CASE AUTH/3673/7/22

COMPLAINANT v DAIICHI SANKYO

Allegations about a press release for Nilemdo and Nustendi

CASE SUMMARY

This case was in relation to a press release for Nilemdo (bempedoic acid) and Nustendi (bempedoic acid and ezetimibe) by Daiichi Sankyo UK Ltd.

The Panel ruled a breach of the following Clauses of the 2021 Code because the contraindication with simvastatin >40mg daily was not immediately apparent when reference to therapeutic use of Nilemdo with oral treatments to lower cholesterol was referred to, which was misleading. This might prejudice patient safety and was such as to reduce confidence in, and bring discredit upon, the pharmaceutical industry:

Breach of Clause 6.1	**Providing misleading information**
Breach of Clause 5.1	**Failing to maintain high standards**
Breach of Clause 2	**Bringing discredit upon, and reducing confidence in, the pharmaceutical industry**

The Panel ruled no breach of the following Clauses of the 2021 Code because:

- **the statement with regard to Nustendi, unlike with Nilemdo, did not refer to its use with other lipid-lowering treatments and the complainant had not established why the contraindication was required**
- **it did not consider that the complainant had established that the information that NICE had 'issued a Final Appraisal Document (FAD) recommending bempedoic acid and bempedoic acid / ezetimibe for treating primary hypercholesterolaemia (heterozygous familial and non-familial) or mixed dyslipidaemia as an adjunct to diet, only if statins are contraindicated or not tolerated, and ezetimibe alone does not control low-density lipoprotein cholesterol well enough, on the NHS in England' was misleading as alleged**
- **the complainant had not provided reasons as to why, in their view, the press release was incapable of substantiation.**

No Breach of Clause 6.1	**Requirement that claims/information/comparisons must not be misleading**
No Breach of Clause 6.2	**Requirement that claims/information/comparisons must be capable of substantiation**

This summary is not intended to be read in isolation.
For full details, please see the full case report below.

FULL CASE REPORT

A complaint was received from an anonymous, contactable complainant about a press release for Nilemdo (bempedoic acid) and Nustendi (bempedoic acid and ezetimibe) by Daiichi Sankyo UK Ltd.

Nilemdo and Nustendi were both indicated in certain adults with primary hypercholesterolaemia (heterozygous familial and non-familial) or mixed dyslipidaemia, as an adjunct to diet.

COMPLAINT

The complainant alleged that a press release concerning Nilemdo and Nustendi was misleading. The press release had the opening statement of 'NILEMDO® (bempedoic acid) is a novel, first-in-class, oral treatment which lowers cholesterol, and can be combined with other oral treatments to help lower cholesterol even further'. The complainant alleged that this statement was not correct. Concomitant use with simvastatin >40 mg daily was a contra-indication to using Nilemdo so to claim it could be combined with other oral treatments was misleading; Nustendi also had the same contraindication and this information was not provided in the press release.

The complainant stated that claims about NICE recommendation in the press release were also missing important information that NICE only recommended use of the products if the company provided bempedoic acid and bempedoic acid with ezetimibe according to the commercial arrangement. The complainant provided a link to the NICE guidance and to the press release.

The complainant stated that it was concerning that twosenior medical employees had not challenged this press release being sent on mass considering the reach of press releases and alleged breaches of Clauses 6.1, 6.2, 5.1 and 2.

When writing to Daiichi Sankyo, the Authority asked it to consider the requirements of Clauses 2, 5.1, 6.1 and 6.2 of the 2021 Code cited by the complainant, but noted that the date of the press release, according to the pharmiweb website, was 18 March 2021 and listed the corresponding clauses in the 2019 Code namely Clauses 2, 9.1, 7.2 and 7.4.

RESPONSE

Daiichi Sankyo explained that the complaint related to the coverage from a press release (DSC/21/0127/March 2021) which Daiichi Sankyo released to journalists in the UK on 18 March 2021.

