GENERAL PRACTITIONER v CHIESI

Conduct of representative

A general practitioner complained about the sales pressure exerted by a Chiesi representative to get his practice to switch asthma patients to Fostair (beclometasone plus formoterol); this had been ongoing for most of the year. At a meeting in September 2009 attended by another doctor, two practice nurses and the complainant, the representative gave misleading and false information regarding other local practices' activities. The representative stated that two other practices were already making switches and that the local primary care trust pharmacy representatives were keen to see switches undertaken. Neither statement was true.

The detailed response from Chiesi is given below. There was some exchange of submissions between the parties before the Panel made its ruling.

The Panel noted that the parties' accounts differed; it was difficult in cases involving discussions between a representative and a health professional to know exactly what had transpired. There had been significant delays in obtaining more information from the complainant who had waited to discuss the matter with several colleagues. A judgement had to be made on the available evidence bearing in mind the extreme dissatisfaction usually necessary on the part of an individual before he or she was moved to submit a complaint.

In the Panel's view it was beholden upon representatives to be very clear when discussing other health professionals' use of a product so as not to mislead by implication. The complainant consistently maintained that he and others had been misled in that regard. In addition there appeared to be confusion about whether Chiesi was supporting disease reviews or switches of products. However, the complainant had the burden of proving his complaint on the balance of probabilities. The Panel considered that on the basis of the evidence provided by the parties it was impossible to know exactly what had been said to whom. In the circumstances the Panel ruled no breach of the Code.

A general practitioner complained about sales pressure, on going for most of the year, exerted by a representative from Chiesi Limited to get his practice to switch asthma patients to Fostair (beclomethasone plus formoterol).

COMPLAINT

The complainant stated that at a meeting in September attended by another doctor, two practice nurses and the complainant, the representative gave misleading and false information regarding other local practices' activities. The representative stated that two other practices were already making switches and that the local primary care trust (PCT) pharmacy representatives were keen to see switches undertaken. The complainant submitted that neither statement was true.
The complainant had discussed this situation with the other doctor and the PCT pharmacy team and they had encouraged him to complain to the Authority.

When writing to Chiesi, the Authority asked it to respond in relation to Clauses 2, 7.2, 9.1 and 15.2 of the Code.

RESPONSE

Chiesi stated that in July 2009, the representative gave a presentation on Fostair at a practice-based commissioning (PBC) group meeting, of which the complainant's surgery was a member. At this meeting, the chair of the PBC group and recommended the use of Fostair within the group and told the representative that he would submit a formulary inclusion for Fostair to the area prescribing committee. The practice manager at the complainant's surgery subsequently organised a meeting for September 2009, at which the representative could discuss Fostair with the GP partners and look at the possibility of reviewing some patients who were on other products to see if they would be suitable for Fostair.

In August 2009, the representative met a practice-based pharmacist who looked after the PCT. The pharmacist was open to discussing a disease review which had been completed at another surgery which was part of another PBC of which the pharmacist had oversight.

Chiesi submitted that at the September meeting with the representative the practice manager was particularly interested in any potential cost savings for the surgery. The representative explained that two nearby surgeries (which were part of the same PBC) had started to undertake disease reviews and that work was ongoing. The representative knew of these through conversations with the medical staff at these two surgeries. The practice manager then suggested that the representative tell the complainant about these ongoing projects. Chiesi stated that as its representative did not know if those reviews had resulted in any patients being prescribed Fostair, there could be no suggestion that any changes in products were happening as stated by the complainant.

At 1.15pm on the same day the representative met a GP at the complainant's surgery, using Fostair material. The GP agreed with Fostair's clinical and cost saving benefits. The representative told the GP about the agreed actions resulting from the July meeting that the Chair of the PBC had stated that he would submit Fostair to the area prescribing committee for formulary inclusion. Chiesi noted that this formulary inclusion was at a PBC level and not at the PCT level as stated by the complainant. Fifteen minutes later the complainant joined the discussion. He seemed surprised that the representative was at the surgery but she explained that the meeting was to discuss Fostair with the GP partners and nurses as agreed with the practice manager. The representative then updated the complainant on what was happening at the other two nearby surgeries (part of the same PCT) and their projects on reviewing patients. The representative also referred to the above mentioned practice-based pharmacist, and told the complainant that a surgery where the pharmacist worked had also decided to review patients and that the pharmacist would have been familiar with the process involved. Again, the representative would not be able to say if medicine had been changed as she was not aware of any patients having been reviewed and then initiated onto Fostair. The complainant stated that he would have preferred to have had some experience of Fostair before using more of it and the representative agreed.

Chiesi's submitted that the representative saw the complainant three times in 2009, once at the PBC group meeting as mentioned above, once at a face-to-face appointment and latterly at the meeting in September, and therefore the complaint about the representative's sales pressure to get the surgery to change product for most of 2009 was a surprise.

