

VOLUNTARY v ADMISSION BY BAXTER

Failure to take the ABPI Medical Representatives Examination within first year

Baxter advised the Authority that a review of training records showed that 21 of its representatives had not taken the ABPI Medical Representatives Examination in their first year of such employment. The one year period had already expired. In accordance with the Constitution and Procedure for the Prescription Medicines Code of Practice Authority, the Director treated the matter as a complaint.

Baxter submitted that the situation had been complicated by the change in status of some roles, changes in reporting structure and the acquisition of another company, however the Code was clear on what was required. Those concerned had been told that they must take their respective ABPI examinations by the end of June 2011 or their continued employment with the company might be at risk. Baxter would audit its internal training record more often to ensure that this could not happen again.

The detailed admission and response from Baxter is given below.

The Panel noted that the only issue to be determined was whether representatives had taken the examination in their first year of employment as a representative. The Panel did not have any information about the roles of the employees prior to joining Baxter.

The Panel noted that Baxter had highlighted the employment status of 17 employees, 7 of whom had previously been employed by a company acquired by Baxter in September 2009. None of the 17 employees had sat their examination in the first year of employment with Baxter although 4 had sat the examination within two years: 1 had passed, 1 had partially passed and was booked to resit failed papers, and two were awaiting results. Of the remaining 13 employees, 12 were scheduled or hoped to sit the examination by September 2011, and 1 had been ill and unable to register.

The Panel noted that Baxter considered that the ABPI Medical Representatives Examination was appropriate for a wide range of its employees. In the Panel's view only those who satisfied the definition and role of a representative were required under the Code to take the examination. A company might decide to require others to sit the examination but it was not a breach of the Code if they failed to do so.

Baxter had only provided the job titles of the 17 employees. Five clearly had a sales role. One specialist nurse had an entirely clinical non-

promotional role. The company had also decided to require other clinical and training nurses who were occasionally part of promotional meetings to sit the examination.

The Panel ruled that in relation to those individuals whose role and responsibilities satisfied those of a representative as set out in the Code, there had been a breach of the Code in relation to their failure to sit the examination in the first year of their employment.

Baxter Healthcare Ltd advised the Authority that some of its representatives had not taken the ABPI Medical Representatives Examination in their first year of such employment. The one year period had already expired.

In accordance with Paragraph 5.6 of the Constitution and Procedure for the Prescription Medicines Code of Practice Authority, the Director treated the matter as a complaint.

COMPLAINT

Baxter stated that a review of training records showed that 21 of its sales representatives in Great Britain and Northern Ireland had not taken the examination within their first year of that role.

This situation had been complicated by the change in status of some roles, changes in reporting structure and the acquisition of another company, however the Code was clear on what was required.

Given the seriousness of this case, those concerned had been told that they must take their respective ABPI examinations by the end of June 2011, or as per the terms of their employment contracts, their continued employment with the company might be at risk.

Baxter formally requested an extension in the case of these individuals, subject to the time limit stated above.

Baxter would audit its internal training record more often to ensure that this could not happen again.

When writing to Baxter, the Authority asked it to respond in relation to Clause 16.3 of the Code.

RESPONSE

Baxter provided a spread sheet of employees, their respective examination dates and any comments as appropriate. On more detailed review, Baxter had found that there were seventeen employees

involved; three had taken the examination already (one had passed and two were awaiting their results) and all others were currently studying.

Baxter noted that it had initially asked for an extension until 30 June 2011, to allow its identified employees to register and prepare for examinations. Baxter noted that from the spread sheet provided all identified employees (except in Northern Ireland) were registered for examinations before that date.

The matter had come to light when one of Baxter's employees informed the company that they could not register for their ABPI examination because they were out of time. Baxter audited all employees to ensure this was not a problem with others too. Having identified a number of shortfalls, Baxter immediately communicated with respective managers to ensure their employees started their ABPI examination process, revised its policy and tracking documentation and advised the Authority of its concern.