The purpose and intent of this press release was to communicate the National Institute for Health and Care Excellence (NICE) Final Appraisal Determination (FAD) on the use of two of Daiichi Sankyo's medicines via NHS reimbursement. The subject content was solely focussed on the details of the NICE FAD and was appropriate for the recipient audience. The decision to issue a press release at this stage was in line with normal business practice. Daiichi Sankyo submitted that the content was highly newsworthy and was deemed to be of interest for journalists and media publications that cover consumer health, science and industry trade media issues.

Daiichi Sankyo submitted the material underwent a full examination by a medical signatory and was distributed by the corporate communications team. It was not intended for healthcare professionals and was approved for UK journalists only.

Daiichi Sankyo stated that the screenshot of the material that the complainant had provided, as part of the complaint, was not the full press release that was approved under examination by Daiichi Sankyo UK and disseminated to UK Journalists. The approved and distributed press release (DSC/21/0127 / March 2021) included further information on the product's indications, links to the summary of product characteristics (SPC) for both Nilemdo and Nustendi and contained information on adverse events from its phase 3 studies.

Daiichi Sankyo submitted, as the Panel would be aware when a press release is issued, unless the eventual publication was commissioned or sponsored by the company, the company had no control over the editorial decision in how a journalist or media outlet chose to report news or publish coverage.

Daiichi Sankyo disagreed with the allegation that the content of the press release, including the headline statement 'NILEMDO® (bempedoic acid) is a novel, first-in-class, oral treatment which lowers cholesterol, and can be combined with other oral treatments to help lower cholesterol even further' was misleading.

Daiichi Sankyo submitted the licensed indications for Nilemdo and Nustendi for clarification were as below:

> 'Nilemdo is indicated in adults with primary hypercholesterolaemia (heterozygous familial and non-familial) or mixed dyslipidaemia, as an adjunct to diet:
>
> - in combination with a statin or statin with other lipid-lowering therapies in patients unable to reach LDL-C goals with the maximum tolerated dose of a statin (see sections 4.2, 4.3, and 4.4) or,
> - alone or in combination with other lipid-lowering therapies in patients who are statin-intolerant, or for whom a statin is contraindicated.
>
> Nustendi is indicated in adults with primary hypercholesterolaemia (heterozygous familial and non-familial) or mixed dyslipidaemia, as an adjunct to diet:
>
> - in combination with a statin in patients unable to reach LDL-C goals with the maximum tolerated dose of a statin in addition to ezetimibe (see sections 4.2, 4.3, and 4.4)
> - alone in patients who are either statin-intolerant or for whom a statin is contraindicated, and are unable to reach LDL-C goals with ezetimibe alone,
> - in patients already being treated with the combination of bempedoic acid and ezetimibe as separate tablets with or without statin.'

Daiichi Sankyo submitted that the press release did not make any suggestion that these products could be combined with all other treatments, but instead communicated appropriately that it 'can be combined with other' oral treatments to support patients to lower their cholesterol further. It was not the intention of the press release to act as a prescribing guide for prescribers, but simply to inform on the positive FAD decision from NICE which facilitated patient access to these treatments.

Daiichi Sankyo noted the complainant's concern that the concomitant use with simvastatin >40mg contraindication should have been included. According to Daiichi Sankyo, as outlined above, this press release was approved and released to UK journalists, with an interest in health-related news, to communicate the NICE FAD on the use of two of Daiichi Sankyo's medicines via NHS reimbursement. Owing to the nature of the announcement, the factual subject content of the press release on the NICE recommendation along with the intended audience, Daiichi Sankyo UK submitted that it did not think that it was [either] appropriate or relevant to include this specific contraindication with Nilemdo and Nustendi in such a press release. Additionally, no suggestion was made in this press release that these products did not have any associated contraindications.

Daiichi Sankyo submitted, as per the Code, that it was considered good practice to provide the regulatory information comprising the SPC along with press release material. In line with this recommendation, the press release in question included links to the SPC for both Nilemdo and Nustendi where further information could have been accessed by the journalist for any additional information they might have required. Daiichi Sankyo believed that the approved press release provided information relevant for the journalists to whom the press release was disseminated, was relevant to the subject content of the press release and provided links to all references included for ease of access for the journalists should they require additional information.

