



Australian Consumers' Association

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2nd May 2006

The Hon. Tony Abbott MHR
Minister for Health and Ageing
Leader of the House of Representatives
Room MG 43
Parliament House
Canberra, ACT, 2600

Dear Minister,

Re: Pharmaceutical Advertising

I am writing to urge you to take action to improve the regulation of pharmaceutical advertising in Australia. As you know, the advertising of pharmaceuticals is governed by some general provisions in the Therapeutic Goods Act together with the Medicines Australia (MA) Code of Conduct (the Code).

The objective of the regulation of pharmaceutical marketing should be to achieve a balance between the interests of pharmaceutical companies in promoting their products, the need for consumers to receive accurate and comprehensive information about medicines, and minimising the risk of over prescribing or incorrect prescription.

The current MA Code is ineffective in regulating the advertising of pharmaceuticals in Australia. The Australian Competition and Consumer Commission (ACCC) approved interim authorisation of version 15 of the Code on the 26th of April 2006, *even though it identified significant deficiencies in the Code*. The ACCC stated that the law required it to approve the Code. The MA self regulatory code is ineffective and does not protect the interests of consumers.

The ACA is concerned about the way in which pharmaceutical companies target both consumers and doctors in their marketing practices.

While direct to consumer advertising (DTCA) is prohibited by the Therapeutic Goods Act, companies get around this in a number of ways. Neither the provisions of the Act nor the Code have proved effective in prohibiting forms of DTCA. Examples of activities which constitute DTCA include:

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- advertising masquerading as education campaigns
- placing stories in the media which are presented as 'medical breakthroughs'
- sponsoring high profile support groups
- subsidising academics to provide their favourable 'expert' opinions, and
- sponsoring prizes for journalist awards

It is clear that many of these activities generate conflicts of interest that have contributed to the undermining of consumer confidence in this industry and that also impact upon the reputation of the medical profession.

In a submission to the ACCC about the MA Code (attached), the ACA outlined why it is an ineffective self regulatory code. The reasons include:

- The imposed sanctions are inadequate. The MA Code sanctions do not deter repeat offenders.

It is a fundamental requirement for any successful code that there are meaningful sanctions if it is breached. Yet most of the fines imposed by the Code Committee were under \$25,000; only one was in the \$100,000 to \$150,000 range and none higher.

- There is a lack of consumer consultation and involvement in developing and appraising the Code.

Most consumers don't know about the Code. Of the 51 complaints in the financial year 2004/5, 30 complaints were lodged by other companies, none were brought forward by consumers

- There is insufficient regulation of the role of pharmaceutical representatives.

There are roughly 3000 pharmaceutical representatives marketing drugs to doctors and only 150 independent detailers providing independent drug information to doctors funded by the NPS. Little is known about the training course that the pharmaceutical representatives are required to do. MA has been unwilling to provide information about this course that would help doctors or consumer organisations understand the basis upon which pharmaceutical representatives recommend drugs.

- The Code is ineffective in regulating medical software

A study¹ found that the majority of the advertisements displayed in Medical Director, prescribing software commonly used by GPs, were in breach of the Code. This is a concern because patients can view advertisements on the GPs' screen.

- Code processes are ineffective in monitoring promotional material.

While a monitoring committee peruses some promotional material, it is ineffective in deterring repeat breaches because much of the material 'slips through the cracks'.

¹ Harvey. K, Vitry. A, Roughead. E, Aroni. R, Ballenden. N, Faggotter. F (2005) 'Pharmaceutical Advertisements in Prescribing Software: An Analysis', *Medical Journal of Australia*, 183 (2): 75-9

The current self regulatory system is detrimental to consumers in two main ways. First, the advertisements inflate the prevalence of certain conditions and encourage consumers to take medication which they may not in fact need. This has long term implications for their health. Second, the increased demand for new products when older versions with the same efficacy are available inflate the cost of the PBS. This puts pressure on both the Government and consumers as the increased cost is in part passed onto them in the form of higher co-payments.

On the 27th of January, the ACCC denied interim authorisation of version 15 of the Code. It asked MA to address some concerns and on the 28th of April 2006 issued a draft determination granting authorisation of the Code for three years subject to a condition related to monitoring.

In approving the Code, the ACCC stated that it “continues to have real concerns about whether the Code is effectively enforced”. Further, the draft determination for approval states “the ACCC considers that it is difficult to precisely determine the magnitude of the public benefit and detriment”. The ACCC concluded, however, that its role is “not to craft an ideal code”. Despite these concerns, the ACCC granted interim authorisation with only one condition, which related to monitoring.

Ultimately the ACCC’s code approval process has proven to be an inappropriate mechanism for managing this important public policy issue. Given this, the focus needs to shift to more direct regulation of advertising in this sector (as occurs in a range of other sectors in the market). This could take the form of:

- a requirement that industry develop an effective Code of Conduct that meets certain policy objectives established by legislation, or
- through legislation enforced by the appropriate regulator

ACA’s experience in dealing with advertising codes suggests that the latter option is likely to produce better outcomes for consumers.

We would welcome the opportunity to discuss this issue with you or your office. Please contact Viola Korczak on 02 9577 3374 or 0411 788 076.

Yours Sincerely,

Peter Kell
CEO