

ANONYMOUS HEALTH PROFESSIONAL v MERCK SHARP & DOHME

Sponsorship of health screening

An anonymous, non-contactable health professional referred to a public health fair (Health Mela) that he/she attended and noted that a major attraction of the event was health screening with a focus on the NHS health checks for heart diseases and diabetes. The complainant submitted that the arrangements for patient confidentiality were poor and that he/she noticed a number of Merck Sharp & Dohme representatives hovering around the patient screening area. The complainant alleged that the representatives appeared to monitor the screening and engaging with the public whilst they were waiting.

The complainant submitted that the representatives were interested because Merck Sharp & Dohme had paid for some of the screening resources. The complainant alleged that they were clearly trying to gauge the effect of the screening and the results. The complainant was concerned that the representatives were actively engaged with patient screening and learning patient details and that Merck Sharp & Dohme's involvement with the screening had not been declared either at the event itself or on flyers.

The detailed response from Merck Sharp & Dohme is given below.

The Panel noted that the meeting poster provided by the complainant gave details of the health fair and listed activities including certain health checks and counselling. At the bottom the poster stated 'Working towards healthier living in partnership with:' which was followed by 14 organisation/company logos. Merck Sharp & Dohme's logo did not appear. Conversely, the poster provided by Merck Sharp & Dohme included the company logo.

It was not clear where the complainant had obtained his/her poster; the Panel was unable to contact the complainant for more information. Merck Sharp & Dohme provided a summary of a telephone conversation with the event organiser who stated that there were approximately 4 versions of the poster.

The Panel noted that the accounts of the events differed between the complainant and the respondent. The Panel considered that supporting the health fair *per se* was not necessarily unacceptable; pharmaceutical company involvement had to comply with the Code.

According to the joint working agreement documentation which covered the meeting, Merck Sharp & Dohme's support included project

management for each of the three events to optimize efficient cholesterol screening; help to promote the Health Mela to mosques and financial support for cholesterol screening of attendees at all three events. Merck Sharp & Dohme's financial support was limited to the hire of LDX machines and purchase of disposables for the three meetings. Merck Sharp & Dohme stated that only the machines and consumables had been paid for. No additional support was provided. This differed from the joint working agreement.

The Panel decided that the representatives had attended in a professional capacity and Merck Sharp & Dohme was responsible for their attendance. The Panel was concerned that the representatives had not worn badges to identify themselves as Merck Sharp & Dohme employees. Contrary to the complainant's view, Merck Sharp & Dohme and the organiser were clear that the two representatives had not watched the health screening. It was unclear how the organiser would be able to comment on this so definitely unless the representatives were closely shadowed at the event.

The Panel noted that there was no briefing material for the representatives regarding their attendance at the Health Mela; they had not promoted any products and according to Merck Sharp & Dohme they had not discussed work matters with those health professionals to whom they spoke. It would have been helpful if the company had provided them with clear instructions for their attendance. This was especially so as one of the representatives' managers had suggested attendance and the company's involvement in the event. In the Panel's view it should have been made abundantly clear to the representatives that they were attending in an official capacity. The layout of the rooms meant that the screening appeared to be very public and potentially people could listen in. Those being screened would be aware of the public nature of this before deciding to proceed, although they would not have known that the representatives were in the room where the screening took place. Contrary to the complainant's assertion, Merck Sharp & Dohme submitted that the representatives did not go near to, interact with or get involved with the screening.

Although the Panel has serious concerns about the representatives' attendance and conduct as outlined above, it did not consider that the complainant had established that they had actively engaged with patient screening and on this narrow ground the Panel ruled no breach of the Code. The Panel was also concerned about the failure to provide any briefing material for an event which involved the

public, which the representatives had been asked to attend and with which the company was involved but, given the wording of the Code, this did not amount to a breach and no breach was ruled.

