the use of the word ‘free’ in this context to be a matter of semantics, others were of the view that it may be false to say ‘free access to a panel of experts’ because you must purchase Lexapro to gain access to the ‘panel of experts’. However, access to the program is ‘free’ or at no additional cost once the patient has purchased the medicine. The issue of whether a doctor should prescribe an originator or generic medicine is outside the remit of the Code of Conduct Committee.

The Committee did not find a breach of Sections 1.3 or 9.8 of the Code, however commented that it may have been better to use “at no additional cost” or “complimentary”.

Synagis 952

Subject Company: Abbott

Complainant: Chairman, Hospital Quality Use of Medicines Committee

Product: Synagis

Complaint

The complainant stated that Abbott had supplied free stock of Synagis directly to a parent support group which met at the hospital. The parent group gave the medicine as a gift to the Hospital's Neonatal Intensive Care Unit which would select patients and administer the medicine. Whilst the parent support group had approached Abbott requesting free starter packs, the Hospital maintained that Abbott should have declined this request. The offer had not been approved by the hospital Quality Use of Medicines (QUM) Committee. The QUM Committee had expressed concern that this was an inappropriate method of marketing the product, as the parent group might expect this medicine to be funded by the hospital the following winter.

Sections of the Code

Conduct alleged to be in breach of the following Section of the Code:

- 9.4 Promotion to the General Public
- 9.5 Patient Education
- 9.10 Discredit to and reduction of confidence in the industry

Response

Abbott responded that the charitable donation of this medicine was done in accordance with the Medicines Australia Code of Conduct. After the initial suggestion by the parent support group, Abbott had discussed the request with the Director of the Neonatal Intensive Care Unit (NICU) and advised that the company would require written confirmation that the Hospital would assume full responsibility for management and administration of this medicine. Abbott had received a written request from the Hospital's NICU Director, after which approval for the donation was made.

Committee determination

- In a majority decision no breach of Sections 9.4, 9.5 and 9.10 of the Code was found.

Consideration of the complaint

The Committee noted the sequence of events in relation to this matter:

- Initial enquiry for a donation of Synagis made to Abbott by parent group
- Abbott advised the parent group that the company would only consider this request if a formal request was received in writing from the Director of the Neonatal Intensive Care Unit (NICU)
- On receipt of the written request Abbott sought internal approval for a one-off donation, which was approved
- The medicine was delivered to the hospital; at no time was the medicine made available to the parent group.

Members noted that Abbott had stated that it was not advised that there was a specific hospital policy in regards to charitable donations of drugs which required approval from the hospital 'Quality Use of Medicines Committee'.

Members considered that it is not unusual for patient groups to lobby pharmaceutical companies or the government in relation to the listing of medicines on hospital formularies or the PBS. Hospital drug committees and the PBS have criteria for determining what medicines are listed. A hospital will usually not include all available medicines on its formulary. This medicine was not available on the hospital formulary, hence the request for its donation.

Some members were of the view that Abbott should have ensured it was familiar with all hospital policies; however the majority of members were of the view that Abbott had relied on a request from the Director of the NICU and should not be responsible for internal hospital approval procedures. Members noted that the actual request from the NICU Director was more like a thank you letter after Abbott's verbal advice that a donation could only be considered after a formal request in writing.

Some members raised an issue in relation to what information may have provided to the

peak body, of which the parent group is a member. It was noted that during sponsorship negotiations Abbott had advised the peak body that they manufactured Synagis. A majority of the Committee did not consider that Abbott had promoted the medicine to the patient support group.

The Committee considered whether Abbott's conduct had brought the industry into disrepute. It was noted that Abbott did have a policy and procedure for charitable donations. Whilst Abbott had not been aware of the requirement to obtain approval from the QUM Committee, the hospital staff should have ensured that hospital procedures were followed before making the arrangements with Abbott to receive and manage the donated medicine. By a majority decision, no breach of Section 9.10 was found.

Members determined that whilst communication within the hospital and with Abbott regarding the potential donation could have been better, no breach of Sections 9.4, 9.5 or 9.10 of the Code were found.

The Committee recommended that Abbott should review its policy for charitable donations and ensure that a specific written request is received for charitable donations rather than simply an acknowledgement or thank you letter.

Complainant Appeal

The Chairman, Hospital QUM Committee lodged an appeal against the decision of the Code Committee. The basis for the appeal was the hospital's disagreement with the statement that "Abbott received a written request from the hospital's NICU Director". The Director had thanked Abbott for their generous offer, but he did not at any stage request the medication. He clearly stated the drug had been offered to the parent group. His understanding was that he was only agreeing to select the patients, administer the drug and receive supply.

The QUM Committee was concerned that pressure was applied by the parent group and Abbott for the hospital to supply the drug.

Response

Abbott maintained that at no stage did it put any pressure on the hospital to accept the Synagis donation. If the hospital had expressed an issue with accepting the donation, Abbott would have respected this decision and would not have proceeded with the donation.

Abbott commented that it only initiated the process for obtaining approval for this donation after the official letter was received from the NICU Director. Abbott's record of correspondence indicates that the request for a donation of Synagis came from the parent group on the same day as the receipt of communication from the hospital.

Appeals Committee determination

The Appeals Committee did not uphold the appeal by the Hospital QUM Committee against the finding of no breach of the Code by Abbott.

Consideration of the Appeal

The following outlines the appeal presentation made by the Hospital representatives.

- Neither the NICU Director nor the hospital had requested the donation of Synagis.
- The request came from the parent group - not the hospital. The negotiation of the supply of the drug was between the parent group and Abbott.
- At no time did the Director NICU believe that he was requesting a donation of Synagis. The Director's email was in response to verbal advice by telephone from Abbott that they would provide the donation.
- The Director NICU only agreed to select the patients, administer the drug and receive supply.
- The parent group had become aware through contact with parents that Abbott had previously provided a donation to another hospital.
- The parent group had asked the hospital if they could be put in touch with parents of babies who received the donated Synagis for publicity and promotion of their organisation. This request was declined by the hospital.
- The QUM Committee considers that Abbott's discussions with the patient

support group and initiating supply of a prescription medicine was promotion to the general public.

- The Director NICU advised that Abbott had suggested that the hospital could order sufficient Synagis to cover the period prior to the donation being approved and supplied. There was also concern from the QUM Committee that there would be pressure on the hospital to continue to provide Synagis each winter.
- Abbott could have conducted a product familiarisation program (PFP) with Synagis rather than supply a donation through the parent group.
- The QUM Committee Chairman expressed concern that a patient support group can influence decisions about inclusion of drugs on the hospital formulary.
- Abbott should have discussed the issue with the hospital QUM Committee.
- In hindsight the Chairman of the QUM Committee, who is also the Director of Pharmacy, should have raised his concerns with Abbott when the drug was first delivered to the pharmacy.
- If the appeal is not upheld the hospital QUM Committee asked that the general issues subject to appeal are referred to the Code Review Panel for consideration.

In response to questions from the Committee the following further points were made by the hospital representatives:

- The letter from the parent group to ask Abbott for the donation was sent on the same day as the letter from the Director NICU to Abbott concerning the donation.
- The e-mail from Abbott advising the donation was approved was directed to both the parent group and the Director NICU.
- The hospital representatives maintained that the discussions between the parent group and Abbott were promotion to the general public.

The following outlines the appeal presentation made by Abbott

- Synagis is not a new drug. It was approved in 2000. Therefore Abbott could not have conducted a PFP which are only permitted within the first 12

months of first supply or a new indication.

- Application has been made to the PBAC for PBS listing. It has been rejected on the basis of cost effectiveness.
- Synagis is indicated for the prevention of serious lower respiratory tract disease caused by respiratory syncytial virus (RSV) in children at high risk of RSV disease.
- RSV is a seasonal infection which starts in April and lasts approximately 6 months. Synagis is provided to susceptible infants from the end of March or early April.
- Donations have been made appropriately to other hospitals with no issues arising.
- Synagis is not actively promoted to healthcare professionals and never to patient organisations.
- The parent group is part of a broader organisation which receives funding from Abbott.
- Abbott's records show that they were approached by the parent group for the donation. Abbott had advised the parent group that the request must come from the hospital and the medicine could not be supplied to the parent group.
- Abbott discussed the request with the Director of NICU and received a written communication accepting responsibility for identifying patients and administering the medication. This communication was considered by Abbott to be a formal request to proceed with supply and the internal donation approval process was initiated.
- Synagis was supplied directly to the hospital and not to the parent group.
- Internal processes have been revised to standardise the documentation for future donation requests:
 - Requires the requestor to sign and date; and
 - Requires the requestor to confirm compliance with relevant policies at their institution.
- Abbott maintained that its actions did not constitute a breach of Section 9.4 of the Code - promotion to the general public.
- Abbott argued that the original recommendations of the Code Committee should remain and that the

improvements to the internal processes will avoid any future misunderstanding.