Baxter's ABPI Policy was provided, including its internal process document regarding the ABPI examination. From this it would be seen that Baxter had put additional measures in place that would avoid this situation in future. Baxter submitted that its Offer of Employment and Job Change templates showed that it formally considered the requirement and status of the ABPI examination at key times of change in employment (copies were provided). Since Baxter had been a member of the ABPI, the ABPI examination had been included in its contracts of employment as a condition of employment, and this would continue to be the case; the only exception was in Ireland, where this would now be added to employment contracts. This policy had been shared with all senior management and was on Baxter's intranet.

It only became apparent through discussions and internal reorganisation that Baxter's colleagues from Ireland who worked in Northern Ireland would need to attain the ABPI qualification. For these individuals, although they worked primarily in the Republic of Ireland with only some of their activities occurring in Northern Ireland, Baxter had included them in its ABPI process. They had already attended a workshop to prepare for their examinations. They were keen to register for examinations, however were currently unable to do so; if they entered a start date of more than two years ago they received a warning message and were prevented from registering. Baxter asked how it might remedy this situation, as it had communicated that they would need to take these examinations as a priority.

Although Baxter clinical and training nurses were not sales representatives *per se*, Baxter recognised that occasionally they were in promotional situations and so Baxter was committed to them also successfully completing the ABPI examination. These employees were indicated within the spread sheet.

Baxter noted that it used a distance learning platform for the ABPI; every employee, regardless of their role, had access to them as part of Baxter's commitment to continuous learning. A number of employees listed on the spread sheet had already completed their training regarding the 2011 update.

Baxter apologised that it found itself in these unfortunate circumstances. Additional measures had been put in place to avoid this happening again.

PANEL RULING

The Panel noted that Clause 16.3 stated that representatives must pass the appropriate ABPI representatives' examination. They must take the appropriate examination within their first year of such employment. Prior to passing the appropriate examination, they might be engaged in such employment for no more than two years, whether continuous or otherwise. The relevant supplementary information gave the Director discretion to grant an extension in the event of failure to comply with either time limit subject to the representative taking or passing the examination within a reasonable time.

The Panel noted that the only issue to be determined was whether representatives had taken the examination in their first year of employment as a representative. The Panel did not have any information about the roles of the employees prior to joining Baxter.

The Panel noted that Baxter had highlighted the employment status of 17 employees, 7 of whom had previously been employed by a company acquired by Baxter in September 2009. None of the 17 employees had sat their examination in the first year of employment with Baxter although 4 had sat the examination within two years: 1 had passed, 1 had partially passed and was booked to resit failed papers, and two were awaiting results. Of the remaining 13 employees, 9 were scheduled to sit the examination between April and September 2011, 3 were unable to register but hoped to sit the examination in September 2011 and 1 had been ill and unable to register.

The Panel noted that a representative was defined in Clause 1.6 of the Code as someone who called on members of the health professions and administrative staff in relation to the promotion of medicines. In the Panel's view such people would often have job titles other than 'representative'. The term promotion was defined in Clause 1.2 as any activity undertaken by a pharmaceutical company or with its authority which promoted the prescription, supply, sale or administration of its medicines. Clause 16.4 stated that the ABPI Medical Representatives Examination must be taken by representatives whose duties comprised or included one or both of calling upon, *inter alia*, doctors and/or other prescribers; and/or the promotion of medicines on the basis of their particular therapeutic properties.

The Panel noted that Baxter considered that the ABPI Medical Representatives Examination was appropriate for a wide range of its employees. In the Panel's view only those who satisfied the definition and role of a representative, as set out above, were required under the Code to take the examination. A company might decide to require others to sit the examination but it was not a breach of the Code if they failed to do so.

Baxter had only provided the job titles of the 17 employees. Five clearly had a sales role. One specialist nurse had an entirely clinical non-promotional role. The company had also decided to

require other clinical and training nurses who were occasionally part of promotional meetings to sit the examination.

The Panel ruled that in relation to those individuals whose role and responsibilities satisfied those of a representative as set out in the Code (Clauses 1.6 and 16.4), there had been a breach of Clause 16.3 in relation to their failure to sit the examination in the first year of their employment.

Complaint received **23 March 2011**

Case completed **20 April 2011**
