

GENERAL PRACTITIONER v MERCK SHARP & DOHME

Conduct of a representative

A general practitioner complained about the conduct of a named representative who, at the time, worked for Organon.

The complainant alleged that the representative was particularly close and openly physically intimate with his GP partner who had told reception staff that the representative was always to be granted access to the practice. The complainant objected to the behavior and noted that although it was agreed that representatives would not be seen by an individual partner, they did not comply. The complainant stated that the GP partner's relationship with the representative had been longstanding and included her attending and providing funding for a practice barbecue party.

The complainant stated that the representative told the practice manager that he had made inappropriate comments to another representative who could have complained but did not do so. The GP partner relied on the representative's report to make allegations against the complainant.

The complainant subsequently declared that allegations made by the representative had been used by his GP partner in legal proceedings and in a statement to the General Medical Council (GMC). Merck Sharp & Dohme was so informed.

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

The Panel noted that all complainants had the burden of proving their complaint on the balance of probabilities. Complaints were judged on the evidence provided by the parties. The Panel noted that in this case the complainant had referred to the conduct of a representative which had allegedly occurred when the representative worked for a company which through two acquisitions, became the responsibility, in 2010, of Merck Sharp & Dohme. The complainant had not provided any evidence to support his allegations. The representative in question no longer worked for Merck Sharp & Dohme and relevant historical records from the time that she worked for Organon/Schering Plough were no longer available. In the Panel's view, given the circumstances, this was not unreasonable.

The Panel noted Merck Sharp & Dohme's submission that two line managers both remembered the representative as an exemplary employee. In that regard, the Panel queried why, if the representative had conducted herself as alleged, the practice had not complained about her behaviour at the time. Neither the complainant nor Merck Sharp & Dohme had referred to such a complaint.

The Panel did not know the precise date in 2008 of the alleged activities, but pragmatically decided to make rulings in this case according to the 2008 Code.

The Panel decided that it had no evidence to show that the representative had funded a practice barbecue as alleged nor to show that the representative had not complied with the practice's wishes that representatives would not be seen by individual partners. No breaches of the 2008 Code were ruled. The Panel noted its rulings and considered that it had no evidence to show that the representative had not maintained a high standard of ethical conduct; no breach was ruled including no breach of Clause 2 of the 2008 Code.

A general practitioner complained about the conduct of a named representative when she worked for Organon.

COMPLAINT

The complainant alleged that the representative enjoyed a particularly close and openly physically intimate relationship with his GP partner who had issued standing orders to reception staff that she was always to be granted access to the practice. It was their practice to sit together on a sofa and engage in playful physical behaviour. The complainant stated that he objected to this behaviour and, although it was agreed that representatives would not be seen by an individual partner, they did not comply.

The complainant stated that the representative reported to the practice manager that he had made inappropriate comments to another representative although he understood that his alleged victim was invited to make a complaint but did not do so. The complainant explained that his GP partner relied on the representative's report to make allegations against him.

The complainant stated that the relationship between the GP partner and the representative had been longstanding and included her attending, and funding at his invitation, a practice barbecue party held at the complainant's home in about 2008. The representative also invited practice staff to her party in 2008.

When writing to Merck Sharp & Dohme, the Authority asked it to consider Clauses 2, 9.1, 15.2, 15.4 and 22.1 of the 2015 Code. It was noted that depending upon when the activities at issue occurred, the equivalent clauses in other editions of the Code might be relevant.

The complainant subsequently declared that allegations made by the representative had been

used by his GP partner in legal proceedings and in a statement to the General Medical Council (GMC). Merck Sharp & Dohme was so informed.

RESPONSE

Merck Sharp & Dohme stated that it was extremely disappointed that a GP felt compelled many years after the alleged events to complain to the PMCPA. Given the elapsed time, investigation into the matter had been very difficult. Nevertheless, the company took any allegation of inappropriate conduct of its staff very seriously and immediately launched a full investigation.

