

GENERAL PRACTITIONER v LILLY

Conduct of representative

A general practitioner complained about the unprofessional and unacceptable conduct of a representative from Lilly who had visited his surgery with a poster. Following instructions from his/her manager, the representative insisted on photographing members of the practice team underneath the poster.

The complainant stated that the representative's aim was to get 10 photographs of doctors and nurses with the poster in order to win a prize. The complainant refused to go along with this, as did a nurse. The complainant stated that the representative then became quite shirty and insistent so the complainant left. Three other staff members had since complained that they were also unhappy but had their photographs taken rather than make a fuss.

The detailed response from Lilly is given below.

The Panel noted that the poster was derived from Lilly's diabetic peripheral neuropathic pain (DPNP) foot symptom assessment tool and asked readers if they were diabetic and ever got odd or painful feelings in their legs or feet. The poster was designed to raise awareness about the symptoms of DPNP. Health professionals might want to display the poster in the waiting room. There was no mention on the poster or the briefing document that representatives were to take photographs of a health professional with the poster.

The Panel noted Lilly's submission that one sales manager had implemented a customer engagement incentive competition for his/her team. This sales team was briefed using a presentation entitled 'The Wall of Pain Hall of Fame Competition' which explained that the competition was 'A project to engage representatives and customers to display the Foot Screening Poster in appropriate target surgeries' and 'An opportunity to enable the representatives to learn other functionalities of the iPad'. The aim of the competition was for each representative to have the poster displayed in 10 practices and to photograph the poster 'with or without your customer'. If 10 surgeries per representative was reached then the team would be rewarded with 'our usual cocktails'. One point would be awarded for each photograph of a poster in situ without a health professional and two points if a GP or nurse was in the photograph. Prizes were a £25 cinema voucher for the representative with the most points and a further £25 cinema voucher for the representative with the best, most amusing photograph including a GP or nurse. There was further reference to the 'bonus prize' of cocktails if each representative reached 10 surgeries. The presentation gave instructions on how to take and email the photographs. There was no mention of any professional discussion of the poster with health professionals or of the benefit of the

poster to patient care. There was no guidance about when/whether to request a photograph nor to respect the wishes of the surgeries/health professionals in this regard.

The Panel was concerned that the name of the competition, 'The Wall of Pain Hall of Fame Competition', trivialised a painful complication of diabetes. The representatives were encouraged to amass points by placing the poster in as many surgeries as possible and provide photographic evidence of their success. There was no professional element to the competition.

The Panel considered that neither the sales manager who had instigated the competition nor the primary care sales team (which, on the balance of probabilities, included the representative at issue) that took part in the competition had maintained a high standard of ethical conduct. The presentation on the competition advocated a course of action that was likely to lead to a breach of the Code and high standards had not been maintained. Breaches of the Code were ruled, as acknowledged by Lilly.

As Lilly had not been provided with information to identify the representative it was impossible to determine precisely what had occurred. The Panel thus ruled no breach of the Code in relation to the allegations about how the representative in question had described the competition and the representative's behaviour.

The Panel noted Lilly's submission that the sales manager at issue had acted independently and that Lilly had not briefed its sales force to undertake the activities at issue. However, the Panel considered that the sales manager's encouragement of representatives to collect points by taking photographs of health professionals and rewarding this with cinema vouchers and cocktails was an activity that demeaned both the health professionals and the representatives and in that regard was likely to bring discredit upon the pharmaceutical industry. A breach of Clause 2 was thus ruled. This ruling was appealed by Lilly.

The Appeal Board noted that the sales manager had independently devised the competition with the aim of engaging his team to encourage display of the foot screening poster in surgeries so that patients might be better informed about DPNP and report symptoms. The Appeal Board considered that greater awareness of foot problems would be helpful to diabetics.

The Appeal Board was extremely concerned that someone as senior as a sales manager, who had line management responsibility, considered it acceptable to direct his team to try to include a GP or a nurse in photographs in surgeries to gain points towards

winning cinema vouchers and cocktails. The Appeal Board was also concerned that additional points would be given to photographs with the health professional and a prize was to be given for the most amusing photograph including a health professional. Participation in the photographs was potentially demeaning to health professionals.

The Appeal Board considered that the sales manager had displayed very poor judgement and the competition as a whole was distasteful.

