CASE AUTH/3700/10/22

HEALTH PROFESSIONAL v ETHYPHARM

Poster about Naloxone

CASE SUMMARY

This case was in relation to a poster produced by Ethypharm that appeared on the side of a telephone booth.

The Panel ruled breaches of the following Clauses of the 2021 Code because it considered that the poster, which included a website address as an integral part of the poster, advertised a prescription only medicine, naloxone, to the public. The Panel considered that the poster was not sufficiently balanced and, in addition, was likely to encourage members of the public to seek a specific formulation.

Breach of Clause 5.1 (Unsuccessfully appealed)	**Failing to maintain high standards**
Breach of Clause 26.1 (Unsuccessfully appealed)	**Advertising a prescription only medicine to the public**
Breach of Clause 26.2 (Unsuccessfully appealed)	**Providing unbalanced information and encouraging members of the public to ask their health professional for a specific prescription only medicine**

The Appeal Board overturned the Panel's ruling of a breach of the following Clause of the 2021 Code as in the unusual circumstances of this case, and overall, the Appeal Board did not consider that Ethypharm had brought discredit upon, or reduced confidence in the pharmaceutical industry.

Clause 2 (successfully appealed)	**Requirement that activities or materials must not bring discredit upon, or reduce confidence in, the pharmaceutical industry**

This summary is not intended to be read in isolation.
For full details, please see the full case report below.

FULL CASE REPORT

A complaint was received from a contactable health professional about Ethypharm UK in relation to a poster regarding naloxone (REF UK-PREN-17, Date of preparation February 2021).

Ethypharm produced two naloxone injections in a pre-filled syringe, a generic Naloxone Hydrochloride and a branded version called Prenoxad.

According to the generic Naloxone SPC provided by Ethypharm, Naloxone was indicated, amongst other things, for the complete or partial reversal of opioid depression including mild to severe respiratory depression induced by natural and synthetic opioids. It may also have been used for the diagnosis of suspected acute opioid overdosage.

Prenoxad injection was intended for emergency use in the home or other non-medical setting by appropriate individuals or in a health facility setting for the complete or partial reversal of respiratory depression induced by natural and synthetic opioids. It may also be used for the diagnosis of suspected acute opioid overdose. (ref: Electronic medicines compendium, accessed 7 July 2023).

COMPLAINT

The complainant submitted that they saw an advertisement for Naloxone by Ethypharm in Birmingham. The complainant was writing as a concerned health professional that this was in breach of the Code of ethics for advertising by a pharmaceutical company. The complainant noted that Naloxone was a prescription only medication. The complainant's understanding was that nasal preparations might sometimes be provided via Patient Group Directions (PGDs), however Ethypharm seemed to only offer parenteral preparations, so this would not fall under its remit. The complainant noted that there was a job code at the bottom of the advertisement which also suggested that this was not part of a wider government/public health campaign. In summary, the complainant did not think that Ethypharm should be advertising Naloxone directly to the public.

In a subsequent email the complainant stated that they had since read the gov.uk website and it seemed that Naloxone could be given as an injectable via PGDs to at risk groups, but the complainant still wanted to pursue the complaint because it felt odd for Ethypharm to be marketing directly to the public. The complainant stated that they were not against increasing awareness of naloxone availability in itself and explained for context, that they were a doctor and were walking past the phone booth displaying the advert and considered that it was unusual in its context and tone so it caught their attention. The complainant stated that they were currently a plastic surgical registrar, so had a vague awareness of these things but no real training and so might be overreacting.

When writing to Ethypharm the Authority asked it to consider the requirements of Clauses 2, 5.1, 26.1 and 26.2 of the 2021 Code.

RESPONSE

Ethypharm submitted that:

‘1 The campaign was developed in conjunction with its medical education agency who devised the concept. The brief that it gave to the agency was that it wanted a campaign to raise awareness around opioid related overdose.

The campaign was developed by the agency in conjunction with real service users who commented on their experience. These comments were used without any input from Ethypharm.

2 The billboard campaign was used in cities around the UK with high opioid drug related deaths in order to raise awareness of the issues and the importance of carrying "Take Home Naloxone" as the intervention which could help reverse an opioid related overdose.

Ethypharm noted that the campaign did not specify any brand product or delivery form and it avoided using any brand product colours which could have been associated with its product.

3 Ethypharm sponsored the campaign. Its involvement in the campaign was to pay the agency for the development and roll-out of the billboards.

4 The materials had been reviewed and certified in Ethypharm's approval system. Details of the reviewers and certifiers were provided.

Ethypharm noted that the complainant sent a follow-up letter advising that they had reviewed the gov.uk website in which they stated that Naloxone could be given as an injectable to 'at risk groups'. Ethypharm noted that legislation changed in 2015 to allow 'Take Home Naloxone' including Prenoxad Injection to be handed out without prescription and no requirement for a PGD.

Following a request for further information, Ethypharm submitted that it did not believe the material/activity breached Clauses 2, 5.1, 26.1 and 26.2 of the 2021 Code. Ethypharm also submitted a copy of the Statement of Works from the agency and the minutes of a briefing meeting which confirmed that the activity was a public facing awareness campaign. Ethypharm also provided a copy of the final certification document approving the material and the qualifications of its final Medical signatory and final Commercial signatory.

PANEL RULING

The Panel noted that the poster in question was on the side of what appeared to be a telephone booth and included an image of a bearded man looking slightly upwards and bore the prominent eye-catching phrase in a large black font on an outlined white background 'Carrying naloxone is easier than carrying a mate's coffin'. This was followed by much less prominent text which read 'Naloxone can help reverse an opioid overdose. So if you use opioids or know someone at risk of an overdose, don't wait. Speak to your local drug service centre about getting a free kit'. This less prominent text was repeated verbatim beneath a prominent phrase that appeared further down the poster in a similar font size, colour and outlined white background to the first prominent phrase, which stated 'Carry naloxone. It could help save a life.' At the very bottom of the poster text in small font stated 'Opioid overdoses kill thousands every year in the UK.[1] But those deaths could have been prevented with naloxone. It's a drug that can help reverse an opioid overdose and help save lives. Signs of an opioid overdose include pinpoint pupils, unconsciousness, or breathing problems. Always call an ambulance first if you think someone is having an opioid overdose. For more information go to naloxone.org.uk. This campaign is sponsored by Ethypharm and made in conjunction with real naloxone carriers.' This was followed by a reference to a published paper (Parsons G. 2019), Date of preparation February 2021 and the Job code UK-PREN-17.

The Panel noted that the medicine naloxone, as a single preparation, was available as two branded medicines: Prenoxad, an injection produced by Ethypharm and Nyxoid, a nasal spray

produced by another company. The injection also appeared to be available as a generic from Ethypharm and a number of other companies.

The Panel noted that the final certificate for the material stated the job name 'Disease awareness on opioids overdose', the Product was Prenoxad, Job Category was non-promotional and Method of Dissemination was 'billboards, online meetings and conferences and will be distributed via the Commercial Sales Team'. The certificate stated that the Target Audience was 'Doctors, Other (specify in the Notes field)', however the Panel did not have the contents of the Notes field before it. The Panel also noted that the Prenoxad tactics – Posters and Flyposting SOW [statement of work] stated 'Creation of posters to raise awareness of Prenoxad. These may feature in drug services, needle exchanges, pharmacies, and homeless shelters'.