In line with the requirements of Clause 6.1, Daiichi Sankyo submitted that the information provided in this headline statement, to which the complainant referred, was accurate, factual, objective and appropriate for the intended audience. It was reflective of the licensed indications for both Nilemdo and Nustendi and in line with the requirements of Clause 6.2, could be substantiated by the SPC for both products, available via the links below:

- Nilemdo 180mg film-coated tablets - Summary of Product Characteristics (SmPC) - (emc) (medicines.org.uk)
- Nustendi 180mg/10mg film-coated tablets - Summary of Product Characteristics (SmPC) - (emc) (medicines.org.uk).

Daiichi Sankyo submitted that the document which the complainant provided a link to was for the technology appraisal guidance (TA694), which was not the subject of the press release announcement. The press release concerned the publication of the final appraisal determination (FAD) which was earlier in the process and separate to the document hyperlinked. This was an important distinction that should be acknowledged.

Daiichi Sankyo submitted that the press release was created in a manner to be short, concise, and to stick to the core detail that was appropriate for the audience. It was not appropriate to include information relating to procurement arrangements, discounts, or pricing agreements. Additional documentation in the format of a 'Frequently Asked Questions' document (copy provided) was also provided to journalists as part of the press pack which covered the commercial arrangement detailed in the FAD.

Daiichi Sankyo submitted that, additionally, the press release did not imply that the medicine could be provided and reimbursed outside of the terms of NICE's FAD recommendation. Daiichi Sankyo stated that all NICE technology appraisal recommendations were based upon cost-effectiveness appraisals and often reference usage being subject to a commercial agreement

between the NHS and the manufacturer. Daiichi Sankyo submitted it did not have the option to supply the medicine to the NHS outside the terms of this agreement.

Daiichi Sankyo submitted the most important element of the communication related to the overall decision by NICE to recommend a new medicinal option, alongside the commentary from the company and two external stakeholders (a patient group and healthcare professional respectively). The press release provided links to the FAD where the journalist could refer to for further information on the specifics, including commercial arrangements agreed with the company.

Summary

Daiichi Sankyo submitted that based on the responses provided and material submitted, it refuted all allegations of Code breaches. As there had been no breach of Clauses 6.1 or 6.2, there was no evidence that high standards had not been maintained meaning that there had not been a breach of Clause 5.1. Daiichi Sankyo submitted, consequently, that there was no evidence it had prejudiced patient safety and thus no breach of Clause 2. Daiichi Sankyo UK stated that it took its obligations under the ABPI Code of Practice seriously, strove to maintain high standards and always behaved responsibly and ethically.

PANEL RULING

The Panel noted it was an accepted principle that complaints about third party articles in the press etc were judged upon the acceptability of the information provided to that third party by the pharmaceutical company, such as any press release, unedited interview etc rather than the final published article. The Panel noted Daiichi Sankyo's submission that the complaint related to the coverage from a press release (DSC/21/0127/March 2021) which Daiichi Sankyo released to journalists in the UK on 18 March 2021.

The Panel noted that it appeared that the information on the pharmiweb website that was the subject of the complaint was an exact replica of the press release issued by Daiichi Sankyo.

The Panel noted the press release issued by Daiichi Sankyo started with the following title and three bullet points, prior to the body of the press release:

> 'First new cholesterol-lowering oral treatments in over a decade, NILEMDO®▼ (bempedoic acid) and NUSTENDI®▼(bempedoic acid / ezetimibe), approved for use on the NHS.
>
> - High blood cholesterol increases the risk of cardiovascular disease, which causes over a quarter of all UK deaths
> - NILEMDO® (bempedoic acid) is a novel, first-in-class, oral treatment which lowers cholesterol, and can be combined with other oral treatments to help lower cholesterol even further
> - NUSTENDI® (bempedoic acid / ezetimibe) is a novel oral treatment which combines two complementary ways of reducing cholesterol in a convenient once-daily tablet.'

