

PARAGRAPH 17/DIRECTOR v SERVIER

Training material

During its consideration of Case AUTH/1889/8/06, some training material in the form of a slide set which instructed representatives on how to access hospital health professionals came to the Panel's attention. The Panel queried whether the material met the requirements of the Code which stated that briefing material must not advocate, either directly or indirectly, any course of action which would be likely to lead to a breach of the Code. The Panel was also concerned that the material did not maintain high standards and brought the industry into disrepute. The Panel decided to take the matter up as a fresh complaint in accordance with Paragraph 17 of the Authority's Constitution and Procedure.

The Panel was extremely concerned regarding the content of the training material, which did not refer at any point to the requirements of the Code. Whilst the Panel accepted that representatives needed to be told about hospital management structure and the status of those health professionals they were likely to encounter such discussions should be placed firmly within the context of the Code.

The Panel noted Servier's material advised representatives to 'Try to establish if there is a protocol for representatives to follow'. It was not made clear that the existence or otherwise of a protocol should be established at the outset, prior to or on entering a hospital. Nor was the importance of compliance with it stressed.

The Panel was very concerned that the material encouraged access to all levels of health professionals, appropriate administrative staff and others including secretaries, and all parts of the hospital without stating that such access must comply with the Code including the requirement that promotion be tailored to the audience. One slide stated 'Potentially access any grade of doctor!' and 'Access Ward Nurses themselves'. Another slide about bleeping referred to junior doctors without reminding the representatives that not all hospitals would allow them access to junior members of staff. A slide headed 'Other sources of information' listed, *inter alia*, security staff, cleaners and in conclusion 'ANYONE!' thus giving the impression that representatives could freely approach absolutely anybody in the hospital environment for information about health professionals. That was not so. No caveats appeared in the speaker notes. An additional slide, which appeared only in the speaker notes, was headed 'Alternative access places' and listed, *inter alia*, coffee shops, hospital restaurants, library and laboratories. The Panel queried whether it would ever be acceptable to access health professionals in, say, the hospital library in the absence of an express invitation to do so and bearing in mind any relevant hospital policy.

The Panel considered that the training material encouraged predatory behaviour in a hospital environment and advocated a course of action likely to lead to a breach of the Code. A breach of the Code was ruled. High standards had not been maintained and the material was likely to bring the industry into disrepute; breaches of the Code were ruled including Clause 2.

COMPLAINT

In Case AUTH/1889/8/06 the Panel was extremely concerned about whether some training material specifically for NHS project co-ordinators (NHSPCs) met the requirements of the Code. Clause 15.4 of the Code stated that representatives must ensure that the frequency, timing and duration of calls on health professionals, administrative staff in hospitals and health authorities and the like, together with the manner in which they were made did not cause inconvenience. The wishes of individuals on whom representatives wished to call and the arrangements in force at any particular establishment, must be observed. The training material described access to doctors, nurses and pharmacists in secondary care. Within a section headed 'Useful things to know...', 'Pharmacy', representatives were advised to 'Try to establish if there is a protocol for representatives to follow'. It was essential that representatives were aware of hospital policy regarding access. It was not made clear that this should be established at the outset. Reference was made to befriending secretaries as quickly as possible and building relationships with ward managers and sisters. No caution was expressed in relation to the relevant requirements of the Code in this regard.

In relation to ward nurses representatives were instructed to 'Spec on wards'. Representatives could 'access clinic nurses themselves' and 'access ward nurses themselves'. The presentation contained a slide listing all grades of nurses including student and auxiliary nurses. All grades of doctors had also been listed including medical students. Representatives were advised that the mess president might provide bleep numbers and although some advice was given regarding the use of bleeps, representatives were told that on wards they could 'Potentially access any grade of doctor!'. The presentation did not state that such access must comply with the Code in particular Clauses 15.2 and 15.4. Despite the wide range of health professionals referred to; consultants, pharmacists etc, there was no instruction to tailor promotion. In the Panel's view it was inappropriate for representatives to actively seek out medical students, student nurses or auxiliary nurses. Such staff were neither health professionals nor appropriate administrative staff. One slide stated that clinics/out patients and wards were to be treated like a GP practice. The Panel queried whether this was appropriate. A slide headed 'other sources of information' listed *inter alia*, switchboard, post room, posters, security staff, cleaners and in conclusion 'ANYONE!'. The Panel queried whether seeking information about health professionals and access to them from a cleaner, or the post room would ever be appropriate given the requirements of Clauses 15.2 and 15.4 of the Code.

