

Simmonds, Martine

From: Ken Harvey [k.harvey@latrobe.edu.au]
Sent: Wednesday, 14 December 2005 9:00 AM
To: Adjudication
Cc: David Graham; Joan Corbett; Tony Abbott MP; Julia Gillard MP
Subject: Application A90994-6 by Medicines Australia re revised Code of Conduct [15th Ed]

The General Manager
Adjudication Branch
Australian Competition & Consumer Commission PO Box 1199 DICKSON ACT 2602

Re: Application A90994-6 by Medicines Australia re revised Code of Conduct [15th Ed]

Dear Mr. Gregson,

I write in response to your letter dated December 5, 2005. I ask that interim authorization of Medicines Australia Code NOT be allowed on the grounds that this would give prima facie approval to a self-regulatory Code that is fundamentally flawed in its revision process, content and management.

For example:

Medicines Australia Code revision process only involves consumer, medical and government organisations / departments that have an intimate and often dependent relationship with the pharmaceutical industry. It excludes organisations such as the Australian Consumer's Organisation and the Doctor's Reform Association which have a specific policy of independence from the pharmaceutical industry. The end result is a "self-regulatory" process that is self-serving to vested interests rather than the public health.

Despite considerable published concern [1-2] about the recent infiltration of pharmaceutical promotion onto GP's computer screens (which patients are encouraged to share) new content in the 15th Edition has only produced cosmetic rather than substantive amendments to the Code in this area (see 3.9.1). Other areas of concern, such as mandating standards to ensure the legibility of generic names (by insisting that they have the same size, font, color and background as a brand name on computer screens of varied resolution) have also not been adequately addressed (see 3.9.7).

There has been publicly expressed concern that management of Code breaches by Medicines Australia has failed to deter unethical behavior by the pharmaceutical industry as evidenced by the fact that many pharmaceutical companies repeatedly breach the Code, probably because the fines imposed are minuscule in relationship to the money gained from promotional excess (and Code breaches). These concerns have also been ignored in the latest Code revision.

The end result is a Code which encourages inappropriate demand and prescribing of heavily promoted drugs that is often not in accord with cost-effective best-practice. This is one reason why the cost of the Pharmaceutical Benefits Scheme has increased exponentially over the last decade (at about 11% per annum, twice the increase of medical or hospital services). In response, the government has recently introduced large increases in co-payments and safety-nets (transferring more of the costs of the PBS from government to consumers) which have inevitably resulted in poorer consumers forgoing necessary medicines to the detriment of their health.

Given the above, my response to your specific questions are as follows:

1. Is the Code effective: No!
2. Should parts of the Code be amended: Yes.
3. Will public benefits flow from granting immunity to the Code: Not until it is substantially improved.
4. Does the Code result in detriment to competition or the public: No detriment to competition but certainly detriment to the public health and public good!

A more complete analysis of the deficiencies of Edition 15 of Medicines Australia Code

and Medicines Australia self-regulatory system will be provided by January 20, 2006. Meanwhile, I have provided some additional references that may assist the ACCC in its deliberations on this matter.

In conclusion, I reiterate that interim authorization should NOT be allowed on the grounds that this would give prima facie approval to a self-regulatory Code that fails to address well publicized problems and is currently causing consumer detriment.

REFERENCES

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http://www.mja.com.au/public/issues/183_02_180705/har10263_fm.html
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5. United Kingdom House of Commons Health Committee. The influence of the pharmaceutical industry. London: Stationery Office, 2005.
<http://www.publications.parliament.uk/pa/cm200405/cmselect/cmhealth/42/42.pdf>

Sincerely,

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