

PRINCIPAL HOSPITAL PHARMACIST v PLIVA PHARMA

Promotion of generic medicines

A principal hospital pharmacist complained about the promotion of generic medicines by representatives from Pliva Pharma.

The complaint referred to an email sent by a Pliva regional hospital manager to a colleague of the complainant which referred to the complainant's lack of response following a meeting about discounts.

The complainant stated that she had immediately switched the purchasing route on Cystistat the afternoon that she met with Pliva so that the trust was buying it at the cheapest possible price. However, many of the generic medicines discussed were in national contracts and there was an obligation to the trust to look at the prices offered elsewhere as Pliva's might not be the cheapest. The complainant had received one email and one telephone call asking what she had done and she duly informed both parties that she had not had time to sort through everything yet but she had not forgotten.

The Director decided that in relation to the allegations about the promotion of Cystistat there was no *prima facie* case to answer as the product was a device rather than a medicine and thus not subject to the Code.

The Panel noted that company representatives had met with the complainant to discuss, *inter alia*, the purchase price of Pliva's generic medicines. The complainant had received one email and one telephone call from Pliva asking what she had done and she duly informed the company that she had not had an opportunity to sort everything out. In addition to the complainant, Pliva had also been in contact with a nurse from the urology department regarding Cystistat. The email provided by the complainant was principally about Cystistat. It appeared that neither Pliva nor the nurse knew that the complainant had already organised its purchase. The Panel considered that Pliva had urged the nurse to contact the complainant about Cystistat, not about the generic medicines.

The Panel noted that the email was simply chasing an outcome to a meeting between Pliva representatives and the complainant. The Panel appreciated that the complainant may have been unhappy that the company had contacted a colleague. Nonetheless, the Panel did not consider that the conduct of the representatives or the content of the email were such as to disparage the complainant or query her professional integrity and no breach of the Code was ruled.

A principal hospital pharmacist complained about the promotion of generic medicines by representatives

from Pliva Pharma Ltd.

COMPLAINT

An email sent by a Pliva regional hospital manager to a colleague of the complainant stated:

'I hope this message finds you in the best of health. Just a quick update to let you know that I came in to see ... and ... yesterday and went through what is happening.

Basically, myself and ... [a senior manager] came to see [the complainant] about a month ago. At the end of this meeting it was agreed that we would put forward a scheme for [the complainant] to look at which included a discount on Cystistat and also the introduction of some new generic lines at a cost benefit to the trust. These measures were designed to assist the trust in achieving its goals of cost containment.

It has now been a few weeks and this matter has still has not been looked into. Please be assured that Pliva UK and most especially myself recognise the gravity of your situation and are willing to help in any way we can. There has to be though some impetus from the trust to engage in a dialogue in order to achieve a satisfactory settlement for all concerned.

Therefore could you please contact [the complainant] to see what's happening and whether she needs to contact us again before you have this meeting next week.'

To put things into context, the complainant stated that in relation to Cystistat, which Pliva originally came to see her about, she immediately switched the purchasing route on the afternoon that they saw her so that the trust was buying it at the cheapest possible prices. With regard to the other generic medicines, the complainant had pointed out that many of them were in national contracts and she was not keen to break the contracts. She also had an obligation to the trust to look at the prices offered by other generic manufacturers as Pliva's might not be the cheapest offer received.

The complainant had received one email and one telephone call asking what she had done and she duly informed both parties that she had not had time to sort through everything yet but she had not forgotten.

The complainant asked the Authority to look into the possibility of a breach of the Code.

When writing to Pliva, the Authority asked it to respond in relation to Clauses 8.2, 9.1 and 15.2 of the Code.

RESPONSE

Pliva submitted that Cystistat was not a medicine but a device and therefore not subject to the Code.

In relation to the generic medicines, Pliva stated that during a meeting between its representative, a senior manager and the complainant on 26 October, a significant overspend was described by the complainant on medicines within the trust. Pliva had as part of its product portfolio a range of generic medicines. On 30 October, a price offer was made on the output of this meeting on various medicines to the complainant. In an email message to the complainant, the senior manager stated:

'I have attached a pricing offer on our generics portfolio which is for ... hospital only – this is positioned for you in the light of the overspend that you described to me in the hospital and its PFI status.'

He further added:

'If you do have any questions, please do not hesitate to contact me at any of the numbers below or by email. I have diarised to contact you in approximately 10 days time to determine if there is an opportunity on the other products that I have provided prices for.'

This was a price offer made in good faith complying with the general regular commercial practice of the industry. It was considered that further discussion would have been needed to complete any commercial outcome from this offer. Pliva supported the complainant's view that she had an obligation to the trust to look at prices offered by generic manufacturers and agreed that Pliva's might not be the cheapest offer.

Pliva denied a breach of Clauses 8.2, 9.1 or 15.2 of the Code.

Pliva provided a chronological list of all its dealings with the hospital with respect to this particular matter.

Pliva did not consider that its actions or the behaviour of its representatives had breached the Code and in particular it did not consider that there had been any breach of Clauses 8.2, 9.1 or 15.2. From its perspective, and what was clear from the chronology, this matter represented a simple lack of communication. The urology department at the hospital and clinical director did not seem to have been fully aware of Pliva's proposal regarding Cystistat and the fact that the complainant had implemented the change in purchasing route. The complaint was the first communication Pliva had received confirming that the

purchasing route had been switched - reflecting the discussion that Pliva and the complainant had on 26 October. Pliva's representative was put under considerable pressure by the hospital to try and resolve a matter the urology department clearly considered of great importance. The communications sent both in content and timing, were made entirely in good faith in an attempt to try and resolve this matter. Pliva did not consider that its actions were anything other than a diligent attempt to meet customer needs. There was certainly no intention to disparage or otherwise make comment on any individuals involved.

PANEL RULING

Cystistat was a device rather than a medicine and was thus not subject to the Code. The Director thus decided that in relation to the allegations about the promotion of Cystistat there was no *prima facie* case to answer.

The Panel noted that company representatives had met with the complainant to discuss, *inter alia*, the purchase price of Pliva's generic medicines. The complainant had received one email and one telephone call from Pliva asking what she had done and she duly informed the company that she had not had an opportunity to sort everything out. In addition to the complainant, Pliva had also been in contact with a nurse from the urology department regarding the purchase of Cystistat. The email provided by the complainant was principally about Cystistat. It appeared that neither Pliva nor the urology nurse knew that the complainant had already organised its purchase. The Panel considered that Pliva had urged the nurse to contact the complainant about Cystistat, not about the generic medicines.

The Panel noted that the email was simply chasing an outcome to a meeting between Pliva representatives and the complainant. The Panel appreciated that the complainant may have been unhappy that the company had contacted a colleague. Companies had to ensure that they maintained high standards. Nonetheless, the Panel did not consider that the conduct of the representatives or the content of the email were such as to disparage the complainant or query her professional integrity; no breach of Clause 8.2 was ruled. The company and its representatives had not failed to maintain high standards; no breach of Clauses 9.1 and 15.2 was ruled.

Complaint received 7 December 2006

Case completed 16 February 2007