

GENERAL PRACTITIONER v BEACON

Episenta unsolicited email

A general practitioner complained about an email relating to Episenta (prolonged release sodium valproate) which he had received from Beacon. The email was a copy of the unsolicited spam emails which he had received over the last several months. The complainant submitted that he would never have given out his email address voluntarily, or allowed somebody else to do so on his behalf in order that he should get these in the first place. Furthermore the unsubscribe function did not work.

Should the Authority be able to contact the source, the complainant would be grateful if it could explain how it got his details.

The Panel considered that the email on epilepsy was clearly promotional material for Episenta. Whilst some of it might have been written by an independent medical writer it was nonetheless an established principle under the Code that pharmaceutical companies were responsible for work undertaken by third parties on their behalf. The email had a link to prescribing information and the company logo appeared in the top right-hand corner of the page provided by the complainant. Beacon had paid the agency to produce the email and send it to health professionals with an interest in epilepsy. The page of the email provided by the complainant referred to prolonged release sodium valproate in general and Episenta in particular. The presentation to Beacon from the agency explained that each email comprised updates in disease area research, sponsors' treatment and an independent key opinion leader article. They were designed to complement and ultimately replace conventional mail shots. Companies paid the agency for the information to be distributed by email. The provision of such material electronically had to comply with the Code and in this case the email in question was the responsibility of Beacon.

The Panel noted that the agency operated an opt-in process for receipt of email. Some five years ago every doctor on the database was sent a questionnaire which included consent to receive a variety of email material, both educational and promotional. The Panel did not have a copy of this questionnaire. This information had been validated over the past five years. The email sent to the complainant and others, dated 27 February, informed the reader that having been verified as an NHS employee they were entitled to unrestricted access to data held on www.nhsdatabase.com. Recipients were required to register. The email then referred to an annual verification process and continued '[the agency] will from time to time send details by email about our affiliates' products and services; however please be advised that we will not share your emails with third parties'. The Panel did not consider this to be an opt-in to receive promotional material as submitted by Beacon;

the nature of the material was not made clear nor did it appear that recipients were given any choice in this regard. The Panel also noted the script used for the telephone review of health professionals' details: health professionals were told that the company would, from time to time, send details by email about its affiliates' products and services relevant to the health professional's area of specialism, such as education on disease areas. The text did not make it abundantly clear that the company intended to send promotional material from pharmaceutical companies. The script did not cover the situation where the health professional declined to receive such material.

The Panel noted that a letter from the agency to Beacon stated that the opt-out function had previously been limited to a specific medical category or healthcare topic unless specifically requested. Blanket opt-out would be permitted in the future. The letter stated that the complainant 'did not request a blanket opt-out in his previous unsubscribe requests'. This was confusing as it suggested that requests to opt-out from the complainant had indeed been received whereas the complainant had thought that the opt-out facility was not working.

The Panel considered that the email had been unsolicited. There was no evidence to show that the complainant had given prior consent to receive by email promotional material from a pharmaceutical company. A breach of the Code was ruled.

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COMPLAINT

The complainant stated that the email was a copy of the unsolicited spam emails which he had received over the last several months. In the complainant's case, it was impossible that he would either have given out his email address voluntarily, or allowed somebody else to do so on his behalf in order that he should get these in the first place. Furthermore the unsubscribe function did not work.

Should the Authority be able to contact the source, the complainant would be grateful if it could explain how it got his details.

When writing to Beacon, the Authority asked it to respond in relation to Clause 9.9 of the Code.

RESPONSE

Beacon stated that it commissioned the agency to produce an educational email and send it to healthcare workers on

its database that might have an interest in epilepsy on 25 June. The major part of the email was written by an independent medical writer. The content of the email was not relevant to the complaint, so no further details relating to its content were provided. Beacon's target audience was stated as being neurologists, paediatricians, medical information hospital pharmacists, principal hospital pharmacists, primary care trust formulary pharmacists and interested GPs.

The complainant noted that this was one of a series of emails received from the agency. For clarification this email was Beacon's first and only activity with this company. The agency had informed Beacon that its former clients included major pharmaceutical companies.

Provided was a copy of a presentation sent to Beacon by the agency which listed former clients. Of particular importance to Beacon was the reassurance that the email conformed to ABPI guidelines in that it had a strict 'opt-in' policy. This was also emphasised in the covering sheet describing the NHS e-messaging service.

The complainant stated that he/she did not give permission for emails to be sent. This should be checked before credence was given to the complaint. Beacon raised this point with the agency and the relevant parts of its response were given below:-

'It is worth noting that our database on healthcare professionals has been built up over approximately 15 years with regular contact between our database research department and NHS organisations. During this time email addresses have been freely given by those who wish to receive information on a variety of topics.

Some of the transmissions are from such organisations as the, as well as universities and pharmaceutical companies such as yourselves.

In the case of the other pharmaceutical companies, I can assure you that we have a considerable amount of repeat business from them, so clearly this would indicate their satisfaction with the results.

With regard to the opt-in process, some 5 years ago every doctor on our database was sent a questionnaire which when completed included a consent to receive a variety of email material, both educational and promotional, as well as newsletters, etc.

