

ANONYMOUS, NON-CONTACTABLE v TEVA

Conduct of a representative

An anonymous, non-contactable complainant alleged that between July 2017 and October 2017, a named individual, employed by Teva as an account manager contacted/visited a named private hospital and falsely presented him/herself as an authorised adviser/specialist of another company with regard to that company's cell-based autologous product which was strictly regulated in the UK by the Medicines and Healthcare products Regulatory Agency (MHRA) and the Human Tissue Authority (HTA).

The complainant stated that the representative in question had no authority to represent the other company. He/she had never been engaged by that company nor trained as required on its product or any of the company's standard operating procedures etc. The complainant submitted that the last contact between the representative and the hospital was an email to the hospital in October.

The detailed response from Teva is given below.

The Panel noted that the complainant was anonymous and non-contactable. The Constitution and Procedure for the Prescription Medicines Code of Practice Authority stated that anonymous complaints would be accepted but that like all other complaints, the complainant had the burden of proving his/her complaint on the balance of probabilities. All complaints were judged on the evidence provided by the parties. The complainant had provided no evidence to support his/her allegations and could not be contacted for more information.

The Panel noted that the parties' accounts differed. Teva stated that its representative had never visited the hospital in question and had never presented him/herself as a representative from another company.

The Panel noted, however, that according to Teva the representative had in a personal capacity, on request of a health professional, emailed a management consultant at the private hospital about the possibility of that hospital obtaining a HTA licence. The representative had previously worked with the health professional whilst employed by another pharmaceutical company. The health professional had provided a letter stating that the representative in question had not attended the private hospital either on his/her behalf or on behalf of the other company and that the representative had offered to help with the HTA licence application as a friend and ex-colleague. The Panel queried whether this account was entirely consistent with Teva's submission that the email was sent at the request of the health professional.

The Panel had some concerns about the representative's activities. The complainant had alleged that the representative had 'contacted/visited' the hospital. Whilst Teva had submitted evidence in support of its position that the representative had not attended the hospital it was, nonetheless, agreed that the representative had emailed the hospital. The Panel noted the email sent by the representative and Teva's submission that the representative had acted as a private individual and friend of a health professional at another hospital. The Panel did not consider that the matter was so straightforward. The representative had previously, whilst employed by another pharmaceutical company, worked professionally with the health professional employed at another hospital and according to that health professional had gained the specialist knowledge to do the HTA forms correctly. The email thus related to the representative's professional expertise albeit whilst employed by another pharmaceutical company. According to the complainant, the representative was now employed in a relevant area although Teva had not commented in this regard. The email was sent from the representative's personal email account and its content implied a degree of familiarity with the recipient. The email did not make it clear that the representative was not acting on behalf of Teva or any other pharmaceutical company; it was not sufficiently clear about the status of the representative. From the email, it would not be unreasonable to assume that the representative was acting on behalf of a company including a pharmaceutical company. In the Panel's view, companies should give representatives clear and unambiguous guidance to cover such personal interactions. Such interactions, especially when they involved healthcare matters, might potentially be covered by the Code. Companies should be mindful of the impression given. The Panel considered that the email was inextricably linked to the representative's professional status and related to healthcare; it was thus covered by the Code. Whilst there was no evidence that the representative had stated that he/she represented a company with commercial interests in human tissue as alleged, the representative had not been sufficiently clear about his/her status as set out above and was thereby misleading on this point. High ethical standards had not been maintained by the representative and a breach of the Code was ruled.

The Panel considered that there was no evidence that the representative had sought an appointment or had an interview and so no breach of the relevant clause was ruled. Similarly, there was no allegation that the representative had sought to employ any

inducement or subterfuge in relation to an interview and thus no breach of the Code was ruled.

With regard to high standards, the Panel considered that the matter was covered in relation to the conduct of the representative by its ruling of a breach of the Code above. There was no evidence that the company had encouraged such activity. No breach of the Code was ruled.

The Panel noted its rulings above and considered that the circumstances did not warrant a ruling of a breach of Clause 2 which was used as a sign of particular censure and was reserved for such use.

An anonymous, non-contactable complainant complained about the conduct of a named representative with Teva UK Limited when he/she contacted/visited a named private hospital.

COMPLAINT

The complainant alleged that between July 2017 and October 2017, the representative in question contacted/visited the named hospital and falsely presented him/herself to the health professionals as an authorised, trained and specialist representative of another company. The representative presented himself/herself as an adviser/specialist of the company in the area of Human Tissue Authority (HTA) licensing for procurement, storage, supply, distribution and testing (including specific blood testing) of the company's cell-based autologous product which was strictly regulated in the UK by the Medicines and Healthcare products Regulatory Agency (MHRA) and the HTA. The complainant alleged that the representative did this whilst solely engaged and employed by Teva in a relevant role. The last contact between the representative and the hospital was an email from the representative to the hospital.

The complainant stated that the representative in question had no authority to present him/herself as representing the other company nor its products in any capacity or manner. The representative had never been engaged by that company and had never had the compulsory training on its human tissue regenerative product as required by the regulatory authorities. Nor was the representative trained on the other company's quality assurance/quality management system, standard operating procedures, processes and pathways which were also a compulsory training requirement for representing the product or company.

When writing to Teva, the Authority asked it to consider the requirements of Clauses 2, 9.1, 15.2, 15.3 and 15.5 of the Code.

