

Practitioner-only Products – Visibility within Retail Environment

Background

The Practitioner Medicine Technical Committee have recently contributed to the Practitioner-only section of the *Code of Practice for the Marketing of Complementary Healthcare Products* (the Code) and have developed the *Guideline for the Sale and Supply of Practitioner-only Products* (the Guideline) in conjunction with the CHC Secretariat. In aligning the Code with the Guideline one contentious issue has arisen.

There has been robust debate with regard to the industry approach to the supply of Practitioner-Only-Products to retailers and the subsequent availability of these products to consumers.

All stakeholders have agreed that Practitioner-Only Products should not be available for self-selection by consumers within a retail environment. It has been agreed that the Guideline must encompass best practice, and therefore the requirement for these products to be stored so as to be **not visible** to consumers. However, there has been some contention with regard to mandating non-visibility within the *Code of Practice for the Marketing of Complementary Healthcare Products* for these products. The secretariat strongly recommends not mandating this expectation of members, in particular because this clause is impossible to enforce. Enforceability and its practical implementation is a basic requirement for an effective industry code. The Executive Board was split on this issue, with a vote of 5-3 to provisionally include the clause 'not visible' and for a final decision to be determined after CHC member consultation.

The Secretariat therefore provides the following for member consideration:

- The Practitioner Medicine Technical Committee (PMTTC) voted to include that retailers must ensure Practitioner only products are 'not visible' to consumers, with the agreement they would not supply product to retail outlets that did not comply. The PMTTC believe that restricting both visibility and accessibility will ensure that Practitioner-only products cannot be self selected.
- Mahony Taren Lawyers commented that the clauses in relation to Practitioner-only products would not be seen as anti-competitive. In their view, it "could be argued that the special provisions relating to the display and sale of "practitioner only" products, in fact increases competition between those products and other products generally available for random purchase by consumers."
- During initial consultation with other CHC committees, members have argued strongly against the restriction of visibility of these products. Their arguments include:
 - Requesting pharmacies to store these Listed products so as to not be visible means that we are asking for a higher level of restriction than that of prescription medicines that, while unable to be accessed are still visible behind the pharmacy counter.
 - That this will be seen as generation of a "pseudo registration category" and the flexibility of practitioner-only labelling that has afforded industry and practitioners greater freedom could be removed.
 - Limiting visibility within a retail environment but not within a multi modality Practitioner environment, as outlined in the Code, is inconsistent.
 - That this will be impossible to enforce and will make the CHC lose credibility. The Complaints Resolution Panel (CRP) is constantly criticised for being a "tiger without teeth" and unable to enforce advertising standards. This will put the CHC's Complaints Resolution Committee (CRC) in the same weak position and open to criticism.

- That this raises an un-level playing field for our retail members compared to non-members, and that this will be a barrier for new retail members, particularly pharmacies, to joining the CHC.

Further information - Background of Practitioner-only Products

Complementary medicines differ from other medicines in that the ingredients may have multiple actions, as they treat the person not the disease. Consequently there are a number of medicines that health care professionals use on a case by case basis. Practitioner-only products evolved because sponsor companies needed to leave off the indications for use on the label, thus giving the practitioner a responsible way to personalise their script to their patient's needs. A practitioner-only product may also be of a dosage that is not appropriate for the 'one dose fits all' label advice and therefore requires over-labelling. The sponsor company may also have additional information that they need to communicate to the practitioner, eg: for pain relief associated with different causes.

At its simplest – a Practitioner-only product is not suitable for public access without a practitioner in the loop for the practical reasons of determining the use and dosage for the presenting individual.

It is appreciated that the TGA has included provisions about marketing to healthcare professionals, yet we have been repeatedly reminded that practitioner-only products are not legislated as a separate, recognised category of therapeutic goods and the majority are Listed goods with no additional special considerations or risks.

Members are requested to make a recommendation as to the inclusion or exclusion of the non-visible clause in *the Code of Practice for the Marketing of Complementary Healthcare Products*.

Please forward all comments to standards@chc.org.au before **March 16th 2012**.