The Chairman thanked representatives from the hospital and Abbott for their presentations and asked that they leave the meeting to allow the Committee to deliberate on the matters before them.

The Appeals Committee accepted that the initial approach seeking a donation was from the parent group to Abbott. Members were of the view that there was some disagreement between Abbott and the hospital staff on what constitutes a request. The email response from the NICU Director appeared to be an acknowledgement of an offer; it was sent on the same day as the letter from the parent group to Abbott. Members also noted that Abbott had revised their internal procedures for future requests for donations.

Some members of the Committee commented that it would have been difficult for the hospital to refuse the donation once it had been negotiated by the parent group; however other members advised that hospital drug committees receive pressure from a variety of sources, including from doctors within the hospital itself. The final determiner in any request is the hospital through its drug committee (also known as the QUM Committee in this instance).

The Appeals Committee confirmed that it does not have the jurisdiction to adjudicate on any parties' conduct other than that of a pharmaceutical company.

The Committee was of the view that the situation gave rise to a literal breach of Section 9.4 of the Code in that the actions of Abbott in the way in which it responded to the patient support group's request could be interpreted as encouraging a patient, or those having the patient's interest at heart, to seek a prescription for a prescription-only medicine. However, the Committee was of the view that the wording of Section 9.4 wasn't primarily directed at this situation where there were intervening parties and policies in play.

In a majority decision the Appeals Committee did not uphold the appeal in relation to the finding of no breach of

Sections 9.4. In a unanimous decision the Committee found no breach of sections 9.5 or 9.10 of the Code.

The Committee recommended that the issue of the relationship between patient organisations and pharmaceutical companies with respect to donations of medicines be referred to the Code Review Panel for consideration. There should be no interaction between companies and patient support organisations that promotes patients to seek supply of a prescription medicine, whether for themselves or others.

Clonidogrel 954

Subject Company: sanofi-aventis

Complainant: Boehringer Ingelheim

Product: Clopidogrel

Complaint

Boehringer Ingelheim alleged that a media release issued by a public relations firm on behalf of sanofi-aventis was misleading and failed to accurately reflect the results of a study on recurrent stroke. Boehringer Ingelheim further alleged that the media release was intended to mislead the reader by distorting the outcomes of the study and by placing undue emphasis on certain aspects of the study results, while ignoring major outcomes.

Whilst Boehringer Ingelheim acknowledged measures undertaken by sanofi-aventis to cease any further distribution of the release and had directed the agency to issue a corrective statement, Boehringer Ingelheim considered that matter of sufficient gravity to require consideration by the Code Committee.

Sections of the Code

Material alleged to be in breach of the following Section of the Code:

- 1.2 Substantiating Data
- 1.3 False or Misleading Claims
- 1.7 Comparative Statements

Response

Sanofi-aventis acknowledged that an error was made by the public relations agency that resulted in the distribution of the media statement containing information that was not approved by sanofi-aventis. Sanofi-aventis took immediate action to retract the media statement communicated by e-mail, directed that no further use of the erroneous communication should occur and had agreed to amend or remove any statements in the media communication that Boehringer Ingelheim objected to.

Sanofi-aventis considered that the concerns of Boehringer Ingelheim had been adequately addressed as a result of the immediate corrective action and alleged that

this complaint was an abuse of the Code according to Section 12.3.

Committee determination

- In a unanimous decision a breach of Sections 1.2, 1.3 and 1.7 of the Code was found.

Sanction

- Pay a fine of \$100,000
- Send a corrective advertisement to '6 minutes' and any other media outlet that had communicated the erroneous information.

In relation to the allegation from sanofi-aventis of a potential breach of Section 12.3 by Boehringer Ingelheim, the Committee found no breach of the Code.

Consideration of the complaint

The Committee noted that the results from the Prevention Regimen For Effectively avoiding Second Strokes (PRoFESS) Study were yet to be published.

The PRoFESS Study compared the combination of aspirin and extended-release dipyridamole (Asasantin, Boehringer Ingelheim) with clopidogrel (Plavix, sanofi-aventis and Iscover, Bristol Myers Squibb). The study did not meet pre-specified non-inferiority criteria in preventing stroke recurrence after a first event, although the difference between the agents was not statistically significant for the primary outcome of recurrent stroke.

From the intercompany dialogue commentary provided in the agenda papers it would appear that the media statement had been developed to be sent to media outlets if they requested information, that is, for reactive use only rather than for issuing as general media release.

Members noted that the public relations (PR) agency acting on behalf of sanofi-aventis had provided a statutory declaration confirming that *"the email used to send the media release to some news agencies included statements that had not been provided or approved by sanofi-aventis and that the pro-active dissemination of the media statement was contrary to their instructions."*

Members were of the view that the information about the PRoFESS study in the release was selective and contained misleading information which may influence prescribers in their choice of a medicine when prescribing a medicine for stroke patients.

Members commented that this is a commercially sensitive and highly competitive therapeutic area with a price difference between treatments and any headline that claims one particular treatment is the “treatment of choice in the prevention of stroke and other cardiovascular events” could mislead prescribers, particularly when the results to support this claim are currently not published and therefore not accessible to a reader.

Although sanofi-aventis had accepted responsibility for the actions of the PR agency, members remained of the view that this was a serious matter.

The Committee discussed the issue of media announcements about clinical trials. Members noted that the Code refers to media statements to the general public but is silent on what can be sent to the medical media. Members were of the view that the overarching principles that a company cannot promote a non-approved product or indication or use an abstract or poster as the sole supporting evidence to support a claim, apply when information is sent to the medical media.

Claim 1 PRoFESS confirms clopidogrel as treatment of choice in prevention of stroke and other cardiovascular events

The Committee was unanimous in its decision that this claim did not accurately reflect the outcomes of the study, which is yet to be published, and was misleading. The Committee unanimously found the statement, which is comparative, to be in breach of Sections 1.2, 1.3 and 1.7 of the Code.

Claim 2 the PRoFESS trial failed to demonstrate that the sustained release (SR) dipyridamole/aspirin combination is non-inferior to clopidogrel (meaning it did not establish that SR dipyridamole/aspirin has comparable efficacy) in preventing recurrence of stroke in patients with a previous ischemic stroke”

The Committee was unanimous in their decision that this claim also did not accurately reflect the outcomes of the study and was misleading. In particular the Committee considered the statement in brackets to be an inaccurate interpretation of a ‘non-inferior’ finding. The Committee unanimously found the statement, which is comparative, to be in breach of Sections 1.2, 1.3 and 1.7 of the Code.

Claim 3 Major haemorrhagic events (4.1% vs 3.6%, HR 1.15, p=0.06) and intracranial bleeds were observed more frequently with Asasantin compared with clopidogrel

The Committee was unanimous in their decision that this claim was a selective reporting of the outcomes from the study. The Committee noted that the majority of outcome events in the study were ischaemic strokes, for which there was no significant difference between subjects taking Asasantin or clopidogrel. The number of subjects who experienced a haemorrhagic event was a small proportion of the overall intracranial events. The Committee considered that the comparative claim was unbalanced, misleading and based on an unpublished study. The Committee unanimously found the statement, to be in breach of Sections 1.2, 1.3 and 1.7 of the Code.

The Committee was of the view that the media release contained promotional statements that were a selective communication of the PRoFESS Study outcomes that therefore had the potential to mislead prescribers and was in breach of Sections 1.2, 1.3 and 1.7 of the Code.

Sanctions

Having found several breaches of the Code the Committee considered what sanction/s should be imposed. The Committee noted the actions taken by sanofi-aventis and its agency when informed of Boehringer Ingelheim’s concerns. The Committee considered that the corrective statement issued by the PR agency did not adequately deal with the three claims now found in breach of the Code; it had only dealt with the heading (part 1.1 of the complaint).

By a majority decision, the Committee determined that sanofi-aventis should:

- Withdraw the media statement found in breach and not use it again, or in a manner which conveys the same or similar meaning.
- Pay a fine of \$100,000
- Send a corrective advertisement to '6 minutes' and any other media outlet that had communicated the erroneous information. The corrective letter shall be approved in writing by the Chairman of the Code of Conduct Committee. The text of the corrective letter must be in a font of no less than 12 point. Medicines Australia must receive documentary evidence of the distribution of the corrective letter and the Secretary of the Code Committee must be included on the mailing list for the letter.

In relation to the allegation by sanofi-aventis that Boehringer Ingelheim had abused the Code in lodging the complaint, the Committee considered that the breaches found were significant and had been inadequately corrected by sanofi-aventis. The Committee determined that there was no need for Boehringer Ingelheim to respond to the allegation of a breach of Section 12.3 of the Code.

Appeal

Sanofi-aventis argued that the Code of Conduct Committee did not adequately take into account the measures sanofi-aventis had undertaken to recall the erroneous media statement and prevent its further use and to provide a replacement statement. sanofi-aventis also argued that the financial sanction imposed was excessive and could not be justified in view of recent precedents in decisions on comparable issues. Further, the finding of no breach of Section 12.3 of the Code was incongruous with the circumstances of this complaint and the wording in Section 12.3 of the Code and guidelines.

