Medicines Australia

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# COMPLAINT OUTCOME

## 1174 - BREZTRI Promotional Material

## DETERMINATIONS OF THE MEDICINES AUSTRALIA CODE OF CONDUCT AND APPEALS COMMITTEES

The administration of the Code is supervised by the Code of Conduct Committee. The Code of Conduct Committee has the power to make a determination as to a breach of the Code and impose sanctions. The right of appeal is available to both the Complainant and Subject Company. An appeal is heard by the Appeals Committee which has the power to confirm or overturn the decision and to amend or remove any sanctions.

The decisions of the Code of Conduct and Appeals Committees are relevant to the date of publication of the materials subject to complaint and approved Product Information (PI) at that time. A complaint is not deemed finalised until the Subject Company has advised Medicines Australia that they will not appeal the outcome of the Code of Conduct Committee decision (following circulation of the Code minutes) or, in the case of an appeal, the minutes of the Appeals Committee meeting have been provided to both parties.

**This report is an extract of the minutes of the complaint heard on 22 July 2024, an Abuse of the Code complaint heard on 29th August 2024, and an appeal heard on 27 September 2024.**

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### DOWNLOAD THE CODE

The Code of Conduct and all associated materials are available on the Medicines Australia Website

# COMPLAINT 1174 - BREZTRI PROMOTIONAL MATERIAL

| SUBJECT COMPANY | PRODUCT | COMPLAINANT |
|---|---|---|
| AstraZeneca Australia | BREZTRI (multiple actives) | Chiesi Australia |

## COMPLAINT

The complaint related to promotional material and claims of Breztri Aerosphere, a pressurised metered dose inhaler with multiple actives that is indicated for patients with moderate to very severe chronic obstructive pulmonary disease (COPD). The device is in the therapeutic class of the respiratory system (bronchodilator aerosols and inhalations). Five items of promotional material were provided as part of the complaint; a digital banner advertisement, digital advertisement, half-page advertisement, full-page print advertisement, and a leave-behind. During inter-company dialogue ('ICD'), resolution was achieved concerning a third promotional component and this did not form part of this complaint. The complaint consisted of two parts and were adjudicated separately:

(1) Chiesi alleged that the promotional claim "*GO FOR GOLD*" ('the first Claim') misled by inference that the product was 'the best' and superior to other inhaler therapies. Chiesi was of the view that this claim was an unsubstantiated superlative and disparaging to other triple therapies, was amplified due to timing with the Olympic campaign, and inconsistent with its approved Product Information which describes the device as having a yellow plastic actuator, not gold.

(2) Chiesi alleged that the promotional claim "*BREATHE MORE LIFE into managing moderate to very severe COPD patients by preventing exacerbations & reducing the risk of death*" ('the second Claim'), was misleading and unsubstantiated. Chiesi was of the view that the headline claim implied product superiority, that the qualifying statements were likely to be misinterpreted by healthcare professionals due to their complexity, that there was insufficient evidence available to substantiate the major claim, and that the piece misled by omitting important results which should be communicated within the piece.

## SECTIONS OF THE CODE (EDITION 19)

- **Overarching Principle 1**: All activities undertaken by Companies have the purpose of supporting the quality use of medicines.
- **Overarching Principle 3**: Companies are responsible for providing current, accurate, balanced, and scientifically valid information products to support their use.
- **Overarching Principle 7**: Information relevant to prescribing, in particular product and safety information, are clearly communicated in all promotional materials. Promotional materials are designed by Companies to not only create awareness of Therapeutic Goods Administration (TGA) approved medicines, but to support proper assessment of their risks and benefits. (Complaint 2 only)
- **Overarching Principle 8:** All promotional claims are consistent with the Australian Product Information document, including claims about competitor products, irrespective of the source on which the claim is based.
- **Section 1**: Requirements for Promotional Claims Directed at Healthcare Professionals.
- **Section 1.1**: Substantiating Data.
- **Section 2**: Requirements For Material Directed To Healthcare Professionals.

