PHARMACIST v PFIZER

Alleged promotion of unlicensed generic losartan

A pharmacist complained about a Pfizer commercial account manager who had discussed the price of losartan at a time when it was not available in generic format. The complainant asked if Pfizer had a licence for it and was told by the representative not yet, it was still in the application process.

The detailed response from Pfizer is given below.

The Panel noted that the complainant referred to a discussion with a named commercial account manager around the beginning of February. It appeared to be a face-to-face discussion in that the complainant stated that only the commercial account manager was present. Pfizer did not know the identity of the complainant. Pfizer acknowledged that the commercial account manager named by the complainant had discussed generic losartan before Pfizer received the relevant marketing authorization. This discussion, however was not with the complainant but with a named buyer. Pfizer stated that this was the only verbal discussion the commercial account manager in question had with any of his buyers. Following this conversation the commercial account manager had emailed the buyer Pfizer's price list.

The Panel noted that the Code defined promotion as any activity undertaken by a pharmaceutical company or with its authority which promoted the prescription supply, sale or administration of its medicines. The Code listed exemptions to this definition including 'factual, accurate, informative announcements and reference material concerning licensed medicines and relating for example to pack changes, adverse-reaction warnings, trade catalogues and price lists provided they include no product claims'.

The Panel noted that under the Code a price list for licensed medicines was not covered by the definition of promotion provided no product claims were included. The price list in question listed the price of losartan which was unlicensed at the time. The Panel also noted that the Code defined a representative as someone calling upon members of the health professions and administrative staff in relation to the promotion of medicines.

The Panel considered that it was not clear whether the commercial account managers were representatives as defined in the Code. It appeared from their job profile that their role went further than only talking about the price of medicines. The Panel noted from Pfizer's submission that the price list for current and forthcoming generic products was circulated to the commercial account managers on 1 February. This was emailed by the commercial account manager in question on 2 February to some of his buyers. One of the recipients identified by Pfizer was not the complainant. However the Panel noted from Pfizer's submission that the price list had been sent to a number of buyers.

The Panel did not agree with Pfizer's submission that the discussion of forthcoming medicines that were or would be available within the generic industry was an activity that fell outside the Code. In the Panel's view such a discussion was potentially subject to the Code although of course dealing with wholesalers might be different to discussions with health professionals and appropriate administrative staff.

The price list provided gave details such as pack sizes, PIP codes and costs for a number of Pfizer generic medicines including losartan. A branded version of losartan, Cozaar was available but not from Pfizer. In the Panel's view the price list emailed on 2 February could not take the benefit of the exemption to the definition of promotion as it included information about generic losartan which was not licensed. In that regard the Panel considered that if sent to health professionals or appropriate administrative staff, the price list was potentially subject to the Code and likely to be in breach.

The Panel noted the information provided by the parties. The accounts differed. A judgement had to be made on the available evidence including the fact that Pfizer did not know who the complainant was. The complainant had the burden of proving his complaint on the balance of probabilities. The Panel considered that although Pfizer acknowledged that it had provided a price list to buyers before it received the losartan marketing authorization, there was no evidence that it had been provided to the complainant. In any event, the complaint was about a specific interaction between the complainant and the named commercial account manager; the complainant had not referred to a price list. On the basis of the complaint, the Panel ruled no breach of the Code.

A pharmacist complained about the conduct of a commercial account manager from Pfizer Limited.

COMPLAINT

The complainant submitted that a commercial account manager had discussed the price of losartan in February, it was not even available in generic format. The complainant asked if Pfizer had a licence for it, the representative said not yet, it was still in the application process.

In response to a request for further information, the complainant stated that he could not remember the date in February – it was around the beginning of the month. Only the named commercial account manager was present.

The complainant acknowledged that other companies tended to discuss discounts prior to launch, but he assumed that was done knowing that they had a marketing authorization for those products.

When writing to Pfizer the Authority asked it to respond in relation to Clauses 3.1, 9.1 and 15.2 of the Code.