Sanofi-aventis had already acknowledged that it considers the provision of the unapproved media statement was a breach of the Code and acknowledged its responsibility in this regard, notwithstanding the PR agency involved has provided a statement that this was done without instruction from sanofi-aventis.

Response to appeal

Boehringer Ingelheim stated that it strongly supported the Code of Conduct Committee's authority to rule on matters of interpretation of the Code. Sanofi-aventis have acknowledged they have breached the Code and it was appropriate for Boehringer Ingelheim to refer this matter to the Code of Conduct Committee. None of the remedial actions taken by sanofi-aventis resulted in correction of the misinterpretation of the trial results in the minds of prescribers. The final publication of the full PRoFESS trial vindicates Boehringer Ingelheim's position to wait for the final publication before commenting on it because the trial authors clearly state in the conclusion that "There is no evidence that either of the two treatments was superior to the other in the prevention of stroke prevention."

Appeals Committee determination

- In a unanimous decision the Appeals Committee did not uphold the appeal. The breaches of Sections 1.2, 1.3 and 1.7 of the Code were confirmed.

Sanctions

- Withdraw the media statement found in breach and not use it again, or in a manner which conveys the same or similar meaning.
- Pay a fine of \$25,000 (reduced from \$100,000)
- Requirement for corrective advertisement removed

Consideration of the Appeal

The following outlines the appeal presentation made by sanofi-aventis.

- Sanofi-aventis is appealing the Code of Conduct Committee's decisions and seeks a reduction in the financial penalty.
- Sanofi-aventis also challenged the finding of 'no breach' against Boehringer Ingelheim in relation to Section 12.3 of the Code.
- Sanofi-aventis had acknowledged that a breach had inadvertently occurred and accepted full responsibility. The media statement was unapproved at the time of distribution and intended for reactive use only.
- Sanofi-aventis had undertaken a proactive and immediate recall, within

72 hours, of the statement from all media outlets that had requested information.

- An approved replacement statement was provided to all media outlets. Each media organisation that was sent the original media statement was followed up by the PR agency.
- These actions went beyond those requested by Boehringer-Ingelheim. There was no indication from Boehringer Ingelheim that there were any unresolved issues with the replacement statement, which had been provided to Boehringer-Ingelheim. This was interpreted by sanofi-aventis as indicating that the statement was acceptable to Boehringer-Ingelheim.
- The Code Committee found that the replacement media statement failed to adequately deal with the three claims that had been found in breach of the Code. Sanofi-aventis argued that if this statement was acceptable to Boehringer-Ingelheim it should have been acceptable to the Code of Conduct Committee. The Code Committee failed to identify the problem with the replacement statement.
- 6 minutes was the only news organisation who published information based on the original media statement prior to sanofi-aventis recalling it - 6 minutes was sent a replacement statement.
- Sanofi-aventis questioned the relevance of the comment in the Code Committee's minutes regarding the price difference between the companies' products.
- Sanofi-aventis noted that Boehringer-Ingelheim has previously engaged in similar conduct which had been resolved through informal inter-company dialogue without reference to the Code of Conduct Committee.
- Sanctions imposed on other companies in relation to a breach for promoting a non-approved indication ranged from \$40,000 to \$60,000, with no requirement for corrective action.
- Sanofi-aventis had a reasonable expectation that this matter had been resolved through intercompany dialogue and its submitting to every demand from Boehringer-Ingelheim, yet Boehringer-

Ingelheim had proceeded with the complaint to the Code of Conduct Committee. There were no apparent unresolved issues; if there were any, Boehringer-Ingelheim had failed to identify them.

- The Code Committee had failed to take sufficient account of these issues.
- Sanofi-aventis considers Boehringer-Ingelheim to have breached Section 12.3 of the Code by proceeding with the complaint to the Code Committee despite apparent resolution.

The following outlines the Boehringer-Ingelheim presentation of its response to the appeal.

- Boehringer-Ingelheim maintains that the result of the press release was to mislead health care professionals and this in itself constitutes a serious breach of the Code. The Code Committee minutes reflect that the Committee considered "that this was a serious matter"
- Boehringer-Ingelheim had agreed to monitor media activities following the corrective actions sanofi-aventis outlined in inter-company dialogue. The corrective media statement was sent without Boehringer-Ingelheim's review or agreement.
- Sanofi-aventis' actions did not result in any communication going to those prescribers who may have been misled. The Code Committee minutes state "Members were of the view that the information about the PRoFESS study in the release was selective and contained misleading information which may influence prescribers in their choice of medicine".
- Sanofi-aventis has downplayed the impact of the 6 minutes newsletter which is widely distributed, to over ten thousand GPs.
- In relation to the allegation that Boehringer-Ingelheim is in breach of section 12.3, the Code Committee found unanimously against sanofi-aventis' allegation.
- The Code Committee was of the view that the media release contained promotional statements that were a selective communication of the PRoFESS study outcomes that had the

potential to mislead prescribers and was in breach of Sections 1.2, 1.3 and 1.7 of the code. It was clear that despite written communication and a teleconference between the companies that they still disagreed as to whether some aspects of the media statement were in breach of the code.

- In its response to the complaint sanofi-aventis had disputed that the content of the media release was in breach of sections 1.2 and 1.3 of the Code. Sanofi-aventis had stated that “the media statement was amended as a goodwill gesture in light of the error that had occurred at PPR”. Sanofi-aventis’ correction to the media statement had focussed on the heading. Sanofi-aventis had not accepted that the body text reporting efficacy and safety outcomes of PRoFESS was in breach of the Code.
- The final publication of the full PRoFESS trial vindicates Boehringer-Ingelheim’s decision to pursue the complaint and the Code Committee’s decision - “There is no evidence that either of the two treatments was superior to the other in the prevention of recurrent stroke”.
- Sanofi-aventis’ actions were not consistent with the principles of “Quality use of Medicines” as referenced in the preface to the Code.

In its final response to the Boehringer-Ingelheim presentation, sanofi-aventis made the following points:

- Sanofi-aventis had no indication that Boehringer-Ingelheim was not satisfied with the outcome of intercompany dialogue and sanofi-aventis’ actions.
- Sanofi-aventis had clearly acknowledged that the heading in the media statement was incorrect and had provided a more accurate statement about the PRoFESS study, which had corrected the body of the media statement as well.
- The media statement was only picked up by one electronic newsletter; no print media acted on the incorrect statement.
- The speed with which sanofi-aventis acted indicates that it regarded this as a very serious issue. Sanofi-aventis had undertaken immediate corrective action.

- Sanofi-aventis considers that the referral to the Code Committee should only occur when inter-company dialogue fails to achieve a satisfactory outcome. Therefore Boehringer-Ingelheim should be found in breach of section 12.3 of the Code for vexatious conduct.

The Chairman thanked representatives from both companies for their presentations and asked that they leave the meeting to allow the Committee to deliberate on the matters before them.

The Committee noted that *6 Minutes* is an online newsletter from the publishers of Australian Doctor Weekly. The audience is general practitioners.

The Appeals Committee noted that the email communicating the media statement to some news agencies included statements that had not been provided or approved by sanofi-aventis. Members noted that while a revised email was sent advising that headline was incorrect and could be considered a promotional claim and requesting that it not be used. The revised statement further stated “... A more appropriate headline (and accurate summary) is”. Some members were of the view that while there is no requirement that all corrections follow the format of a corrective letter as determined by the Code of Conduct Committee, the revised media statement could have been more specific about what was being corrected. The Appeals Committee also noted that sanofi-aventis had acted promptly in requiring the PR agency to issue a corrective email and that the incorrect information had only been published by one media outlet (6 minutes).

Members also considered the allegation by sanofi-aventis that Boehringer-Ingelheim had not raised any issues with the corrective email when it was provided to them. The Appeals Committee was of the view that both companies could have been clearer in their communications pertaining to this complaint and could have undertaken further inter-company dialogue. Nevertheless the Appeals Committee did not agree that Boehringer-Ingelheim should be asked to respond to an alleged breach of Section 12.3 of the Code.

The Appeals Committee was not persuaded that the Code Committee had erred in finding that the original media statement was in breach of Sections 1.2, 1.3 and 1.7 of the Code and did not uphold the appeal in relation to these decisions. However members were of the view that the matter was not as severe as determined by the Code Committee as sanofi-aventis had accepted responsibility for the actions of the PR agency and had attempted to correct the information. It therefore determined that the fine should be reduced.

Sanctions

Having not upheld the appeal the Appeals Committee reviewed the sanctions imposed by the Code of Conduct Committee. Members of the Appeals Committee were of the view that this breach was not as severe as determined by the Code of Conduct Committee. Members were of the view that the fine should be reduced and the requirement for corrective advertisement be removed in consideration that almost five months had elapsed since the publication in *6 minutes*.

