

## **Report from the Code Appeals Committee (CAC)**

The Code Appeals Committee (CAC) has considered an appeal by Medtronic Australasia Pty Ltd (Medtronic) against decisions of the Code Complaints Committee (CCC) arising from a referral by the Code Monitoring Committee (CMC).

The matters of complaint and appeal were heard under the edition of the Code in force at the time of the alleged breach. The CCC and CAC were convened and proceeded under the 4<sup>th</sup> ed of the Code.

CMC referred five alleged breaches to CCC, consisting of:

Alleged Breach 1: EuroPCR 2008 Barcelona (13-16 May 2008)

Alleged Breach 2: Visit to Medtronic manufacturing facility in Galway (16-19 May 2008)

Alleged Breach 3: Primary percutaneous coronary intervention (14 May 2008)

Alleged Breach 4: New Product Launches (24/6, 25/6 and 27/6, 2008)

Alleged Breach 5: Sprinter Legend Brochure

Alleged Breach of section 10.2 (d) of the 4<sup>th</sup> ed (complaints 1 – 5)

For each of the items above, CMC alleged breaches of:

1. section 4.4 (in 5<sup>th</sup>, 4<sup>th</sup> and 3<sup>rd</sup> eds and equivalent to sections 3.5 and 3.6 in the 2<sup>nd</sup> ed);
2. section 10.2c (in 5<sup>th</sup> and 4<sup>th</sup> eds and 10.2b in the 3<sup>rd</sup> ed);
3. section 10.2 d (in 5<sup>th</sup> and 4<sup>th</sup> eds and 10.2b in the 3<sup>rd</sup> ed).

CCC did not proceed on points 1 and 2 above. In relation to alleged breaches of section 10.2 d (in 5<sup>th</sup> and 4<sup>th</sup> eds and 10.2b in the 3<sup>rd</sup> ed), CCC agreed to consider this as a single overarching breach as it was common across all matters raised by CMC.

### **1. EuroPCR 2008 Barcelona (13-16 May 2008)**

This matter concerned the direct support of Healthcare Professionals (HCP) to attend the EuroPCR 2008 conference in Barcelona, Spain in 2008. CCC found the following:

- Minor Breach of 5.3.2 (a), 2nd ed
- Minor Breach of 5.3.2 (b), 2nd ed
- Minor Breach of 5.3.2 (e), 2nd ed

### **2. Visit to Medtronic manufacturing facility in Galway (16-19 May 2008)**

This matter concerned the appropriateness of a Training and Education venue and the reasonableness of hospitality, travel and lodging costs around a visit by HCP to a Medtronic manufacturing facility in Galway, Ireland. CCC found the following:

- Minor Breach of 5.2 (a), 2nd ed
- Minor Breach of 5.2 (c), 2nd ed
- Minor Breach of 5.2 (d), 2nd ed
- Dismissed an alleged breach of 5.2 (f), 2nd ed.

### **3. Primary percutaneous coronary intervention (14 May 2008)**

This matter concerned the selection and support of HCP to attend a Training & Education event associated with the EuroPCR 2008 conference in Barcelona, Spain in 2008. CCC found the following:

- Dismissed an alleged breach of 5.3.(a) (ii), 2nd ed
- Minor Breach of 5.3.2 (a), 2nd ed
- Minor Breach of 5.3.2 (b), 2nd ed

### **4. New Product Launches (24/6, 25/6 and 27/6, 2008)**

These matters concerned new product launches held in Sydney, Newcastle and Brisbane.

CCC found the following:

- Dismissed the alleged breach 6.2 (a), 3rd ed with respect to the event held at the Medtronic facility in North Ryde, Sydney on 24 June 2008;
- Minor Breach 6.2 (a), 3rd ed, with respect to the new product launches held at Restaurant II, Newcastle and Sono, Brisbane on 25 and 27 June 2008 respectively.
- Dismissed an alleged breach of 6.2 (c), 3rd ed.
- Moderate breach of 6.2 (c), 3rd ed. CAC imposed a fine of \$10,000 after agreeing to treat the two launches as a single Moderate breach for the purposes of imposing a sanction.

### **5. Sprinter Legend Brochure**

This matter concerned a product brochure and the use of the term 'safe.'

CCC found the following

- Dismissed an alleged breach of 5.1 (a), 3rd ed on the grounds that this was insufficiently canvassed with Medtronic by CMC.
- Severe Breach of 5.1 (f), 3rd ed. CCC imposed the maximum fine of \$20,000.

### **Alleged Breach of section 10.2 (d) of the 4<sup>th</sup> ed (complaints 1 – 5)**

This overarching matter concerned the provision of information under the Code. CCC found the following:

- Moderate breach of 10.2 (d), 4th ed. CCC imposed a fine \$15,000.

Medtronic appealed in relation to the following matters:

#### **New Product launches in Brisbane and Newcastle (6.2 (c), 3rd ed)**

Having regard to further information provided by Medtronic, CAC found no breach in relation to either event. Appeal upheld.

#### **Sprinter Legend Brochure (5.1 (f), 3<sup>rd</sup> ed)**

Having regard to further information provided by Medtronic, CAC found no breach. Appeal upheld.

**Section 10.2 (d) of the 4<sup>th</sup> ed (complaints 1 – 5)**

CAC dismissed this appeal. However, the fine was reduced from \$15,000 to \$10,000.

**Costs**

Costs were awarded against Medtronic. Based on unclear Code provisions regarding conflicts of interest and confidentiality, CAC directed that a 10% discount be applied and that the Code be reviewed to clarify these issues.

This notice has been placed on the MTAA website in accordance with section 14 of the Code.

A handwritten signature in black ink, appearing to read "Brett Andrews". The signature is written in a cursive, somewhat stylized font.

Brett Andrews  
Secretary, Code Complaints Committee

1 September 2010