## RESPONSE TO THE COMPLAINT

AstraZeneca disputed Chiesi's allegations and firmly believed that the Breztri Aerosphere materials subject to this complaint were aligned with the Code. In summary, AstraZeneca responded as follows:

(1) The sole representation of the material was to draw attention to the new gold-coloured Bretzi device. AstraZeneca asserted the claim did not include any references to comparative or superiority qualities with other devices and no other features in the materials implied superiority. AstraZeneca explained the claim was consistent with the existing brand teal and gold colour theme, and proximity to the 2024 Olympic games was coincidental. In addition, the claim was consistent with the PI, because yellow and gold are shades of the one colour.

(2) The primary and secondary endpoints from the phase 3 ETHOS study provided significant and sufficient evidence to support the entirety of Claim. In addition, AstraZeneca's use of symbols and different sized font engaged the reader to keep reading the full text and did not mislead. AstraZeneca asserted the evidence was entirely appropriate, consistent with good scientific communication practices and fully substantiated the claim.

In their response, AstraZeneca counter-claimed that the complainant had abused the Code and that both the complaints were frivolous and vexatious.

## CODE COMMITTEE DECISIONS

The Code Committee considered the complaints and determined there were breaches of the Code. Sanctions were applied by the Code Committee. See the table of Committee Decisions, and the Code Committee Reasons on pages 4-7.

## APPEAL

The subject company appealed four of the six findings of the Code Committee, only in relation to Complaint 2: "BREATHE MORE LIFE". The findings of Complaint 1: "GO FOR GOLD" were not appealed by the subject company. The complainant did not appeal any findings of the Code Committee for either Complaint.

## APPEAL COMMITTEE DECISIONS

The Appeals Committee upheld three of the four appealed findings of the Code Committee in relation to Complaint 2, reconfirming three of four breaches and overturning one breach of the Code. The sanction was varied to reflect the overturned breach.

## SUMMARY OF DECISIONS

| Code | COMPLAINT 1: "GO FOR GOLD" | COMPLAINT 2: "BREATHE MORE LIFE" | Sanctions (Complaint 2 only) | Appeals Committee Decision (Complaint 2 only) | Appeals Committee Sanctions |
|---|---|---|---|---|---|
| Principle 1 | **No Breach** Unanimous | **No Breach** Majority | • $100, 000 fine (minor breach).<br>• Cease using materials found in breach (where they are still in circulation) and not use the claim in future materials. | **Breach** Majority *(Decision upheld)* | • $80,000 fine (minor breach).<br>• Withdrawal of materials found in breach (where they are still in circulation) and to not use the claim in future materials.<br>• Bond to be refunded to Subject Company. |
| Principle 3 | **No Breach** Unanimous | **Breach** Unanimous | | | |
| Principle 7 | | Not adjudicated* | | | |
| Principle 8 | **No Breach** Unanimous | **Breach** Unanimous | | **Breach** Majority *(Decision upheld)* | |
| Section 1 | **No Breach** Unanimous | **Breach** Unanimous | | **Breach** Majority *(Decision upheld)* | |
| Section 1.1 | **No Breach** Unanimous | **Breach** Unanimous | | **No Breach** Majority *(Decision overturned)* | |
| Section 2 | **No Breach** Unanimous | **Breach** Majority | | | |

*The Committee did not adjudicate on Principle 7 for Complaint Two because this allegation was not raised during the intercompany dialogue process between the two companies. Introducing a new matter or allegation to the Committee that had not been raised previously in ICD was not conducive to affording reasonable efforts for complaint resolution. The Committee will only adjudicate on matters that have been raised satisfactorily during that inter-company dialogue process, as captured in the Code in Section 16.1.

## ABUSE OF THE CODE ALLEGATION

Because the subject company had counter-complained that the Complainant had breached Section 16.4 of the Code (because both complaints were alleged to be vexatious), the Code Committee had an additional responsibility not to adjudicate on this counter complaint, but rather to ascertain if the complaint might be considered frivolous or vexatious, and if it were, to request the complainant to provide its response to the concern.