The Panel noted that the Prenoxad campaign Medical feedback contact report dated 8 October 2020 stated 'The purpose of this meeting was to obtain Ethypharm Medical's feedback on the headlines, shots, and tactics for the Prenoxad 'I choose to carry' campaign' and stated that Ethypharm Medical confirmed that the campaign assets could link to a disease awareness website and could be added to printed assets such as posters; the websites should be educational and should not seem to promote Prenoxad specifically. It was confirmed by Ethypharm Medical that naloxone.org.uk in its then current form could not be used as it included imagery of Prenoxad injection and an unlicensed kit. It was noted that if the image of the injection was removed from the website and the website complied with disease awareness criteria a link to the website could be used. The contact report noted that the website was created by another organisation but was funded by Ethypharm.

The Panel noted that whilst Ethypharm had not provided a copy of the webpages of naloxone.org.uk, the website address was an integral part of the poster. In this regard the Panel noted that it had previously been decided in relation to printed material that if companies published website addresses as an integral part of the message of their material and directed the public to seek further information about that message from the website that they needed to be satisfied that its content was reasonable as far as the Code was concerned. The Panel noted that whilst neither Ethypharm nor the complainant had specifically commented on the website, the website address was an integral part of the material. The Panel was concerned to note that the naloxone.org.uk home page accessed on 7 July 2023 contained an image of Nyxoid 1.8mg nasal spray and Prenoxad 1mg/ml solution for injection pre-filled syringe. The Panel noted that the name/description of the browser tab when the website was accessed was 'Naloxone – Naloxone Saves Lives'.

The Panel noted in general terms that disease awareness campaigns were a legitimate and helpful activity. The Panel noted that according to its SPC generic naloxone was indicated amongst other things for the complete or partial reversal of opioid depression and the diagnosis of suspected acute opioid overdose. The Panel noted that Parsons (2018), a review, highlighted the high levels of drug-related deaths in the UK and suggested six practical ways in which a prescriber could support patients to help reduce risks of drug-related deaths. These included naloxone distribution and training on managing opioid overdoses. Reference was made to naloxone distribution for use in an emergency in people at risk of an opioid overdose. It referred to prescribers working with local drug and alcohol services to understand current supply and where supply through the primary care network would be an advantage. Further minimum support was described in relation to the supply of naloxone in primary care such as the administration of basic life support. Other suggestions included harm-reduction advice which

would include, for example, promotion of safer methods of drug taking such as oral use or smoking in preference to injecting, management of physical and mental health in the older population, referral to structured treatment and supervised consumption and safe storage of medication. Noting the prevalence of opioid related deaths in 2018 the Panel acknowledged the potential importance of disease awareness campaigns in this disease area, noting that such campaigns should nonetheless comply with the Code.

The Panel noted that the naloxone.org.uk website mentioned on the poster in question when accessed by the Panel was headed NALOXONE, followed by TAKE HOME NALOXONE IN THE UK and explained that Naloxone (provided under the brand names Prenoxad and Nyxoid in the UK) was a medication used to reverse opioid overdose and that since 2015, this medication had been more widely available in the UK as a 'take home' emergency medication. An FAQ regarding who can supply naloxone in the UK and who can be supplied with take home naloxone stated that 'Under regulations that came into force in October 2015, people working in or for drug treatment services can, as part of their role, supply naloxone to others that their drug service has obtained, if it is being made available to save a life in an emergency. You do not need a prescription to supply naloxone in this way'. It thus appeared to the Panel that it was the sub population of people working in or for drug treatment centres that could be provided with naloxone to supply to individuals for the purpose of saving a life in an emergency.

The Panel noted that Clause 26.1 stated, among other things, that prescription only medicines must not be advertised to the public. The prohibition did not apply to vaccination and other campaigns carried out by companies and approved by health ministers. The Panel noted that naloxone was a prescription only medicine. The Panel, noting that an image of Prenoxad appeared on the naloxone.org.uk website, did not agree with Ethypharm's submission that the campaign did not specify any brand product or delivery form. The Panel noted Ethypharm's submission that legislation changed in 2015 to allow 'Take Home Naloxone' including Prenoxad Injection to be handed out without prescription and no requirement for a PGD. The Panel noted, however, that despite the changes in legislation naloxone remained a prescription only medicine, to which relevant requirements of the Code applied. The Panel also noted that Ethypharm had not asserted that the poster was part of a campaign approved by the health ministers.

The Panel noted that naloxone was mentioned seven times in the poster. That the brand name was not used in the printed poster, and that generics were also available did not preclude the application of Clause 26.1. In addition, in the Panel's view, the design of the poster was such that certain references to naloxone were particularly prominent and designed to catch the reader's eye as a primary take home message. This effect was compounded by the large size of the poster which covered one vertical side of what appeared to be a telephone booth. Further, the poster included a link to and explicitly directed readers to the naloxone.org.uk website which included on its homepage details about Ethypharm's product Prenoxad and another company's branded naloxone nasal spray Nyxoid. The Panel considered that the poster went beyond raising awareness of opioid related overdose as submitted by Ethypharm. The Panel, noting the above factors, considered that the poster advertised prescription only medicines to the public. A **breach of Clause 26.1** was therefore ruled.

Clause 26.2 stated, among other things, that information about prescription only medicines which is made available to the public either directly or indirectly must be presented in a balanced way. It also stated that statements must not be made for the purpose of encouraging members of the public to ask their health professional to prescribe a specific prescription only

medicine. The Panel noted that the supplementary information to Clause 26.2 Disease Awareness or Public Health Campaigns stated that such campaigns can be conducted provided that the purpose is to encourage members of the public to seek treatment for their symptoms while in no way promoting the use of a specific medicine. The use of brand or non-proprietary names and/or restricting the range of treatments described in the campaign might be likely to lead to the use of a specific medicine. The Panel noted its comments above on disease awareness campaigns and considered that such a campaign on opioid addiction and overdose including references to treatments would not be unacceptable so long as they complied with the Code. The Panel noted Ethypharm's submission that the campaign was developed by its agency in conjunction with real service users who commented on their experience and that these comments were used without any input from Ethypharm. The Panel noted that Ethypharm was responsible for ensuring that the poster including any user comments complied with the Code.