Merck Sharp & Dohme submitted that it could not interview the representative in question as she left the company some time ago. The complaint related to a time when the representative was employed by Organon Laboratories Limited which was acquired by Schering-Plough Limited in 2007. Schering-Plough Corporation was subsequently acquired by Merck and Co. Inc (called Merck Sharp & Dohme outside of the US and Canada) in 2009; the local business transfer took place in 2010. This transition of businesses and the passage of time meant that Organon's records for 2008 of representative expenses and meetings were no longer available. Further, Merck Sharp & Dohme no longer had access to any archive of Organon standard operating procedures relevant to that time. Merck Sharp & Dohme confirmed that the representative had taken and passed her ABPI examination.

As a consequence of the time between the alleged incident and the complaint being made, Merck Sharp & Dohme stated that it was unable to identify any evidence that the representative funded or attended any practice barbecue or acted inappropriately at the practice. Merck Sharp & Dohme could not verify whether or not practice staff attended the representative's party. Therefore, Merck Sharp & Dohme could find no evidence of having breached Clauses 22.1, 15.4, 15.2, 9.1 or 2 of the 2008-2011 Code or the 2015 Code.

During the investigation, Merck Sharp & Dohme spoke to the representative's line managers from the periods before and after the alleged incident. Both were extremely surprised by the allegations, recalling the representative as an exemplary employee, who always complied with the Code and never had any disciplinary concerns.

Merck Sharp & Dohme noted that although it related to a time period before 2008 as referred to by the complainant, it was relevant that the manager responsible for the representative remembered the GP practice in question, but he had no memory of ever being told about any relationship between the representative and one of the other GPs in the practice. He recalled that the representative was concerned about the complainant's inappropriate behaviour towards her and so he advised her that if she felt uncomfortable she no longer needed to call on the practice. Merck Sharp & Dohme noted that the complainant was subject to a GMC fitness to practice panel hearing where he was issued with a

formal warning; he had confirmed this as a conflict of interest with regard to this complaint.

PANEL RULING

The Panel noted that all complainants had the burden of proving their complaint on the balance of probabilities. All complaints were judged on the evidence provided by the parties. The Panel noted that in this case the complainant had referred to the conduct of a representative which had allegedly occurred in 2008, when she had worked for a company which through two acquisitions, became the responsibility, in 2010, of Merck Sharp & Dohme. The complainant had not provided any evidence to support his allegations. The representative in question no longer worked for Merck Sharp & Dohme and relevant historical records of the meetings that she had held or expenses that she had claimed when working for Organon/Schering Plough, were no longer available. In the Panel's view, given the circumstances, this was not unreasonable.

The Panel noted Merck Sharp & Dohme's submission that two of the representative's line managers remembered her as an exemplary employee. In that regard, the Panel queried why, if the representative had conducted herself as alleged, particularly with the complainant's GP practice partner, the practice had not complained about her behaviour at the time. Neither the complainant nor Merck Sharp & Dohme had referred to such a complaint.

The Panel noted that the complainant had referred in particular to activities which allegedly took place in 2008. The 2008 edition of the Code came into operation on 1 July of that year. The Panel did not know the date in 2008 of the alleged activities, but pragmatically decided to make rulings in this case according to the 2008 Code. The case preparation manager had asked Merck Sharp & Dohme to consider the requirements of Clauses 2, 9.1, 15.2, 15.4 and 22.1 of the 2015 Code. The requirements of Clauses 2, 9.1, 15.2 and 15.4 were similar in the 2008 Code and the 2015 Code. Clause 22.1 of the 2015 Code was Clause 19.1 of the 2008 Code.

The Panel decided that it had no evidence before it to show that the representative had funded a practice barbecue in 2008 as alleged; no breach Clause 19.1 of the 2008 Code was ruled. Similarly, the Panel decided that it had not been provided with any evidence to show that the representative had not complied with the practice's wishes that representatives would not be seen by individual partners; no breach of Clause 15.4 of the 2008 Code was ruled. The Panel noted its rulings and considered that it had no evidence before it to show that the representative had not maintained a high standard of ethical conduct; no breach of Clauses 15.2 and 9.1 of the 2008 Code was ruled. Similarly, the Panel ruled no breach of Clause 2 of the 2008 Code.

Complaint received **27 July 2015**

Case completed **2 September 2015**