

# PHARMACIST v SANOFI-AVENTIS

## Conduct of representatives

A pharmacist complained that a representative from Sanofi-Aventis had taken members of the local oncology team (2 doctors and 5 nurses) to dinner in a restaurant on 17 June, 2008. Those involved had told the complainant that the evening was purely social. A sales/educational event had been held earlier in the day.

The detailed response from Sanofi-Aventis is given below. It became clear that two representatives had been involved.

The Panel noted that the parties' accounts differed; it was extremely difficult in such cases to know exactly what had transpired. In that regard it was unfortunate that the meeting at issue had taken place almost a year ago, that the complainant had not attended the meeting, that one of the representatives no longer worked for Sanofi-Aventis and that the representatives' meeting records were not wholly consistent. A judgement had to be made on the available evidence and the balance of probability bearing in mind the extreme dissatisfaction usually required before an individual was moved to complain.

The Panel noted that the first representative's meeting log recorded a small audio-visual meeting which started at 7.30pm and would last an hour and a half; the meeting venue was to be confirmed. The second representative's meeting log recorded a round table meeting which started at 6pm at the chemotherapy unit followed by the restaurant. The meeting was to last four hours. Five of the delegates were hospital nurses, one was a hospital doctor and one GP also attended. Sanofi-Aventis had submitted that the first representative had presented on early breast cancer for approximately one hour. The second representative had then presented on prostate cancer. No formal agenda for the meeting was produced.

Sanofi-Aventis had submitted that, following the meeting at the hospital, the representatives had taken the attendees to a restaurant because no on-site catering facilities were available at the time of the meeting. This was disputed by the complainant. The Panel was concerned to note that in choosing the restaurant the representatives had consulted the delegates and their preferences appeared to have been considered. Sanofi-Aventis had submitted that non-product related discussions continued at the restaurant. The complainant had been assured that the evening was entirely social in purpose and that most of the educational event had occurred earlier in the day.

The Panel noted all the discrepancies particularly

those of the representatives' meeting logs. The timing and venue for the meeting were not clear. It would be a breach of the Code for a company to delay the provision of hospitality eg to hold a meeting at lunchtime and provide dinner in the evening. It would also be a breach of the Code to hold the meeting in a restaurant unless a private room was used or the restaurant closed to the public. Hospitality had to be secondary to the main purpose of a meeting. The level must be reasonable and not out of proportion to the occasion.

The Panel noted that a three course meal with wine had been provided. The cost per head was £36.20 of which £9.83 per head was wine. The Panel was concerned to note that one liqueur had also been paid for. The Panel considered that the hospitality provided was not limited to subsistence only and was out of proportion to the occasion. The Panel also considered that for some of the attendees the hospitality provided might have exceeded the level which they would normally adopt when paying for themselves. A breach of the Code was ruled. The representatives had not maintained a high standard of ethical conduct and a further breach was ruled.

A pharmacist complained about the conduct of a representative from Sanofi-Aventis.

## COMPLAINT

The complainant stated that the representative had entertained members of the local oncology team (2 doctors and 5 nurses) at a dinner in a restaurant on one of the Channel Islands on 17 June, 2008. Those involved had told the complainant that there was no educational content to the dinner, it was purely social. The representative had held a sales/educational event earlier in the day for the staff involved.

The complainant alleged that the arrangements were in breach of the Code.

When writing to Sanofi-Aventis the Authority asked it to consider the requirements of Clauses 2, 15.2 and 19.1 of the 2006 edition of the Code. The case was considered under the Constitution and Procedure as set out in the 2008 edition of the Code.

## RESPONSE

Sanofi-Aventis explained that the representative in question, from the company's oncology sales team, promoted Taxotere for breast cancer; she had since

joined another pharmaceutical company.

The representative had passed the ABPI Representatives Examination, with distinction. She had been trained on Taxotere and on the Code, in particular the revised 2006 Code and the provisions on meetings and hospitality, including the company standard operating procedure (SOP) on meetings and hospitality.

The meeting in question took place during a visit by the representative to the oncology centre; another Sanofi-Aventis oncology representative who promoted Taxotere in metastatic hormone-resistant prostate cancer, accompanied her. The meeting was arranged with the local oncology unit and involved both representatives.