Over the past 5 years we have consistently validated this information via additional questionnaires and follow up telephone calls. We currently hold data on 36,000 GPs of which c.19,500 are presently validated, so as you can imagine this is a daily ongoing process.

It might be worth noting that of the hundreds of thousands of emails that have been sent in those years, less than 1% of the recipients choose to opt out, a statistic which I think speaks for itself.

On the subject of whether the doctor in question did

or did not give his/her email address to our researchers, or whether it was given on his behalf, this can only be resolved if we have his/her identity. Once we have that it should be possible to locate the relevant paperwork which will show who gave over the information and on what date.'

The complainant stated that the unsubscribe function did not work. The unsubscribe button could be seen at the bottom of the screen print provided by the complainant. It was difficult to comment on the complainant's observation other than saying that the unsubscribe function worked on the email sent to Beacon. The agency had told Beacon that up to 20 July, of the 3,800 doctors that opened the email, 20 requests to unsubscribe were received. As it was the same email that was sent out this suggested that there might have been an issue related to the complainant's computer.

In conclusion, before Beacon commissioned the agency, it enquired that its procedures were in line with the Code and was assured that they were. Subsequent to the complaint the agency had continued to assert that its email campaigns were from a validated opt-in database. The agency had a track record of undertaking a number of these mailing campaigns over the last few years and if this was the first complaint that had been received by the Authority, then it was difficult to malign its reputation with one isolated report.

From Beacon's point of view it was unfortunate that this complaint regarding the activities of the agency related to a Beacon campaign and had been directed at the Authority rather than Beacon. If the complaint had been directed to Beacon, it would have had the opportunity to address the issues raised directly. Indeed Beacon believed that this was still the best way of taking this matter forward.

In response to a request for further information and following permission from the complainant to disclose his identity, Beacon provided a copy of the email that was sent to the complainant earlier this year. It was in response to this email that the complainant opted-in to receive information from the agency by email. Also provided was a copy of the standard telephone script that the agency used when validating its database.

Beacon stated that it was made clear in the initial email that recipients might receive email material regarding 'affiliates products or services'. It might be true that this was not completely explicit in the wording used by the agency, but we were all used to ticking similar boxes on all sorts of forms, emails and websites. If we say yes, then we fully expect to receive promotional material. The wording was more specific in the telephone script.

The information in the email was not in the email itself, but was provided in a link to a website. If the doctor did not want to click this link then they did not have to.

The email contained information on a disease area written by an independent expert. Where it was sponsored by a pharmaceutical company then there was a separate section on product information that they could choose to click if they wished. The doctor could

read the independent educational content without ever downloading the message from the sponsor. Beacon submitted that a key point was that doctors had to opt-in to be on the database and also they had the ability to opt-out. Beacon knew that the opt-out system had worked for other doctors, but it appeared that as a result of this complaint the agency was intending to improve the system for opt-out.

PANEL RULING

The Panel noted that Clause 9.9 prohibited the use of email for promotional purposes except with the prior permission of the recipient. The Panel considered that the email on epilepsy was clearly promotional material for Episenta. Whilst some of it might have been written by an independent medical writer it was nonetheless an established principle under the Code that pharmaceutical companies were responsible for work undertaken by third parties on their behalf.

The email had a link to prescribing information and the company logo appeared in the top right-hand corner of the page provided by the complainant. Beacon had paid the agency to produce the email and send it to health professionals with an interest in epilepsy. The page of the email provided by the complainant referred to prolonged release sodium valproate in general and Episenta in particular. The presentation to Beacon from the agency explained that each email comprised updates in disease area research, sponsors' treatment and an independent key opinion leader article. They were designed to complement and ultimately replace conventional mail shots. Companies paid the agency for the information to be distributed by email. The provision of such material electronically had to comply with the Code and in this case the email in question was the responsibility of Beacon.

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The Panel did not consider this to be an opt-in to receive promotional material as submitted by Beacon; the nature of the material was not made clear nor did it appear that recipients were given any choice in this regard. The Panel also noted the script used for the telephone review of health professionals' details: health professionals were told that the company would, from time to time, send details by email about its affiliates' products and services relevant to the health professional's area of specialism, such as education on disease areas. The text did not make it abundantly clear that the company intended to send promotional material from pharmaceutical companies. The script did not cover the situation where the health professional declined to receive such material.

The Panel noted that a letter from the agency to Beacon stated that the opt-out function had previously been limited to a specific medical category or healthcare topic unless specifically requested. Blanket opt-out would be permitted in the future. The letter stated that the complainant 'did not request a blanket opt-out in his previous unsubscribe requests'. This was confusing as it suggested that requests to opt-out from the complainant had indeed been received whereas the complainant had thought that the opt-out facility was not working.

The Panel considered that the email had been unsolicited. There was no evidence to show that the complainant had given prior consent to receive by email promotional material from a pharmaceutical company. A breach of Clause 9.9 was ruled.

During its consideration of this case the Panel noted that the agency stated in its presentation that the emails conformed to all ABPI guidelines. This could not possibly be so as it would depend on the content of each email and whether the necessary prior permission had been given as required by Clause 9.9.

Complaint received	11 July 2007
Case completed	28 September 2007
