

ACCC Pre-determination Meeting Monday 12 November 2012

Submission by Prof Philip Morris

Dear Meeting Chair Commissioner Court,

I would like to thank the ACCC for the opportunity of having my submission read out to participants at the start of the meeting since I am not able to be at the meeting in person.

I requested this meeting because I believe the ACCC is making a mistake in authorizing the Medicines Australia Code of Conduct for three years.

In 2009 the ACCC in its final determination noted the following:

Sponsorship of healthcare professionals to attend educational events

5.43. At the conference, Professor Philip Morris submitted that sponsorship carries greater influence on the behaviour of healthcare professionals compared to the receipt of various brand name reminders, and considers that public disclosure of sponsorships provided by pharmaceutical companies to healthcare professionals should form part of the Code. Professor Morris submits that sponsorship is usually targeted at opinion leaders and is generally extensive, including overseas travel and accommodation.

5.44. Dr Harvey and Dr Vitry submit that the pharmaceutical industry is going through unprecedented change in terms of an acceptance of the need for transparency.

5.45. Professor Morris submits that public disclosure of the names of the recipients of sponsorship would increase transparency, and that the medical profession should be made aware of any monetary ties a speaker has with a pharmaceutical company and the value of these ties.

5.49. The ACCC accepts there is likely to be merit in providing greater transparency around the sponsorship provided to healthcare professionals by pharmaceutical companies to attend educational events. However more work is needed to be done to address the issues such as privacy and the effects of greater transparency on a range of stakeholders.

5.50. The ACCC encourages industry and Medicines Australia to consider these issues with respect to the disclosure and transparency of such sponsorship.

Despite this recommendation by the ACCC Medicines Australia has done little on responding to this request and proposed no changes to its Code on the matter of individual

disclosure and transparency. Medicines Australia has offered to set up a transparency working group which will report by the end of 2013. There is no commitment to present a change to the Code at that time and there is no commitment that any proposal will be incorporated into the Code before the three-year period of ACCC authorization has expired.

This arrangement will mean that the implementation of adequate individual transparency concerning gifts (cash payments, honorariums, and sponsorship in-kind support) from pharmaceutical companies to health practitioners will be delayed for three years. This is completely unsatisfactory given the importance of transparency around gifts for the maintenance of public confidence in the health professions and the pharmaceutical industry.

I note in the ACCC draft determination the ACCC proposes to restrict the authorization period to three years despite Medicines Australia requesting a five-year period. The ACCC reduced the period to three years so that Medicines Australia could finish work on transparency issues and make any necessary changes to the Code.

If the ACCC is serious in its desire to expedite the inclusion of appropriate transparency arrangements in the Code and if Medicines Australia is committed to do the same, then the requisite work of the transparency working group and a recommendation about changing the Code could be completed and submitted to the ACCC for re-authorization by the end of 2013. This would mean that a revised Code of Conduct incorporating rules regarding individual disclosure and transparency could be in place by the start of 2014.

The importance of individual disclosure and transparency of payments and gifts from the pharmaceutical industry to health practitioners cannot be overemphasized. Cash payments and honoraria are paid to health practitioners for participation in pharmaceutical company advisory boards and meetings, and as speaker's fees. Sponsorship in-kind support is given to health practitioners to attend national and international professional meetings.

In my opinion these gifts are not given to any health practitioner - they are reserved for key opinion leaders (health practitioners who by their standing are likely to influence the practice of medicine and prescription of drugs) and to health practitioners who have experience prescribing large amounts of companies' medications.

These payments can amount to substantial amounts of money (especially in the case of overseas business class travel, five star accommodations, and registration fees to expensive

international conferences with associated pre-meeting and post-meeting gatherings, to far away and expensive destinations - up to \$20,000 per gift) on any one occasion and some health practitioners receive multiple gifts of this nature per year. Indeed some health practitioners can get to rely on one or two overseas trips per year being sponsored by pharmaceutical companies.

In this setting it is not surprising that conflicts of interest arise. This is especially the case when the amounts involved in the gifts are large and when the health practitioner might hope a similar gift might be offered in the future.

Conflict of interest temptations can be in the form of errors of commission or errors of omission. Errors of commission involve promoting pharmaceutical products of the company providing the payments or sponsorship in-kind support. Errors of omission involve minimizing or overlooking adverse qualities of pharmaceutical products of the company providing the payments or sponsorship in-kind. I have encountered conflict of interest challenges in both directions.

The problem with the current arrangements in the Code of Conduct is that these conflict of interest issues and the way individual health practitioners deal with them are hidden from the health professions and from the public.

There needs to be a transparent and accountable way that gifts from the pharmaceutical industry to individual health practitioners is monitored so that professional practice and advice to the professions and the public is seen to be independent of inappropriate influence. Ultimately this will involve an individual register of payments and sponsorship in-kind to health professionals being made available to professional organizations, government and to the public.

Health professionals who accept gifts from pharmaceutical companies do this on a free-will basis. There is no compulsion to accept these gifts and there is no professional requirement to accept company payments, honoraria or sponsorship in-kind. Therefore, health professionals who know that these payments will be made transparent and who are not comfortable with this will be free to decline the gifts. While legitimate privacy issues need to be addressed, the greater good is achieved by public disclosure of these payments that are at present hidden.

The health professions and the public are aware that pharmaceutical companies provide gifts to health professionals. At the moment these gifts to individual

health professionals are hidden. This concealment raises the risk of bringing the health professions into disrepute. The transparent disclosure of gifts as requested by the ACCC will work to enhance the standing of the health professions and the pharmaceutical industry.

In summary, I would like to ask the ACCC to make the following changes to its draft determination.

1. Reduce the period of authorization of the Code of Conduct to one year (2013).
2. Request Medicines Australia to submit a revised Code to include arrangements covering transparency of relationships between the pharmaceutical industry and individual health professionals for authorization at the end of 2013.
3. Request Medicines Australia increases the number of informed critics of their current Code regarding transparency matters on the transparency working group. I would be pleased to assist Medicines Australia in this capacity.

Dr Ken Harvey will be able to expand on these points in my absence.

Thank you.

Prof Philip Morris.