Chiesi regretted the misunderstanding with the complainant but considered that the representative had neither given misleading or false information, nor failed to maintain high standards. Chiesi thus denied breaches of Clauses 2, 7.2, 9.1 and 15.2.

FURTHER COMMENTS FROM THE COMPLAINANT

The complainant had discussed the matter with the local pharmacy advisor and various members of the PBC group. The pharmacy advisor recalled that in August it was stated that until Fostair was approved by the area prescribing committee she would not recommend its use. The pharmacy advisor was also told by the representative that another local practice was going to switch to Fostair; she followed this up with the practice concerned and found this not to be the case but that Chiesi was doing work looking at switching patients from Beclazone to Clenil. The final comment from the pharmacy advisor was 'I think this representative purposefully confused people by not being clear about the difference between reviews being carried out in practice eg poorly controlled asthma patients and implied that these were actually reviews looking at drug switching to Fostair'. The PBC considered that the representative had used undue sales pressure to get her product prescribed. The chairman had informed the complainant that Fostair was not on the area prescribing committee formulary – the committee had requested further appraisal of the product by one of the local respiratory physicians. There was only a limited amount of prescribing of Fostair locally.

FURTHER COMMENTS FROM CHIESI

Chiesi noted that the complainant originally referred to a meeting between himself and a representative in September and although Chiesi's response was sent to the complainant for comment. The complainant did not comment upon it or refer to his original complaint Chiesi thus assumed that the complainant had accepted the company's explanations. Chiesi noted that in his further comments the complainant referred to another meeting in August 2009 and also mentioned an un-named pharmacy advisor and an un-named local practice as the source of his second complaint.

Chiesi submitted that it was not possible for the company to investigate the second complaint in a thorough manner as it did not know the name of the pharmacy advisor or the local practice.

Representatives interacted with many customers a day and it was not possible to establish with absolutely certainty who the complainant had referred to without a name. All the company had to go on was a specific date in August; was that date correct? Chiesi requested a name so that it could question its representative more closely. Chiesi noted that the complainant had now complained on behalf of a pharmacy advisor. It had not been verified if the pharmacy advisor had a complaint to make or if she wanted to make a complaint. As a health professional in her own right, if the pharmacy advisor had a complaint to make, would she not have made it herself? Chiesi further noted that the complainant was not at the meeting in August and therefore his latest complaint was based on secondary sources.

Taking all the above into account, Chiesi considered that there was no *prima facie* case to answer with regard to the complainant's second complaint.

Chiesi noted that there was a common theme running through both submissions from the complainant, which was about the representative's sales pressures to get a practice to switch asthma products and that the representative had used undue sales pressure to get her product prescribed.

In response to a request for further information Chiesi stated that its representative did not see any customer bearing the title of pharmacy advisor on that date in August.

FURTHER COMMENTS FROM THE COMPLAINANT

In response to a request for further information the

complainant provided a statement from a local practice support pharmacist who stated that she had met the Chiesi representative on the date in August. The meeting was not pre-arranged but the practice manager asked her to talk to the representative about the work the representative was doing in the practice. It was at that meeting that the pharmacist was told that certain local practices would be switching to Fostair. The pharmacist subsequently discovered that that information was not true.

FURTHER COMMENTS FROM CHIESI

Chiesi confirmed that following an introduction by the practice manager, its representative had spoken to the practice support pharmacist. Two local practices were referred to in that conversation: one where only the use of Clenil was discussed and the second where the representative stated that one of the GP partners would raise Fostair for discussion at the next PBC committee meeting. However the use of Fostair at this practice was not discussed.

Chiesi noted that in the six months until August 2009 the two practices prescribed between 20 and 30 units of Fostair each.

PANEL RULING

The Panel noted that the parties' accounts differed; it was difficult in cases involving discussions between a representative and a health professional to know exactly what had transpired. There had been significant delays in obtaining more information from the complainant who had waited to discuss the matter at a PBC group meeting as well as contacting others. A judgement had to be made on the available evidence bearing in mind the extreme dissatisfaction usually necessary on the part of an individual before he or she was moved to submit a complaint.

In the Panel's view it was beholden upon representatives to be very clear when discussing other health professionals' use of a product so as not to mislead by implication. The complainant consistently maintained that he and others had been misled in that regard. In addition there appeared to be confusion about whether Chiesi was supporting disease reviews or switches of products. However, the complainant had the burden of proving his complaint on the balance of probabilities. The Panel considered that on the basis of the evidence provided by the parties it was impossible to know exactly what had been said to whom. In the circumstances the Panel ruled no breach of Clauses 2, 7.2, 9.1 and 15.2.

Complaint received **16 September 2009**

Case completed **30 April 2010**