The Panel noted its comments and ruling above of a breach of Clause 26.1. The Panel queried whether the material at issue was sufficiently balanced as required by Clause 26.2 particularly in relation to the availability of certain non-medicinal options such as those outlined in Parsons (2018). The Panel noted that the poster in question did not differentiate between the formulations of naloxone or mention any specific brand name, however the naloxone.org.uk website referred to on the poster contained an image of Nyxoid 1.8mg nasal spray, a naloxone product by a different company, and Ethypharm's Prenoxad 1mg/ml solution for injection pre-filled syringe. This appeared to be not inconsistent with the description of the images on the website homepage described in the Prenoxad Contact report dated October 2020 which referred to an image of the Prenoxad injection and an unlicensed kit. The Panel was concerned that an image of two different branded formulations of naloxone on the website, which readers were explicitly directed to, might encourage members of the public to ask their health professional for a specific formulation of naloxone, especially noting that Prenoxad was the only injection mentioned on the homepage and Nyxoid was the only available nasal spray formulation. The Panel considered that the prominent specific mention of the two branded formulations and, in addition, the failure to refer to other non-medicinal options for how to avoid opioid-related overdose meant that the campaign was not balanced and in addition was likely to encourage members of the public to seek a specific formulation as outlined above. The Panel, noting the factors above, ruled a **breach of Clause 26.2.**

Noting its ruling of a breach of Clauses 26.1 and 26.2 above the Panel considered that overall high standards had not been maintained and a **breach of Clause 5.1** was ruled.

Clause 2 was a sign of particular censure and was reserved for such use. While the Panel noted that the company response stated that the purpose of the campaign was to raise awareness on opioid related overdose which was an important issue, the Panel considered that the poster went beyond this. Noting the Parsons review the Panel queried whether a bona fide disease awareness campaign ought to have mentioned certain broader issues outlined above. In the Panel's view the campaign encouraged drug users to ask for specific prescription only medicines. In addition, internal documents made it clear that its purpose was to raise awareness of Prenoxad. The Panel noted from the approval certificate that part of the intended audience included doctors and queried whether there had been confusion between the differing requirements for material directed at health professionals and that for the public.

The Panel noted that the poster was aimed at a very vulnerable population, those who were at a high risk of overdose. In such circumstances it was particularly important that companies were cautious and that any disease awareness campaign complied with the Code.

The Panel, noting its comments above, considered that the material in question brought discredit upon the pharmaceutical industry, and a **breach of Clause 2 was ruled.**

APPEAL BY ETHYPHARM

Ethypharm submitted that it was a speciality pharmaceutical company with European origins, focussed on specific central nervous system diseases and conditions as well as hospital injectables, including critical care medicines. As a result of the company's acquisition of Martindale Pharma in 2015, Ethypharm now operated a manufacturing site in England, employing 450 people and was a leading supplier of medicines within its therapeutic areas to the NHS.

Ethypharm submitted that it had extensive experience in the complex therapeutic areas in which it operated. In particular, Ethypharm's experience extended to the treatment of opioid use disorders and prevention of overdose deaths. For the last 30 years Ethypharm had worked tirelessly to support the treatment of opioid dependence and had provided training and education in relation to overdose intervention – including the provision of naloxone – for over 10 years.

Unlike many areas of healthcare, substance misuse treatment was largely delivered by charitable organisations, social enterprises, and other non-NHS services; indeed approximately 70% of treatment was provided to non-NHS organisations, which were not able themselves to undertake the awareness campaigns in the same way that Ethypharm could. Ethypharm submitted that it was very proud of the reputation it had built with these organisations over the last three decades, preventing harm and promoting recovery with its service users and patients. Ethypharm was dedicated to improving and saving the lives of some of the most disadvantaged service users and patients in the United Kingdom.

Executive summary

Ethypharm submitted that it had received a ruling from the Panel concluding that Ethypharm was in breach of Clauses 26.1, 26.2 and Clause 5.1, and in light of these determinations, the Panel also found that Ethypharm breached Clause 2. Ethypharm submitted that it took the ABPI Code seriously, was aware of its requirements, and respected its underlying principles to ensure patient safety. As would be explained below, Ethypharm maintained that the campaign materials did meet the requirements of the Code.

Ethypharm noted that a key principle of the Code was a commitment to benefiting patients and ensuring patient safety, including ensuring the appropriate and rational use of medicines and supporting the provision of high-quality healthcare. Ethypharm would like to assure the Panel that patients' interests had always been at the heart of this campaign, which was designed to raise awareness of the availability of take-home naloxone and the potential benefits of carrying it. Given the campaign's target audience, Ethypharm believed that this campaign would have maximum impact if a strong, simple message was used.

Ethypharm submitted that the Panel erred in its ruling for the following reasons:

- **Clause 26.1** – the intention of the poster was to support the widening availability of naloxone in line with government policy, rather than a flagrant attempt to advertise prescription-only medicines to the public.

- **Clause 26.2** – the information provided on the poster was factually correct and balanced. Naloxone could reverse an opioid overdose and save a life.

- **Clause 5.1** – the poster campaign was designed to reach a vulnerable population at risk of overdose. The objective of the campaign was the reduction of drug-related deaths using hard-hitting and compelling messages. The highest standards were maintained at all times.

- **Clause 2** – the poster campaign was firmly driven by the goal of protecting patients and reducing preventable deaths with a freely available product. Rather than bringing discredit upon (or reducing confidence in) the pharmaceutical industry, the campaign highlighted the important work that some pharmaceutical companies were doing to minimise preventable deaths in at-risk populations in line with government policy.

Ethypharm set out below its reasons for the appeal, including a background section, which might assist the review of the ruling. Ethypharm highlighted the following points, which provided important context:

- the overdose intervention awareness campaign aimed to support government policy, which was to encourage carrying of naloxone in order to reduce preventable deaths due to opioid overdose; naloxone was the only available reversal agent for use in opioid overdose intervention, and only two branded products were licensed for supply in the community as 'take-home' naloxone (as explained below);

- the campaign was designed to be sensitive and authentic, while effectively getting an important message through to a potentially hard-to-reach audience; Ethypharm had gathered statements from a number of independent experts with experience of working with the intended target audience, all of which strongly support the appropriateness and effectiveness of the messaging; and

- while Ethypharm appreciated that the Code played an important role in supporting the rational use of medicines, any effective campaign in support of the policy of encouraging availability of naloxone to save lives will necessarily encourage drug users and concerned members of the public to be aware of and request supplies of 'take-home' naloxone.

Background about 'Take-Home' naloxone

Ethypharm submitted that it would like to put into context the use of the poster that was the subject of the complaint and rulings and draw the Panel's attention to the prevalence of drug-related deaths in the UK as an ongoing public health crisis. Ethypharm submitted that the annexed letters from various experts, referred to elsewhere in Ethypharm's appeal submission, also provided valuable information and context. The Office for National Statistics tracked the number of deaths related to drug poisoning in England and Wales, showing that in 2021, 3,060

out of 4,859 drug poisoning deaths were related to drug. This was the highest number of overdose deaths ever recorded. The Government's policy paper (updated 29 April 2022), 'From harm to hope: A 10-year drugs plan to cut crime and save lives', highlighted the complex, multi-faceted nature of tackling drug misuse and related harms in the UK, which was described as 'Europe's largest heroin market'. The Government's 10-year plan in Harm to Hope drew from Dame Carol Black's 'Independent Review of Drugs' ("Independent Review"), part two of which set out the costs and benefits of a proposed 5-year plan that included 'increas[ing] the provision of harm reduction interventions such as naloxone and needle and syringe exchange programmes'. The review also stated that the provision of such services and programs should be covered by the National Commissioning Quality Standard.

