

Report from the Code Appeals Committee (CAC)

The Code appeals Committee (CAC) met on 26 February 2010 to consider a Johnson & Johnson Vision Care (a division of Johnson & Johnson Pacific Pty Ltd) (JJVC) appeal against the decision of the Code Complaints Committee (CCC) arising from a complaint made by Ciba Vision (Australia) Pty Ltd (Ciba) heard on 1 December 2009. The complaint and appeal were heard under the 4th ed of the Code.

By way of background to the appeal findings, Ciba had alleged that JJVC workshop 'From New Customer to Loyal Patient' was in breach of the Code. CCC considered that the JJVC program did not fit within the definition of "Training and Education" as the program was not considered to be '*... in relation to Products*'. It was not in relation to products as it was not sufficiently focused on a product and was in effect mainly focused on 'practice building.'

CCC found that JJVC had breached section 6.7a of the Code. The 'From new customer to loyal patient' program failed to meet the definition of Training and Education and as a result the benefit of attending constituted a gift of more than minimal value to those Healthcare Practitioners (HCP) and/or Other Professionals who attended the program.

CCC regarded this as a minor breach of the Code.

JJVC appealed against the findings of the CCC.

The appeal by JJVC was based on the cost of the 'From New Customer to Loyal Patient' workshops. JJVC contend that the cost of the workshops did not exceed \$100 per HCP and that as a result CCC was incorrect to conclude they were a gift of excessive value. CAC considered the appeal on this basis only.

CAC considered the arguments put forward by JJVC. CAC did not accept the contention that, in determining the value of the workshop or any similar activity as a "gift", venue, food and beverage should be separated from the educative component and deducted from the calculation of the cost per attendee. CAC was of the view that venue, food and beverage are an integral part of a workshop package when considered as a gift for the purposes of clause 6.7 of the Code.

HCP attending the 'From New Customer to Loyal Patient' workshop (primarily optometrists and possibly pharmacists) could reasonably be considered to take such factors into account in making their decision to attend or not. It is therefore incorrect to split the educative component from the venue, food and beverage in order to form two 'gifts' each below \$100 in value. CAC considered such a split could perhaps see the 'gift' of food and beverages (in a venue such as a hotel) breaching section 6.7 (a) in that it was unlikely that that such a gift could benefit a patient or be educative.

CAC concluded that CCC was correct in concluding that the 'From New Customer to Loyal Patient' workshops were a gift from JJVC to HCP exceeding \$100.

CAC dismissed the appeal by JJVC.

In accordance with the Code, no fine was imposed, although JJVC was required to pay costs.

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



Brett Andrews
Secretary, Code Complaints Committee
22 March 2010