

## Pfitzner, Laura

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**From:** Philip Morris  
**Sent:** Friday, 9 January 2015 11:17 PM  
**To:** Plumridge, Natalie  
**Cc:** Macrae, Tess  
**Subject:** Re: Medicines Australia Limited - application for reauthorisation of Code of Conduct - pre-decision conference meeting record [SEC=UNCLASSIFIED]

Transparency and financial relationships between doctors and the pharmaceutical industry

Transparency and financial relationships between doctors and the pharmaceutical industry was a hot topic reaching a crescendo late last year when the ACCC held a pre-decision forum after it delayed authorising the new Medicines Australia Code of Conduct.

It is no small matter. Some doctors receive substantial gifts or 'transfers of value' from the pharmaceutical industry with a monetary value that can reach into the tens of thousands of dollars a year with the potential of further gift support in future years.

Currently, these gifts are kept secret from public view.

Some in the profession don't think this is a big deal – it is a private matter between the doctor and the pharmaceutical company. Others are not so sure – and I am one of the latter.

Financial payments or transfers of value of this kind raise the possibility of significant conflicts of interest in the doctor's role as an independent and unbiased adviser to the medical profession and the public more widely, and in the prescribing of medicines to individual patients.

While these gifts are kept private, there is no way physician colleagues, professional associations, or medical colleges on the one hand, or patients and patient advocates, or the public on the other hand can check for conflicts of interest in advice given or the prescribing habits of physicians receiving these gifts.

For the past six years, I, along with others, have been campaigning for these gifts to be made transparent. The most recent opportunity was the application of Medicines Australia (MA) to have its Code of Conduct Edition 18 authorised by the Australian Competition and Consumer Commission (ACCC).

Usually industry associations like MA seek ACCC authorisation when any practices included in a code could be seen to be anti-competitive. Authorisation protects the members of the association from prosecution. However, the ACCC's decision must be based on the public's interest.

Its recent draft determination recommends authorisation of the MA Code subject to it having a public interest requirement that includes transparency features where significant transfers of value to health care practitioners are publicly disclosed. This will allow previously unknown potential conflicts of interest to be identified.

Before making a final decision the ACCC held a public meeting in late November of interested parties to discuss the draft determination. Most participants agreed that the transparency arrangements should be mandatory. That is, if a health care practitioner (eg doctor) is offered a gift (or transfer of value or other form of payment) and the practitioner accepts the gift, then this gift (converted to a monetary amount) would be made public, not in aggregate form, but in terms of an accounting of the value to the individual practitioner.

This new transparency model would mean that any practitioner entering into an agreement with a pharmaceutical company involving a transfer of value or gift would do so with the understanding that the transfer of value would be made public as identified payments to that particular practitioner.

No consent is required and therefore no consent given can be withdrawn. The Privacy Commissioner's advice has confirmed that this is an appropriate way to avoid the transparency arrangements conflicting with privacy law. If a practitioner does not want the transfer of value to be made public then the practitioner is free to reject the gift.

At the pre-determination meeting, MA tried to argue that it was better if a practitioner gave consent first to have transfers of value made public. It then argued that if a practitioner accepted and used the gift, but later withdrew consent, the transfer of value should be kept unseen.

Of course this 'opt out' clause would make a mockery of the transparency arrangements. Most non-pharmaceutical company attendees rejected this proposal.

Timing of the introduction of these transparency arrangements and the public disclosure of individuals' transfers of value was also hotly debated. When should these transparency arrangements be implemented? MA wants the transparency aspects of the Code to be delayed until October 2016, however, in my view, its reasons were not persuasive.

Once the ACCC makes a final determination early this year, it would not take more than six months for MA companies and health care practitioners to be made aware of the new arrangements and to implement methods of compliance. Therefore a start-up deadline of no later than the end of 2015 should be acceptable.

MA will be required to set up a centralised repository or database for making public all transfers of value to individual practitioners. This could take some time, perhaps up to two years.

In the meantime, I believe the best way forward is for all MA companies to start recording transfers of value to individual practitioners and making this information available on a 3-6 monthly basis on the MA website. This would make the information available to consumers (and their advocate organisations) and to clinicians (and their professional associations and colleges) when assessing conflicts of interest arising from financial relationships between health care professionals and the pharmaceutical industry.

The ACCC determination is an important opportunity to make the relationship between health practitioners and pharmaceutical companies more transparent. I hope it is not a wasted one.

Philip Morris.

#### UK initiative on transparency

This UK initiative is good as far as it goes (see BMJ article - BMJ 2014;350:g7748 doi: 10.1136/bmj.g7748 [Published 2 January 2015]). But the main problem is there is an 'opt-out' clause that allows doctors who receive pharmaceutical industry gifts to withdraw consent for the transfers of value to be made public and still benefit from the gift. The ACCC draft implies that this option will not be available in Australia. But Medicines Australia still wants to be able to give gifts to doctors who want to opt-out in this way. Of course this 'opt out' clause would make a mockery of the transparency arrangements. Unlike in the UK there is a way around the privacy concerns of public disclosure of these gifts in Australia. If the ACCC draft is adopted the Australian transparency model would mean that any practitioner entering into an agreement with a pharmaceutical company involving a transfer of value or gift would do so with the understanding that the transfer of value would be made public as identified payments to that particular practitioner. No consent is required and therefore no consent given can be withdrawn. The Privacy Commissioner's advice has confirmed that this is an appropriate way to avoid the transparency arrangements conflicting with privacy law. If a practitioner does not want the transfer of value to be made public then the practitioner is free to reject the gift. Perhaps this arrangement might have been explored in the UK to avoid the opt-out option?

Philip Morris.