Ethypharm submitted that whilst there were also ongoing issues related to drug supply, demand, and treatment, Ethypharm as a pharmaceutical company was focused on reducing drug-related deaths by trying to ensure widespread availability of an effective opiate/opioid overdose antidote – 'take-home' naloxone – as a ready-to-use product for emergency use. Although the UK did not produce any reports on the distribution and use of naloxone, the company estimated that Ethypharm had supplied over one million 'take-home' kits since 2013. Although it was difficult to provide an exact figure, Ethypharm estimated (by extrapolating data from Public Health Scotland) that as many as 75,000 accidental opioid overdoses had been reversed since 2013. Ethypharm submitted that the National naloxone programme Scotland: annual Monitoring report 2019/20 provided more information.

As evidenced by Harm to Hope, the Government recognised naloxone as a 'life-saving heroin antidote' and 'overdose antidote', stating that '[t]he strategy shows how we'll keep expanding the provision of the life-saving heroin antidote naloxone to drive down drug-related deaths…". The Medicines & Healthcare products Regulatory Agency ('**MHRA**') likewise referred to naloxone as 'the emergency antidote for overdoses caused by heroin and other opiates or opioids (such as methadone, morphine and fentanyl)' in its guidance, 'Widening the availability of naloxone'.

The poster at issue in this appeal therefore aimed to increase awareness – particularly within a vulnerable and hard to reach community – about naloxone and its availability as a potential lifesaver when there was a suspected drug overdose. Ethypharm referred the Panel to another campaign that was directed at users on a named third party website which discussed nitazenes, a new class of opioid, and the importance of carrying naloxone to avoid overdoses. The video made three key points to reduce the risk of overdose, beginning with: 'First of all, carry naloxone'. The third party was a social enterprise that designed and delivered social care services in the field of substance use among others. The author of the article, 'Drug-related deaths: practical responses to a growing problem' (which was referred to on the poster), was previously Chief Pharmacist at the third party social enterprise. [A named doctor] was a dual accredited addiction and general adult psychiatrist who was currently the group medical director of the social enterprise.

As an independent expert in this field, [the named doctor] had provided a statement in support of the poster campaign referred to in Expert Views below.

Ethypharm submitted that although naloxone was classified as a prescription-only medicine, it was subject to an exemption under sections 214(1)-(2), 235(2), (5) and (7) and 238, and schedules 17 and 19 of the Human Medicines Regulations *2012* , which permitted the supply of injectable and nasal naloxone by people working in or for drug treatment services without a

prescription, in the course of providing lawful drug treatment services and for the purpose of saving lives in an emergency (including anticipated future emergencies). Such naloxone that was made available to the community under the exemption was described as “take-home naloxone”, which was available as two products:

- a ready-to-use pre-filled syringe in a sharps box, supplied under the brand name Prenoxad by Martindale Pharma (a subsidiary of the Ethypharm Group); and

- a ready-to-use nasal spray, supplied under the brand name Nyxoid by Napp Pharmaceuticals Limited.

Ethypharm submitted that it was important to be aware that although there were licensed generic naloxone products, in practice there were only two preparations specifically licensed for community supply as take-home naloxone (UK Government’s ‘Closed consultation: Expanding access to naloxone’). The SPC for Prenoxad stated, at section 4.1 on therapeutic indications (emphasis added):

> ‘Prenoxad Injection is intended for **emergency use in the home or other non-medical setting by appropriate individuals** or in a health facility setting for the complete or partial reversal of respiratory depression induced by natural and synthetic opioids, including methadone, and certain other opioids such as dextropropoxyphene and certain mixed agonist/antagonist analgesics: nalbuphine and pentazocine. **For this reason Prenoxad Injection should be carried by persons at risk of such events. It may also be used for the diagnosis of suspected acute opioid overdose**.’

The SPC for Nyxoid stated, at section 4.1 on therapeutic indications (emphasis added):

> ‘Nyxoid is intended for immediate administration as emergency therapy for known or suspected opioid overdose as manifested by respiratory and/or central nervous system depression in both **non-medical and healthcare settings**.’

Generic naloxone was supplied in ampoules and pre-filled syringes (without the sharps box and patient-oriented information) and was therefore only suitable for administration by healthcare professionals who had access to additional needles etc. required to administer it, an appropriate means of disposal, and the required training and information for safe administration. Unlike the SPCs for Prenoxad and Nyxoid, section 4.1 of the SPCs for the generics refer to use for ‘diagnosis of suspected acute opioid overdosage’ only, noting that only qualified health professionals were permitted to make diagnoses.

Patient group directions or patient specific directions (‘PSDs’), while still available in appropriate circumstances (sections 227-234 of the UK Human Medicines Regulations 2012), were no longer required when naloxone was supplied by drug treatment services (sections 214(1)-(2), 235(2), (5) and (7) and 238, and schedules 17 and 19 of the UK Human Medicines Regulations 2012). Additionally, supply was not limited to specific individuals. For example, drug services could supply naloxone to outreach workers, drug users at risk, carers, friends, or family members of a drug user at risk, or an individual working in an environment where there was a risk of overdose. In an emergency, anyone could use any available naloxone to save a life.

The underlying policy reason for the above exemptions was to expand the supply and access to take-home naloxone across the UK. This policy had been repeatedly endorsed by various

government departments and ministerial bodies, including the Secretary of State for Health and Social Care, the Secretary of State for the Home Department, and the Combating Drugs. The UK Government and the devolved administrations had also agreed that further review of the legislation was required to make take-home naloxone more available to those who use drugs and were at risk. A consultation about expanding access to naloxone was conducted by the UK Government and concluded on 28 September 2021.

The Advisory Council on the Misuse of Drug's report of 17 June 2022, 'Research and analysis: ACMD review of the UK naloxone implementation' stated the following relevant points:

- 'The importance of naloxone is apparent, with evidence showing an association between administration of naloxone and a reduction of opioid overdose-related deaths.'
- 'Overall, it is apparent that a national joined-up approach to promote the delivery of take-home naloxone across different sectors is necessary, supported by rigorous data recording to measure progress.'

The European Monitoring Centre for Drugs and Drug Addiction ('**EMCDDA'**) concluded from a review of 21 studies on take-home naloxone in 2015 that take-home naloxone programs decrease overdose-related mortality. The EMCDDA had also cited, in various publications, a modelling study which found that the distribution of naloxone to 30% of heroin users might lead to a decrease in overdose deaths by around 6.6%.

Ethypharm submitted that it would also like to emphasise the importance of distinguishing between overdose prevention and overdose intervention in the context of the Panel's observations. This campaign was strictly geared towards intervention measures, since it addressed the situation of needing to use naloxone in an emergency once an overdose had already put a life in danger; possible steps to help prevent an overdose were no longer immediately useful or relevant considerations in such situations. Whilst raising awareness of overdose prevention measures was clearly an important (but separate) consideration, it was important to keep the intervention message of this campaign as clear and simple as possible, given the target audience and the possibility of a limited capacity to engage with multiple, diverse messages simultaneously. Ethypharm referred to Expert Views regarding the appropriateness of the messaging in the poster.