- For Complaint 1, the Committee determined that the complaint **may have** been considered frivolous or vexatious. As such, the complainant, being a non-member at the time of the Complaint, was invited to have this complaint heard at a future meeting of the Committee. The complainant accepted this invitation.
- For Complaint 2, the Committee determined that the complaint was not frivolous or vexatious. By finding the subject company in breach of the Code, it followed logically that there was merit to the allegation and in these circumstances, no abuse of the Code had occurred.

Therefore, the complainant was asked to respond to the counter complaint alleging breach of Section 16.4 in relation to the first complaint only. At a subsequent meeting of the Code Committee, both perspectives were considered and the Code Committee decided that there was **no breach** of Section 16.4 of the Code by the complainant. Reasons for this decision are outlined on pages 8-10.

## CONSIDERATION OF THE COMPLAINT by the CODE COMMITTEE

### Complaint 1 – "*GO FOR GOLD*" ('the first Claim')

The findings concerning the first Claim

- In August 2023, the colour of the Bretzri Aerosphere ('the device') changed from white to gold, and the Committee accepted the primary purpose of the promotional campaign was to inform healthcare professionals of this change.
- Device colour in this therapeutic class is often used to provide a clear identifying factor by healthcare professionals and their patients to recognise different brands of inhaled therapies.
- The Committee determined that a reasonable healthcare professional would understand the claim as drawing their attention to the new gold-coloured device.
- Furthermore, the Committee concluded that a reasonable person such as an audience of highly skilled healthcare professionals would not be misled by the first Claim. It was neither false, misleading, unsubstantiated, nor inconsistent with the approved Product Information. The Code had not been breached in any of the alleged areas (Principles 1, 3 and 8, Sections 1, 1.1 and 2).

The complainant asserted the first Claim "*GO FOR GOLD*" misled by inference that the product is 'the Best', 'Number 1', the GOLD standard, and superior to other inhaled triple therapies.

- The design and layout of the material reinforced the purpose of drawing attention to the new gold-coloured BREZTRI device, rather than supporting an inference of superiority. For example, the placement of the first Claim was located immediately adjacent to the image of the gold device and was distinctly separate from the efficacy claims, as well as text that is colour-matched to the colour of the device.
- Although "gold" as an adjective has general positive associations, the first Claim does not include any references to comparative or superior qualities with other devices. Words like 'best' or 'number 1' are not used, neither are their synonyms. There are no other features in the materials which would support an implication of superiority. Given the context and intent of the materials, the Committee did not agree (with the complainant) that an inference of superiority was a reasonable interpretation of the presentation of the materials. Further, the Committee did not view the first Claim to be comparative to other triple therapies, nor that "go for" implies superiority to other triple therapies, and that a reasonable healthcare professional would not interpret the first Claim to be comparative, nor superior to other triple therapies.

The complainant asserted the timing of the campaign during an Olympic year (Paris 2024) further amplified the inference, associating the product with Olympic gold.

- The Committee understood that "gold" has different definitions, wide uses, idioms and associations, and whilst a possible association is to strive for an Olympics gold medal, this was not a reasonable interpretation in the context of the materials.
- There was no Olympic imagery or reference to the Olympics in the material, and any possible association with the Olympics was outweighed by the clear message of the campaign; to draw attention to the new gold-coloured device.

The complainant asserted the first Claim is inconsistent with its approved Product Information, which describes the device as having a yellow plastic actuator, not gold.

- The Committee determined that a reasonable person or audience would interpret the colour of gold as being consistent with the colour of yellow. They noted numerous examples where gold was used interchangeably with yellow.
- The Committee agreed that 'Gold' and 'Yellow' are, for the purposes of interpretation, different shades of the same colour.

- Therefore, it was understandable to a reasonable person that 'gold' more accurately matched the shade of the device rather than the broader palette of "yellow" and was more likely to inform the intended audience of the colour change of the device more accurately.
- The Committee determined that the first Claim was consistent with its approved Product Information.

**Complaint 2 – "*BREATHE MORE LIFE into managing moderate to very severe COPD patients by preventing exacerbations & reducing the risk of death*" ('the second Claim')**

The findings concerning the second Claim.