RESPONSE

Pfizer stated that it had launched its generic portfolio in 2010; currently it had six generic medicines in its portfolio with a publicised commitment to increase this number during 2010 and 2011.

The commercial account manager (commercial account manager) role at Pfizer was not a sales representative role and the commercial account manager's main responsibility was to have trade discussions with potential buyers including discussions on discounts and price lists; they did not get involved in promotional conversations.

On 4 February 2010, in order to inform a potential purchaser of Pfizer's generic products, the commercial account manager had a factual discussion with a buyer (not a pharmacist) about the price list of Pfizer's generic portfolio; one of the medicines listed was losartan. Discussing forthcoming generic medicines that were or would be available in the near future was a common and acceptable trade practice within the generic pharmaceutical industry. In the UK, Pfizer was granted the marketing authorization four days later on 8 February for this product. No promotional activity occurred; this was purely a mention of the price of a forthcoming product. As such, Pfizer did not consider that this activity fell within the scope of the Code. The company thus denied a breach of Clauses 3.1, 9.1 and 15.2 of the Code.

Pfizer noted that the commercial account manager in question was very experienced and had passed the ABPI Medical Representatives Examination in 1992 when he was working for Pfizer in a sales role. A copy of his certificate was provided. The commercial account manager was highly trained and had more than ten years of account management and sales experience.

In response to a request for further information Pfizer stated that on 1 February Pfizer distributed the price list for its current and forthcoming generic products to the commercial account manager's. This price list was essential information provided to the commercial account manager's in advance in order for them to discuss the current prices and any discounts and deals being offered by Pfizer to buyers. On 2 February, the commercial account manager emailed this information to some of his buyers one of whom represented a regional pharmacy chain which held a wholesale pharmaceutical dealer's licence. A copy of the email and its attachments (including the aforementioned price list) was provided. The two letters attached to the email, which related to Pfizer's acquisition of Wyeth, were not relevant to this case but were provided for completeness.

On 4 February the buyer left the commercial account manager a voicemail asking for his call to be returned. When he returned the call he was asked if Pfizer had received a marketing authorization for losartan from the Medicines and Healthcare products Regulatory Agency (MHRA). The commercial account manager informed him that Pfizer had applied for the authorization and would receive it in the near future.

The above was the only verbal discussion that the commercial account manager had with any of his buyers about the losartan marketing authorization and this was why Pfizer assumed that the complaint might have originated from him. Unless the complainant revealed his identity Pfizer was not willing to share this response with him as it contained commercially sensitive price information.

As could be seen, the commercial account manager did not make any promotional claims regarding Pfizer's generic portfolio. The exchange was merely of factual information regarding the price of the product in question and the status of the marketing authorization. Clause 1.2 specifically stated that promotion did not include factual and informative announcements. Price lists were given as an example of materials that were excluded from the scope of the Code, provided they included no product claims. As such, the Code did not apply to this interaction and hence no breach of either Clause 3.1 or 9.1 occurred.

The commercial account manager was a very experienced account manager and had passed the ABPI Medical Representatives Examination. He was highly trained and worked in various roles at Pfizer for the last 10 years. The main responsibility of the commercial account manager was to ensure that appropriate trade discussions were held with buyers about Pfizer's product portfolio.

Part of the induction programme for a commercial account manager included a presentation about Quality Assurance and Compliance (a copy of the presentation was provided). This presentation catered for all roles within the Commercial Account Directorate and, as such, covered the three categories of interaction mentioned on slide 6; brand promotion, commercial discussion and market expansion. As stated above, the CAMs did not get involved in promotional conversations (brand promotion). Slides 7 and 8 demonstrated that the do's and don'ts were very clear and understood by the whole team.

Pfizer believed that the commercial account manager conducted his duties with professionalism and high standards according to his brief. He also informed his

line manager on the same day of the discussion with the buyer in question that some concerns and questions had been raised by his customer regarding the marketing authorization of losartan. This written feedback proved that the commercial manager had maintained high standards at all times and that Pfizer had not breached Clause 15.2.

