



## What's Wrong with Pushing Pills?

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A consumer complaint about pharmaceutical advertising reveals the inadequacy of the Medicines Australia (MA) Code of Conduct (the Code) that regulates the marketing of drugs in Australia. While direct to consumer advertising is prohibited in Australia, companies are employing increasingly novel marketing techniques to reach consumers and are succeeding. The Code needs to be strengthened, starting with higher sanctions and more effective monitoring. Failing this, new legislation needs to be introduced and enforced through an appropriate regulator.

### Consumer complaint

A consumer lodged a complaint with the MA Code of Conduct Committee about an erectile dysfunction drug for which Bayer was offering a money back guarantee. An extensive advertising campaign run by *Saatchi & Saatchi Healthcare* comprised advertisements in leading medical journals, broadsheet newspapers and on the internet. The ads were spread over two pages, one with a banana pointing down and another with a banana pointing up.

Bayer sent vouchers, which were the size of prescription pads, to both GPs and pharmacists. These vouchers were money back guarantees which were to be given to patients by the GP with the script or by the pharmacist when dispensing the drug.

The Committee considered the complaint against 9 sections of the Code and found the advertisement was in breach of 1; section 10.5. The committee decided that the money back guarantee decreased the value of prescription medicines and brought discredit to the industry.<sup>1</sup> The Committee determined that Bayer should<sup>2</sup>:

- take immediate action to cease offering the money back guarantee to healthcare professionals;
- issue a corrective letter to all health care professionals who received letters about the offer;
- publish a corrective letter in all health professional journals where the advertisement appeared.

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<sup>1</sup> Extract of the minutes of the Code of Conduct Committee Meeting held on 17 July 2006.

<sup>2</sup> Extract of the minutes of the Code of Conduct Committee Meeting held on 17 July 2006.

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There are three main concerns about the course that this complaint took. First, the Committee took six weeks to make a decision, during which time Bayer continued to offer the money back guarantee. The campaign ran for over two months.

Second, even though Bayer was found to be in breach of the Code, they were not fined. In the last financial year, 51 complaints were lodged with the Code of Conduct Committee. Of these 20 companies were fined. Though the maximum fine is \$200,000, most of the fines were under \$25,000. The average fine imposed in 2005 was \$23,575<sup>3</sup>, which is not likely to deter any pharmaceutical companies whose marketing budgets far exceed these amounts.

Third, the MA Monitoring Committee did not identify this breach - it was brought to their attention by a consumer. A fundamental problem with the current self regulatory arrangement is the lack of effective monitoring. MA has established a Monitoring Committee which is responsible for “reviewing promotional material submitted by companies”.<sup>4</sup> The Monitoring Committee failed to notice the Bayer banana ads. It is in the pharmaceutical industry’s interest to create a guise that monitoring is being undertaken, when in fact very little is being done.

### **What’s wrong with advertising prescription drugs?**

Direct to consumer advertising is illegal in Australia but companies get around it by adopting novel marketing techniques.

Many drug advertisements inflate the prevalence of conditions and medicalise normal behaviours and life stages. For example, menopause is no longer viewed as a natural part of the ageing process, but a condition which requires medication. The erectile dysfunction drug that Bayer advertised adopted similar techniques using quotes such as “love shouldn’t have to wait”.<sup>5</sup> The main aim of advertisements is to increase demand for products. The implication here is that consumers should take more drugs, even when they may not need them.

The other side of the coin is financial. If consumers are demanding more drugs, the Government and ultimately taxpayers are spending (and possibly wasting) more on the Pharmaceutical Benefits Scheme (PBS).

### **Policy directions**

There are two main policy options which could be adopted. The first is to strengthen the Code. This could be done by imposing higher sanctions which deter repeat breaches of the Code. The higher sanctions would replace the nominal amounts being imposed now and would be in proportion to the possible harm which could result from unethical drug marketing. When the ACCC approved version 15 of the Code it noted that it was “concerned that they [member companies] are regularly breaching the Code, and that the penalties imposed by the Code Committee do not appear to reflect this”.<sup>6</sup>

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<sup>3</sup> 2005 Code of Conduct Annual report

<sup>4</sup> <http://www.medicinesaustralia.com.au/pages/page17.asp>

<sup>5</sup> Levitra advertisement in the Herald Sun, 17/18<sup>th</sup> July.

<sup>6</sup> ACCC draft determination



Strengthening the role of the Monitoring Committee and decreasing the length of time to resolve complaints would help to reduce inappropriate or unethical drug marketing.

Increasing transparency in the way the Code is administered would also improve the current self regulatory scheme. This could include making information available about pharmaceutical representatives training and how much companies spend on marketing.

The ACCC approved version 15 of the Medicines Australia Code of Conduct on 26 April 2006. Authorisation was granted on the condition that the Monitoring Committee would require each member company to report on the number of events they hold with doctors, the venue, and the number of attendees; and to provide a copy of the invitation and any printed material given to the attendees. The new provisions are a step in the right direction as they will increase transparency. Disappointingly, MA responded by appealing to the Australian Competition Tribunal. This matter has not yet been resolved.

The Code could also be strengthened by regulating pharmaceutical advertising in medical software. Studies have found that advertisements appearing in prescribing software are often in breach of the Code.<sup>7</sup>

Failing the option of strengthening the Code, legislation providing for effective limits on drug advertisements should be introduced and enforced by an appropriate regulator.

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<sup>7</sup> 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