- In ICD, the subject company agreed to review the format and layout of the material containing 'the second Claim'. The materials containing all uses of the second Claim had therefore been updated, including formatting and layout changes to the second Claim "to reduce any ambiguity and provide absolute clarity on the intent of the second Claim".
- Whilst these changes had occurred, the subject company reserved the right to retain the wording, including the phrase "BREATHE MORE LIFE". The complainant maintained their view that the second Claim remained misleading, too definitive and broad, and unsubstantiated, and the only rectification was the full withdrawal of the claim.
- Based on this, the complaint centred on the original material as submitted by the complainant, because resolution had not been achieved on that adjusted material.

The complainant asserted the second Claim is too broad and definitive and unsupported by the evidence or Australian COPD-X Guidelines.

- The Committee considered the ETHOS study design and results and accepted that the study provides sufficient evidence to substantiate the 'prevention of exacerbations', component of the second Claim, where the primary endpoint was met.
- However, the Committee agreed that the ETHOS study design and results were insufficient to support a broad claim of the 'reduction in the risk of death' component of the second Claim. The Committee noted the apparent reduction in time to mortality derived from an unadjusted secondary outcome, where the outcome was nominally significant for one, but not the other, cohort comparisons. This secondary outcome, as per the pre-specified trial protocol for adjusting for type 1 error, was not considered statistically significant. The Committee viewed the results as not supporting the claim, particularly given the prominence and broadness of the claim.
- The Committee noted the mortality benefit, as reported in the second Claim, was not addressed in the Product Information, despite the ETHOS trial representing the pivotal trial supporting registration.
- Supported by a larger body of evidence and articulated in "The COPD-X Plan: Australian and New Zealand Guidelines for the management of Chronic Obstructive Pulmonary Disease 2023" (page 50), the Committee accepted that a reduction in mortality with triple therapy in the IMPACT and ETHOS studies was observed, and therefore the totality of evidence suggests triple therapies may reduce the risk of death.
- However, even though the mortality component of the second Claim may have been consistent with the totality of evidence of triple therapies, the Committee determined the ETHOS study was not powered adequately to substantiate the claim promoting this particular device, and in the context in which it was presented.
- The Committee did not consider the allegation that the second Claim is claiming superiority in improving quality of life, because this was not raised in intercompany dialogue. The promotional material does not communicate any quality of life outcomes.

The complainant asserted the juxtaposition, the prominence of the headline claim ('the second Claim') and the complex maze of the qualifying marks & statements direct the audience to read the primary 'headline' only.

- The Committee appreciated that detailed information can assist readers in having sufficient information in the material to be able to fully assess the veracity of a claim. On a technical basis, the Committee noted the qualifying statements were linked to the relevant claim with a readily identifiable symbol, appeared directly below or adjacent to the claim, and the statistical significance of the claim was indicated.
- However, the layout and complexity of the qualifying marks and statements in the original material did not assist the reader to verify the second Claim. The Committee determined the qualifying statements were not as prominent or clear as they could be and required considerable effort to interpret.
- Notwithstanding, the Committee disagreed with the allegation that the intent or effect of the layout was to 'direct the audience to read the primary 'headline' only'.
- As a side note, the Committee remarked that the subsequent adjustments made by the subject company had significantly improved the legibility of the material. The resulting adjusted material alleviated many of the concerns relating to juxtaposition and the complexity of the qualifying marks and statements.

## Decisions and Sanctions - Complaint 2 only

In conclusion, the Committee made the following decisions:

- By unanimous decision, the second Claim **breached** Principle 3, because the second Claim was not substantiated accurately or sufficiently and was not scientifically valid.
- By unanimous decision, the second Claim **breached** Principle 8, because the mortality component in the second Claim is not included in the Australian Product Information despite the ETHOS trial representing the pivotal trial supporting registration, and additionally represented a level of efficacy (reduction in risk of death) that is significantly greater than the efficacy data included in the Product Information (preventing exacerbations, improvements in lung function, etc). The claim is therefore not consistent with the Product Information.
- By unanimous decision, the second Claim **breached** Section 1, because there was insufficient level of evidence to support the claim being made, and the information was not wholly accurate, balanced, or consistent with the approved Product Information, and therefore likely to have misled the audience.
- By unanimous decision, the second Claim **breached** Section 1.1, because there was an insufficient level of evidence to support the claim being made, and the material did not enable the reader to understand the statistical insignificance of the data due to overly complex qualifying marks and statements.
- By majority decision, the second Claim **breached** Section 2, because promotional material should be presented in such a way that visible information is accurate and consistent with the Code. The material did not enable the reader to understand the statistical insignificance of the data due to overly complex qualifying marks and statements.
- By majority decision, the second Claim **did not breach** Principle 1. The Committee acknowledged that in many cases, where a promotional claim is inaccurate and not substantiated accurately, this would logically follow that the claim could not support the quality use of medicines. However, considering that the body of evidence does appear to support triple therapy, that triple therapy should be used to treat moderate to very severe COPD patients, and it is unlikely that an inappropriate treatment choice would be prescribed, it was determined no breach in this context.