With regard to the declaration of Merck Sharp & Dohme's involvement, the Panel noted that the flyer provided by the complainant did not have the company logo. The Panel noted its comments above in this regard. It also noted the submission from Merck Sharp & Dohme that the flyer used for the meeting included the company logo. Further there was stated to be a notice on the table and registration desk. Merck Sharp & Dohme had not been able to obtain a copy of this document.

The Panel considered that although attendees would know that Merck Sharp & Dohme had supported the event it was not sufficiently clear that those being screened would understand the extent of the company's involvement. The position was not helped as the company had been unable to provide a copy of the material made available at the registration desk. The poster provided by the complainant bore no declaration and that provided by Merck Sharp & Dohme bore a corporate logo alongside 'Working towards healthier living in partnership with:'. The Panel did not consider that the phrase and corporate logo in the poster provided by Merck Sharp & Dohme were a clear declaration of sponsorship as required by the Code; neither document complied with the Code and thus a breach was ruled.

The Panel considered that when interacting with the public at events sponsored by companies, it was extremely important to ensure that the requirements of the Code were met. Any company attendees, particularly representatives, should be given clear instructions about such involvement. The Panel noted its criticisms about the representatives and the failure to clearly disclose Merck Sharp & Dohme's involvement. It considered that overall high standards had not been maintained and a breach of the Code was ruled. The Panel did not consider that the matter brought discredit upon or reduced confidence in the pharmaceutical industry and no breach of Clause 2 was ruled.

An anonymous, non-contactable health professional complained about a public health fair (Health Mela) held in October 2013.

COMPLAINT

The complainant stated that he/she went to the public health fair out of curiosity after being told about it by a patient and finding marketing for it on the internet, a copy of which was provided. These events often raised more questions than answers for patients and so it was wise to look at what was being done.

The complainant submitted that part of the event, or in fact a major attraction of it, was health screening with a focus on the NHS health checks for heart diseases and diabetes. The complainant watched the screening with some concern as patients were easily seen and heard being tested and counselled. Patient confidentiality was a priority.

The complainant stated that he/she noticed a number of Merck Sharp & Dohme representatives hovering around the patient screening and listening intently and alleged that they appeared to be monitoring the screening process and even engaged with the public whilst they were waiting. The complainant recognised some of the people from his/her clinical practice.

From a discussion with one of the organisers, the complainant learnt that the Merck Sharpe & Dohme representative's avid interest was due to the fact that Merck Sharp & Dohme had paid for some of the resources that were being used to screen. The complainant alleged that they were clearly trying to gauge the effect of the screening and the results.

The complainant stated that this raised a number of concerns: Firstly that Merck Sharp & Dohme promotional representatives were actively engaged with patient screening and learning patient details. Secondly there was no mention at the event of the screening service being funded by Merck Sharpe & Dohme and finally there was no notice on the promotional flyer that Merck Sharp & Dohme had any involvement.

The complainant stated that that type of behaviour only served to proliferate the negative opinion of pharmaceutical companies by both professionals and public alike. The shameful behaviour of the representatives was a disgrace and the industry had not cleaned up its act.

When writing to Merck Sharp & Dohme, the Authority asked it to respond in relation to Clauses 2, 9.1, 9.10, 15.2, 15.9 and 18.4 of the Code.

RESPONSE

Merck Sharp & Dohme submitted that it carried out a full and thorough investigation including face to face interviews with the two representatives that attended as well as the lead organiser of the Health Mela. Following its investigation, Merck Sharp & Dohme was completely reassured that its representatives were nowhere near the patient screening area. In particular they did not learn or become exposed to patient information and were not monitoring, involved or interfering in any way with the health screening. Contrary to the document produced by the complainant, there was clear indication of Merck Sharp & Dohme's involvement with the meeting on the poster advertising the Health Mela, at the meeting itself and in the subsequent reports published on the organiser's website. Merck Sharp & Dohme submitted that high standards had been maintained at all times and it strongly refuted any allegations of wrong doing. There had been no breach of Clauses 2, 9.1, 9.10, 15.2 or 18.4 as alleged.