- Withdraw the media statement found in breach and not use it again, or in a manner which conveys the same or similar meaning.
- Pay a fine of \$25,000

Cialis 955

Subject Company: Eli Lilly Australia (ELA)

Complainant: Pfizer Australia (Pfizer)

Product: Cialis

Complaint

Pfizer had stated that as the medicine is not a new product but is a new dose a media release was not allowable.

Pfizer alleged that the media release to the general public contained at least eight promotional claims and therefore constituted promotion to the general public. The media release was also posted on ELA's website. Pfizer also alleged that the media release included false, misleading and unsubstantiated claims, and brought discredit to the industry.

Pfizer further alleged that promotional material for Cialis included false and misleading claims and false and misleading comparative statements.

Sections of the Code

Materials alleged to be in breach of the following Sections of the Code:

- 1.1 Responsibility
- 1.2 Substantiating Data
- 1.3 False or Misleading Claims
- 1.5 Unqualified Superlatives
- 1.7 Comparative Statements
- 9.6 Use of the Internet
- 9.10 Discredit to and reduction of confidence in industry
- 10.8 Discredit to and reduction of confidence in industry

Response

Eli Lilly responded that there had been previous complaints made in relation to the media release. The Code of Conduct Committee had found the media release in breach of Sections 9.2 and 9.4 but not Sections 9.3 or 10.8 (complaints 947 and 948). ELA argued that the breaches of Sections 9.6 and 9.10 should be rejected as the issues have already been considered by the Code Committee.

ELA asserted that as the Code Committee has already dealt with some aspects of the complaint, and the media release and its use on the website has been addressed, no further consideration by the Committee was required.

In relation to the promotional material for health professionals, Eli Lilly responded that the statements are accurate, balanced, correct and fully supported by the approved Product Information, literature and data on file. Eli Lilly asserted that the promotional material was not in breach of any section of the Code.

Committee determination

- In a majority decision no breach of Sections 1.1, 1.2, 1.3 and 9.10 of the Code
- In a unanimous decision a breach of Section 9.6 of the Code
- Sections 9.2, 9.4 and 10.8 had already been considered under complaints 947 and 948
- No breach of Sections 1.1, 1.2, 1.3, 1.5 or 1.7 was found in relation to the promotional material for Cialis for health professionals.

Sanction

The Committee considered that the imposition of a fine under complaints 947 and 948 had adequately dealt with this matter.

Consideration of the complaint

A) Media Release

The Committee noted that the media release had already been subject to complaint and was found to be in breach of Sections 9.2 and 9.4 of the Code resulting in a fine of \$60,000. In its consideration of the media release in June 2008 the Committee had found no breach of Sections 9.3 or 10.8 of the Code.

Members determined that this Committee should only address new issues pertaining to the media release raised in the Pfizer complaint, namely Sections 1.1, 1.2, 1.3, 1.7, 9.6 and 9.10. The Committee also determined that the alleged breaches pertaining to the promotional material for

healthcare professionals should be considered.

As the Committee had already found the media release to be in breach of Sections 9.2 and 9.4 for the reason of making promotional statements to the general public, the Committee unanimously determined that a breach of Section 9.6 should also be found because the media release had been available on the Eli Lilly website. Members noted Eli Lilly's advice that it had removed the release once the complaint had been received and the website had only received 14 'hits' in the time it had been accessible.

As identified previously by the Committee, the question of when a media release may be distributed to the lay media could be further clarified in the Code and this should be referred to the Code Review Panel for consideration.

Claim: First ever daily ED [erectile dysfunction] pill now available to Aussie men to help restore sexual spontaneity

One member was of the view that there was insufficient evidence to support a claim of 'sexual spontaneity'. However the majority of members were of the view that the dosing regimen for Cialis once-a-day does support the claim for 'sexual spontaneity'.

In a majority decision the Committee found that the statement was a promotional claim but was not in breach of Section 1.3 of the Code.

Claim: The first in its class of medication to offer continuous 24/7 coverage to men with erectile dysfunction

The Committee was of the view that the Cialis once-a-day was the first in its class approved for once daily continuous dosing; the other PDE5 medicines were approved as 'on demand' treatments. Although the pharmacokinetic data to support the once daily dosing regimen provided in the Cialis Product Information was based on the 10mg and 20mg products, the half life for the Cialis once-a-day product should be the same.

In a majority decision the Committee found that the statement was a promotional claim but was not in breach of Section 1.3 of the Code.

Claim: Although the two regimens have not been compared in a head-to-head clinical trial, the efficacy and safety of Cialis Once-A-Day appears similar to that of the existing Cialis (10 and 20mg, taken as needed)

In comparing two treatment regimens, albeit both Eli Lilly Cialis products, the statement was comparative and some members were of the view that no comparative statements should be used in information to the general public.

The Committee noted that the Porst et al study concluded that "*because this study did not compare once-a-day dosing with on-demand dosing or every-other-day dosing, we cannot adequately compare the efficacy and tolerability of the regimens or comment on which would be preferred, but the efficacy and tolerability of 5mg tadalafil (Cialis) taken daily appear to be comparable to the efficacy and tolerability of 20mg taken on demand or every other day.*"

In a majority decision the Committee found that the statement was a promotional claim but was not in breach of Sections 1.1, 1.2, 1.3 or 1.7 of the Code.

For reasons of consistency with the decision pertaining to a finding of no breach of Section 10.8 (Discredit to and reduction of confidence in the industry), in a majority decision the Committee found no breach of Section 9.10 of the Code, which is the equivalent provision relating to conduct directed at the general public.

B) Promotional material to healthcare professionals

Claim: Life just like it was before

The Committee noted that the claim was qualified with a statement "Erectile function similar to before ED, enabling spontaneous sexual activity". Members were of the view that the claim was sufficiently qualified. The statement was unlikely to be misinterpreted to be claiming that 'all aspects' of a person's life would be improved. The Committee by a majority decision found no breach of Sections 1.1, 1.2 and 1.3 of the Code.

Claim: Unsurpassed duration to respond anytime

Some members were of the view that the Code Review Panel should consider prohibiting the use of 'unsurpassed' because

it was a term that may be interpreted differently by different readers and its meaning variously understood.

Members noted the qualifying statements on the promotional item and reviewed the evidence to support the claim of 'unsurpassed'.

By a majority decision the Committee found no breach of Sections 1.2, 1.5 and 1.7 of the Code, but noted that it is difficult to understand the meaning of the term 'unsurpassed' and in another context use of the term might be found in breach of the Code.

Sanction

Having found a breach of Section 9.6 of the Code in relation to the publication of the media release, which had previously been found in breach of the Code, on the Eli Lilly Australia website, the Committee considered an appropriate sanction. The Committee determined that the sanction of a \$60,000 fine imposed in relation to complaints 947 and 948 had adequately dealt with this matter.

Truvada 956

Subject Company: Gilead Australia (Gilead)

Complainant: GlaxoSmithKline Australia (GSKA)

Product: Truvada

Complaint

GSKA alleged that promotional material for Truvada was misleading due to the use of incomplete and inappropriate information concerning the Data Safety Monitoring Board's (DSMB) recommendations on study ACTG 5202 in HIV patients. GSKA alleged that physicians could be misled by the promotional piece and ultimately patients may be harmed by unnecessary, unjustified and poorly substantiated alteration of therapy.

Sections of the Code

Materials alleged to be in breach of the following Section of the Code:

- 1.1 Responsibility
- 1.2 Substantiating Data
- 1.3 False or Misleading Claims

Response

Gilead responded that the promotional piece was not misleading to medical practitioners, or in breach of the Code of Conduct. The content of the piece is substantiated by documents available in the public domain and does not misrepresent the intention and meaning of the DSMB's recommendations.

Although Gilead believes that the piece is not in breach of the Code of Conduct, Gilead had offered to withdraw it in order to resolve the complaint. GSKA had not accepted this offer. Gilead argued that a corrective letter is not necessary.

Committee determination

- In a unanimous decision a breach of Sections 1.1, 1.2 and 1.3 of the Code was found.

Sanction

- Pay a fine of \$75,000
- Send a corrective letter to all healthcare professionals (HIV prescribers) who

received this item or had been detailed with the material.

Consideration of the complaint

Members noted that the AIDS Clinical Trials Group (ACTG) study 5202 is a definitive randomised, double blind study in 1858 HIV positive, antiretroviral (ART) naïve patients that aims to assess the efficacy and safety of Truvada (Gilead's product) or Kivexa (GSKA's product) in combination with atazanavir/ritonavir or efavirenz.

The study is funded by the US Department of Health and Human Services, National Institutes of Health (NIH) through the National Institute of Allergy and Infectious Diseases (NAIDS). The study has several planned analyses at varying time points. One of these was the scheduled analyses by an independent DSMB. Thus, the public statement by the DSMB was of its interim analysis of safety and efficacy; the study has not been completed. The DSMB determined that the protocol should be amended with respect to subjects who had entered the study with a high initial viral load.