## Decisions and Sanctions - Complaint 2 only (continued)

Committee's consideration of the sanction:

The second Claim may have affected how the medical profession will prescribe the product, however, the Committee viewed this effect to not be 'major'. Any such possible effect, would likely have been limited to a brand-related prescribing decision rather than changing the class of medication. Because the second Claim is potentially supported by the totality of evidence for the class of triple inhaler therapies, which are generally indicated in clinical guidelines for the relevant cohort of the claim, the Committee determined the second Claim had relatively no safety implications to patient wellbeing. Due to these reasons, the Committee was satisfied the breach arising from the second Claim was categorised as minor.

The Committee noted that the subject company, in the spirit of resolution and responding to ICD, updated materials containing all uses of the second Claim.

The Committee considered what sanctions were appropriate, having regard to the following factors:

- Whether the breach should have been clearly evident to the subject company;
- Length of time that the materials have been in use;
- The number and type of alleged breach/es;
- Circumstances in which the activity took place – and whether any explanation was offered by the subject company;
- Whether a subject company engaged in ICD in good faith;
- Whether a subject company made reasonable concessions in response to ICD or the complaint itself; and
- Where prescribing behaviour may be affected, the likely degree of the effect.

The Committee determined that a fine was appropriate, and this be at the upper fine threshold associated with a minor breach because the second Claim was of a significant magnitude by claiming to 'reduce the risk of death' and there were a number of principles and sections breached. Further, it was in place for some time and may have had some effect on prescribing one brand over another.

The Committee imposed the following sanctions:

- Single monetary fine of $100,000.
- Withdrawal of materials found in breach (where they are still in circulation) and to not use the claim in future materials.

## CONSIDERATION OF THE ABUSE OF THE CODE COMPLAINT by the CODE COMMITTEE

Context

- In their response to the complaint, the subject company claimed that the complainant had breached Section 16.4 of the Code, where a complaint is frivolous (i.e., not having any serious purpose or value) or vexatious (i.e. a complaint that is made without sufficient grounds, purely to cause annoyance to the other party). The Committee's responsibility was not to adjudicate on this counter-complaint but rather to ascertain **if** the complaint **might** be considered frivolous or vexatious, and if it were, to request the complainant to provide its response to the concern and for this to be heard at a subsequent Code Committee.
- In considering this counter complaint, the Committee noted that the complainant had raised several complaints with the subject company over a number of months. Of the complaints put before the Committee, these substantially varied in merit. Whilst the Committee can only comment on the complaints put before them, the fact that one of these had merit, and the other did not, indicated that perhaps those complaints also varied in merit.
- The Committee took the view that interactions between the companies were suboptimal, as demonstrated by a disagreement on the ICD minutes. For Complaint 1 only, the Committee determined that the complaint might be considered frivolous or vexatious. As such, the complainant, being a non-member, was invited to have this complaint heard at a subsequent meeting of the Committee. The complainant accepted this invitation and responded to the counter complaint accordingly.
- The Code Committee met subsequently on 29/08/2024 to consider the perspectives of both parties and to adjudicate on whether Section 16.4 had been breached by the complainant.

The subject company (AstraZeneca) asserted repeat complaints were used to cause disruption rather than to address legitimate concerns.