Merck Sharp & Dohme provided background to the National Forum for Health and Well Being (NFHW) and the Health Mela. The NFHW was a group that was set up by a local health users forum. In 2001, a group of health professionals and executive members of a local society set up a steering group to create an awareness of health inequalities amongst the local ethnic and social groups. The NFHW planned a community day of education, culture

and fun with an underlying objective to promote healthy living. The day was referred to as a 'Mela' – a hindu word meaning a gathering or festival. It was designed to engage the local community and mobilize and motivate members of the public to take an active and enjoyable part in their own health and well-being. The first Health Mela took place in 2001.

Since 2001 the Health Mela expanded to cover all sections of the community and became an annual event. Part of the cultural festival that was the core of the Health Mela was the work of the health olympics team. This was a group of volunteer medical students from the local university who, working under supervision, took responsibility for the Health MOT programme. It was this group that was involved in the screening on the day in question.

There were many partners in the Health Mela and the organisers stated that partnership was the trust essence of what the Health Mela was about. Partners included: Merck Sharp Dohme, another named pharmaceutical company, universities, hospitals, societies, the local council, and local TV.

A report taken from the website of the Health Mela that took place in September was provided. This was the latest report regarding a Health Mela available; the report on the Health Mela which was the subject of this complaint was not yet available.

During 2013 Merck Sharp & Dohme's involvement with the Health Mela changed. Merck Sharp & Dohme still wished to support it and provide LDX machines and consumables. The LDX machines which belonged to Merck Sharp & Dohme, that had been provided in 2012, had been disposed of. In addition, the involvement of Merck Sharp & Dohme with the Mela was now to be limited to the provision of LDX machines and consumables (ie no project management, no media support and no local marketing distribution). Merck Sharp & Dohme intended to provide LDX machines and consumables by leasing the LDX machines from a third party. Agreements were to be between the third party and the Health Mela organisers. These arrangements were documented in the minutes of the grants committee meeting, copies of which were provided. A quotation from the third party to Merck Sharp & Dohme for the provision of LDX machines and consumables was provided as was a letter of agreement between the third party and the NFHW detailing the arrangements and costs of the LDX machines and consumables.

Similar to 2012, Merck Sharp & Dohme's support of the Health Mela in 2013 was managed as a joint working project. A copy of the joint working agreement and certificate was provided.

From a head office and project perspective, it was not intended that Merck Sharp & Dohme should or would have any involvement in this activity other than to provide funding to the NFHW to supply LDX machines and associated consumables. Merck Sharp & Dohme submitted that in hindsight this project had changed from a bona fide joint working project in 2012 and would have been

more appropriately classified as a grant in 2013. Despite this, Merck Sharp & Dohme submitted that the requirements of Clause 18.4 were met. The LDX machines and consumables were provided to enhance patient care and benefit the NHS. No gift, pecuniary advantage or benefit was supplied or offered to any member of the health professions or administrative staff in connection with the promotion of any medicine.

Merck Sharp & Dohme noted that blood cholesterol testing was the only health screening which it supported and it was done by the provision of funds to NFHW to hire LDX machines and consumables. It was important to recognise that that component was only a small part of the health screening provided at the Health Mela by a large number of other partners to the NFHW and the Health Mela.

After initial investigation by Merck Sharp & Dohme, it became clear that two Merck Sharp & Dohme representatives had attended the Health Mela at issue and face to face interviews were arranged to get a clear, full and accurate account of what had happened on the day and to be able to respond to the complaint. A summary of the interviews was provided.

Merck Sharp & Dohme submitted that two representatives had attended the Health Mela in October in an unofficial capacity with a view to understand more about what was involved in the Mela and to show support for the meeting organisers. There was no Merck Sharp & Dohme stand or promotion of any Merck Sharp & Dohme medicine on the day by the representatives or anyone else on behalf of Merck Sharp & Dohme. The representatives were in casual non-business dress and they had not worn name badges. Merck Sharp & Dohme further submitted that there had been no interaction between the Merck Sharp & Dohme representatives and any patients and no patient information was gleaned or obtained and/or taken away by the two representatives. The representatives did not go anywhere near, interact with or get involved with the health screening part of the Mela. No record of their attendance at the Health Mela was recorded in the Merck Sharp & Dohme customer relationship management tool by either representative.