Consistent with the Government's policy objectives, Ethypharm (and formerly, Martindale Pharma) had been committed to improving access to take-home naloxone since 2010 by advocating for changes in the regulations, working with government bodies to develop the injectable naloxone (Prenoxad) which was launched in 2013, and was now supplied and used in the community, and funding awareness campaigns and resources.

Expert views on the importance of the Campaign and the appropriateness of its messaging

In April 2021, [named agency], a medical communications, and marketing agency, commenced an Ethypharm-funded poster campaign. The campaign was delivered to coincide with 'International Overdose Awareness Day', recognised globally as a time to reflect on the many thousands of preventable drug deaths that occur each year, but also a time to redouble Ethypharm's collective efforts to prevent these deaths occurring in the first place. This disease awareness campaign was focused on raising awareness of the UK's opioid overdose crisis, and the importance of naloxone carriage, by the 'at risk' population and the wider public. This key

message of the campaign was in line with UK government policy and messaging and the devolved nations' drug strategies. The title of the campaign was 'I choose to carry'.

Because of the particular nature of the campaign's target audience, which might not be appreciated by those with no experience of working in the sector, Ethypharm provided a number of expert opinions to emphasize the appropriateness and effectiveness of the overdose intervention awareness campaign. Letters from these experts were provided. As explained in the letters, all these individuals had an in-depth understanding and extensive experience of working with drug-users, in various contexts. All were independent of Ethypharm; they were contacted for the purpose of this appeal based on their relevant expertise. Details of the experts' roles were provided by the company.

The experts' letters provided a wealth of context, and conveyed the unanimous view that drug users, as the campaign's target audience, would not find the messaging of this campaign unduly distressing, distasteful or insensitive. Indeed, it was overwhelmingly endorsed as an effective, well-pitched campaign. Ethypharm highlighted just some of the many supportive comments below (and had added its own emphasis to some of wording).

Firstly, there was enormous support for the need to raise awareness of take-home naloxone. The importance of messaging which directly addresses at-risk populations was particularly emphasized:

- **[Named professor]:**
    - 'The consensus of opioid experts is that THN (Take Home Naloxone) programmes and removal of prescription barriers to naloxone distribution are some of the most helpful responses to reducing opioid-related harm. … These programmes have been shown to be cost-effective and reduce opioid overdose-related mortality at the population level. … modelling work has indicated that a high level of distribution (in excess of 20 times the number of drug related deaths) is required to ensure that THN is available at every witnessed overdose .'

- **[Named member of the Scottish Drugs Forum]:**
    - 'The evidence-base for the effectiveness of naloxone and for 'take-home naloxone' provision is overwhelming and well documented.'
    - '… it will always be **crucial to ensure that people not reached through [alternative means of naloxone provision] who may be among the most vulnerable to fatal overdose – those not engaged with services who may be socially isolated – are reached directly through public health advertising** – this group is a key target for this campaign.'

- **[Named professor]:**
    - 'Raising awareness of and access to naloxone is particularly crucial for the large population (approx. 120,000) not engaged with drug treatment services. It is here that **the poster campaign in question plays a particularly important role**. Information about naloxone and its role in preventing opioid overdose is generally confined to drug treatment services – reaching a necessary audience, but not those at the highest risk. Highlighting the risk of opioid overdose and the

availability of an antidote in public spaces is crucial to empower people at high risk and their loved ones to prevent unnecessarily fatalities.'

- 'It is paramount that this messaging is not confined to specialist services and uses words and images meaningful and accessible to the target population. **I hope to continue to see this and similar innovative harm reduction messages in public spaces** to help empower high risk populations to protect themselves from harm.'

Secondly, it was crucial to be aware that these experts overwhelmingly endorsed, and indeed applauded, the appropriateness of the campaign, given the target audience:

- **[Named professor]:**
  - **'**I am aware of the naloxone opioid overdose awareness poster in question. It **received favourable attention when it was first released** – particularly among communities of people who use drugs through social media forums such as Facebook and Twitter. I am well connected with these networks, having prior lived experience of opioid dependency myself. **The poster is well placed to connect with the target population in a non-stigmatising and accessible way**. It **uses clear language and provides an empowering message** 'I choose to carry' to a highly stigmatised population. **The reference to carrying a 'mates coffin' I do not deem to be offensive or inappropriate**. It speaks to the unfortunately common experience many community members face – of witnessing their friends and peers dying before their time. It is **paramount that information about this life-saving intervention is promoted in an accessible way** and in places where it can be seen by the most at risk. I would like to applaud Ethypharm on their support for this intervention.'

- **[Named member of the Scottish Drugs Forum]:**
  - 'Our initial reaction [to the campaign] and remaining impression is that this is an **impressive campaign that speaks clearly to stakeholders and offers practical advice to vulnerable people and those concerned for their welfare**. This is a stigmatised and marginalised group of people who are rarely engaged by advertising and **the campaign managed to engage that audience**. In the context of a public health crisis it is appropriate for this audience to be directly engaged. It is important that people who are at risk of fatal overdose and those who care for and love them know that they can do something to prevent fatal overdose. **It is a powerful message which gives them agency and hope**.'
  - 'The **most effective communication with people who use drugs including people who are experiencing drug problems are based in the realities of their lives without sensationalising or demeaning them. In our opinion this series of posters manages that balance.** The situations are ones which many people with an opioid dependency will recognise and may identify with.'

- ‘From informal conversations and what we have observed on social media, the **campaign was well received. Professionally we welcomed it** and it helped inform a subsequent ‘How To Save a Life’ campaign in Scotland in which SDF led. These campaigns are the key advertising campaigns specifically addressing drug-related harms in the UK and **are to be welcomed and applauded.**’

- **[Named professor]:**

  - ‘As someone who has undertaken research and policy activity in the drugs field for over 20 years, I **welcomed the launch of the campaign**.’

  - ‘My brief review of the website reassures me that the **information provided is clear, accurate, and helpful,** and the content is similar to websites funded and supported by, for example, the Scottish Government…’

  - ‘humanising framing… aligns with research findings showing campaigns that encourage/highlight familiarity and (indirect) contact with an affected group lead to lower stigma and an increase in supportive action. This is important as [drug users] remain a highly stigmatised and marginalised group, and as they are often dehumanised, their lives are ‘devalued’. This leads to ‘internalised’ stigma, whereby members of affected groups come to believe stigmatising labels and are subsequently less likely to seek support for their drug use as they do not think they – or people like them – are worthy of support. **Hence, compassionate framing can lead to ‘rehumanisation’ and [drug users] are viewed as deserving of support and help**.’

  - ‘Overall, [the peer-reviewed evaluation of the Scottish How To Save A Life campaign] suggested that **campaigns which may traditionally have been viewed as ‘controversial’ such as drug related deaths and distribution of naloxone, are appropriate topics for large-scale public mass media campaigns**. This is particularly true in the public health context of high levels of drug related deaths and other harms, as we are currently experiencing in the UK. We also concluded that audience segmentation was important and in addition to more general messaging about drug related deaths targeting the general public, **it is important to specifically target those most at risk of experiencing or witnessing drug overdoses with specific messages to motivate action.’**

- **[Named project executive]:**

  - ‘The participative nature of the development process employed in the design of this campaign ensured that it was both developed for and with people who use opioids. As a result, **the messaging and visuals were well conceived and targeted**. The campaign’s **empathic engagement with our community** was best symbolised by the agreement of community members to be shown on the posters alongside their peer education messages.’