The Appeal Board noted that on receipt of the complaint Lilly had ceased the competition and no prizes had been awarded. Lilly had not condoned the behaviour of the sales manager and had accepted the Panel's rulings of breaches of the Code. The poster competition had been initiated and devised by a single sales manager without the company's knowledge or approval and it had taken place in a limited geographical area.

Although Lilly had been ruled in breach of the Code, including failure to maintain a high standard, the Appeal Board considered, on balance, that the activities did not amount to a breach of Clause 2. This clause was a sign of particular censure and was reserved for such circumstances. Thus no breach of Clause 2 was ruled. The appeal was thus successful.

A general practitioner complained about the conduct of a representative from Lilly who had visited his surgery and, apparently following instructions from his/her manager, insisted on photographing members of the practice team underneath a poster which he/she had brought to the complainant's surgery.

COMPLAINT

The complainant said that the representative's aim was to get 10 mugshots of doctors and nurses with the poster in order to win a prize. The complainant refused to go along with this, as did a nurse, as he considered it a potential infringement of his human rights. The complainant stated that the representative then became quite shirty and insistent so the complainant left. Three other staff members had since complained that they were also unhappy to have had their photographs taken but did so rather than make a fuss.

The complainant considered the conduct of the representative was very unprofessional and unacceptable. Lilly representatives were no longer welcome at his practice.

When writing to Lilly the Authority asked it to respond in relation to the requirements of Clauses 15.2, 15.9, 9.1 and 2.

RESPONSE

Lilly submitted that it was extremely concerned about the complainant's allegations since it found the alleged behaviour entirely unacceptable and would not condone it.

Lilly noted that the complaint contained very limited information to help it identify the source of the behaviour and alleged activity, since the representative and location were not identified and there was no information about the therapeutic area involved or the content of the poster.

Lilly submitted that the alleged activity was not one upon which it had centrally briefed its sales force but it had identified activity in one primary care sales team (with a total of 12 sales representatives), which appeared to be relevant.

Lilly believed that the poster at issue was material derived from an enlarged version of a diabetic peripheral neuropathic pain (DPNP) foot symptom assessment tool introduced to the sales force by email in March 2012, with full, approved briefing instructions for its use. Lilly also produced posters based on, and as a derivation of, the tool for patient waiting rooms. The poster had clear instructions on the reverse and explained that it was for a health professional to display in an area where patient materials were available. The sales force was told about the poster during a conference call in March 2012 and it was rolled out using Lilly's automated system for ordering sales materials. No additional briefing instructions were issued to the sales team for this poster at that time as it had clear instructions on the reverse on its intended use as a DPNP patient information poster to provide to health professionals.

Lilly submitted that the briefing and information on the reverse of the poster comprised the central Lilly briefing material used to tell representatives how to use it. Lilly maintained that the instructions were clear and that it had not issued additional guidance regarding the use of the poster or instructed any sales teams to deviate from these instructions.

Lilly stated that it appeared that the sales manager for one of its primary care sales teams comprising 12 sales representatives had of his/her own accord implemented a customer engagement incentive competition around the poster for the sales representatives in his/her team, intending to engage representatives and customers to display the poster. Lilly understood that the sales manager told the sales team about the competition at a regional meeting and it was intended that the competition would run in the summer. The presentation set out how the competition would work. The sales manager confirmed that he/she had instructed the sales team to get customers' permission before photographing them and that if a customer did not wish to be photographed they should not proceed. This instruction was not included in the written presentation.

Lilly submitted that it was most concerned about the competition and accepted that it was entirely inappropriate. Accordingly, upon becoming aware of these activities, Lilly took immediate steps to stop the competition. The sales manager at issue informed all sales representatives in his/her team by text that the competition would cease with immediate effect and followed up each text with

either a personal telephone call or face-to-face meeting the same day. The competition ceased on 25 June 2012. Lilly confirmed that apart from the sales team involved, no other representatives were involved in the competition.

Lilly maintained that it had provided its representatives with detailed briefing material in compliance with the Code in this instance. It had also appropriately trained its representatives on both the Code and privacy requirements. The activities which were the subject of this complaint were those of one isolated primary care sales team/sales representative acting on his/her own and contrary to Lilly's central briefing instructions.

Consequently, Lilly accepted that there had been a breach of Clauses 15.9 and 9.1 and undertook to retrain the sales team at issue on both the requirements of the Code and on privacy requirements. It had already applied internal processes to follow-up with the responsible sales manager.