Merck Sharp & Dohme submitted that the representatives had entered the event and registered at the desk. They then proceeded directly along past the slide room – and stands through the hall to the front of a second hall. The health screening had taken place towards the back left hand side and was screened by exhibition stands to the best of Merck Sharp & Dohme's knowledge. After the speeches and performances, the representatives went to an area in the second hall and collected a fruit smoothie. Both representatives then left the second hall, went back through the first hall, back past the slide room – and stands only to stop momentarily by the registration desk to pick up a banana before leaving the event. The representatives had attended the event for approximately one hour. A plan of the rooms, was provided.

Merck Sharp & Dohme submitted that it had had a telephone interview with a health professional, committee member of the NFHW and events organiser of the Health Mela. The summary of the conversation was provided. The events organiser confirmed that as far as he/she and his/her staff were concerned the two Merck Sharp & Dohme representatives did not go anywhere near, interact with or get involved with the health screening part of the Health Mela.

A copy of a form provided to groups and institutions by means of an invitation to potential exhibitors and participants in the Health Mela was provided as was a copy of the patient information, collection, consent and GP referral form used at the Health Mela in October. Merck Sharp & Dohme submitted that neither of the documents were Merck Sharp & Dohme materials and that its representatives have never had sight or access to those forms either blank or completed. Merck Sharp & Dohme submitted that the events organiser had ensured it that patient confidentiality was maintained at all times.

Merck Sharp & Dohme submitted that as already stated, there was no promotion of Merck Sharp & Dohme products as part of the Health Mela either by Merck Sharp & Dohme employees or on behalf of Merck Sharp & Dohme. Merck Sharp & Dohme had provided funding to hire LDX machines and consumables which were used to measure blood cholesterol. There was no link to product or promotion whatsoever with that provision. Merck Sharp & Dohme submitted that it did have a product that was licensed for the reduction of blood cholesterol, Ezetrol (ezetimibe), and a copy of the summary of product characteristics was provided.

Merck Sharp & Dohme submitted that, according to the organisers, the poster provided by the complainant was not the final version and was not the version used to advertise the Health Mela. That version had been sent to a series of stakeholders, sponsors and supporters for review and comment before the final version was produced. Merck Sharp & Dohme submitted that whilst that version of the poster did not contain the Merck Sharp & Dohme logo, the version of the poster used to advertise the Health Mela and that was available on the NFHW website did. During the telephone interview, the events organiser confirmed that attendees were informed about Merck Sharp & Dohme's involvement as the company's logo appeared on the poster and notice on the table and registration desk. Merck Sharp & Dohme had not been able to obtain a copy of the latter notice. A copy of a report from a different Health Mela produced by the NFHW with no involvement from Merck Sharp & Dohme was provided. Merck Sharp & Dohme had submitted this report as the report for the Health Mela at issue was not yet available and it provided general background and information about a very similar event. It also showed that Merck Sharp & Dohme was acknowledged on page 2 as a major partner with a further different Health Mela and Merck Sharp & Dohme logos appeared on page 6 of the report.

In combination with details on the floor plans/room layouts, Merck Sharp & Dohme provided a list of

participants, exhibitors and partners involved with the 2013 Health Mela at issue.

Merck Sharp & Dohme submitted that although at the time of its response the report for the Health Mela was not yet available, there was an approximately 15 minute video of it on the nfhw website.

In conclusion Merck Sharp & Dohme submitted that even though the two representatives had not attended the Health Mela at issue in an official capacity, they had at all times maintained high standards of ethical conduct. The representatives did not attend the meeting in a promotional context and no promotion of any Merck Sharp & Dohme product had taken place. As such, no briefing materials were prepared for the representatives in relation to that activity and Merck Sharp & Dohme submitted that there had not been a breach of Clauses 15.2 or 15.9.

