

## CONSULTANT PHYSICIAN v MERCK SHARP & DOHME

### Market research survey

A consultant physician complained about a market research survey and letter sent on behalf of Merck Sharp & Dohme. The questionnaire enabled the recipient to nominate those physicians from whom he/she sought medical guidance/knowledge in specified therapy areas. It was stated in the letter that the information would be used to help structure future medical educational programmes according to need.

In the complainant's view such unsolicited mail was not appropriate. He was worried that the company was paying him to send it information regarding other doctors who could then be contacted in a similar unsolicited way.

The Panel noted from the letter that the nominated colleagues and the addressee would be invited to 'speak at or take part in relevant professional meetings, scientific partnerships and research initiatives' and that the information received would be used to 'deliver tailored information to you and them'. Physicians might also be approached for their knowledge of a specific disease area and its environment. The questionnaire asked for details of local and regional asthma and allergic rhinitis specialists and referred to the general approach to managing the associated risk with adopting new treatment options.

The Panel did not consider that it was unacceptable for Merck Sharp & Dohme to have commissioned market research to validate its understanding of networks in asthma and allergic rhinitis. The arrangements for such research must not contravene the Code.

The Panel noted that whilst the covering letter made Merck Sharp and Dohme's involvement clear no such explanation appeared on the questionnaire itself. The Panel queried whether the honorarium of £25 online gift vouchers was excessive given the very simplistic nature of the questionnaire. The Panel thus had some concerns about the material. Nonetheless the material was not such as to constitute disguised promotion and thus the Panel ruled no breach of the Code.

A consultant physician complained about a market research survey and covering letter sent by an agency on behalf of Merck Sharp & Dohme Limited. The covering letter explained that the questionnaire was to enable the recipient to nominate those physicians from whom he/she sought medical guidance/knowledge in specified therapy areas. The information would be used to help structure future medical educational programmes according to need.

#### COMPLAINT

In the complainant's view such unsolicited mail was not appropriate. He was worried that the company was paying him to send it information regarding other doctors who could then be contacted in a similar unsolicited way.

When writing to Merck Sharp & Dohme, the Authority asked it to respond in relation to Clause 10.2 of the Code.

#### RESPONSE

Merck Sharp & Dohme explained that the market research survey was conducted with full intent to comply with the Code as well as with the British Healthcare Business Intelligence Association (BHBI) Legal and Ethical Framework for Healthcare Market Research.

The survey was to validate Merck Sharp & Dohme's understanding of the secondary care networks in asthma and allergic rhinitis, by asking specialists to:

- nominate UK leading specialists in asthma
- nominate local/regional specialists in allergic rhinitis

- nominate local/regional specialists in asthma
- nominate doctors whose practice and opinion is respected
- provide a personal perception of one's general approach to managing the associated risk with adopting new treatment options into practice.

The survey was not commissioned to establish a database. The company already had a customer database, which contained names, addresses, and therapeutic specialty for health professionals, and complied with all applicable privacy laws. The personal data provided would be cross referenced against and integrated into its internal database and used to invite health professionals to attend conferences and to participate in other programmes, to deliver educational materials as well as other products and services, including promotional activities that might be of interest. This complied with the requirements of Clause 10.2 of the Code.

In terms of the market research approach undertaken and how the information provided would be used to ensure compliance with the Code and the BHBIA framework the following standards were applied:

- The research was conducted through a reputable market research agency. The agency was a member of BHBIA, the European Pharmaceutical Marketing Research Association (EphMRA) and the Pharmaceutical Business Intelligence and Research Group (PBIRG) and, as such, was bound by the 'The Legal and Ethical Framework for Healthcare Market Research', as referred to in Clause 10.2 of the Code. The agency concerned understood that this research complied with the Code.
- The survey was designed to comply with the core principles of the BHBIA Framework.
  - Participants were honestly and comprehensively informed about the research in which they were taking part. The covering letter explicitly stated the purpose of the research and how the information was intended to be used, ensuring full transparency. No attempt was made to disguise the nature of the study.
  - The survey clearly stated the research was being commissioned by Merck Sharp and Dohme as required by the Code; there was no implication that the survey was independent from the company.
  - The survey explicitly outlined how the personal data provided would be used, and aimed to address this up-front, to ensure the respondent was not misled in anyway.
  - In compliance with the BHBIA framework informed consent was also required in order for the information provided by participants to be processed and was not and would not be accessible to Merck Sharp & Dohme if not completed correctly. Merck Sharp & Dohme had tried to provide participants with sufficient relevant information to enable them to make an informed judgement about whether to take part.

