

# ANONYMOUS v CHUGAI

## Conduct of representative

An anonymous complainant raised concerns about the conduct of a Chugai representative in relation to the Granocyte (lenograstim, G-CSF) business in a named UK region. The representative was alleged to have been overheard at a meeting boasting that the Granocyte business was 'wrapped up' because of 'pay offs' (the complainant quoted a low five figure sum) to local consultants which the complainant alleged 'had been going on for years'. The complainant stated that the representative had claimed that his/her manager knew about it and they were 'laughing all the way to the bank' in terms of bonus.

The detailed response from Chugai is given below.

The Panel noted that the complainant was anonymous and non-contactable. The Constitution and Procedure required the complainant to prove their complaint on the balance of probabilities. Anonymous complaints, like all complaints, were judged on the evidence provided by the parties.

The Panel noted that Chugai's review of its financial records over the last three years indicated that only three payments, totalling around £500 had been made in that time to consultants in the region in question. Two of those payments were for speaker services and one was an educational grant to support attendance at a meeting. The first and largest single payment (around £300) pre-dated both the representative's and the manager's employment with Chugai.

The Panel noted that the complainant claimed to have recently overheard the representative at a meeting in a named town. The representative had last been in that town eight weeks before the complaint was submitted, to speak to a secretary about the possibility of arranging a meeting. The Panel noted that Chugai's investigation indicated that the representative had not attended a stand meeting, speaker meeting or audio-visual meeting in the town since starting employment with Chugai.

The Panel considered that there was no evidence before it to suggest that any gift, benefit in kind or pecuniary advantage had been given or offered to a health professional as an inducement to prescribe, supply, administer, recommend, buy or sell Granocyte. No breach of the Code was ruled.

The Panel noted that the complainant had submitted no evidence to support his/her serious allegations about the conduct of the representative. Evidence submitted by Chugai did not indicate any improper payments. Thus the Panel considered that there was no evidence to indicate that the representative had failed to maintain a high standard of ethical conduct, and no breach of the Code was ruled including Clause 2.

An anonymous, non-contactable complainant raised concerns about the conduct of a Chugai Pharma UK Ltd representative in relation to the Granocyte (lenograstim, G-CSF) business in a named UK region.

Granocyte was marketed by Chugai for the reduction in duration of neutropenia in certain patients and for the mobilisation of peripheral blood progenitor cells.

### COMPLAINT

The complainant stated that he/she had recently attended a meeting in a named town and overheard the representative boasting that all of the local Granocyte business was 'wrapped up' because of 'pay offs' (the complainant quoted a low five figure sum) to local consultants which 'had been going on for years'. The complainant submitted that the representative had stated his/her manager knew about it and they were now 'laughing all the way to the bank' in terms of bonus.

When writing to Chugai, the Authority asked it to consider the requirements of Clauses 2, 9.1, 15.2 and 18.1 of the Code.

### RESPONSE

Chugai submitted that it took these allegations extremely seriously. All staff were aware of the need to maintain high standards between themselves and health professionals in line with the Code. The employee handbook (December 2009) detailed the Chugai business conduct guidelines including the requirement: 'Chugai will engage in fair and transparent transactions with medical institutions and organisations, suppliers and customers'. Chugai further recognised that, in line with the Code, its representatives must be paid a fixed basic salary and any addition proportional to sales of medicines must not constitute an undue proportion of their remuneration.

Chugai gave details of the representative in question's employment with the company and

industry experience generally; the representative had passed the ABPI Medical Representatives Examination some time ago (a copy of the certificate was provided). The representative had been further trained on the Code since joining Chugai. Chugai gave details of the representative's sales territory wherein approximately one third of the time was spent promoting Granocyte to health professionals; the remainder was spent promoting other products. Chugai submitted that the representative was well aware of, and was particularly distressed by, the serious nature and potential consequences of the anonymous allegations.

The representative's manager had been employed by Chugai for over a year and had many years' experience in the pharmaceutical industry.

Following receipt of the complaint, the representative and the manager were separately interviewed by two directors. Before the interviews took place, the representative's expense claims records and electronic diary entries were reviewed to ascertain what meetings had been attended by the representative in the named town over the past six months. In addition, the financial records for the past three years were reviewed to identify any payments made to consultants in the representative's territory.

Chugai submitted that the representative had never held or attended a stand meeting, speaker meeting or audio-visual meeting in the town in question; during the time at Chugai, the representative had visited the town only twice, in May 2011 to discuss with a transplant nurse and two doctors the possibility of arranging a meeting in the future and on 9 September 2011 where the representative spoke to a secretary about arranging a meeting and left a business card. Chugai stated that these visit dates were independently corroborated by expense claim records and detailed diary entries. The visit dates were also consistent with the dates identified before the face-to-face interviews. The only expenses claimed were for mileage and local car parking charges; there were no expenses associated with a stand meeting, speaker meeting, audio-visual meeting or similar on these dates. To date, the representative had not been successful in organising a meeting in the town.