To summarize, the discussion between the commercial account manager and a buyer was based purely on factual, informative matters, ie a discussion of Pfizer's generic medicine price list. Accordingly, Pfizer believed that it was not in breach of Clause 3.1. Pfizer also believed that the qualifications and experience of the CAM and the honesty and integrity under which he acted was evidence that Pfizer had not breached Clause 9.1 or Clause 15.2.

PANEL RULING

The Panel noted that the complainant referred to a discussion with a named commercial account manager around the beginning of February. It appeared to be a face-to-face discussion in that the complainant stated that only the commercial account manager was present. The complainant did not mention an email. Pfizer did not know the identity of the complainant. Pfizer acknowledged that the commercial account manager named by the complainant had discussed generic losartan before Pfizer received the relevant marketing authorization. This discussion, however was not with the complainant but with a named buyer. Pfizer stated that this was the only verbal discussion the commercial account manager in question had with any of his buyers. Following this conversation the commercial account manager had emailed the buyer a copy of Pfizer's price list.

The Panel noted that Clause 1.2 defined promotion as any activity undertaken by a pharmaceutical company or with its authority which promoted the prescription supply, sale or administration of its medicines. The Code listed exemptions to this definition including 'factual, accurate, informative announcements and reference material concerning licensed medicines and relating for example to pack changes, adverse-reaction warnings, trade catalogues and price lists provided they include no product claims'.

The Panel noted that under the Code a price list for licensed medicines was not covered by the definition of promotion provided no product claims were included. The price list in question listed the price of losartan which was unlicensed at the time.

The Panel noted that Clause 1.6 defined a representative as someone calling upon members of the health professions and administrative staff in relation to the promotion of medicines.

The Panel considered that it was not clear whether the commercial account manager's were representatives as defined in the Code. It appeared from their job profile that their role went further than only talking about the price of medicines. The commercial account manager job profile referred to business relationships, wholesale and retail accounts and supply chains etc. There was no reference to the clinical or technical aspects of any medicine. Slide 7 of the Quality Assurance and Compliance presentation for the commercial account directorate stated, *inter alia*, 'DO separate brand promotion activities and/or opportunities from market expansion activities and/or opportunities'. The Panel noted from Pfizer's submission that the price list for current and forthcoming generic products was circulated to the commercial account manager's on 1 February. This was emailed by the commercial account manager in question on 2 February to some of his buyers. One of the recipients identified by Pfizer was not the complainant. However the Panel noted from Pfizer's submission that the price list had been sent to a number of buyers.

The Panel did not agree with Pfizer's submission that the discussion of forthcoming medicines that were or would be available within the generic industry was an activity that fell outside the Code. In the Panel's view such a discussion was potentially subject to the Code although of course dealing with wholesalers might be different to discussions with health professionals and appropriate administrative staff.

The price list provided gave details such as pack sizes, PIP codes and costs for a number of Pfizer generic medicines including losartan. A branded version of losartan, Cozaar was available but not from Pfizer. In the Panel's view the price list emailed to buyers on 2 February could not take the benefit of the exemption to the definition of promotion as it included information about generic losartan which was not licensed. In that regard the Panel considered that if sent to health professionals or appropriate administrative staff, the price list was potentially subject to the Code and likely to be a breach of Clause 3.1.

Turning back to the facts of the case before it the Panel noted the information provided by the parties. The accounts differed. A judgement had to be made on the available evidence including the fact that Pfizer did not know who the complainant was. The complainant had the burden of proving his complaint on the balance of probabilities. The Panel considered that although Pfizer acknowledged that it had provided a price list to buyers before it received the losartan marketing authorization, there was no evidence that it had been provided to the complainant. In any event, the complaint was about a specific interaction between the complainant and the named commercial account manager; the complainant had not referred to a price list. On the basis of the complaint, the Panel ruled no breach of Clauses 3.1, 9.1 and 15.2.

Complaint received **29 March 2010**

Case completed **2 July 2010**