The Committee also noted Gilead's advice that approximately one week after GSKA had issued a press release outlining the DSMB interim findings, Gilead had received physician requests for information about the findings and how they relate to Truvada and Kivexa. Subsequently Gilead had issued the item subject to complaint.

Members commented that while it is acceptable to provide information about a clinical study to healthcare professionals in response to a request, a company should provide balanced and comprehensive information and available data and should not include promotional claims that are misleading. The efficacy and safety issues raised by the ACTG 5202 DSMB are important. A company should not turn this information into a promotional claim, and particularly should not be promoting a medicine on the basis of interim results of an ongoing study, the results of which have not been formally published. Members also commented that had the information published by Gilead been more complete or presented in proper context, this may have been acceptable and more educative than

the item provided to prescribers by Gilead. Members were particularly concerned by the omissions of the full and complete DSMB advice relating to Kivexa patients who were responding to their treatment.

The Committee took into account the intercompany dialogue during which Gilead had agreed to cease using the material and potentially distribute a corrective letter to HIV physicians.

Complaint 1:

- *“DSMB review of this ongoing large randomised placebo-controlled trial has identified efficacy concerns in patients with high viral loads randomised to receive Kivexa.*
- *This was not observed in those patients receiving Truvada.”*

Complaint 2: The attempt to present key findings of the DSMB in paraphrase misrepresents the full intention and meaning of the DSMB recommendations

Example 1:

Significantly higher virological failure rates in those patients randomised to Kivexa containing regimens vs Truvada containing regimens - hazard ratio 2.33 (95% CI:1.46, 3.72), p-value = 0.00032

Example 2:

Significantly higher rates of protocol safety endpoints occurred in those patients who received Kivexa containing regimes vs Truvada containing regimens
- *Specifically a large number of Grade 3/4 elevated cholesterol, triglyceride levels and body aches were observed*

Example 3:

Those patients on Kivexa will be offered a switch to Truvada or other NRTIs

The Committee was of the view that the Gilead item *“ACTG 5202: Interim Data Safety and Monitoring Board (DSMB) recommendations on important changes to study conduct 28 February 2008.*

(containing the statements identified above) was not a complete or accurate reflection of the DSMB findings and may mislead prescribers in Australia about the efficacy and safety of treatments in HIV. In particular the Gilead document had misleadingly

omitted information on the option for subjects continuing on Kivexa in certain circumstances. For this and the reasons outlined above the Committee, in a unanimous decision, unanimously found a breach of Sections 1.1, 1.2 and 1.3 of the Code.

Sanction

Having found several breaches of the Code the Committee considered what sanction/s should be imposed.

The Committee determined that Gilead should:

- Withdraw the materials found in breach and not use them again, or in a manner which conveys the same or similar meaning.
- Pay a fine of \$75,000
- Send a corrective letter to HIV physicians. The corrective letter shall state that:
 - Gilead had been found in breach of the Code
 - the full study results for ACTG 5202 have not been published;
 - the promotional item had omitted important recommendations from the interim efficacy and safety evaluation by the DSMB
 - prescribers should not rely on the Gilead promotional item when considering treatment options in HIV
 - provide the website address where the full DSMB advice can be located;
- The corrective letter shall be approved in writing by the Chairman of the Code of Conduct Committee. The text of the corrective letter must be in a font of no less than 12 point. Medicines Australia must receive documentary evidence of the distribution of the corrective letter and the Secretary of the Code Committee must be included on the mailing list for the letter.

Lipidil 957

Subject Company: Solvay Pharmaceuticals (Solvay)

Complainant: AstraZeneca

Product: Lipidil

Complaint

AstraZeneca alleged that Solvay is engaged in promotion of an unapproved indication for Lipidil with the intent of encouraging off-label use.

Sections of the Code

Materials alleged to be in breach of the following Section of the Code:

- 1.2.2 Level of Substantiating Data
- 1.3 False or Misleading Claims
- 1.3.1 Unapproved Products and Indications
- 10.5 Medical literature/reprints

Response

Solvay denied that its promotion of Lipidil breached any section of the Code of Conduct. Solvay stated it had attempted to reach a resolution of the complaint with AstraZeneca, including offering to voluntarily cease any reprint of the advertisement for Lipidil subject to complaint. However AstraZeneca had not accepted these offers.

Solvay stated that the claims for Lipidil relate to its use for dyslipidaemia, which is the approved indication. Solvay stated that it is not promoting Lipidil in diabetic retinopathy. The clinical papers on diabetic retinopathy should not be viewed in isolation, but in the context of dyslipidaemia.

Committee determination

- In a unanimous decision a breach of Sections 1.2.2, 1.3, 1.3.1 and 10.5 of the Code was found.

Sanction

- Pay a fine of \$25,000
- Send a corrective letter within 30 calendar days to all health professionals detailed with the item containing claims found in breach

- Publish a corrective advertisement within 30 calendar days in all publications where the advertisements containing claims found in breach had appeared.

Consideration of the complaint

There were three items of promotional material subject to complaint. The Committee noted Solvay's advice that advertisement SOL-151107-114 was used for one month immediately following the publication of the study results in the Lancet in November 2007. It has not been used since December 2007. Advertisement SOL-150208-157 will not be reprinted after June 2008.

Prior to considering the claims subject to complaint members referred to the approved indications in the Lipidil Product Information (PI):

Lipidil is indicated as an adjunct to diet in the treatment of:

- *Hypercholesterolaemia*
- *Types II, III, IV and V dyslipidaemia*
- *Dyslipidaemia associated with type 2 diabetes*

The Field Study, on which the claims subject to complaint are based, is a double-blind, randomised-controlled clinical trial conducted in patients with type 2 diabetes. The Committee noted the findings in relation to the primary endpoint of this study - a 2-step progression of retinopathy. The progression of retinopathy did not differ significantly between patients on Lipidil or placebo or the subset of patients without pre-existing retinopathy. Thus for the primary endpoint there was no significant difference between Lipidil and placebo. In the sub-group of patients with pre-existing retinopathy, significantly fewer patients on Lipidil had a 2-step progression than did those on placebo. An exploratory composite endpoint of 2-step progression of retinopathy grade, macular oedema, or the need for first laser treatments found a significantly lower requirement for the first laser treatment for retinopathy in the Lipidil group than in the placebo group. However, this exploratory composite endpoint was not the primary or a secondary endpoint of the

study but was a post-hoc subgroup analysis. The promotional materials (advertisements and detail aid) relied on this exploratory subgroup analysis.

Claim 1: There's more to Lipidil than meets the eye

Claim 2: Unlike the salamander, we can't regenerate our eyes

Therefore we should protect them

Having considered Solvay's response that they were not promoting Lipidil as a treatment for diabetic retinopathy, which is an unapproved indication, members questioned the use of headlines which imply benefits of Lipidil in eyesight and do not mention this is in the context of treating dyslipidaemia in people with type 2 diabetes. Members were of the view that Solvay could have provided information on the full outcomes of the Field Study, which had not shown any difference between Lipidil and placebo for its primary or secondary outcomes, and should not have selectively highlighted a specific subgroup analysis of the study. Members considered that the reference to the outcomes from the subgroup analysis on the need for first laser treatment for retinopathy without adequate qualification that this was only in the context of treatment for dyslipidaemia in type 2 diabetes was promoting an unapproved indication for Lipidil.

The detail aid with the headline '*Unlike the zebrafish we can't regenerate out heart. Therefore, we should protect it.*' also included claim 2 and statements referring to the benefits of Lipidil in diabetic retinopathy without adequate qualification that this was not an approved indication for Lipidil and should only be considered in the context of treatment of dyslipidaemia in people with type 2 diabetes.

The Committee was of the view that the promotional items did promote an unapproved indication for Lipidil for diabetic retinopathy. The Committee considered that the claims relied on insufficient substantiation being a sub-group analysis and omitted information that the primary and secondary endpoints of the Field trial found no significant difference between Lipidil and placebo. The claims were not consistent with the approved Product Information for Lipidil.

The Committee determined that the two advertisements and detail aid were in breach of Sections 1.2.2, 1.3, 1.3.1 and 10.5 of the Code.

Sanction

Having found several breaches of the Code the Committee considered what sanction/s should be imposed.

The Committee determined that Solvay should:

- Withdraw the materials found in breach and not use them again, or in a manner which conveys the same or similar meaning.
- Pay a fine of \$25,000
- Send a corrective letter within 30 calendar days to all healthcare professionals who had been detailed with the item aid titled '*Unlike the zebrafish we can't regenerate out heart. Therefore, we should protect it.*' The corrective letter shall be approved in writing by the Chairman of the Code of Conduct Committee. The text of the corrective letter must be in a font of no less than 12 point. Medicines Australia must receive documentary evidence of the distribution of the corrective letter and the Secretary of the Code Committee must be included on the mailing list for the letter.
- Publish a corrective advertisement within 30 calendar days in all publications where the advertisements containing claims found in breach had appeared.
- The corrective letter and corrective advertisement must state that Lipidil is not indicated for diabetic retinopathy and the literature does not currently support its use to treat this condition.