  - ‘The messaging came from community members who selected messages that they felt would reach past our peer’s resistance to official messaging.

The peers shown in the campaign had the courage to be shown personally on a campaign poster. This was key to **securing the empathic community connection with a highly stigmatised and criminalised target audience.** It is an unusual experience for people who use opioids to be spoken to by our own in our own words on a topic that matters to us.

The campaign was well received in our community. It created a point of dialogue and health promotion for those of us promoting our peers to carry naloxone. It also showed our community that someone had noticed the shocking death toll among our community and invested money in a **well-designed, thoughtfully messaged, and creatively shot poster campaign**.'

- **[Named medical director] and [named chief executive]:**
    - 'It is also important for messages to be informed by people who've been through similar things (lived/living experience) to make sure the messages make sense and help people.'
    - 'I think the poster is **entirely appropriate for the target audience**, and we have had, and continue to have, this very same poster in our Manchester drug service reception since it was first released… I can say, to my knowledge, that **we have not had a single complaint regarding these posters in the entire time they have been displayed in our services**.'

- **[Named health professional]:**
    - 'Using real service users and their direct quotes is a style that I am familiar with and that has achieved success. They are speaking directly to us.'
    - 'After hearing that there had been a complaint to the PMCPA I was concerned about the impact this could have on future campaigns. I am hopeful that you will not waver from your commitment to the universally accepted ideal that naloxone continues to be raised in the awareness of every single person in the country and we continue to destigmatise treatment of this population.'

Ethypharm submitted that it trusted that the Panel would take all this important context into account when reaching its appeal decision; the campaign was appropriately and sensitively designed with a specific target audience in mind and was truly focussed on effectively supporting a vital public health policy and, ultimately, on saving lives.

Appeal Arguments

Ethypharm noted Clause 26.1 – Prescription only medicines must not be advertised to the public. This prohibition does not apply to vaccination and other campaigns carried out by the companies and approved by health ministers.

As explained in Ethypharm's response to the complaint the purpose of the campaign/poster was to 'raise awareness around opioid related overdose' as well as to 'raise awareness of the issues and the importance of carrying 'Take-Home Naloxone' as the intervention which can help reverse an opioid related overdose.' There was no intention to promote supply of a specific

product. The aim was to support the widely endorsed policy of encouraging drug users to carry naloxone as a potentially life-saving antidote.

Ethypharm submitted that Naloxone was an exceptional prescription-only medicine in that it was subject to exemptions from prescription requirements. Unlike typical prescription-only medicines, it was a consistent goal of the government that naloxone be distributed more widely. Increased distribution of naloxone was part of the UK Government's 10-year strategy, as stated in Harm to Hope, and had been reflected in various government initiatives, including:

- a nationwide awareness campaign in Scotland in August 2021, jointly run by the Scottish Government and Scottish Drugs Forum, to encourage the public to access the 'Stop the Deaths' website where it promoted the use of naloxone and availability of free naloxone kits;

- publication of Reducing Drug Deaths in London Report – London Assembly Health Committee (March 2022); and

- amendments to the Human Medicines Regulations 2012 in 2015 and 2019 to make naloxone more widely available, as shown in the letter dated 15 July 2014 from [named MP] of the Department of Health to [named professor] of the Advisory Council on the Misuse of Drugs on the amendments to the Human Medicines Regulations 2012 in 2015 to make naloxone more widely available, and Explanatory Memoranda of The Human Medicines (Amendment (No. 3) Regulations 2015 and The Human Medicines (Amendment) Regulations 2019 .

Ethypharm submitted therefore, the intention of the poster was to support widening the availability of naloxone in line with the above initiatives, not to blatantly breach Clause 26.1. As explained above, there were only two products supplied under the take-home naloxone scheme, and although both were referred to by brand name on the naloxone.org.uk website, neither one was promoted over the other.

Ethypharm noted Clause 26.2. Ethypharm submitted that the information provided on the poster was factually correct and balanced; naloxone could reverse an opioid overdose and save a life. It was an effective product with only 37 reports of adverse drug events since 1977, as shown by the drug analysis profile for naloxone at the MHRA Yellow Card reporting website. Even since the launch of Prenoxad, the number of incidents had not increased; in fact, since that launch there had only been 5 reports linked to intra-muscular naloxone in 10 years during which period 1 million kits had been supplied. This illustrated why government policy was to promote widespread availability in the community. While Clause 26.2 required that 'statements must not be made for the purpose of encouraging members of the public to ask their health professional to prescribe a specific prescription only medicine', the fact was that, in this case, it was government policy to encourage relevant members of the public to ask for take-home naloxone, and there were only two products available under this scheme. There was no real risk of take-home naloxone being 'over-subscribed'. The potential beneficiaries of take-home naloxone were quite possibly unlikely to find out about it through their own initiative or primary healthcare services, hence the importance of an awareness-raising campaign.

Ethypharm submitted that the prominent quote on the poster, 'Carrying naloxone is easier than carrying a mate's coffin,' was a statement made by the individual in the poster based on their personal experience and was not incited or induced by Ethypharm. The idea was to present a

quote from someone who other drug users would, hopefully, easily related to and therefore took notice of. Again, it was important to consider all aspects of the reality of the lives of the target audience. Ethypharm worked in tandem with experienced drug treatment providers (who put it in touch with the individual in the poster) and informally consulted with the Office of Health Improvement and Disparities to ensure its campaign was sensitive, appropriate and felt authentic.

Ethypharm submitted that the ruling raised concerns about there being no reference to non-medical preventative options, but such options were not relevant during a suspected overdose crisis as it was too late to prevent it. To counteract the effects of opioid drug overdoses, naloxone was used to block the opioid receptors; it was the most effective overdose intervention. As explained above, the campaign focussed on a simple message to raise awareness of the availability of naloxone for use as an intervention measure.

Ethypharm submitted that the ruling also expressed concern about the naloxone.org.uk website. The website was originally designed as an independent information source, set up in 2012 by the Scottish Drugs Forum through Scottish Government support. The decision to provide financial support for the naloxone.org.uk website was made in good faith, intending to offer an informative and non-promotional resource for the public. When Ethypharm provided an unrestricted educational grant in 2019 for the ongoing provision and maintenance of the website, it was on the basis that the website would provide information about naloxone in the UK and be independent of any particular product or route. It named Prenoxad and Nyxoid because, as explained above, those were the only two medicinal products presently supplied to the community as ‘take-home naloxone’ in the UK. ‘Generic’ naloxone was only supplied to hospitals and healthcare professionals, as it would be impractical (and unhelpful) for community-use without a syringe, sharps container, and/or patient-oriented information.

Explicit identification of the two branded products was consistent with the approach taken by other awareness and support organisations which likewise named the two branded products. Examples were provided.

Clause 5.1 – High standards must be maintained at all times.

Ethypharm noted that the ruling stated that a breach of Clause 5.1 was based on the Panel’s findings in relation to Clause 26.1 and 26.2. Ethypharm hoped that the Appeal Board would reconsider this view in light of the more detailed information now provided.

