

GENERAL PRACTITIONER v NAPP

Email promotion of BuTrans

A general practitioner complained that Napp had twice sent an advertisement for BuTrans (buprenorphine matrix patch) to her NHS email address. The complainant stated that she did not usually see representatives as she was concerned that her decisions about medicines might be compromised. As the complainant and her colleagues were looking at BuTrans/fentanyl patches in terms of their appropriate use it was unfortunate that she had received the email at issue. The complainant queried how her NHS email could be used in this way.

The detailed response from Napp is given below.

The Panel noted that the Code prohibited the use of email for promotional purposes except with the prior permission of the recipient. Whilst the material at issue had not been sent directly by Napp it was nonetheless an established principle under the Code that pharmaceutical companies were responsible for work undertaken by third parties on their behalf.

The Panel noted that when obtaining permission from health professionals to add them to their database [and thus contact them through their NHS email account] the agency concerned had made it clear that it would, from time to time, email information which might include, *inter alia*, pharmaceutical promotional material. It was clear that the agency intended to email promotional material from pharmaceutical companies. The Panel noted Napp's submission that the complainant had been invited to join the database in February 2012 and the terms and conditions would have been explained. The complainant had not responded to the Authority's request to comment on this information. On the material available, the Panel considered that there was evidence that the complainant had agreed to receive promotional material by email and it thus ruled no breaches of the Code.

A general practitioner, complained about the promotion of BuTrans (buprenorphine matrix patch) by Napp Pharmaceuticals Limited.

COMPLAINT

The complainant stated that she was a busy GP who did not usually see representatives from pharmaceutical companies due to concerns of compromising her decision making of medication especially as prescribing lead for the practice. On two occasions, a BuTrans advertisement had been sent directly to her NHS email address.

As the complainant and her colleagues were specifically looking at BuTrans/fentanyl patches in terms of their appropriate use, the complainant

considered that it was unfortunate that she received the advertisements in question. The complainant asked how her NHS email came to be available for use in this way.

When writing to Napp, the Authority asked it to respond in relation to Clauses 9.1 and 9.9 of the Code.

RESPONSE

Napp stated that the complainant had provided prior permission to receive promotional emails into her NHS email account from a third party agency (Clause 9.9). In addition, and in line with the supplementary information to Clause 9.9, the email promotion received by the complainant informed her how to unsubscribe. Napp believed that it had maintained high standards at all times (Clause 9.1).

Napp submitted that it contracted the agency to send the digital BuTrans advertisement at issue. The advertisement (ref UK/BUTR-12042) was certified in October 2012.

The agency provided a free resource for medical professionals employed within the NHS and the UK private healthcare sectors. It was completely independent of the Department of Health and the NHS. Registered users had free access to information on the site, including information about prescription only medicines and medical devices, which could only be directed and accessed by health professionals who prescribed these products. The site included the latest information on the management of specific disease areas and medical conditions in an interactive format, including live online presentations and webcasts on the latest medical procedures. Users could only register via their NHS email account to prevent access by the public.

When completing their online registration form, a statement informed the health professional that completion of the form confirmed compliance with the terms and conditions which were accessible as part of the online registration process and were also included as part of email confirmation of continuing registration. These terms and conditions included the opt in policy (provided), which stated clearly that information provided might include pharmaceutical promotional materials and that users might opt out of receiving such materials without losing the remainder of the information service.

Further, approximately once a year, every health professional user was contacted by the agency to confirm and update (if required) the information that it held. During this conversation, the health professional was reminded that they had consented

to receive emails from the agency or its associated/affiliated companies, which included promotional information from pharmaceutical companies.

Napp submitted that the complainant was invited by telephone to join the free resource on 3 February 2012. An email sent to her explained the registration process and terms.

The email advertisement for BuTrans at issue informed the recipient how to unsubscribe to receiving further promotional emails, as required by the supplementary information to Clause 9.9.

In response to a request to provide further information setting out exactly what the complainant saw when completing the online registration, Napp submitted that the complainant was invited to join the free resource in February 2012. Details of the process for the complainant were provided. Step 1 was telephone contact and the script included [agency] will from time to time send information by email about our associated/affiliated companies and their clients' product and services, which may include updates on specialist services, conferences and seminars, diagnostic, medical and pharmaceutical promotional materials as well as official information'. This was also included in a follow up email (step 2). Step 3 was completion of the online registration which stated that 'completion of this online registration form confirms compliance with our terms and conditions'. Following submission of this form the complainant received confirmation that she was now a registered user of the resource (3 February 2012).

PANEL RULING

The Panel noted that Clause 9.9 prohibited the use of email for promotional purposes except with the prior permission of the recipient. The Panel considered that the email was clearly promotional material. Whilst it had not been sent directly by Napp it was nonetheless an established principle under the Code that pharmaceutical companies were responsible for work undertaken by third parties on their behalf.

The Panel noted that when obtaining permission from health professionals to add them to their database, the agency had made it clear to them that it would, from time to time, email information about associated/affiliated companies, its clients and its clients' products and services which might include updates on specialist services, conferences and seminars, diagnostic, medical and pharmaceutical promotional materials as well as official information. It was clear that the company intended to email promotional material from pharmaceutical companies. The Panel noted the information provided by Napp regarding the inclusion of the complainant's details to the database. The complainant had not responded to the Authority's request to comment on this information. On the material available, the Panel considered that there was evidence that the complainant had agreed to receive promotional material by email and it thus ruled no breach of Clause 9.9. It consequently ruled no breach of Clause 9.1.

Complaint received

6 August 2012

Case completed

15 October 2012