- The Committee noted that two complaints had been initially made in parallel, however the complainant (Chiesi) had agreed to deal with them separately and not simultaneously, as requested by the subject company, which demonstrated a degree of good faith by the complainant.
- The Committee could find no evidence to indicate that the complainant had launched their complaint for the purpose of causing disruption.

The subject company asserted new evidence and items were introduced into the ICD process without first allowing an opportunity to assess them.

- The subject company claimed the complainant had verbally introduced additional components into the ICD meeting without offering the subject company prior opportunity to review these components. These were market research data, as well as Olympic-related allegations.
- The Committee emphasized that introducing and referencing any new material in an ICD meeting, even if it is to help make clear the case already expressed in writing, is unlikely to help create an optimal environment for resolving a dispute.
- The Committee encouraged companies to allow each other sufficient time and notice to understand the complaint prior to the ICD meeting. This includes providing advance documentation of any material used to explain a point of view, reflecting the principle of procedural fairness and enhancing the chance of resolution.

- The Committee took a dim view of the complainant verbally introducing market research without being able to simultaneously provide that data to the subject company, whether or not that data was critical to the basis of its claims. Just as the Code expects companies to provide healthcare professionals with immediate access to data to substantiate claims, a similar principle applies in ICD; if a company is willing to reference data to prosecute their argument, then that data should be provided immediately to the other party. Similar to the Code, it is unreasonable to expect a company to independently source that data themselves.
- On the matter that the complainant introduced in its complaint that Overarching Principle 7 had also been breached, the Committee addressed this by not adjudicating on this allegation because the matter had not been raised between the companies in ICD. Medicines Australia will not accept a complaint from a company, or a component of a complaint, unless it has been clearly demonstrated that inter-company dialogue has taken place on that matter. 19. Overall, the Committee determined these incidents during ICD did not constitute an abuse of the Code; being that they did not amount to vexatious behaviour.

<u>The subject company asserted information was repeatedly and intentionally cherry-picked and omitted, whilst presenting speculation as fact in order to support its position.</u>

- The Committee did not agree with the view that the complaint should necessarily include all elements that were raised in ICD, such as the issue of the market research.
- As per the Code, a party making a complaint has the burden of proving their complaint on the balance of probabilities and was within their rights to choose what information to present to the Committee, as long as it had been subject to prior ICD.
- The allegation that the subject company had deliberately timed the advertisement in the lead up to the Olympics was considered by the Committee. Because the advertisement benefited from that timing synergy, whether coincidental or not, the Committee took the view that it was a reasonable speculation to make. As such, this 'speculation' was not vexatious.
- However, the Committee considered that the lengthy dialogue (in ICD and in the complaint itself) on the issue of gold and yellow was minor and trivial in nature, and ideally should have been settled in ICD, allowing the Code Committee to focus their attention on more meaningful matters.
- In conclusion, the Code Committee suggested this complaint had less merit than other complaints made (#1168 and the second complaint as part of #1174), as explained in the Reasons, and supported by a unanimous agreement that the Code had not been breached.
- However, this complaint was not devoid of merit, and the complainant had not abused the Code by lodging this complaint.

<u>The subject company asserted ICD was not entered into with the intent to agree on a reasonable resolution.</u>

- The Committee considered the issue of what behaviours may or may not demonstrate a willingness to consider concerns with the intention of a resolution. The fact that the companies resolved one part of the complaint prior to the Committee's adjudication demonstrated there was a level of willingness.
- Furthermore, the Committee noted its limitations in adjudicating on the intent of a party. Rather, the Committee examined whether there had been a breach of the Code in 16.4. By undertaking the ICD process as outlined in the Guidance, the Committee was satisfied that on the balance of probabilities, both parties entered into ICD with the intent to establish a resolution.

## CONSIDERATION OF THE ABUSE OF THE CODE COMPLAINT by the CODE COMMITTEE (continued)

- The Committee acknowledged that what one party considers a reasonable resolution may not be reasonable to the other party, as the term is subjective. In this case, and as articulated in Complaint #1168, the Code does not prohibit the Committee from considering a matter where one company wishes the Committee to adjudicate and another does not, and it does not expressly preclude or prohibit the Committee from dealing with a complaint in circumstances where no consensus view has been reached between the parties about a reasonable resolution of the complaint.