Ethypharm acknowledged the special nature of medicines and the importance of considering the audience to which information about medicines was directed. The poster was designed to reach a vulnerable part of the population that was at risk of overdose (including their carers, friends, and family members), with the objective of reducing drug-related deaths through overdose intervention, thus requiring strong messaging about the availability of free naloxone for use during emergencies. The promotion of naloxone as a possible lifesaver and counter to opioid overdose was consistent with other drug overdose prevention campaigns, such as the Scottish Government’s ‘Stop the Deaths’ campaign in collaboration with Scottish Drugs Forum, and drug harm prevention resources (referred to above).

Ethypharm’s poster provided the following information about naloxone and overdose situations:

- ‘Speak to your local drug service centre about getting a free kit.’

- ‘It could help save a life.’
- ‘It is a drug that can help reverse an opioid overdose and helps save lives.’
- ‘Signs of an opioid overdose include pinpoint pupils, unconsciousness, or breathing problems. Always call an ambulance first if you think someone is having an opioid overdose.’

Ethypharm submitted that the statements not only encouraged carrying naloxone for emergencies, but also explained how to recognise symptoms of an overdose and the importance of calling an ambulance. As also noted above, only two products were available as take-home naloxone for overdose intervention and neither was specifically promoted over the other on the referenced naloxone.org.uk website.

Ethypharm submitted that it again referred to the Government’s repeated support for promoting and expanding the availability of naloxone in the community to target drug-related harm and death. Therefore, the poster was supporting the need to increase the uptake of take-home naloxone, using appropriate tones of concern and urgency. It thus did not bring discredit upon, or reduce confidence, in the pharmaceutical industry, but illustrated a concern for the community that went beyond private sales and profits. Ethypharm was transparent with its involvement by stating on the poster, ‘This campaign is sponsored by Ethypharm…’ At the heart of the campaign was Ethypharm’s goal to educate, inform and save lives.

Clause 2 – Activities or materials must never be such as to bring discredit upon, or reduce confidence in, the pharmaceutical industry.

Ethypharm submitted that rather than compromising patient safety or public health, Ethypharm firmly believed the poster in fact sought to improve patient safety and public health by combatting drug-related harm in the UK with a medicinal product where empirical evidence showed that reports of adverse reactions to naloxone are uncommon beyond the expected onset of withdrawal symptoms and agitation in an overdose victim who was revived by naloxone (page 53 of the EMCDDA report, ‘Preventing opioid overdose deaths with take-home naloxone (2016)’). As stated by the World Health Organisation on its online fact sheet (‘Naloxone has virtually no effect in people who have not taken opioids’. In addition to the information provided on the naloxone.org.uk website, both Prenoxad and Nyxoid had dedicated websites with extra information for patients, thus minimising risk.

Ethypharm submitted that Clause 2 of the Code provided examples of types of behaviour which could be held to breach it, but Ethypharm did not consider that any aspect of its naloxone campaign aligned with these examples in terms of risk of discrediting the industry. On the contrary, the campaign was firmly driven by the goal of protecting patients, aiming to maximising opportunities to reduce preventable deaths.

Ethypharm submitted that it agreed with the Panel’s view that the poster was aimed (at least in part) at a ‘vulnerable’ population, but the company disagreed with the consequence which the Panel appeared to derive from this view, namely that the messaging on the poster reduced confidence in or discredited the pharmaceutical industry. Presumably the Panel considered that the poster wording was too hard-hitting. However, all characteristics of the intended audience should be taken into account in a balanced way, together with the aim of the campaign, namely, to effectively deliver an important message to a potentially hard-to-reach audience. The decision to use a direct, impactful message to clearly communicate the importance of carrying naloxone as a potential life-saving treatment (instead of a ‘soft’ approach which might well be less

effective) should not in Ethypharm's view be regarded as behaviour discrediting the industry in breach of Clause 2. Ethypharm referred to Expert Views, which evidenced the consistent support for the messaging on the poster (as well as the poster campaign generally) by experts in the field of drug misuse and overdose prevention.

Ethypharm submitted that also relevant to the Panels' ruling on Clause 2 was the explanation provided above , namely the importance of distinguishing between overdose prevention and overdose intervention. As this was a disease awareness campaign focussed on overdose intervention and given the potential for members of the target audience to be suffering from confusion and/or impaired memory or reasoning skills, it was important to keep the message short and simple, with a focus on effectively raising awareness that life-saving products were available.

Conclusion

Ethypharm submitted that it hoped its clarifications provided the Panel with greater insight into the company's intentions with the awareness campaign. In summary, Ethypharm's campaign was designed to support the important public health goal of widening access to take-home naloxone, using a clear, simple message which would resonate with the target audience without causing undue distress. There was no intention to specifically promote Ethypharm's product. While Ethypharm was appealing all rulings, and hoped that this ruling would be amended once the information provided in this letter had been taken into account, Ethypharm submitted that it was committed to working with the Appeal Board to resolve any outstanding concerns and would be very keen to meet in person, and so was requesting a hearing, to clarify or expand on any of the points raised in Ethypharm's response. Ethypharm emphasised that the company fully appreciated the importance of adherence to the Code.

COMMENTS FROM THE COMPLAINANT

The complainant submitted again, that they did not feel qualified to comment so would certainly defer to the expert opinion of the Appeal Board. The complainant's limited understanding of the situation was that the agency was working on behalf of Ethypharm, so Ethypharm was responsible for the content, and given naloxone was an Ethypharm product, proactively discussing the product should probably be considered as promotional. The complainant was confused regarding naloxone's prescription only status, the SPC seemed to still suggest it was a POM but could be administered at home? If so, the complainant still thought companies were not permitted to promote POMs to the public. The complainant understood if a company gave an arm's length grant to a legitimate body to create a disease awareness campaign that would be permitted, but that did not seem to be this situation as Ethypharm seemed to have its own employees certifying things, and the agency was acting on Ethypharm's behalf rather than it being an independent organisation. Either way, the complainant was grateful for everyone's time and they supported the notion of increasing naloxone awareness, as long as it was not in breach of laws/regulations/codes.

APPEAL BOARD RULING

The Appeal Board noted that the poster in question appeared on the side of a telephone booth and bore the prominent eye-catching phrase in a large black font on an outlined white background 'Carrying naloxone is easier than carrying a mate's coffin'. This was followed by much less prominent text which read 'Naloxone can help reverse an opioid overdose. So if you

use opioids or know someone at risk of an overdose, don't wait. Speak to your local drug service centre about getting a free kit'. The Appeal Board noted that naloxone was mentioned seven times in the poster.

The Appeal Board noted that at the relevant time, naloxone, as a single preparation, was available as two branded medicines, Prenoxad, an injection produced by Ethypharm and Nyxoid, a nasal spray produced by another company. The injection also appeared to be available as a generic from Ethypharm and a number of other companies.

The Appeal Board noted that under regulations that came into force in October 2015, people working in or for drug treatment services could, as part of their role, supply naloxone to save a life in an emergency and that a prescription was not needed to supply naloxone in this way.