Sanofi-Aventis explained that it required details of all meetings to be held on a central salesforce activity database. The details of the meeting logged by the representative were provided. These did not provide enough detail to adequately account for the activity; however the other representative at the meeting kept more appropriately detailed records and her summary of the meeting was also provided. From this, the meeting started at the oncology centre at 6pm (once all patients had left) and carried on at the restaurant, finishing at approximately 10pm that evening.

The representative who jointly held the meeting with the representative at issue recalled that her colleague presented on early breast cancer for approximately an hour using her detail aid and support materials. Copies of the relevant materials were provided; unfortunately there was no confirmation as to which specific materials were used. The discussion focussed on the issues with side effects and their management and also problems posed by cases the unit had seen. The second representative then presented on prostate cancer, discussing urology referral and its importance, the patient pathway and the National Institute for health and Clinical Excellence (NICE) guidance in depth. She used the current detail aid and support materials to do this, copies of which were provided. No formal agenda was produced for the meeting.

The discussion at the restaurant was non product-related, and focussed on environmental and service-related issues, including oncology services on the mainland and progress with the new oncology centre.

There were no refreshment facilities available at the oncology centre at the time of the meeting. Cognisant of the requirements of the Code and Sanofi-Aventis' policies, the representatives requested advice from the oncology unit approximately a week before their visit to identify a suitable venue for refreshments. Criteria discussed were that the venue be not lavish, nor have an international reputation or be linked to a spa or golf course. The restaurant used was suggested by the

oncology unit as being appropriate and convenient for the attendees; as part of a bistro franchise known to the representatives on the mainland, it was considered to be of the standard that the attendees might normally frequent themselves.

A full breakdown of the costs for the meal was provided. The bill of £350, including tax, was divided between the two representatives. Nine people attended, the two representatives and seven health professionals consisting of one hospital consultant, one GP with a special interest in oncology, and five oncology nurses. Details of the attendees were provided.

Sanofi-Aventis regretted that the detail recorded in the sales activity system was not sufficient to provide a fully comprehensive response on all aspects of this meeting and impaired recall due to the passage of time also hindered the supply of a fully detailed account. It was not possible therefore to completely refute the allegation of breaches of Clauses 15.2 and 19.1. The company was currently taking steps to re-brief its sales team on the requirements of the Code regarding meetings and hospitality, with particular emphasis on accurate and diligent record keeping. Sanofi-Aventis considered that the representative concerned acted in good faith but in retrospect, greater control over the costs of refreshments, and an agenda setting out the educational content of the meeting should have been evident. The company submitted, however, that this isolated specific occasion did not represent a breach of Clause 2.

## **FURTHER COMMENTS FROM THE COMPLAINANT**

In response to a request for her comments upon Sanofi-Aventis' response, the complainant noted that the background on the representative's training was irrelevant; one would expect this to have taken place given that she promoted oncology medicines.

The complainant had been told by the individuals involved that the representatives met the oncology staff earlier in the day when the sales information was presented. They might have met again at 6pm after clinic, regrouped and held brief discussions before moving on. It was incorrect to give the impression that the meal was an extension of the meeting. The complainant had been assured that the evening was entirely social in purpose and that the bulk of the event was earlier in the day.

The complainant noted that it was wrong to state that there were no refreshment facilities available at the oncology centre. This was a unit directly attached to a hospital and the catering department, frequently supplied good quality buffets on request. There was also a meeting room available with modern presentation facilities.

The complainant further noted that the restaurant was at least a taxi ride away from the hospital. The

complainant considered that £350 for nine people (ie £39 per head) was a very large bill on territory where VAT was not payable and the individuals involved presumably had to attend work the following morning.

The complainant's comments were sent to Sanofi-Aventis for its comments.

### **FURTHER COMMENTS FROM SANOFI-AVENTIS**

Sanofi-Aventis submitted that to address the specific questions about the meeting which was held over a year ago it had to rely on the records of the representatives involved. These revealed some discrepancies. Notwithstanding, the company acknowledged that the standard of record keeping was not acceptable and measures were in place to address this matter.

Sanofi-Aventis provided the complete records of the second representative which detailed the interactions between the representatives and the health professionals on 17 June. The record of both representatives had shown that seven health professionals had attended the meeting. The one discrepancy in an attendee's name was assumed to be an inputting error.

With regard to the duration of the meeting Sanofi-Aventis did not have further details to explain the anomaly between the two representatives' records. The records of the second representative were more detailed. Similarly the company did not have any further details regarding the meeting description; it was possible that the difference was indicative of the presentation styles that the two representatives might have used to convey their product-related messages on the two different tumour types.