Merck Sharp & Dohme submitted that neither it nor its representatives had been given access to data/records that could identify or be linked to particular patients before, during or after the event. Merck Sharp & Dohme submitted that that patient confidentiality and the data protection legislation had been complied with by it and its representatives at all times. Merck Sharp & Dohme submitted that the provision of the LDX machines and associated consumables was not connected to any Merck Sharp & Dohme product or Merck Sharp & Dohme product promotion. They were provided to enhance patient care and benefit the NHS. They were not provided to an individual for personal benefit and were not an inducement to prescribe. As a result Merck Sharp & Dohme submitted that there had been no breach of Clause 18.4.

The involvement of Merck Sharp & Dohme appeared by means of a logo not only on the poster which advertised the Health Mela but also, according to the meeting organiser, at the registration desk at the meeting. Merck Sharp & Dohme submitted that its involvement with the day was displayed in a way that was proportionate to the company's involvement and in consideration of all other sponsors, participants, partners and supporters of the day. Merck Sharp & Dohme submitted that the appearance of its logo and acknowledgement of its involvement in the materials associated with the Health Mela and on the day was reasonable and as such Merck Sharp & Dohme submitted that there had been no breach of Clause 9.10.

Merck Sharp & Dohme submitted that as a result, it considered that high standards had been maintained at all times and that the reputation and confidence in the industry had not been compromised. Merck Sharp & Dohme submitted that there had been no breach of Clauses 9.1 or 2.

PANEL RULING

The Panel noted that the complainant was anonymous and non-contactable. As stated in the introduction to the Constitution and Procedure such complaints were accepted and like all complaints,

judged on the evidence provided by the parties. Complainants had the burden of proving their complaint on the balance of probabilities. The Panel noted that as the complainant was anonymous and non-contactable it was not possible to ask him/her for further information.

The Panel examined the material provided by the complainant. This gave details of the Health Mela and that it was free to attend. A list of activities included certain health checks and counselling including blood sugar and cholesterol testing as well as blood pressure checks. The flyer also mentioned the availability of activities for children ('Wii, smoothy bike, face painting and competitions') and complementary medicine taster workshops 'Reflexology, Reiki, Head massage, yoga etc'. At the bottom the poster stated 'Working towards healthier living in partnership with:' which was followed by 14 organisation/company logos. Merck Sharp & Dohme's logo did not appear.

The version of the poster provided by Merck Sharp & Dohme included the Merck Sharp & Dohme logo and 15 others.

It was not clear precisely where the complainant had obtained his/her poster; the complainant explained that it was from the internet. The Panel was unable to contact the complainant for more information. However the Panel noted that Merck Sharp & Dohme had provided a summary of a telephone conversation with the lead organiser of the event who stated that there were approximately 4 versions of the poster. The Mela had so many partners who all wanted changes and there was limited space, time and funds to produce the poster.

The Panel noted that the accounts of the events differed between the complainant and the respondent. The Panel considered that supporting the Health Mela *per se* was not necessarily unacceptable. Any pharmaceutical company involvement had to comply with the Code.

According to the joint working agreement documentation which covered the Melas, Merck Sharp & Dohme's support included project management for each of the three events to optimize efficient cholesterol screening; assistance in promoting one Mela to mosques and financial support for cholesterol screening of attendees at all three events. Merck Sharp & Dohme's total financial support was limited to £3,556.01 for the hire of LDX machines and purchase of disposables. The actual cost of the machine and consumables for the three meetings according to the invoice was £3,345.01 plus VAT (£4,014.01). Merck Sharp & Dohme stated that only the machines and consumables had been paid for. No additional support was provided. This differed from the joint working agreement.

The Panel noted that Merck Sharp & Dohme had considered its support of the Mela in question was a joint working arrangement. The Panel did not necessarily agree that this was so. In its response to the complaint Merck Sharp & Dohme stated that this project would have been more appropriately classified as a grant in 2013. However this was

not the subject of complaint so the Panel did not consider this point further. Merck Sharp & Dohme needed to be clearer about the basis of its support and to ensure the documentation was consistent with what actually happened.