Given its comments above the Panel queried whether the training material met the requirements of Clause 15.9 of the Code which stated that briefing material must not advocate, either directly, or indirectly any course of action which would be likely to lead to a breach of the Code. The Panel was also concerned that such material did not maintain high standards and brought the industry into disrepute contrary to Clauses 9.1 and 2. The Panel decided to take the matter up as a fresh complaint (case AUTH/1906/10/06) in accordance with Paragraph 17 of the Authority's Constitution and Procedure.

RESPONSE

Servier agreed that it was essential that representatives were aware that hospital protocols were to be followed at all times and took every opportunity to ensure that representatives were instructed to do so.

In the NHSPC training course, where the presentation that concerned the Panel was presented, another presentation on the Code was delivered, which clearly instructed and reminded representatives of their obligations.

Servier considered all training given to the representatives as instruction and not advice and the consequences for disobeying these instructions could be severe. The slide entitled 'Pharmacy' instructed representatives to make the pharmacy the 'First port of call' with further instruction to 'Try and establish if there is a protocol for representatives to follow'. This instruction was unambiguous. In addition, the Code training presentation required all representatives to have understood Clause 15 of the Code; the requirements of Clauses 15.2 and 15.4 were described verbatim. The instruction to try and establish if a protocol existed was therefore absolutely clear and reinforced on at least one other occasion in the training course. Representatives were therefore appropriately instructed in the requirements of Clause 15 on more than one occasion during this training and no breach had occurred.

Servier acknowledged that representatives were instructed to befriend secretaries and build relationships with ward managers as described by the Panel; it was not inappropriate for this to happen. Secretaries booked appointments for health professionals and it was therefore important for representatives to be on good professional terms with them in order to facilitate appropriate appointment making. Ward sisters increasingly influenced prescribing and were also often sources of key information such as how a representative might approach a health professional without causing offence or nuisance. Again these instructions to representatives must be taken in the context of the Code presentation which, *inter alia*, defined health professionals and described the requirements of Clause 18. The Panel would recall that, in addition, these requirements were reinforced by a bulletin from the chief executive. In light of all this instruction, given on numerous occasions to the representatives, a considerable amount of caution had indeed been expressed.

The slide that listed the grades of nurses and doctors was for the representatives' information only. It was inappropriate not to fully brief representatives on all potential professionals and training grades that they might encounter when performing their duties within the Code. However representatives were not asked or incentivised to call upon individuals who were not health professionals or appropriate administrative staff. In addition to this, the Code training presentation clearly stated who health professionals were as defined in the Code, thereby ensuring that inappropriate calling did not occur. Representatives were not encouraged to actively seek out medical students, student nurses and auxiliary nurses as alleged and thus no breach of Clause 15.9 had occurred.

Servier considered that a health professional's time was important and needed to be respected. Most hospital representatives came from primary care sales and would know the importance of this; as mentioned previously representatives were instructed to obey all local protocols. In terms of provision of care for patients, out-patient clinics were indeed similar to GP surgeries and thus similar instruction was appropriate. The suggestion that the care provided in a GP surgery was any less important than an out-patient clinic in a hospital was not a position that Servier endorsed.

The slide entitled 'Other sources of information' was designed to help the representatives understand where general information might be sourced. These 'other sources of information' would not have information about health professionals that might be of use to representatives, nor was this implied in Servier's training materials. Information that these professionals might provide could include the location of wards or offices and the like. The seeking of such information from these sources was not inappropriate.

The training presentation directly referred to by the Panel was had been certified as complying with the requirements of the Code. The certificate was provided. The training material was still in use. Another presentation giving instruction on access to health professionals was the Code presentation.