The press release went on to state that NICE had 'issued a Final Appraisal Document (FAD) recommending bempedoic acid and bempedoic acid / ezetimibe for treating primary

hypercholesterolaemia (heterozygous familial and non-familial) or mixed dyslipidaemia as an adjunct to diet, only if statins are contraindicated or not tolerated, and ezetimibe alone does not control low-density lipoprotein cholesterol well enough, on the NHS in England', amongst other things.

The Panel noted that Section 4.1, Therapeutic indications, of the Nilemdo SPC referred the reader to Sections 4.2 (posology and method of administration), 4.3 (contraindications) and 4.4 (special warnings and precautions for use) when referring to the use of each medicine in combination with a statin (emphasis added by the Panel below):

> 'Nilemdo is indicated in adults with primary hypercholesterolaemia (heterozygous familial and non-familial) or mixed dyslipidaemia, as an adjunct to diet:
>
> - **in combination with a statin** or statin with other lipid-lowering therapies in patients unable to reach LDL-C goals with the maximum tolerated dose of a statin **(see sections 4.2, 4.3, and 4.4)** or,
> - alone or in combination with other lipid-lowering therapies in patients who are statin-intolerant, or for whom a statin is contraindicated.'

The Panel considered that Sections 4.2, 4.3 and 4.4 of the SPC gave important safety information in relation to concomitant use with simvastatin including that Nilemdo was contraindicated in patients taking simvastatin >40mg daily.

The Panel considered that whether a contraindication needed to be highlighted within a particular section of material depended on a consideration of all of the circumstances including the nature of the contraindication and the content, layout, audience and intended use of the material.

The Panel noted Daiichi Sankyo's submission that the press release was approved and released to UK journalists, with an interest in health-related news, to communicate the NICE FAD on the use of two of Daiichi Sankyo's medicines via NHS reimbursement. According to Daiichi Sankyo, owing to the nature of the announcement, the factual subject content of the press release on the NICE recommendation, along with the intended audience, it did not think that it was appropriate or relevant to include this specific contraindication with Nilemdo and Nustendi in such a press release and the press release in question included links to the SPC for both Nilemdo and Nustendi, where further information could have been accessed by the journalist for any additional information they might have required.

The Panel disagreed with Daiichi Sankyo's submission, in this regard, noting that the Code required, amongst other things, that all information must be accurate and must not mislead and material must be sufficiently complete to enable recipients to form their own therapeutic value of the medicine. Claims and information must be capable of standing alone with regard to accuracy etc, and it was an established principle that companies could not rely on additional information within the SPC to qualify a claim or negate a misleading impression. In addition, the Panel considered that whilst the press release was issued to journalists, the end recipient of the information within the press release would have included a much broader audience, noting the press release issued by Daiichi Sankyo stated 'For Consumer and Medical/Trade media'.

Whilst the Panel noted that it stated in the body of the press release that NICE had 'issued a Final Appraisal Document (FAD) recommending bempedoic acid and bempedoic acid /

ezetimibe for treating primary hypercholesterolaemia (heterozygous familial and non-familial) or mixed dyslipidaemia as an adjunct to diet, **only if statins are contraindicated or not tolerated**' **(emphasis added by the Panel)**, it noted the second headline bullet point specifically referred to therapeutic use of Nilemdo **in combination with other oral treatments (emphasis added by the Panel)** to help lower cholesterol even further. The headline bullet point, in the Panel's view, endorsed far broader use than the restriction of the NICE recommendation.

The Panel considered the immediate and overall impression of the material to a reader. In the Panel's view, given that simvastatin was a commonly prescribed lipid-lowering treatment, the contraindication regarding concomitant use with simvastatin >40mg daily needed to be immediately apparent to health professionals in material which referred to therapeutic use of Nilemdo in combination with oral treatments to help lower cholesterol even further; the statement 'NILEMDO® (bempedoic acid) is a novel, first-in-class, oral treatment which lowers cholesterol, and can be combined with other oral treatments to help lower cholesterol even further' should thus have made the contraindication in patients taking simvastatin >40mg daily immediately apparent to readers. The Panel considered that the sole inclusion of a link to the Nilemdo SPC, did not negate the misleading immediate impression given in the body of the material that Nilemdo could be used therapeutically in combination with any oral lipid lowering treatment, which was not so. Therefore, **a breach of Clause 6.1** was ruled.