In relation to the allegation by Solvay that AstraZeneca had brought the complaint in an anti-competitive and vexatious manner, the Committee dismissed the allegation and determined that there was no cause for AstraZeneca to be asked to respond to Section 12.3 of the Code.

Appeal

Solvay written appeal stated that it accepted the Code Committee's decision in principle, but wished to appeal the contents of the

Code Committee minutes, as they were considered to be ambiguous and inaccurate in several places with regards to the results of the main FIELD Study and the ophthalmology sub-study.

AstraZeneca had responded to the appeal stating it concurred with the Code Committee's decisions. AstraZeneca did not consider that Solvay had provided any new arguments or information that would justify that the promotional items were not promoting an unapproved indication and were in breach of the Code.

Appeals Committee determination

- In a unanimous decision the Appeals Committee did not uphold the appeal. The breaches of Sections 1.2.2, 1.3, 1.3.1 and 10.5 of the Code were confirmed.

Sanctions

- Withdraw materials found in breach
- Send a corrective letter to all healthcare professionals who had been detailed with the item containing claims found in breach
- Publish a corrective advertisement in all publications where the advertisements containing the claims found in breach had been published
- Pay a fine of \$75,000 (increased from \$25,000)

Consideration of the Appeal

The Chairman and members discussed whether the Solvay appeal was a competent appeal as it was neither against the Code Committee's findings or the sanction. The Chairman noted that the explanatory notes to Section 13.1.1 of the Code states "*The Committee shall not uphold an appeal unless it is persuaded that the findings of the Code of Conduct Committee or the sanction imposed by it involved an error on the basis of which they should be set aside or varied.*" The Chairman also referred to the extract of the minutes from the 'Pfizer Conduct 909' appeal which had also accepted the Code Committee's decision and sanction but had appealed against the manner in which the Committee had reached its decisions and recorded those decisions in the minutes. Members understood that an appellant must appeal on the basis that the Code

Committee had erred in their decision rather than appealing the wording of the Code of Conduct Committee minutes. Members concurred that the Appeals Committee did not have jurisdiction to amend the confirmed minutes of the Code of Conduct Committee. The minutes of a Code of Conduct or Appeals Committee meeting are not a transcript, but rather a summary of the discussion and reasons for coming to a decision.

If an appellant considers that the Committee made a wrong decision on the basis of its misunderstanding of the evidence, this should be stated as the reason for the appeal. Medicines Australia staff advised that on the advice of the Chairman, Solvay had been advised to respond to this issue concerning the basis of its appeal in its presentation. Members resolved to seek clarification from Solvay of the basis for its appeal.

The Chairman outlined the Committee's concern that the appeal may not be properly constituted. He asked Solvay to clarify what it sought to appeal. Solvay responded that it was appealing the decision of the Code Committee on the basis that the Committee had misunderstood the FIELD Study and the retinal photography sub-study and therefore the basis for its decisions was incorrect. Solvay confirmed that it sought a reconsideration of the findings of the Code Committee and the sanction imposed. On this basis the appeal proceeded.

The following outlines the appeal presentation made by Solvay.

- Three items were considered by the Code Committee. Two advertisements were to "announce" new results from the FIELD studies to health professional in print media. The third item was educational material for health professionals which was much broader than the FIELD study results.
- The materials were directed at healthcare professionals who would be familiar with Lipidil and its TGA-approved use - Lipidil is not a new product.
- The FIELD studies were conducted with Lipidil used in the treatment of dyslipidaemia in patients with type II

diabetes, which is the TGA approved indication for Lipidil.

- Solvay asserted that it was not promoting Lipidil outside its approved indication and that the three items were not in breach of the sections of the Code of Conduct as alleged:
 - The two advertisements gave information on the FIELD trial results, included a prominent qualifier that Lipidil is not indicated for the prevention or treatment of diabetic retinopathy, included the minimum product information stating the approved indication for Lipidil, and an invitation to obtain the full trial publication.
 - The printed material provided additional, balanced information regarding treatment of dyslipidaemia in type II diabetes. Solvay considers that this item complies with the Code.
- The advertisements served to “announce” new FIELD clinical trial results and did not to promote off-label. One of the two items only ran for one month as an announcement.
- In inter-company dialogue Solvay had offered to cease further publication of the advertisements in May and June.
- Solvay considers that the FIELD study results were not properly understood by AstraZeneca in the intercompany teleconference. Resolution was not achieved in intercompany dialogue and Solvay considers that the AstraZeneca minutes were not a true reflection of the meeting.
- Solvay considers that AstraZeneca had expanded its requirements during intercompany dialogue beyond the scope of initial complaint.
- Solvay still reserves the right to communicate clinical trial results from peer reviewed journals.
- Whilst the Code Committee minutes may not be a transcript of all discussions at the Committee meeting, Solvay believes that the Committee had not fully understood the complex studies relevant to this case. The minutes are in several places ambiguous and inaccurate with regards to results of the main FIELD study, and the

ophthalmology sub-study - there are two studies involved.

- A correct understanding of these studies is critical to ensure that the correct decision is made when deciding on each of the materials in question:
 - Lipidil is used in the treatment of dyslipidaemia in patients with type II diabetes which is the TGA approved indication.
 - the materials in question communicate clinical trial results and do not promote an unapproved indication

The following outlines the key points in the presentation by the investigator.

- The FIELD trial included 9795 people with type II diabetes (men and women) randomised to either placebo or fenofibrate 200mg daily. The primary endpoint was first non-fatal myocardial infarction or death from coronary heart disease.
- Laser treatment for diabetic retinopathy was a pre-determined tertiary endpoint of the FIELD Study; that is all subjects were monitored for whether they required laser treatment.
- The eye sub-study was a nested sub-study in 1012 subjects (of the 9795 total population) who were evaluated for the development or progression of diabetic retinopathy with the primary endpoint being at least a two-step increase in the Early Treatment Diabetes Retinopathy Study grade after 2 years or more of follow-up. In this sub-study there was no difference between the placebo and fenofibrate groups in the primary endpoint. However, there was a statistical difference in favour of fenofibrate in patients with pre-existing retinopathy. There was also a post-hoc, exploratory composite endpoint used to evaluate the development of significant retinal pathology, because if a subject has laser treatment for retinopathy the main evaluation tool of retinal photography cannot be used to assess the retina.
- The decrease in requirement for first laser treatment for retinopathy in the FIELD trial (in the 9795 subjects) was highly significant ($p=0.0003$),

irrespective of the fact that the primary endpoint of the study was not reached.

Following questions from members of the Committee the investigator provided the following explanations:

- The patient's treating ophthalmologist decided whether they required laser treatment. If a subject reported having laser treatment, information was then obtained from the treating doctor. And evaluated at two of the FIELD sites.
- The investigator did not dispute the statements in the editorial in *The Lancet* which commented that the number of events in the ophthalmology sub-study were small which precludes definitive conclusions. The editorial also stated that the mechanism of action of fenofibrate in relation to its effects on retinopathy is unknown and therefore it cannot yet be regarded as a new option in the management of diabetic retinopathy.
- The primary endpoints for the ophthalmology sub-study were pre-determined, not *post hoc*.

The following outlines the AstraZeneca presentation of its response to the appeal

- AstraZeneca commented that their response had been developed on the basis of the written appeal submission. However they would proceed on the revised grounds of appeal as discussed with Solvay.
- AstraZeneca considers that the primary issue in the complaint is the promotion of Lipidil outside the TGA approved indications.
- The materials subject to complaint are promotional in nature. The claims in relation to Lipidil use in diabetic retinopathy are not accurate and balanced because they are based on selectively favourable aspects of a study that failed to reach its primary endpoint.
- The claims are unsubstantiated by the body of evidence.
- The data, together or alone, do not substantiate the claim.
 - Based on a tertiary endpoint of a single study that failed to meet its primary endpoint
 - an ophthalmology sub-study (involving 512 patients on Lipidil),

that also failed to show a significant difference between treatments for its primary endpoint.

- The claims have the potential to mislead a prescriber.
- The key issues are:
 - off-label promotion is prohibited by the Therapeutic Goods Act and the Code of Conduct.
 - Solvay has misled prescribers for over 9 months.
 - The dispute is not with the FIELD main study or sub-study but with the manner in which the results have been used by Solvay.
- AstraZeneca asks that the Appeals Committee uphold the determination of the Code of Conduct Committee and review the sanctions previously issued given the serious nature of the breaches.

The Chairman thanked representatives from both companies for their presentations and asked that they leave the meeting to allow the Committee to deliberate on the matters before them.

Consideration of the appeal

The Committee considered whether procedural fairness was afforded to AstraZeneca when the basis for appeal had changed in its presentation to the Committee. Members determined that as both companies had been present and had the opportunity to present their views to the Committee, and AstraZeneca had the opportunity to respond to the revised appeal to the Committee, there was no issue with regard to procedural fairness.