Servier believed that the presentation at issue complied with the Code and in particular did not breach or suggest actions that might result in a breach. Furthermore this presentation was given on the same course as a presentation reaffirming the representatives' responsibilities on the Code itself which was unequivocal on the requirements of the Code. In light of this Servier denied breaches of Clauses 15.9 and Clause 9.1.

Nothing within either briefing material would bring discredit upon or reduce confidence in the pharmaceutical industry and thus Servier did not believe that Clause 2 had been breached.

In response to a request for further information Servier provided the slides with speaker notes for the NHSPC presentation, advising that representatives at the course were given paper copies of the slides (not speaker notes) of both the 'Code training for ITP' and the NHSPC presentation. These were the only

presentations given to these representatives on this course with respect to accessing doctors.

The primary care representatives were also given the presentation 'Code Training for ITP' presentation both during the course and as a handout. In addition they were given a separate presentation on selling skills, copies of which were provided together with the speaker notes. They received no other training in respect to access to doctors.

All the representatives were given a copy of the latest Code and a copy of 'The Code in the Field' to ensure that they understood the Code and their responsibilities within it.

PANEL RULING

The Panel was extremely concerned regarding the content of the NHSPC training material. The slide set did not refer at any point to the requirements of the Code. Whilst the Panel accepted that representatives needed to be told about hospital management structure and the status of those health professionals they were likely to encounter such discussions should be placed firmly within the context of the Code. In particular the requirements of Clauses 15.2 and 15.4 should be made abundantly clear.

The Panel noted Servier's submission about the need to establish the existence of a hospital protocol. The Panel noted that the relevant reference appeared on a slide entitled 'Pharmacy', in the 'Hospitals, A Golden Opportunity' section of the NHSPC presentation, after the detailed lists of customers (doctors, pharmacists and nurses). It was not made clear that the existence or otherwise of a protocol should be established at the outset, prior to or on entering a hospital. Nor was the importance of compliance with it stressed. The speaker notes were silent on this point.

The Panel was concerned that when listing potential customers all grades of doctors, nurses and pharmacists were listed (including auxiliary nurses and medical students) without any reference to Clause 12 of the Code which required promotion to be tailored towards the audience.

The Panel was very concerned that the presentation encouraged access to all levels of health professionals,

appropriate administrative staff and others including secretaries, and all parts of the hospital without stating that such access must comply with the Code. The Code was not referred to in the speaker notes. One slide stated 'Potentially access any grade of doctor!' and 'Access Ward Nurses themselves'. Another slide about bleeping referred to junior doctors without reminding the representatives that not all hospitals would allow them access to junior members of staff. A slide headed 'Other sources of information' listed, *inter alia*, security staff, cleaners and in conclusion 'ANYONE!' thus giving the impression that representatives could freely approach absolutely anybody in the hospital environment for information about health professionals. That was not so. No caveats appeared in the speaker notes. An additional slide, which appeared only in the speaker notes, was headed 'Alternative access places' and listed, *inter alia*, coffee shops, hospital restaurants, library and laboratories. The Panel queried whether it would ever be acceptable to access health professionals in, say, the hospital library in the absence of an express invitation from the doctor to do so and bearing in mind any relevant hospital policy.

The Panel considered that the training material encouraged predatory behaviour in a hospital environment and the slide set advocated a course of action likely to lead to a breach of the Code. A breach of Clause 15.9 was ruled. High standards had not been maintained and the material was likely to bring the industry into disrepute; breaches of Clauses 9.1 and 2 were ruled.

The Panel did not consider that the separate 'Code training for ITP' presentation was sufficient to negate the misleading impression given in the NHSPC slide set. Whilst the overall training provided to the representatives was relevant, each presentation had to stand alone with regard to compliance with the Code. Further, the 'Code training for ITP' presentation simply reproduced clauses of the Code and did not link the detailed examples given in the presentation at issue with the relevant clauses.

Proceedings commenced 25 October 2006

Case completed

21 December 2006