Lilly noted that the complainant had not agreed to be identified to Lilly, nor had he/she identified the representative who was the subject of the complaint or provided evidence to support his/her allegations. Notwithstanding this, Lilly had tried to identify the representative in question by requesting further information from the sales team about their knowledge of this complaint and any background information. Despite these efforts, Lilly had not been able to identify the representative and was therefore unable to properly investigate his/her conduct or respond to the allegations made concerning his/her behaviour.

Whilst Lilly accepted that the activities of one sales team was not of the high standard required by the Code, it denied that these activities were of such a serious nature as to constitute a breach of Clause 2 of the Code. They were isolated and did not constitute multiple and cumulative breaches of a similar or serious nature in the same therapeutic area within a short period of time; they did not prejudice patient safety and/or public health; neither did they involve inducements to prescribe, inadequate action leading to a breach of undertaking or promotion prior to the grant of a marketing authorization.

Lilly submitted that it had taken immediate steps both to try and investigate the actions of the representative involved and to stop the activities in question as soon as it knew of them. It had also undertaken to retrain the sales team involved. Lilly thus did not consider that it had brought discredit upon, or reduced confidence in, the pharmaceutical industry and denied a breach of Clause 2.

PANEL RULING

The Panel noted Lilly's submission that it considered the poster at issue was that derived from the DPNP foot symptom assessment tool. The associated briefing instructed the representatives how a health professional could use the tool; either by providing the patient with a dry wipe marker pen to write on the document and wipe clean afterwards or for the health professional to stick to the wall of their consulting

room as a reminder of the questions they should ask patients to help identify DPNP. There was no mention in the briefing document of the poster at issue.

The Panel noted that the poster asked the reader if they were diabetic and ever got odd or painful feelings in their legs or feet such as burning, pins and needles, freezing. The poster had a note on the back for health professionals explaining, *inter alia*, that the poster was designed to raise awareness among patients about the symptoms of DPNP. It went on to state that the health professional might want to display the poster in an area of his/her clinic in which other patient materials were available such as the waiting room. There was no mention of the representative taking a picture of the poster and a health professional.

The Panel noted Lilly's submission that a sales manager for a primary care team had implemented a customer engagement incentive competition for his/her sales team around the poster. This sales team were told about the competition in May by way of a 15 slide presentation entitled 'The Wall of Pain Hall of Fame Competition'. The second slide of the presentation explained that the Wall of Pain Hall of Fame was 'A project to engage representatives and customers to display the Foot Screening Poster in appropriate target surgeries'. It was also 'An opportunity to enable the representatives to learn other functionalities of the iPad'. The third slide explained that the aim of the competition was for each representative to have the foot pain poster on display in 10 practices and photograph the poster 'with or without your customer'. If 10 surgeries per representative was reached then the team would be rewarded with 'our usual cocktails'. The fourth slide noted that one point would be awarded for each photograph of a poster in situ without a GP or nurse in the photograph, and two points if a GP or nurse was in the photograph. The fifth slide stated that the prizes were a £25 cinema voucher for the representative with the most points at the end of the competition and a further £25 cinema voucher for the representative with the best, most amusing photograph including a GP or nurse. This slide again referred to the 'bonus prize' of cocktails if each representative reached 10 surgeries. The remaining 10 slides of the presentation instructed the representatives on how to take a photograph with their iPad and then email it. There was no mention of any professional discussion of the poster with health professionals or of the benefit of the poster to patient care. There was no guidance about when/whether to request a photograph nor to respect the wishes of the surgeries/health professionals in this regard.

The Panel noted that the aim of the competition, to engage representatives and customers to display the poster, was not necessarily unacceptable but any such competition must comply with the Code. The Panel was concerned that the name of the competition, 'The Wall of Pain Hall of Fame Competition', trivialised a painful complication of diabetes. The representatives were encouraged to amass points by placing the poster in as many surgeries as possible and provide photographic evidence of their success. There was no professional element to the competition.

The Panel considered that neither the sales manager who had instigated the competition nor the primary care sales team (which, on the balance of probabilities, included the representative at issue) that took part in the competition had maintained a high standard of ethical conduct. A breach of Clause 15.2 was ruled. The presentation on the competition advocated a course of action that was likely to lead to a breach of the Code and a breach of Clause 15.9 was ruled, as acknowledged by Lilly. High standards had not been maintained and a breach of Clause 9.1 was ruled, as acknowledged by Lilly. These rulings were accepted by Lilly.

