

## Pfitzner, Laura

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**From:** Philip Morris <pmorris@iprimus.com.au>  
**Sent:** Sunday, 23 November 2014 10:18 PM  
**To:** Macrae, Tess  
**Cc:** Ken Harvey  
**Subject:** ACCC submission

21/11/2014

ACCC  
Tess Macrae

I respond to the recent submission of Medicines Australia 'Application for Revocation and Substitution A91436-A91440 of 21/11/2014'. I would be pleased if my response was published on the ACCC website before the pre-decision conference on 28 November 2014.

In the item 1 'Summary' and in the item 2 'Condition requiring amendment of s 41.2.3 of the Code' of the Medicines Australia submission Medicines Australia argues for a one year delay of implementation of the new transparency arrangements from October 2015 to October 2016. No cogent reasons are provided for this delay. The demand for the delay overlooks the fact that there will likely be a ten-month period from authorization of the Code (in late 2014) until application of the Code in October 2015. In this time appropriate notification of member companies of Medicines Australia and health care professionals can be undertaken to inform them of the changes in the Code and especially in the mandatory transparency reporting arrangements for those health care professionals wishing to accept gifts or transfers of value from companies. Informing health care professionals of changes to the transparency arrangements can be done quickly through the general and professional media and by direct (email and regular mail) contact with health care professionals. The ten-month period available for preparation for implementation of the transparency arrangements will not affect educational programs planned by companies or the relationships between companies and health care professionals aware of the new transparency reporting arrangements. Therefore there is no reason for the ACCC to accept a delayed implementation of the revised transparency arrangements incorporated into the ACCC Draft Determination 17 October 2014.

In item 2 'Condition requiring amendment of s 41.2.3 of the Code' Medicines Australia argues that a health care professional who initially consents to the new transparency arrangements on accepting a gift or transfer of value offering and who subsequently withdraws consent should be allowed to keep the gift or transfer of value secret. Acceptance of this proposal from Medicines Australia will completely defeat the mandatory nature of the new transparency arrangements. Health care professionals and companies will quickly become aware that this option is open and will take advantage of it. The advice by the Privacy Commissioner indicated that as long as health care professionals were aware of the nature of the new transparency arrangements and would reasonably expect that disclosure would take place, then Medicines Australia companies would not be breaching privacy laws in disclosing transfer of value payments. This is the case whether or not a health care professional consents to the transparency arrangements. Therefore there is no need to provide an excuse for Medicines Australia to allow gifts or transfers of value to health care professionals to be kept secret. The ACCC should reject this proposal by Medicines Australia.

In item 3 'No condition should be imposed with respect of hospitality reporting' I would agree with the Medicines Australia proposal that hospitality expenses do not need to be reported if the total amount per health care professionals per event is kept below AUD\$120. As I have noted in previous submissions to the ACCC on these matters, the main concern regarding conflict of interests arising from financial transactions and transfers of value or gifts from the pharmaceutical industry to health care professionals relates to substantial gifts or transfers of value, not pens, cups of coffee, sandwiches or modest meals. The industry does not offer substantial gifts to all members of the health care or medical professions. Rather, the industry targets health care professionals who are key opinion leaders (and certain others) for significant

gifts or transfers of value because these individuals have the capacity to influence clinical practice. Transparency arrangements that expose these more significant potential conflicts of interest should have priority in the revised Code of Conduct.

In item 5 'Centralized database' Medicines Australia notes that within six months of authorization of the Code it will liaise with member companies to set up a process to establish a centralized database for publication of the transfers of value by individual health care professionals. I consider this to be a too vague undertaking – no timeline is given as to when a centralized database will be established. In the first instance I recommend the ACCC require Medicines Australia to ask each of its member companies to immediately set up their own publicly accessible databases showing transfers of value for individual health care professionals. This will then allow patients, health care professionals, professional associations, professional bodies and colleges to access this information in order to assess matters relating to potential conflicts of interest. Using this experience and following liaising with Medicines Australia member companies, health care professionals and their professional associations, and patient groups and advocates, I suggest over the next two years Medicines Australia should be asked to set up a centralized database to be operational by October 2017.

Prof Philip Morris