The Committee reviewed the Lipidil Product Information and noted that Lipidil is not approved for use in diabetic retinopathy. Its only indication is as an adjunct to diet in the treatment of hypercholesterolaemia; types II, III, IV and V dyslipidaemia and dyslipidaemia associated with type 2 diabetes.

The Committee noted that the Solvay contention that the Code of Conduct Committee minutes were incorrect where it was stated: "*The Field Study, on which the claims subject to complaint are based, is a double-blind, randomised-controlled clinical*

trial conducted in patients with type 2 diabetes. The Committee noted that the findings in relation to the primary endpoint of this study - a 2-step progression of retinopathy.” The minutes should correctly read “The Committee noted that the findings in relation to the primary endpoint of the sub-study - a 2-step progression of retinopathy.”

While members agreed that the Code of Conduct Committee may have incorrectly cited the outcomes of the FIELD Study and the ophthalmology sub-study, the key issue is the overall interpretation derived from the advertisements and printed material and whether Solvay was promoting a unapproved indication. Whilst noting that the advertisements and printed promotional material included a qualification about Lipidil’s approved use, the Committee was of the view that there is a difference between educational and promotional material. The Appeals Committee was concerned that Solvay did not acknowledge or recognise that the material was promotional.

The Committee noted that its concerns were not in relation to the FIELD Study or the ophthalmology sub-study, how they were conducted or the professionalism of investigators; it was the manner in which the outcomes were used as a basis for claims to healthcare professionals by Solvay. The Committee noted that in the ophthalmology sub-study the primary endpoint of a two step progression of retinopathy grade did not differ significantly between placebo and fenofibrate groups; only in those patients with pre-existing retinopathy was the difference significant, and this was in a very small number of subjects. There is no explanation of the mechanism of action for this effect, which was unrelated to any effect on serum lipids.

The Appeals Committee concurred with the findings of the Code of Conduct Committee that the materials promoted a non-approved indication for Lipidil in the treatment of diabetic retinopathy. The Appeals Committee also considered that the claims could not be adequately substantiated by the referenced studies.

The Committee was of the view that this was a severe breach and at no stage had Solvay acknowledged that the material was

promotional (albeit it had agreed to cease using the advertisements and printed material). Members emphasised that companies should be cognisant of the requirements of the Therapeutic Goods Act and the provisions of the Code relating to reporting the outcomes of clinical trials with respect to the approved use of prescription medicines.

Sanctions

Having not upheld the appeal the Appeals Committee reviewed the sanctions imposed by the Code of Conduct Committee. Members of the Appeals Committee were of the view that this was a serious breach. The Committee unanimously determined that the fine should be increased and the requirement for corrective advertisement and letter should remain.

- Withdraw the materials found in breach and not use them again, or in a manner which conveys the same or similar meaning.
- Send a corrective letter within 30 calendar days to all healthcare professionals who had been detailed with the item titled ‘Unlike the zebrafish, we can’t regenerate our heart. Therefore, we should protect it’. The corrective letter shall be approved in writing by the Chairman of the Code of Conduct Committee. The text of the corrective letter must be in a font of no less than 12 point. Medicines Australia must receive documentary evidence of the distribution of the corrective letter and the Secretary of the Code Committee must be included on the mailing list for the letter.
- Publish a corrective advertisement within 30 calendar days in all publications in which the advertisements containing the claims found in breach had been published. The advertisement should be a similar size and position in the publications as the original advertisements.
- The corrective letter and corrective advertisement must state that Lipidil is not indicated for diabetic retinopathy and that the published evidence does not currently support its use to treat this condition.
- Pay a fine of \$75,000

The Committee considered the allegation by Solvay that AstraZeneca was in breach of Section 12.3 of the Code. The Appeals Committee commented that they encouraged companies to enter into meaningful intercompany dialogue and demonstrate a willingness to consider each other's positions. The Appeals Committee determined that there was no reason for AstraZeneca to be asked to respond to an allegation that it had breached Section 12.3 of the Code.

Autogel 960

Subject Company: Ipsen

Complainant: Novartis Pharmaceuticals (Novartis)

Product: Autogel

Complaint

Novartis alleged that the claim of comparable efficacy and tolerability to octreotide LAR in the promotional material for Somatuline Autogel was unqualified, misleading and could not be substantiated with an adequate level of scientific evidence. Novartis also alleged that Ipsen was promoting out of indication use of Autogel.

Sections of the Code

Materials alleged to be in breach of the following Section of the Code:

- 1.1 Responsibility
- 1.2 Substantiating Data
- 1.3 False or Misleading Claims
- 1.7 Comparative Statements

Response

Ipsen responded that the claim is supported by the highest level of evidence that is available and reflects the body of evidence in its entirety. Ipsen also noted that the promotional piece subject to complaint is no longer in circulation; however the claim being challenged is being used in other materials. Ipsen has not received any objections from endocrinologists in the 4 years that the claim has been in circulation.

Committee determination

In a unanimous decision the Committee found a breach of Sections 1.1, 1.3 and 1.7 of the Code and in a majority decision a breach of Section 1.2 of the Code. No breach of Section 1.3.1 was found.

Sanction

- Withdraw materials found in breach of the Code
- Issue a corrective letter to endocrinologists and other medical practitioners who were mailed or detailed with the item of promotional material

Consideration of the complaint

The Committee acknowledged that the acromegaly patient population would be very small and noted Ipsen's response that undertaking randomised controlled trials to compare treatments would be difficult, particularly with regard to recruiting sufficient patients to achieve statistical power or to conduct equivalence or non-inferiority studies where a large sample size is required.

The Committee also noted that there was some disagreement between Novartis and Ipsen as to the record of intercompany dialogue. The Committee encouraged complainants and subject companies to undertake intercompany dialogue in good faith and with a willingness to find resolution on all aspects of the complaint.

Members referred to the statement from Ipsen that the claim subject to the complaint had been in use for several years and had never been challenged. The Committee was not able to comment on why it had never been challenged, however the issue of a maximum period of time which can elapse from the first distribution of promotional material until a complaint is lodged with the Code of Conduct Committee has been referred to the Code Review Panel for consideration.

Claim: Comparable efficacy and tolerability to octreotide LAR in the treatment of acromegaly

The Committee referred to the Ashwell et al (2004) paper cited as reference 3 to the claim. 10 subjects completed the study, which was an open-label observational study in which patients stabilised on octreotide LAR were switched to lanreotide Autogel. The authors stated that the study was not designed to demonstrate relative efficacy between the two products.

Members noted that there has been no head to head study between lanreotide Autogel and octreotide LAR and referred to the Alexopoulou et al study, reference 4 to the claim. This was also an open label, study in 25 patients designed to evaluate the efficacy and tolerability of lanreotide Autogel in agromegalic patients over a 24-week period by switching patients stabilised on octreotide

LAR to lanreotide Autogel. In this study 64% of subjects were well controlled (measured by growth hormone level) on ocretotide prior to switching and 48% were well controlled on lanreotide Autogel after switching, although this difference was not statistically significant. The authors concluded that “nearly similar control of (growth hormone) hypersecretion by both somatostatin analogues was observed”. The authors also stated that lanreotide Autogel was well tolerated. However, the Committee noted that it is not appropriate to use this study design (open label switch study) to compare efficacy.

The Committee considered that if a company wants to make a claim of comparable efficacy and tolerability to a competitor product, the company should clearly communicate to a reader the type and scope of study on which the claim is based if it is not a randomised controlled trial, to ensure a reader is not misled. The Committee concluded that the claim was misleading because it was not clearly disclosed to a reader that the claim was not based on appropriately powered randomised controlled trials but on studies in small numbers of subjects that were an open-label switch design. Although the studies may be the best available due to the difficulty of working in a small patient population, comparative claims should be supported by high quality evidence. Where there is limited data available a company should take care not to overstate a claim. In this case the claim went beyond what could be asserted from the supporting studies and members were of the view that the claim was comparative and misleading as it did not identify how the data to support the claim was obtained.

The Committee unanimously determined that the claim was in breach of Sections 1.1, 1.3 and 1.7 of the Code and by a majority decision in breach of section 1.2 of the Code.. The Committee was of the view that there was no patient harm likely to arise from a doctor’s interpretation of the claim.

In relation to the allegation that the claim was inconsistent with the somatuline Autogel Product Information, because the referenced studies were switch studies and the PI does not refer to switching between

long acting repeatable (LAR) injections and Autogel in stabilised patients, the Committee did not agree with the complainant that the claim promoted switching or that the use of references based on switch studies constituted an off-label use of the product. No breach of section 1.3, subsection 1.3.1 of the Code was found.

