

# ANONYMOUS GENERAL PRACTITIONER v BOEHRINGER INGELHEIM

## Conduct of representative

An anonymous non-contactable general practitioner complained that he had been unwittingly drawn into an industrial dispute between Boehringer Ingelheim and one of its representatives. The complainant was led to believe that as a result of the company conducting market research, he was asked to provide written evidence that he had seen this representative. The complainant later discovered from another pharmaceutical company's representative that this formed part of this individual's defence in a disciplinary procedure.

The complainant stated he was very selective about seeing representatives; however this dishonest incident had thrown into question his relationship with the pharmaceutical industry and he was disgusted with this type of conduct. Doctors should not be used as pawns and trivialised in this way.

The detailed response from Boehringer Ingelheim is given below.

The Panel noted that the complainant was anonymous and non-contactable. The representative had left Boehringer Ingelheim and there was no direct account from him as to what had occurred. When an allegation had been made about a representative's conduct it was difficult to determine precisely what had occurred. In this instance there were few details and no way to ask those directly involved for more information.

The complainant stated that he was asked to provide written evidence that he had seen the representative in question in relation to market research being carried out by Boehringer Ingelheim. The company stated that there was no market research and that the representative had contacted doctors during a period of sick leave. The Panel considered that Boehringer Ingelheim was responsible for the conduct of its employee regardless of whether or not that employee was on sick leave. The Panel was concerned that if the circumstances were as outlined by the complainant then high standards had not been maintained. However the Panel noted that a complainant had the burden of proving their complaint on the balance of probabilities. The Panel had some concerns about the arrangements and noted that it appeared that the representative had contacted doctors despite being on sick leave. Nonetheless with regard to the interaction between the representative and the doctor there was no way of knowing what had been said and in that regard the

**Panel did not consider that evidence had been provided to show that on the balance of probabilities the representative had behaved inappropriately and thus no breach of the Code was ruled.**

An anonymous non-contactable general practitioner complained about the conduct of a representative from Boehringer Ingelheim Limited.

## COMPLAINT

The complainant stated that he had been unwittingly drawn into an industrial dispute between the representative and Boehringer Ingelheim, whereby he was led to believe that as a result of the company carrying out market research, he was asked to provide written evidence that he had seen this representative. The complainant later discovered from another representative of another pharmaceutical company, that this letter formed part of the defence for this individual in a disciplinary procedure.

The complainant stated he was very selective about seeing representatives; however this dishonest incident had thrown into question his relationship with the pharmaceutical industry and he was quite disgusted with this type of conduct. Doctors should not be used as pawns and trivialised in this way.

When writing to Boehringer Ingelheim the Authority asked it to respond in relation to Clauses 2, 9.1, 12.2 and 15.2 of the Code.

## RESPONSE

Boehringer Ingelheim denied a breach of Clauses 9.1, 12.2, 15.2 and 2.

Despite the anonymity of the complainant, Boehringer Ingelheim knew who the representative was. When Boehringer Ingelheim received the complaint, the representative in question was already suspended and under investigation due to concerns regarding communication with doctors.

The representative in question joined Boehringer Ingelheim in 2003 and was trained on the Code and Boehringer Ingelheim's Standard Operating Procedures in 2003, 2006 and 2007. This included internal training meetings and on-line training.

The representative was on sick leave from October

2008 until March 2009 and as stated above, had received full training until his period of absence. During the period of sick leave, the representative did not undertake any duties on behalf of Boehringer Ingelheim. This included all elements of his position as a medical representative and any contact with customers was without the company's authorization or knowledge.

Despite the extensive training mentioned above and the fact he was on sick leave, he contacted customers and in the interests of partnership and transparency, Boehringer Ingelheim included anonymised copies of the communications from the doctors that it had sourced through the investigation.

With regard to the market research that the representative had advised he was undertaking, Boehringer Ingelheim submitted that there was not any market research.

Boehringer Ingelheim believed its processes and training were robust. This was an unfortunate and regrettable incident that was isolated and unforeseeable. Boehringer Ingelheim did not believe that it had brought the industry into disrepute as this activity was not associated with promotion; it was one representative who had acted outside company procedures and standards.

Integrity and honesty were very important to Boehringer Ingelheim as reflected in the company code of conduct. Boehringer Ingelheim was investigating this thoroughly and the outcome of a disciplinary hearing was awaited.

In response to a request for further information, Boehringer Ingelheim stated that the representative was on sick leave from early October 2008 to early March 2009. The letters from doctors referred to visits made in September and early October 2008 that were part of standard promotional activity. However, the representative had visited these customers in February 2009 to obtain those letters. It was these later visits that the complaint referred to and not the visits in September and October last year.

Boehringer Ingelheim submitted that it was widely held that when an employee was off sick, they ceased to perform all functions for the company. The company's absence policy stated that during sickness employees should remain at home resting. The representative had not raised his intention to visit these doctors and it was a reasonable expectation, on the grounds above, that the representative would not have worked while off sick.

In response to a request to advise precisely what the representative asked the doctors in order for them to write the letters, Boehringer Ingelheim stated that it was unable to provide this information

as the representative left the company before its internal investigation had been completed. The company did not therefore have an official account from the representative regarding this matter.

As previously stated, there was no market research being performed. There were no records of the visits in Boehringer Ingelheim's system as the employee was off sick during the time of the alleged incidents.

## **PANEL RULING**

The Panel noted that the complainant was anonymous and non-contactable. Shortly after the company had submitted its initial response the representative had left Boehringer Ingelheim and there was no direct account from him as to what had occurred. When an allegation had been made about a representative's conduct it was difficult to determine precisely what had occurred. In this instance there were few details and no way to ask those directly involved for more information.

The Panel noted that it was a well established principle under the Code that pharmaceutical companies were responsible for the conduct of their representatives even if they acted outside the company's instructions.

There was insufficient detail to determine precisely what had happened. The complainant stated that he was asked to provide written evidence that he had seen the representative in question in relation to market research being carried out by Boehringer Ingelheim. The company stated that there was no market research and that the representative had contacted doctors during a period of sick leave. The Panel considered that Boehringer Ingelheim was responsible for the conduct of its employee regardless of whether or not that employee was on sick leave. The Panel was concerned that if the circumstances were as outlined by the complainant then high standards had not been maintained. However the Panel noted that a complainant had the burden of proving their complaint on the balance of probabilities. The Panel had some concerns about the arrangements and noted that it appeared that the representative had contacted doctors despite being on sick leave. Nonetheless with regard to the interaction between the representative and the doctor there was no way of knowing what had been said and in that regard the Panel did not consider that evidence had been provided to show that on the balance of probabilities the representative had behaved inappropriately and thus no breach of Clauses 2, 9.1, 12.2 and 15.2 was ruled.

**Complaint received**                      **19 March 2009**

**Case completed**                              **12 May 2009**