<u>The subject company asserted evidence and items within the complaint ICD were repeatedly and intentionally misrepresented.</u>

- The Committee did not agree that the omission of an image in the Code Complaint letter was done intentionally to misrepresent the material and to support the subject company's position, because images of the promotional material were included in the complaint as Appendix 1.
- Similarly, any size reduction of an image in the complaint letter was immaterial, because Appendix 1 supported the complaint.
- In considering the complaint, the Committee viewed the promotional material provided by subject company, which was equally provided by the complainant in Appendix 1, and therefore the Committee took the view these allegations were inconsequential and not an abuse of the Code.
- The Committee acknowledged that parties do not always agree on ICD minutes, as was the case here. However, the Committee took the view that this disagreement did not mean that ICD was intentionally misrepresented by the complainant, and that there was some success in agreeing to amendments.

<u>The subject company asserted there was an unfair advantage in the complaints process because of the non-member company status:</u>

- The Code at Section 16.3 affirms that non-member companies are not obligated to use the Medicines Australia complaints process, but are instead invited to use the process. The fact that the complainant had used the complaint process repeatedly (Complaints 1168 and 1174) and yet historically exercised its right to decline having a complaint heard against them, was allowable because they were not a member. Furthermore, the Committee found breaches had occurred in both those complaints (1168 and 1174), indicating those complaints had merit and there was no pattern of vexatiousness.
- The fact that the complainant had agreed to have this current complaint ('Abuse of the Code') heard under the complaints process did not support the allegation that the complainant was unwilling to be accountable to its own behaviours.
- The Committee determined that there was no abuse of the Code in relation to the complainant exercising its right as a non-member, which aligned with the Code at Section 16.3 and was irrelevant.

<u>In conclusion</u>

The Code of Conduct Code Committee considered the material put before them and determined, by majority decision, that there was no breach of the Code in relation to 16.4.

## CONSIDERATION OF THE APPEAL by the APPEALS COMMITTEE

The Appeals Process

- The subject company appealed four of the six findings of the Code Committee in relation to Complaint 2. The areas of appeal can be found on the Summary of Decisions Table on page 3 of this document. Specifically, the appeal relates to the claim "*BREATHE MORE LIFE into managing moderate to very severe COPD patients by preventing exacerbations & reducing the risk of death*" (as referenced previously in this document as 'the second Claim').
- Section 16.6 provides that an appeal is a rehearing of the original complaint and the Appeals Committee may affirm, set aside, or vary findings and/or sanctions of the Code Committee, provided that the Appeals Committee is "persuaded that the findings of the Code Committee, or the sanction imposed by it, involved an error on the basis of which they should be set aside or varied".
- The Appeals Committee noted that the Subject Company requested clarification and/or correction to a number of the reasons for decision provided by the Code Committee. The Committee clarified that the Appeals Committee's remit is limited to the responsibilities outlined in Section 16.6. It can only provide reasons for its own decisions and may not correct or amend the reasons given by another Committee.

The findings in relation to the second Claim

- The Appeals Committee noted the complexity of the matter, particularly as it related to data derived from a sophisticated and comprehensive data and statistical analysis plan.
- The Committee considered the second Claim as a whole "*Breathe More Life into managing moderate to very severe COPD patients by preventing exacerbations & reducing the risk of death*". The Committee also considered two discreet parts of the overall Claim, specifically "*preventing exacerbations*" and "*reducing the risk of death*".
- The Committee considered the ETHOS study design and results and accepted that the study provides sufficient evidence to substantiate the "*prevention of exacerbations*" component of the Claim, where the primary endpoint was met.
- The Committee agreed that the "*prevention of exacerbations*" was a valid claim and focused their attention on the mortality claim "*reducing the risk of death.*"
- The significance of a mortality claim within the context of COPD treatment was noted by the Committee. It was considered that where a claim is of this level of significance, a higher level of scrutiny is required when determining whether the second Claim is accurate, balanced and scientifically valid.

The Subject Company asserted that the totality of evidence not only supported the reduction of mortality in COPD patient by triple maintenance therapy as a class, but also specifically highlighted the mortality results for BREZTRI in the ETHOS study, and therefore the ETHOS study was powered adequately to substantiate the claim.