The Panel noted that the complainant had also made allegations about what the representative had said and his/her conduct. As Lilly had not been provided with the identity/location of the representative/surgery it had been unable to respond to this aspect of the complaint. Consequently it was impossible to determine precisely what had occurred. The Panel thus ruled no breach of Clause 15.2 in relation to the allegations about how the representative in question had described the competition and the representative's behaviour. This ruling was not appealed.

The Panel noted Lilly's submission that the sales manager at issue had acted independently and that Lilly had not briefed its sales force to undertake the activities at issue. However, the Panel considered that the sales manager's encouragement of representatives to collect points by taking photographs of health professionals and rewarding this with cinema vouchers and cocktails was an activity that demeaned both the health professionals and the representatives and in that regard was likely to bring discredit upon the pharmaceutical industry. A breach of Clause 2 was thus ruled. This ruling was appealed by Lilly

APPEAL BY LILLY

Lilly noted that the Panel had ruled no breach of Clause 15.2 in relation to the anonymous allegations made about the representative. The ruling of a breach of Clause 2 related only to the behaviour of one sales manager and the internal competition that he organised (together, the activity). Lilly did not condone or support the activity and accepted the Panel's ruling of breaches of Clauses 9.1, 15.2 and 15.9. In appealing the Panel's ruling of a breach of Clause 2, Lilly submitted that it had made no suggestion whatsoever that it supported or condoned the activity: it did not.

Lilly noted that the supplementary information to Clause 2 stated that a ruling of a breach of Clause 2 '... is a sign of particular censure and is reserved for such circumstances'. The guidance went on to provide examples of the types of activity which were likely to be in breach of Clause 2; all of them were clearly very serious.

Lilly submitted that the basis of its appeal was that it accepted that the activity breached Clauses 9.1, 15.2 and 15.9 but the activity was not of such a serious nature so as to bring discredit upon the industry; it was initiated by, and limited to, one sales manager acting independently, in breach of the company's policies and procedures, in a lapse of judgement.

It was a single and isolated activity on a very limited scale, it was not a multiple or cumulative breach. It did not impact patient safety or care, involve an inducement to prescribe, relate in any way to promotion outside the marketing authorization nor was it otherwise of such a serious nature so as to bring discredit upon the industry. As such, Lilly's appeal centred on the severity of the censure.

Lilly focussed on the following key areas:

- 1 It was an isolated activity, not representative of Lilly's activities** – this activity was an isolated activity, initiated by one sales manager acting on his own. The sales manager committed a serious error of judgement, although Lilly believed that he/she had had the best of intentions (see point 4 below); it was not an activity that Lilly initiated centrally, encouraged or on which it briefed its sales force and it was entirely unrepresentative of Lilly's activities. In short, it was unauthorised.
- 2 Full accountability for the actions of its employees** – Lilly took full responsibility for the action of its employees. Once identified (through a country-wide investigation, immediately instigated following receipt of the complaint), this activity was stopped straightaway and corrective action taken. Details were provided. Lilly retrained the sales manager and the twelve sales representatives in his team on the requirements of the Code in addition to their usual refresher training. Lilly would carry out additional ethics and compliance retraining, directed at all sales managers in Lilly UK's human health business units on both the requirements of the Code and compliance matters generally to avoid a repetition.

In taking this action Lilly had taken ultimate accountability for the activity.
- 3 Appropriate level of censure given the limited scale of the activity** – Lilly gave detailed information about its sales force in the UK. The sales team reporting to the sales manager in question amounted to only a very small percentage of Lilly's UK sales force. From the point of view of Lilly's customer base this activity at most had the potential to impact less than 1% of GP practices in the UK. It had a very limited scale, whether considered geographically, as a percentage of Lilly's sales force, or as a percentage of health professionals it had the potential to touch as a whole; this activity was therefore entirely unrepresentative of the overall direction and activity performed by Lilly's large sales force with the vast majority of its customer base.
- 4 Patient benefit/intent** – DPNP was a painful complication of diabetes, which was unreported by patients and had a relatively low rate of diagnosis/treatment. Lilly submitted that it was for this reason it had placed a good deal of focus in trying to support health professionals around assessment of DPNP by producing tools which facilitated detection and diagnosis of the condition, ultimately having a significant patient benefit. Lilly's view, having questioned the sales manager, was that, despite the lapse of

judgement, the intentions had been good – the competition forming part of the activity was not to demean health professionals (or, indeed, sales representatives, as suggested), but to try and encourage them to display a poster in their surgeries which might lead to patients reporting their symptoms to the health professional and ultimately to diagnosis and better care.