Sanofi-Aventis noted that company policy required representatives to have meeting arrangements approved in advance. However, circumstances sometimes prevented this. On this occasion, whilst not ideal, the second representative was on two weeks' annual leave prior to the meeting (30 May – 16 June) and again on 19 June. Sanofi-Aventis gave its assurance that both meetings logs referred to the meeting in question on 17 June.

Sanofi-Aventis submitted that the receipt for the meal showed the purchase of five bottles of wine which equated to approximately half a bottle of wine per attendee, which was in line with the company's internal guidance. Sanofi-Aventis had reviewed the restaurant and stated that it appeared that it was not part of the franchise of the same name on the mainland, which was the belief of the representative.

The company believed that discussions were held at both the oncology centre and the restaurant.

With regard to the choice of venue, the

representatives worked with the attendees to find a suitable venue for the evening part of the meeting. The appropriate choice of venue, together with individual preferences would have dictated the mode of transport to the restaurant.

Over the course of the evening, until the bill was settled at 10.10pm, three courses were served and the cost reflected this.

Sanofi-Aventis reiterated that it regretted the paucity of details in the sales activity system. It was not possible to refute allegations of Clauses 15.2 and 19.1. The company still considered that this case did not represent a breach of Clause 2.

Sanofi-Aventis stated that it was currently taking steps to re-brief its sales team on the requirements of the Code with regard to meetings and hospitality, with particular emphasis on accurate and diligent record keeping.

### **PANEL RULING**

The Panel noted that the parties' accounts differed; it was extremely difficult in such cases to know exactly what had transpired. In that regard it was unfortunate that the meeting at issue had taken place almost a year ago, that the complainant had not attended the meeting, that one of the representatives no longer worked for Sanofi-Aventis and that the representatives' meeting logs were not wholly consistent. A judgement had to be made on the available evidence and the balance of probability bearing in mind that extreme dissatisfaction was usually required on the part of an individual before he or she was moved to complain.

The Panel noted that the first representative's meeting log recorded a small audio-visual meeting which started at 7.30pm and would last an hour and a half; the meeting venue was to be confirmed. The second representative's meeting log recorded a round table meeting which started at 6pm at the chemotherapy unit followed by the restaurant. The meeting was to last four hours. Five of the delegates were hospital nurses, one was a hospital doctor and one GP also attended. Sanofi-Aventis had submitted that the first representative had presented on early breast cancer for approximately one hour. The second representative had then presented on prostate cancer. No formal agenda for the meeting was produced.

Sanofi-Aventis had submitted that, following the meeting at the hospital, the representatives had taken the attendees to a restaurant because no on-site catering facilities were available at the time of the meeting. This was disputed by the complainant. The Panel was concerned to note that in choosing the restaurant the representatives had consulted the delegates and their preferences appeared to have been considered. The representatives had reported that the restaurant was part of the

mainland franchise of the same name which was not so. The restaurant was two miles from the meeting venue. Sanofi-Aventis had submitted that non-product related discussions continued at the restaurant. The complainant had been assured that the evening was entirely social in purpose and that most of the educational event had occurred earlier in the day.

The Panel noted all the discrepancies, particularly those of the representatives' meeting logs. The timing and venue for the meeting were not clear. It would be a breach of the Code for a company to delay the provision of hospitality eg to hold a meeting at lunchtime and provide dinner in the evening. It would also be a breach of the Code to hold the meeting in a restaurant unless a private room was used or the restaurant closed to the public. Hospitality had to be secondary to the main purpose of a meeting. The level must be reasonable and not out of proportion to the occasion.

The Panel noted that a three course meal, with wine had been provided. The cost per head was £36.20 of which £9.83 per head was wine (excluding tip). The Panel was concerned to note that one liqueur had also been paid for. The Panel considered that the hospitality provided was not limited to subsistence only and was out of proportion to the occasion. The Panel also considered that for some of the attendees the hospitality provided might have exceeded the level which they would normally adopt when paying for themselves. A breach of Clause 19.1 was ruled. The representatives had not maintained a high standard of ethical conduct. A breach of Clause 15.2 was ruled. On balance the Panel did not consider that the matter warranted a ruling of a breach of Clause 2 which was a sign of particular censure and reserved for such.

<b>Complaint received</b>	<b>1 June 2009</b>
<b>Case completed</b>	<b>22 July 2009</b>

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