The Panel noted that two Merck Sharp & Dohme representatives attended the Health Mela. Merck Sharp & Dohme provided details of their movements whilst at the Health Mela and explained that they attended in an unofficial capacity. It was not entirely clear whether the representatives were attending in a professional or personal capacity. The representatives had attended to understand what was involved and to show support for the meeting organisers. One of the representatives explained that her manager had suggested she attend. The other representative explained that she had attended primarily as a relationship development exercise. The reason for attending with the first representative was that he/she knew some of the organising committee. The Panel decided that the representatives had attended in a professional capacity and the company was responsible for their attendance. The Panel was concerned that the representatives had not worn badges to identify that they were Merck Sharp & Dohme employees. Both the company and the organiser were clear that the two Merck Sharp & Dohme representatives had not watched the health screening whereas the complainant had a different view. It was unclear how the organiser would be able to comment on this so definitely unless the representatives were closely shadowed at the event.

In cases like this it was often helpful, prior to the Panel making a ruling, to ask the complainant to comment on the company's response. This was not possible as the complainant was non-contactable. The Panel noted that there was no briefing material for the representatives regarding their attendance at the Health Mela. No products had been promoted by the representatives and according to Merck Sharp & Dohme they had not discussed work matters with those health professionals to whom they spoke. It would have been helpful if the company had provided clear instructions to the representatives attending the event. This was especially so given one of the representatives' managers had suggested attendance and the company's involvement in the event. In the Panel's view it should have been made abundantly clear to the representatives that they were attending in an official capacity. The layout of the rooms meant that the screening appeared to be very public and potentially people could listen in to the screening. Those deciding to be screened would be aware of the public nature of this before deciding to proceed, although they would not have known that the representatives were in the room where the screening took place. Contrary to the complainant's assertion, Merck Sharp & Dohme submitted that the representatives did not go near to, interact with or get involved with the screening.

The Panel has serious concerns about the representatives' attendance and conduct at the Mela as outlined above. However the Panel did not consider that the complainant had established that the representatives had actively engaged with

patient screening and on this narrow ground the Panel ruled no breach of Clause 15.2. The Panel considered that the failure to provide any briefing material at an event which involved the public, which the representatives had been asked to attend and with which the company was involved was concerning but given the wording of Clause 15.9, this did not amount to a breach of that clause. No breach was ruled.

With regard to the declaration of Merck Sharp & Dohme's involvement, the Panel noted that the flyer provided by the complainant did not have the company logo. The Panel noted its comments above in this regard. It also noted the submission from Merck Sharp & Dohme that the flyer used for the meeting included the Merck Sharp & Dohme logo. Further there was said to be a notice on the table and registration desk. Merck Sharp & Dohme had not been able to obtain a copy of this document.

The Panel noted the requirements of Clause 9.10 and considered that although attendees would be aware that Merck Sharp & Dohme had supported the event it was not sufficiently clear that those being screened would immediately understand the extent of the company's involvement. The position was not helped as the company had been unable to provide a copy of the material made available at the registration desk. The poster provided by the

complainant bore no declaration and that provided by Merck Sharp & Dohme bore a corporate logo alongside 'Working towards healthier living in partnership with:'. The Panel did not consider that the phrase and corporate logo in the poster provided by Merck Sharp & Dohme were a clear declaration of sponsorship as required by Clause 9.10. Neither document complied with Clause 9.10 and thus a breach of that clause was ruled.

The Panel considered that when interacting with the public at events sponsored by companies, it was extremely important to ensure that the requirements of the Code were met. Any company attendees, particularly representatives, should be given clear instructions about such involvement. The Panel noted its criticisms about the representatives and the failure to clearly disclose Merck Sharp & Dohme's involvement. It considered that overall high standards had not been maintained and a breach of Clause 9.1 was ruled. The Panel did not consider that the matter brought discredit upon or reduced confidence in the pharmaceutical industry and no breach of Clause 2 was ruled.

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