- 5 Additional context of wider Lilly work in the DPNP therapy area** – Lilly noted the Panel’s comments that the activity ‘trivialised’ a painful complication of diabetes and potentially demeaned health professionals. Lilly submitted that it promoted a National Institute for Health and Clinical Excellence (NICE) recommended medicine in the therapy area of DPNP and as such took very seriously both the disease area and the impact that it could have on patients’ lives. Lilly provided a significant level of support, tools and education to health professionals to help them in their assessment of their patients in accordance with guidelines and best practice. Focussing on the narrow context of the single and isolated activity did not provide a fair representation of the company’s wide ranging support to health professionals and their patients suffering from DPNP. Examples of the support tools Lilly provided in this therapy area (and which were already in use by the sales manager and his team, among others) were provided, including ‘A Tool for the Initial Assessment of Foot Pain Among People with Diabetes’; ‘Addressing the burden of diabetic peripheral neuropathic pain: Improving detection in primary care’ together with its briefing document and ‘Looking after your feet’.

Upon receiving the initial complaint, Lilly submitted that it immediately launched a full investigation – despite the difficulty of the complaint being anonymous and with limited information. Upon identifying what it submitted to be the cause, ie an internal activity initiated by one primary care sales manager (who, despite good intentions, exercised poor judgement), acting without authority, Lilly stopped it immediately. Prior to responding to the PMCPA Lilly took corrective action with the relevant employee. Lilly had immediately acknowledged accountability for the actions of its employees and pre-emptively accepted that there were breaches of the Code. The activity concerned was not in any way centrally driven or endorsed by Lilly, but was a single and isolated activity and not widespread (whether considered geographically, as a percentage of Lilly’s sales force, or as a percentage of the health professionals that it had the potential to touch as a whole). The activity did not in any way provide a true representation of Lilly’s support and commitment to this very important therapeutic area.

Accordingly, Lilly submitted that a ruling of a breach of Clause 2, which was a sign of particular censure, was not justified in this case.

RESPONSE FROM THE COMPLAINANT

The complainant was happy with the explanations and that the activity at issue could not happen again. The complainant accepted that Lilly might wish this

case to be seen as an isolated incident and it was up to the relevant bodies to decide what importance, if any, was put on the episode overall, for which he had nothing to add.

APPEAL BOARD RULING

The Appeal Board noted that the sales manager had offered an incentive of cinema vouchers and possibly cocktails to his team. This appeared to be inconsistent with the Lilly representatives’ response to a question at the appeal hearing that incentives were national not local.

The Appeal Board noted that the sales manager had independently devised the competition with the aim of engaging his team to encourage display of the foot screening poster in surgeries so that patients might be better informed about DPNP and report symptoms. The Appeal Board considered that greater awareness of foot problems would be helpful to diabetics. The Appeal Board noted, however, that the sales manager’s training slides were titled ‘The Wall of Pain Hall of Fame Competition’.

The Appeal Board was extremely concerned that someone as senior as a sales manager, who had line management responsibility, considered it acceptable to direct his team to try to include a GP or a nurse in photographs in surgeries to gain points towards winning cinema vouchers and cocktails. The Appeal Board was also concerned that additional points would be given to photographs with the health professional and a prize was to be given for the most amusing photograph including a health professional. Although participation in the photographs appeared to be optional it was potentially demeaning to health professionals.

The Appeal Board considered that the sales manager had displayed very poor judgement and the competition as a whole was distasteful.

The Appeal Board noted that on receipt of the complaint Lilly had ceased the competition and no prizes had been awarded. Lilly had not condoned the behaviour of the sales manager and had accepted the Panel’s rulings of breaches of Clauses 9.1, 15.2 and 15.9. The poster competition had been initiated and devised by a single sales manager without the company’s knowledge or approval and it had taken place in a limited geographical area.

Although Lilly had been ruled in breach of the Code, including failure to maintain a high standard, the Appeal Board considered, on balance, that the activities did not amount to a breach of Clause 2. This clause was a sign of particular censure and was reserved for such circumstances. Thus no breach of Clause 2 was ruled. The appeal was thus successful.

Complaint received **7 June 2012**

Case completed **6 September 2012**