

CASE AUTH/2052/10/07

NO BREACH OF THE CODE

MEMBER OF THE PUBLIC v ROCHE

MabThera journal advertisement

A member of the public complained about a Roche advertisement for MabThera (rituximab) in the BMJ.

The complainant had retired from the legal/academic profession and was not medically qualified but had access to the BMJ via a relative. As he had rheumatoid arthritis he was naturally drawn to the MabThera advertisement and thought it was misleading by portraying a rheumatoid arthritis patient performing high jump like a professional athlete. Unfortunately patients who needed further medicines after failure of first line treatment, were far from this level. The advertisement raised unsubstantiable hopes for patients and might cause them frustration and disappointment.

Moreover, to use the National Institute of Health and Clinical Excellence (NICE) as a recommendation with gold medal was surely out of line and against the requirement of the Code which forbade quoting official bodies in promotional material.

The Panel noted that the advertisement, which featured a black and white photograph of an athlete performing a 'Fosbury flop' over a high jump rail, was headed 'The day perceptions changed'. The Panel did not consider that the majority of health professionals, to whom the advertisement was directed, would assume that MabThera treatment would enable rheumatoid arthritis patients to be similarly athletic. The Panel noted Roche's submission that the image and headline had been chosen to represent the situation where a paradigm shift in the approach or thinking about a certain situation had resulted in progress. MabThera was a new approach to the treatment of rheumatoid arthritis. The Panel did not consider that the advertisement was misleading as alleged. No breach of the Code was ruled.

The advertisement included the claim 'Recommended by NICE'. Although the Code prohibited reference to certain bodies in promotional material, NICE was not one of them. No breach was ruled.

The BMJ was primarily aimed at health professionals. Although members of the public might see the publication, the BMJ was not aimed at the public and so in that regard the advertisement would not give rise to unfounded hopes of successful treatment. No breach was ruled.

A member of the public complained about an advertisement for MabThera (rituximab) which placed by Roche Products Ltd in the BMJ, 29 September.

COMPLAINT

The complainant stated that he had retired from the legal/academic profession and was not medically qualified but had access to the BMJ via a relative. As he had rheumatoid arthritis he was naturally drawn to the MabThera advertisement. He thought this advertisement was quite misleading by portraying a rheumatoid arthritis patient performing high jump like a professional athlete. Unfortunately rheumatoid arthritis patients in his condition, who needed further medicines after failure of first line treatment, were far from this level. The advertisement raised unsubstantiable hopes for patients and might cause them frustration and disappointment.

Moreover, to use the National Institute of Health and Clinical Excellence (NICE) as a recommendation with gold medal was surely out of line and against the specific requirement of the Code, which forbade quoting official bodies in promotional material.

When writing to Roche, the Authority asked it to respond in relation to Clauses 7.2, 7.8, 9.5, and 20.2 of the Code.

RESPONSE

Roche stated that the advertisement at issue was placed in the BMJ as an insert and was produced in accordance with the Code.

The BMJ was intended for health professionals via subscription. It was not available directly to the public and in the complainant's case they obtained it from a friend or relative. The advertisement was placed in this professional journal and as such should not have knowingly breached Clause 20.2.

With regard to the image used in the advertisement, the use of a professional athlete had not been done to infer that patients taking MabThera would be able to high jump, rather it represented a well known paradigm shift where changing the approach or thinking about a certain situation had resulted in progress.

The use of a high jumper performing a 'Fosbury flop' was purposeful. Before the 1968 Olympics, athletes approached the high jump with something called a 'Western Roll'. This limited their ability to get above 2.4m; however, with the advent of softer mats Dick Fosbury initiated a backward roll over the bar nicknamed the 'Fosbury flop' which changed the paradigm in the jumping technique for the high jumper and resulted in the 2.4m barrier being broken.

Until recently, the perception that rheumatoid arthritis was primarily T cell driven was largely accepted across the rheumatology community. MabThera acted by depleting B cells and thus an agent that acted on B cells rather than either directly or indirectly on T cells had caused a shift in perceptions as to the pathophysiology of the disease. The title of the advertisement, 'The day perceptions changed', indicated the analogy.

Roche did not intend to imply that if a patient was prescribed MabThera they would be jumping the high jump and it strongly contested that the advertisement and its layout were in breach of Clauses 7.2 or 7.8. Roche also did not believe that a health professional (the target of the advertisement) would come to the same conclusion as the complainant. This was based on market research testing with the image prior to use. Roche also noted that the licence for MabThera was for patients who had previously failed the gold standard treatments, the anti TNF agents, and thus MabThera now offered a therapeutic option for patients who would otherwise have had limited or no option other than palliative treatment.

Referring to the complainant's concerns regarding the fact that MabThera had been recommended by NICE and that a statement to this effect appeared in the advertisement, Roche did not believe that this was in breach of Clause 9.5 as NICE did not fall within the agencies referred to within that clause. It was also of significant interest to prescribers who looked to NICE for guidance on rational medicine use. The use of a medal was in keeping with the image used.

PANEL RULING

The Panel noted that the advertisement, which featured a black and white photograph of an athlete performing a 'Fosbury flop' over a high jump rail, was headed 'The day perceptions changed'. The advertisement had been placed in the BMJ and the Panel did not consider that the majority of health

professionals, to whom the advertisement was directed, would assume that MabThera treatment would enable rheumatoid arthritis patients to be similarly athletic. The Panel noted Roche's submission that the image and headline had been chosen to represent the situation where a paradigm shift in the approach or thinking about a certain situation had resulted in progress. MabThera was a new approach to the treatment of rheumatoid arthritis. The Panel did not consider that the advertisement was misleading as alleged. No breach of Clauses 7.2 and 7.8 was ruled.

The Panel noted that the advertisement included the claim 'Recommended by NICE'. Although Clause 9.5 prohibited reference to certain bodies in promotional material, NICE was not one of them. No breach of Clause 9.5 was ruled.

The advertisement at issue appeared in the BMJ ie a journal primarily aimed at health professionals. Although members of the public might see the publication (either by buying the print version or on the internet), the BMJ was not aimed at the public and so in that regard the advertisement would not give rise to unfounded hopes of successful treatment. No breach of Clause 20.2 was ruled.

During its consideration of this case the Panel noted the depiction of a gold, Olympic type medal which referred to NICE. In that regard the Panel was concerned that the advertisement implied that MabThera was a 'winning' medicine ie more effective in rheumatoid arthritis than any other. The Panel considered that this might be an exaggerated claim and asked that Roche be advised of its concerns in this regard.

Complaint received	1 October 2007
Case completed	5 November 2007