Chugai submitted that the representative strenuously denied making comments about 'having the Granocyte business wrapped up because of pay-offs to local consultants' or that this 'had been going on for years' or that the '... manager knew about it and positively encouraged it' or that 'they were now laughing all the way to the bank in terms of bonus'. The representative clearly stated that he/she had never made improper payments to consultants and would never do so; he/she had no knowledge of any improper payments being made in the past and had never been asked by the manager to do anything improper. The representative had no idea where the

complaint had come from and could make no sense of it.

Chugai stated that the manager also strenuously denied knowledge of any improper payments made to consultants recently or in the past and had never encouraged any of his/her staff to behave in this manner. The manager stated that the representative was very professional and hard working with a high level of integrity.

Chugai considered that the above interviews and investigations demonstrated that there was no evidence that high standards of ethical conduct had not been maintained and therefore refuted any breach of Clauses 9.1 and 15.2 of the Code.

Chugai explained that in the UK, G-CSF products were contracted by tender through a process commissioned by the Department of Health working in partnership with hospital pharmaceutical procurement colleagues across the NHS. The regional tendering process was led by the procurement lead, who was a pharmacist, and the local consultants had little or no influence or involvement in the process.

Chugai explained how the region at issue bought its G-CSF products and provided market share data which it considered clearly refuted the claim that the Granocyte business was 'wrapped up' across the region at issue.

Chugai stated that it had never, and would never, make improper payments to health professionals. Any payments were supported by a signed payment request form with supporting documentation and were approved by the managing director. All cheques above a value of £2,000 had to be signed by the managing director.

Chugai submitted that as the complaint was open ended ('going on for years'), three of its senior executives conducted a detailed review of the company's financial records over the past three years to identify all payments made to any consultants in the sales territory in question. The review did not reveal any evidence of improper payments. This review clearly showed there were no large payments of the sum mentioned by the complainant or more (cumulative or otherwise) as alleged. The three payments (totalling £523.60) that had been made to local consultants were all justifiable (details were provided). Furthermore, there was no evidence of recurring regular payments to local consultants. Chugai stated that its accounts were regularly audited and no evidence had ever been found of improper payments to health professionals. Chugai refuted any breach of Clause 18.1.

Chugai submitted that its representatives were paid a fixed basic salary. In addition, an objective based incentive scheme operated. Representatives could be bonused on achievement of territory sales targets and of agreed business objectives (details

were given). An additional amount might be paid for over achievement of the sales target and overall performance as in behaviours and overall contribution. The 2011 incentive scheme was notified to the sales representatives at the beginning of 2011. Bonus payments were paid annually and the next payments would be made in January 2012. Details of the representative's salary and bonus were given together with that for the manager.

Chugai submitted that in addition to the bonus scheme a single managing director's award was introduced at the end of 2010 for the top representative in the whole company for the year. Chugai noted that the manager was not eligible for this award.

Chugai considered that its salary levels and bonus scheme were consistent with industry standards and complied with Clause 15.7. Chugai did not believe that this level of potential bonus was consistent with the allegation of 'laughing all the way to the bank in terms of bonus'.

Chugai was very concerned that the anonymous and non-contactable complainant had not supplied any evidence in support of the untrue serious allegations and that this allegation could damage its good reputation.

In conclusion, Chugai submitted that it had taken the complaint extremely seriously and had performed a thorough investigation. Chugai strenuously denied the serious allegations and therefore that there had been any breach of the Code. In particular, Chugai refuted any breaches of Clauses 2, 9.1, 15.2 and 18.1.

#### **PANEL RULING**

The Panel noted that the complainant was anonymous and non-contactable. The introduction to the PMCPA Constitution and Procedure stated that it was for the complainant to prove their complaint on the balance of probabilities. Anonymous complaints were accepted and, like all complaints, judged on the evidence provided by the parties.

The Panel noted that Chugai's review of its financial records over the last three years indicated that only three payments, totalling £523.60, had been made in that time to consultants in the representative's sales territory. Two of these payments were for speaker services and one was an educational grant to support attendance at a meeting. The first and largest single payment (£326.80) pre-dated both the representative's and the manager's employment with Chugai.

The Panel noted that the complainant claimed to have recently overheard the representative at a meeting in a named town. The last time the representative had been in the town was eight weeks before the complaint was submitted. On that date the representative had spoken with a secretary about the possibility of arranging a meeting. The Panel noted that information taken from expense claims and diary entries, as well as from an interview indicated that the representative had not attended a stand meeting, speaker meeting or audio-visual meeting in the town since starting employment with Chugai.

The Panel considered that there was no evidence before it to suggest that any gift, benefit in kind or pecuniary advantage had been given or offered to a health professional as an inducement to prescribe, supply, administer, recommend, buy or sell Granocyte. No breach of Clause 18.1 was ruled.

The Panel noted that the complainant had submitted no evidence whatsoever to support his/her serious allegations about the conduct of the representative. Evidence submitted by Chugai did not indicate any improper payments. Thus, the Panel considered that there was no evidence to indicate that the representative had failed to maintain a high standard of ethical conduct, and no breach of Clause 15.2 was ruled. The Panel thus ruled no breach of Clauses 9.1 and 2.

<b>Complaint received</b>	<b>4 November 2011</b>
<b>Case completed</b>	<b>28 November 2011</b>

---