With regard to the complainant's reference to Nustendi having the same contraindication of concomitant use with simvastatin >40 mg daily which had, allegedly, not been provided in the press release, the Panel noted that the statement with regard to Nustendi, unlike with Nilemdo, did not refer to its use with other lipid-lowering treatments. In this regard, the Panel considered the complainant had not established why the contraindication was required and therefore **no breach of Clauses 6.1** was ruled.

The Panel noted the complainant's further concern that claims about NICE recommendation in the press release were missing important information that NICE only recommended use of the products if the company provided bempedoic acid and bempedoic acid with ezetimibe according to the commercial arrangement.

The Panel noted that the NICE recommendation stated, amongst other things, that:

> 'Bempedoic acid with ezetimibe is recommended as an option for treating primary hypercholesterolaemia (heterozygous familial and non-familial) or mixed dyslipidaemia as an adjunct to diet in adults. It is recommended only if:
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> - statins are contraindicated or not tolerated
> - ezetimibe alone does not control low-density lipoprotein cholesterol well enough and
> - the company provides bempedoic acid and bempedoic acid with ezetimibe according to the commercial arrangement.'

The Panel noted that whilst the press release included reference to the first two points, no reference was made to the last. The Panel noted Daiichi Sankyo's submission that the press release did not imply that the medicine could be provided and reimbursed outside of the terms of NICE's FAD recommendation; all NICE technology appraisal recommendations were based upon cost-effectiveness appraisals and often referenced usage being subject to a commercial

agreement between the NHS and the manufacturer. According to Daiichi Sankyo, it did not have the option to supply the medicine to the NHS outside the terms of this agreement.

The Panel considered that whilst it might have been helpful to include the information that Nilemdo and Nustendi were only recommended if provided, according to the commercial arrangement, on the evidence before it, the Panel did not consider the complainant had established that the information that NICE had 'issued a Final Appraisal Document (FAD) recommending bempedoic acid and bempedoic acid / ezetimibe for treating primary hypercholesterolaemia (heterozygous familial and non-familial) or mixed dyslipidaemia as an adjunct to diet, only if statins are contraindicated or not tolerated, and ezetimibe alone does not control low-density lipoprotein cholesterol well enough, on the NHS in England' was misleading as alleged and **no breach of Clauses 6.1** was ruled.

The Panel noted the complainant cited Clause 6.2 but had not provided reasons as to why, in their view, the press release was incapable of substantiation in this regard; it was not for the Panel to infer detailed reasons to support an allegation on behalf of the complainant and therefore the Panel ruled **no breach of Clause 6.2**.

The Panel noted its comments and ruling of a breach of Clause 6.1 in relation to Nilemdo above and considered that Daiichi Sankyo had failed to maintain high standards in this regard and **a breach of Clause 5.1** was ruled.

The supplementary information to Clause 2 listed prejudicing patient safety as an activity likely to lead to a breach of that Clause. The Panel was concerned that in referring to therapeutic use in combination with oral treatments to help lower cholesterol further, without mentioning that Nilemdo was contraindicated with simvastatin>40mg, particularly given that simvastatin was a commonly prescribed lipid-lowering treatment, meant that there was a risk that some patients on simvastatin >40mg daily might be inappropriately treated with Nilemdo. Patient safety was of the utmost importance and the Panel considered that the contraindication with simvastatin >40mg daily was not immediately apparent when reference to therapeutic use with oral treatments to lower cholesterol was referred to. This might prejudice patient safety and was such as to reduce confidence in, and bring discredit upon, the pharmaceutical industry. **A breach of Clause 2** was ruled.

Complaint received **1 July 2022**

Case completed **13 September 2023**