Sanctions

Having found several breaches of the Code the Committee considered what sanction/s should be imposed. The Committee determined that Ipsen should:

- Withdraw all promotional materials containing the claim found in breach and not use it again, or in a manner which conveys the same or similar meaning.
- Send a corrective letter to endocrinologists and other medical practitioners who were mailed or detailed with the item of promotional material found in breach of the Code. The corrective letter shall be approved in writing by the Chairman of the Code of Conduct Committee. The text of the corrective letter must be in a font of no less than 12 point. Medicines Australia must receive documentary evidence of the distribution of the corrective letter and the Secretary of the Code Committee must be included on the mailing list for the letter.

Fosamax 961

Subject Company: Merck Sharp & Dohme (Australia) MSDA

Complainant: AMA Queensland (AMAQ)

Product: Fosamax

Complaint

AMAQ was notified by an association member of an advertising item mailed direct to a patient in March 2007. The complainant alleged that the MSDA were advertising directly to the patient by using the enticement of continuing supply of the Breakfree magazine produced by MSDA. AMAQ Ethics Committee referred this matter to the Medicines Australia Code of Conduct Committee for consideration.

Sections of the Code

Materials alleged to be in breach of the following Section of the Code:

- 9.4 Promotion to the general public

Response

MSDA responded that the mailer in question was only sent to patients who had already been prescribed Fosamax and had subsequently been enrolled by their General Practitioner in the MSDA BREAKfree patient support program.

MSDA stated that the mailer was not distributed to members of the general public but was only sent directly to patients in the support program. The mailer refers to materials of an educational nature and does not contain promotional claims for the product and therefore complies with the Medicines Australia Code of Conduct.

Committee determination

The Committee found no breach of Section 9.4 of the Code.

Consideration of the complaint

The Committee noted that this mailer was dated February 2007 and had only just been submitted as a complaint in July 2008. However, there is no limitation on when a complaint may be submitted to the Committee and the BREAKfree program had continued during 2007.

Members referred to the Code for provisions relating to 'Patient Support Programs'. Section 9.8 of the Code states that "No incentives, other than material that will enhance positive health outcomes and compliance, can be provided to patients to become involved in these programs."

Some members commented that many patients stop taking their medication inappropriately. It may be appropriate for a company to provide patients with material to educate and inform them about their medicine and to encourage compliance.

The Secretary advised the Committee that a number of companies had requested advice about how an organisation sending patient support program material would know whether a patient is still receiving that treatment and if there would be a problem if a patient kept receiving the materials after they had stopped treatment. Members noted the MSDA advice that the mailer asking the patient to send in an empty blister pack of Fosamax or the packet barcode was a mechanism for ensuring the person was eligible to continue in the program i.e. to ensure the materials were only sent to people that have been prescribed Fosamax, consistent with section 9.8 of the Code.

However the Committee noted that the complaint was in relation to advertising directly to a patient and using enticement by offering continuation of the magazine if the patient continued their treatment and the complainant had referred to Section 9.4 of the Code.

Members determined that the mailer was not advertising directly to a patient as the person receiving the BREAKfree magazine had already been prescribed Fosamax and the magazine was aimed at providing relevant information to enhance health outcomes for the patient. The Committee was of the view that the mailer was not promotional and the offer of continued supply of the magazine was not promotional.

One member raised a concern about an item in the Q&A section of the BREAKfree magazine (Issue 4) "*When am I eligible for Fosamax on the Pharmaceutical Benefits Scheme (PBS) as opposed to paying full*

price on a private script.” The majority of members considered that this may be a question some patients ask, particularly if they have discussed their treatment with other patients. The answer was factual and advised the patient to “Talk to their doctor if they have any questions in this regard”. In relation to a question that this may encourage a patient to ask their doctor to change their diagnosis so they could meet the PBS criteria, healthcare professional members of the Committee commented that they have an ethical obligation to meet the criteria which must be documented in the patient’s medical record.

One member of the Committee was of the view that the requirement to send a bar code or an empty blister pack each month in order to continue to receive the magazine had the potential to appear to be an incentive to continue to be prescribed a particular medicine.

In a majority decision the Committee found no breach of Section 9.4 of the Code as the majority of members were of the view that because the offer of continued supply of the BREAKfree magazine was only sent to patients already prescribed Fosamax, it was not promotional and the provision of the magazine was not an incentive to remain on Fosamax. The Committee commented that companies should be vigilant to ensure that any information or materials for patients could not be regarded as an inducement to stay on a particular medicine but rather encourages appropriate compliance and concordance.

Avamys 962

Subject Company: GlaxoSmithKline
Australia (GSKA)

Complainant: Schering-Plough

Product: Avamys

Complaint

Schering-Plough alleged that Avamys promotional materials distributed and displayed at the GSKA trade display at the Thoracic Society of Australia & New Zealand conference contained claims and graphical representations that are in breach of the Code. The Complainant alleged that the data used to support the promotional claims were not of adequate quality to allow evaluation of the validity of the results and the claims.

Schering-Plough and GSKA had engaged in intercompany dialogue. Resolution was reached on several issues, however the central issue in this complaint was unable to be resolved.

Sections of the Code

Materials alleged to be in breach of the following Section of the Code:

- 1.1 Responsibility
- 1.2 Substantiating Data
- 1.3 False or Misleading Claims
- 1.7 Comparative Statements

Response

GlaxoSmithKline denied any breach of the Code and stated it had attempted to address the Complainant's concerns through intercompany dialogue. GSKA asserted it had provided Schering-Plough with significant and reasonable offers in an effort to resolve the complaints, including offering to issue a corrective letter, which Schering-Plough have not accepted.

GSKA asserted that the study to support the graphical representation provided reliable outcomes, reflects the body of evidence and meets the requirements of the Code. GSKA maintained its right to use the study in future promotional materials notwithstanding the undertakings offered in intercompany dialogue.

Committee determination

In a unanimous decision the Committee found a breach of Sections 1.1, 1.2, 1.3 and 1.7 of the Code.

Sanction

- Withdraw materials found in breach of the Code
- Send a corrective letter
- Pay of fine of \$100,000

Consideration of the complaint

Complaint 1: "Nasal and ocular symptom relief" headline is followed directly by the claim "A pharmacological profile with a significant difference compared with other intranasal steroids"

Members noted the GSKA response that the two claims are not linked however members were of the view that the totality of the claims and graphical information on the page/display provides a misleading representation of clinical superiority that is based on *in vitro* data.

Complaint 2: Graphical representation of in vitro/laboratory data (relative glucocorticoid receptor affinity)

The Committee noted the Explanatory note 'Use of animal or laboratory data as sole evidence to support a claim' for Section 1.3 (f) of the Code: *It should be noted that if animal or laboratory data are used a prominent statement identifying this type of data and acknowledging that such data does not necessarily predict clinical effects must be made on the same page and within reasonable proximity to the data in a manner that is not obscured by other material.*

Members noted the GSKA statement that the use of the term 'kinetic binding' would be understood by specialists as meaning *in vitro* not *in vivo* data. Some members commented that while some specialists in this field may have that understanding, they were concerned that GSKA had made significant comparative claims that were based on *in vitro* data that do not necessarily predict clinical outcomes and as a result, a qualification ought to have been provided.

The Committee also referred to the graphical representation adapted from a table in the Valotis et al study (table 1). Members commented that the graph should have

more accurately reflected the data in the table and also noted that the graph represented selective data in that some differences between the drugs reported in the table were not statistically significant. It was not clearly communicated in the graphical representation that it represented just one factor of several kinetic binding experiments. Further, the graph in the promotional item included the brand name Avamys and not the active ingredient name 'fluticasone furoate', whereas the qualifying statement underneath the graph used the abbreviations FF, FP and MF. It was therefore not sufficiently clear which comparisons were statistically significant. The use of the brand name 'Avamys' in the graph was misleading because it gave the impression that the data were a clinical comparison of products rather than an *in vitro* comparison of the active substances. Members noted the advice from GSKA that it would qualify future materials in terms of the *in vitro* data and that it had offered to send a corrective letter although reserving the right to continue using the Valotis study.

In a unanimous decision the Committee found the promotional brochure and trade display banner to be in breach of Sections 1.1, 1.2, 1.3 and 1.7 of the Code.

Having found several breaches of the Code the Committee considered what sanction/s should be imposed. Whilst taking into consideration the concessions offered by GSKA during intercompany dialogue, the Committee also considered that these claims were being promoted at the start of the allergy season that would have had a major impact on prescribers that would be difficult to reverse. The Committee noted that GSKA had offered no concession on its use of the graphical representation.

The Committee by a majority determined that GSKA should:

- Withdraw the materials including claims found in breach and not use them again, or in a manner which conveys the same or similar meaning.
- Send a corrective letter to all healthcare professionals mailed or detailed with any item of promotional material containing this information, including all attendees at the Thoracic Society of Australia & New Zealand conference. The

corrective letter shall be approved in writing by the Chairman of the Code of Conduct Committee. The text of the corrective letter must be in a font of no less than 12 point. Medicines Australia must receive documentary evidence of the distribution of the corrective letter and the Secretary of the Code Committee must be included on the mailing list for the letter.

- Pay a fine of \$100,000