- The honorarium for specialists was £25 of online gift vouchers which Merck Sharp & Dohme submitted was in accordance with the current EphMRA guidance, referred to in the 'The Legal and Ethical Framework for Healthcare Market Research'.
- In comparison to standard agency fees for such a study, the amount given to recipients was also set towards the lower end of the usual honaria offered by pharmaceutical market research agencies.
- The agency, rather than Merck Sharp & Dohme, was solely responsible for the distribution of this incentive to respondents.

In summary, the survey was to validate Merck Sharp & Dohme's understanding of the secondary care networks in asthma and allergic rhinitis. The survey did not refer to any products and was not disguised promotion. At all times the company aimed to provide an honest and comprehensive description of the survey's purpose and how the personal data collected would be used. Informed consent was integral to the participation and processing of information received from the survey; ultimately this ensured that Merck Sharp and Dohme complied with the requirements of Clause 10.2 of the Code.

#### PANEL RULING

The Panel noted that the market research questionnaire had been sent by a market research company on behalf of Merck Sharp & Dohme. It was an established principle under the Code that activities carried out by a third party on behalf of a pharmaceutical company were the responsibility of that pharmaceutical company. Merck Sharp & Dohme was thus responsible for the questionnaire.

The Panel noted that the specimen covering letter described the questionnaire as an opportunity to nominate physicians from whom the addressee would seek medical guidance/knowledge in specified therapy areas. The input would be used to help structure future medical education programmes. The section headed 'Protecting personal information about you' stated that the objective was to invite the nominated colleagues and the addressee to 'speak at or take part in relevant professional meetings, scientific partnerships and research initiatives as well as deliver tailored information to you and them'. Physicians might also be approached for their knowledge of a specific disease area and its environment. Four questions in the accompanying questionnaire asked for details of local and regional asthma and allergic rhinitis specialists. The fifth question referred to the general approach to managing the associated risk with adopting new treatment options.

The Panel noted Merck Sharp & Dohme's submission that the material was market research. Clause 10.2 of the Code required that such activity must not be disguised promotion. The Panel did not consider that it was unacceptable for Merck Sharp & Dohme to have commissioned market research to validate its understanding of networks in asthma and allergic

rhinitis. The arrangements for such research must not contravene the Code.

The Panel noted that both Merck Sharp & Dohme and the supplementary information to Clause 10.2 of the Code drew attention to guidelines – The Legal and Ethical Framework for Healthcare Market Research – produced by BHBIA in consultation with The Association of the British Pharmaceutical Industry (ABPI). The framework document explained that database building was incompatible with market research; names and addresses of respondents should not be passed on to any third party and respondent details should not be placed onto a client database, used in the development of customer intelligence for the purposes of direct promotion and/or used for the purposes of direct marketing following research.

The Panel noted Merck Sharp & Dohme's submission that the survey was not commissioned to establish a database. The company already had a customer database and the data would be cross referenced against and integrated into its internal database. Doctors named in the questionnaire would be contacted as, *inter*

*alia*, possible speakers for Merck Sharp & Dohme; they would also be sent 'tailored information'. In that regard the Panel considered that the results of the questionnaire were likely to be used in the development of customer intelligence for the purposes of direct promotion. The Panel thus queried whether such activity was compatible with the requirements set out in the BHBIA framework document.

The Panel noted that whilst the covering letter made Merck Sharp and Dohme's involvement clear no such explanation appeared on the questionnaire itself. The Panel queried whether the honorarium of £25 online gift vouchers was excessive given the very simplistic nature of the questionnaire. The Panel thus had some concerns about the material. Nonetheless the material was not such as to constitute disguised promotion and thus the Panel ruled no breach of Clause 10.2 of the Code.

**Complaint received**

**8 August 2006**

**Case completed**

**21 September 2006**