

EXPLANATION OF PROPOSED CHANGES TO THE ASMI CODE OF PRACTICE - 2009

Clause 5.1.6 Prize competitions

The proposed amendment includes a definition of prize competition. The purpose is to distinguish impermissible prize competitions, as defined, from consumer promotions that offer a small gift, including “cash-back” offers, where their perceived value is less than approximately 25% of the product. These are generally not considered significant enough to encourage excessive consumption. This is standard industry practice and found to be in compliance with the Code in past Panel hearings.

Insert definition of Prize competition

“A contest for a prize, where purchase is a condition of entry”

Clause 5.3.1 Scheduled Substances and Internal Analgesics

Delete clause 5.3.1- Scheduled substances and internal analgesics

The proposed amendment removes the clause 5.3.1 because it is fully covered by section 4.2.f of the Therapeutic Goods Advertising Code, which provides in general terms: ‘*An advertisement for therapeutic goods must not encourage, or be likely to encourage, inappropriate or excessive use*’. Clause 5.3.1 of the ASMI Code refers only to S2s and S3s and is thus inconsistent with 4.2.f of the TGAC as it implies (incorrectly) that unscheduled products are not covered by the restriction.

Clause 5.3.2 Scheduled Substances and Internal Analgesics

Delete clause 5.3.2- Scheduled substances and internal analgesics

The proposed amendment removes clause 5.3.2 which presently conflicts with section 4.3 of the Therapeutic Goods Advertising Code. Removal of this clause makes clear the existing position under that Code that promotional techniques should not offer incentives to recommend S2 and S3 products.

Explanatory Notes to clauses 5.3.1 and 5.3.2

In view of the proposed deletion of the operative clauses to which these notes relate, the notes now appear as explanatory notes applicable to section 5.1.2 since they provide helpful guidance for compliance with the Therapeutic Goods Advertising Code.

Clause 5.1.8 Ban on personal incentives

Insert clause 5.1.8 Personal incentives

The proposed new clause corresponds to section 4 (3) of the Therapeutic Goods Advertising Code under which ASMI members are already obliged not to offer any personal incentives to healthcare professionals to recommend or supply therapeutic goods.

Clause 5.1.8: “Advertisements/promotions must not offer any personal incentive to a healthcare professional, pharmacy assistant, or other non-healthcare professional sales person, to recommend or supply therapeutic goods”

Complaints Procedure

Clause 8.5.5 To improve clarity and consistency, the proposed amendments provide further procedural guidance on timelines regarding notification of claimed inconsistencies in the draft determination. Also, the time given to the Chair to issue the final determination has been increased from 2 to 5 days.

Clause 8.5.5 Within seven working days of the Panel meeting, a Draft Determination will be provided to the parties to the complaint. Within five working days each party may notify the Panel Chair of any claimed inconsistencies and ambiguities in the draft determination and must at the same time notify the other party. (This is not an opportunity to re-argue the case but rather to point out some inconsistency or ambiguity in the reasoning.) Within three working days i.e. 3 days after a party has claimed an inconsistency either party may provide comment i.e. on the inconsistency claimed by the other party to the Panel Chair, who will make any changes to the draft that the Panel Chair considers necessary to address any demonstrated ambiguities or inconsistencies. Within 5 working days i.e. after party 2 has commented on the claim by party 1 and vice versa the Panel Chair must then provide the Final Determination to the Executive Director who must notify the parties and the ASMI Executive Subcommittee of the Complaints Panel’s findings and determination, with its reasons