RESPONSE

Teva submitted that the representative had never visited the private hospital named by the complainant and in that regard it provided a copy of his/her call reporting summary for 1 June to 31 October 2017. Further, the representative had never presented him/herself to any health professional as

an authorised, trained and specialist representative from another company. The representative had never promoted any products for Teva or any other organisation to any health professional at the private hospital in question and he/she had never represented the other company or any other organisation while employed by Teva. Teva noted that the other company knew about the complaint and had proactively stated that the representative had never represented that company.

Teva noted that the representative had emailed a management consultant at the private hospital at the request of a trauma and orthopaedic health professional employed at another hospital. The health professional wanted to establish a service and had asked the representative if he/she could assist with the forms, as a private individual and a personal friend, not as a pharmaceutical company representative. The health professional had proactively emailed Teva, to confirm this and express concern.

Teva submitted that the representative had maintained high standards at all times and had not employed any subterfuge or inducement; he/she had never visited the private hospital in question or misled anyone as to his/her identity or that of the company he/she represented. The company denied breaches of Clauses 9.1, 15.2, 15.3 and 15.5. As there were no activities associated with promotion the company also denied a breach of Clause 2.

PANEL RULING

The Panel noted that the complainant was anonymous and non-contactable. The Constitution and Procedure for the Prescription Medicines Code of Practice Authority stated that anonymous complaints would be accepted but that like all other complaints, the complainant had the burden of proving his/her complaint on the balance of probabilities. All complaints were judged on the evidence provided by the parties. The complainant had provided no evidence to support his/her allegations and could not be contacted for more information.

The Panel noted that the parties' accounts differed. The Panel noted that Teva denied the allegations. It stated that its representative had never visited the hospital in question and in support provided a copy of the representative's call reporting summary for 1 June to 31 October 2017. In addition, Teva submitted that the representative had never represented him/herself as a representative from any another company.

The Panel noted however that according to Teva the representative had in a personal capacity emailed a management consultant at the private hospital at the request of a trauma and orthopaedic health professional about the possibility of that hospital obtaining a HTA licence. The email stated that the representative was happy to support the application of a licence. The representative had previously worked with the health professional whilst employed by another pharmaceutical company. The health professional had provided a letter stating that

the representative in question had not attended the private hospital either on his/her behalf or on behalf of the other company and stated that the representative in question had offered to help him/her with the HTA licence application in his/her own time, as a friend and ex-colleague. The Panel queried whether this account was entirely consistent with Teva's submission that the email was sent at the request of the health professional.

The Panel had some concerns about the representative's activities. The Panel noted that the complainant alleged that the representative in question had 'contacted/visited' the hospital. The Panel noted that the complainant was anonymous and non-contactable. Whilst Teva had submitted evidence in support of its position that the representative had not attended the hospital it, nonetheless, agreed that the representative had emailed the hospital. The Panel noted the email sent by the representative and Teva's submission that the representative had acted as a private individual and friend. The Panel did not consider that the matter was so straightforward. The representative had previously, whilst employed by another pharmaceutical company, worked professionally with the health professional and according to him/her had gained the specialist knowledge to do the HTA forms correctly. The email thus related to the representative's professional expertise albeit whilst employed by another pharmaceutical company. According to the complainant, the representative was now employed in a relevant therapeutic area although Teva had not commented in this regard. The email was sent from the representative's personal email account and its content implied a degree of familiarity with the management consultant. The email did not make it clear that the representative was not acting on behalf of Teva or indeed any other pharmaceutical company. In the Panel's view the email was not sufficiently clear about the status of the representative. It would not be unreasonable for anyone reading the email to assume that the representative was acting on behalf of a company including a pharmaceutical company. In the Panel's view, companies should give representatives clear and unambiguous guidance to cover such personal interactions. Such interactions, especially when they involved healthcare matters, might potentially be

covered by the Code. Companies should be mindful of the impression given by such activities. The Panel considered that the email was inextricably linked to the representative's professional status and related to healthcare; it was thus covered by the Code. Whilst there was no evidence before the Panel that the representative had stated that he/she represented the other company, a company with relevant commercial interests in human tissue as alleged, the representative had not been sufficiently clear about his/her status as set out above and was thereby misleading on this point. High ethical standards had not been maintained by the representative and a breach of Clause 15.2 was ruled.

The Panel considered that there was no evidence that the representative had sought an appointment or had an interview and thus considered that Clause 15.5 did not apply. No breach of that clause was ruled. Similarly, there was no allegation that the representative had sought to employ any inducement or subterfuge in relation to an interview and thus Clause 15.3 did not apply. No breach of Clause 15.3 was ruled.

With regard to Clause 9.1, the Panel considered that the matter was covered in relation to the conduct of the representative by its ruling of a breach of Clause 15.2. There was no evidence before the Panel that the company had, in any way, encouraged such activity. No breach of Clause 9.1 was ruled.

The Panel noted Teva's submission that as there were no activities associated with promotion there could be no breach of Clause 2. The Panel considered that it was important to note that Clause 2 was broadly interpreted as evidenced by published cases and the relevant supplementary information which included breaches of undertaking and other non-promotional activities and materials. Nonetheless, the Panel noted its rulings above and considered that the circumstances did not warrant a ruling of a breach of Clause 2 which was used as a sign of particular censure and was reserved for such use.

Complaint received	24 October 2017
Case completed	11 January 2018