- The ETHOS study design and results were considered in detail. The Committee agreed that there was scientific validity to the study and its findings.
- The Committee considered in detail the mortality outcome and noted that it was a pre-specified secondary endpoint. The Committee also noted the earlier secondary endpoint in the hierarchy of pre-specified, statistical analytical tests (not the mortality endpoint) that did not reach statistical significance. As per the pre-specified, statistical analysis plan, subsequent secondary outcomes would not be subject to statistical testing because of an increased risk of Type 1 error for that outcome.

- It was agreed that the ETHOS data were not sufficient to support the claim "*reducing the risk of death*."
- It was acknowledged that the study produced valid results, however it was considered that the data referenced in the claim were not strong enough to support the prominence and broad scope of the mortality claim.
- The Committee considered that the level of qualifications and annotations presented in the material and agreed that it was presented in a clearly referenced way. It was agreed that the material did enable the reader (a healthcare professional) to adequately understand the statistical limitations of the data.
- The Committee noted that clearly referencing the data points and ensuring the data is understood accurately is nuanced from the data being sufficient to support the Claim.
- The Committee noted the mortality benefit, as reported in the second Claim, was not addressed in the Product Information, despite the ETHOS trial representing a pivotal trial supporting registration.
- The appropriate definition of 'consistent' in relation to consistency with the Product Information was robustly considered. The Committee noted that the Product Information excluded any reference to mortality, despite the ETHOS data representing a pivotal trial supporting registration. Whilst the Appeals Committee acknowledged that all data may not need to be specifically presented in the Product Information for it to be considered 'consistent', in this case the Committee decided that the magnitude of the mortality claim was significantly greater than the benefits included in the Product Information, and therefore was inconsistent with the Product Information.

## Decisions, Sanctions and Bond

The Appeals Committee reaffirmed three of the decisions made by the Code Committee and varied one.

<u>In conclusion, the Committee made the following decisions:</u>

- By majority decision, the Claim **breached** Section 1, because there was insufficient level of evidence to support the broad scope and prominence of the claim being made, and it was not consistent with the approved Product Information. This decision upholds the Code Committee's decision.
- By majority decision, the Claim **did not breach** Section 1.1, because the substantiating data was presented in a clearly referenced way and the material did enable the reader to understand the statistical insignificance of the data. This decision overturns the Code Committee's decision.
- By majority decision, the Claim **breached** Principle 3, because the Claim was not substantiated sufficiently with data commensurate to the significance of the Claim. This decision upholds the Code Committee's decision.
- By majority decision, the Claim **breached** Principle 8, because the mortality component in the Claim is not included in the Australian Product Information despite the ETHOS trial representing a pivotal trial supporting registration, and additionally represented a benefit (reduction in risk of death) that is of a magnitude significantly greater than the benefits included in the Product Information (preventing exacerbations, improvements in lung function, etc). The claim is therefore not consistent with the Product Information. This decision upholds the Code Committee's decision.

A summary of these decisions is captured in the Summary Table on page 3.

## Decisions, Sanctions and Bond (continued)

The Appeals Committee agreed with the Code Committee's categorisation of a minor breach, and their reasons for this decision. The Appeals Committee also agreed that the seven factors, as listed in the Code Committee's Reasons were relevant and appropriate to determine the fine amount.

The Appeals Committee agreed that a fine was appropriate, and this be at the upper range of fine associated with a minor breach because the Claim was of a significant magnitude by claiming to 'reduce the risk of death' and there were a number of principles and sections breached. However, given that the Committee had varied the finding and found one less breach, a commensurate reduction to the fine was determined to be appropriate.

The Appeals Committee agreed to vary the sanctions, as follows:

- A total fine of $80,000
- Withdrawal of materials found in breach (where they are still in circulation) and to not use the claim in future materials.
- With regards to the Appeal bond of $20,000 paid by the subject company, the Appeals Committee instructed that this be returned to the subject company by Medicines Australia, because the Appeal had merit and had varied the decision of the Code Committee in part.

<end>