Ethypharm submitted that in this instance when naloxone was supplied, training was also given on its administration.

The Appeal Board noted that the final certificate for the material stated the job name 'Disease awareness on opioids overdose', the Product was Prenoxad, Job Category was non-promotional and Method of Dissemination was 'billboards, online meetings and conferences and will be distributed via the Commercial Sales Team'. The certificate stated that the Target Audience was 'Doctors, Other'. The Appeal Board queried the distribution of the poster via the Commercial Sales Team and the intended target audience.

Ethypharm submitted that although its small team of Healthcare Development Managers sat within the commercial function in the company, they had regular contact with drug treatment services and they were responsible for engaging with these services. Ethypharm submitted that the poster was made available to doctors in drug and alcohol centres and it was for them to decide if they wanted to display the posters in their centres.

The Appeal Board had been provided with a copy of the homepage of naloxone.org.uk as accessed by the Panel in July 2023. The Appeal Board noted that it contained an image of Nyxoid 1.8mg nasal spray and Prenoxad 1mg/ml solution for injection pre-filled syringe. The Appeal Board noted that the Prenoxad campaign Medical feedback contact report dated 8 October 2020 stated it was confirmed by Ethypharm Medical that naloxone.org.uk in its then current form could not be used as it included imagery of Prenoxad injection and an unlicensed kit. It was noted that if the image of the injection was removed from the website and the website complied with disease awareness criteria a link to the website could be used.

The Appeal Board considered that in general terms disease awareness campaigns were a legitimate and helpful activity. Parsons (2018), a review, highlighted the high levels of drug-related deaths in the UK and suggested six practical ways in which a prescriber could support patients to help reduce risks of drug-related deaths. Noting the prevalence of opioid related deaths the Appeal Board acknowledged the potential importance of disease awareness campaigns in this disease area, but such campaigns should nonetheless comply with the Code.

The Appeal Board noted that Clause 26.1 stated, among other things, that prescription only medicines must not be advertised to the public. The only exception was vaccination and other campaigns carried out by companies and approved by health ministers.

The Appeal Board explored whether Ethypharm was asserting that naloxone was not a prescription only medicine. The Appeal Board noted Ethypharm's submission that legislation changed in 2015 to allow 'Take Home Naloxone' including Prenoxad Injection to be supplied without prescription and no requirement for a PGD. Ethypharm submitted that the circumstances of this campaign were unique in that it was for a prescription only medicine which could be supplied without a prescription under specific conditions and considered that the Code was unclear on such a matter. The Appeal Board did not agree that the Code requirements in relation to the prohibition on promoting prescription only medicines to the public were in any way unclear.

The Appeal Board considered that regardless of the unusual supply arrangement for naloxone, it remained a prescription only medicine, to which relevant requirements of the Code applied. The Appeal Board considered whether the exception applied i.e. whether this was a campaign approved by health ministers. The Appeal Board noted Ethypharm's submission that whilst the campaign had received positive support from various individuals within government departments the company had not secured its approval by health ministers as this would have been difficult and would have taken a long time. In that regard Ethypharm had not asserted that the poster was part of a campaign approved by the health ministers. The company told the Appeal Board that it knew it had 'pushed the boundaries [of the Code]' to deliver this campaign despite not obtaining ministerial approval.

The Appeal Board considered whether the poster advertised Ethypharm's product.
The Appeal Board noted that naloxone was mentioned seven times in the poster. The design of the poster was such that certain references to naloxone were particularly prominent and designed to catch the reader's eye as a primary take home message. This effect was compounded by the large size of the poster which covered one vertical side of a telephone booth. Further, the poster included a link to and explicitly directed readers to the naloxone.org.uk website which included on its homepage details about Ethypharm's product Prenoxad and another company's branded naloxone nasal spray Nyxoid. The Appeal Board noted an image of Prenoxad on the naloxone.org.uk website and did not agree with Ethypharm's submission that the campaign did not specify any brand product or delivery form. The Appeal Board noted Ethypharm's submission that Prenoxad was the only available injectable naloxone preparation until 2019 and 90% of all currently supplied naloxone was injectable and that Ethypharm had maintained a low cost of Prenoxad in comparison to the other available product for use in an opioid-related overdose. The Appeal Board, noting the above, considered that the poster went beyond raising awareness of opioid related overdose as submitted by Ethypharm, and promoted a prescription only medicine. The Appeal Board considered that the poster advertised prescription only medicines to the public and it upheld the Panel's ruling of a **breach of Clause 26.1**. The appeal on this point was unsuccessful.

Clause 26.2 stated, among other things, that information about prescription only medicines which is made available to the public either directly or indirectly must be presented in a balanced way. It also stated that statements must not be made for the purpose of encouraging members of the public to ask their health professional to prescribe a specific prescription only medicine. The supplementary information to Clause 26.2 'Disease Awareness or Public Health Campaigns' stated that such campaigns can be conducted provided that the purpose is to encourage members of the public to seek treatment for their symptoms while in no way promoting the use of a specific medicine. The use of brand or non-proprietary names and/or restricting the range of treatments described in the campaign might be likely to lead to the use of a specific medicine.

The Appeal Board considered that such a campaign on opioid related overdose including references to treatments would not be unacceptable so long as it complied with the Code.

The Appeal Board queried whether the material at issue was sufficiently balanced as required by Clause 26.2 particularly in relation to the availability of certain non-medicinal options to reduce drug-related deaths such as those outlined in Parsons (2018).

The Appeal Board considered Ethypharm's submission that the campaign was focused on overdose intervention rather than prevention, therefore there were fewer balancing messages that could be given. Ethypharm submitted that few and simple messages could be given with regard to overdose intervention, namely, identification of an overdose, calling an ambulance and providing enhanced first aid, which meant basic life support and administration of naloxone, therefore prominence was given to naloxone on the poster at issue.

The Appeal Board considered that the mention of naloxone on the poster seven times, and the prominence given to naloxone in large bold font, while the signs of an opioid overdose and reference to calling an ambulance were in a much smaller font at the bottom of the poster, gave the misleading impression that carrying naloxone was the only thing that readers needed to know about in the event of an opioid related overdose, and meant that the poster was not balanced.

The Appeal Board considered that the poster in question did not differentiate between the formulations of naloxone or mention any specific brand name, however the image of two different branded formulations of naloxone on the website, which readers were explicitly directed to, might encourage members of the public to ask their health professional for a specific formulation of naloxone, especially noting that Prenoxad was the only injection mentioned on the homepage and Nyxoid was the only available nasal spray formulation. The Appeal Board, noting the above, upheld the Panel's ruling of a **breach of Clause 26.2**. The appeal on this point was unsuccessful.

The Appeal Board noted that the poster was aimed at a very vulnerable population, who were at a high risk of overdose. Whilst a significant proportion of drug related overdoses might involve opioids, not all did, and naloxone was not a treatment for all overdoses. The poster did not provide wider context on other reasons for drug related overdose.

The Appeal Board was concerned with the way in which the poster was certified, the involvement of the commercial sales team in its distribution and the company's inclusion of the linked webpage containing images of two branded naloxone preparations. The poster at issue had been placed in areas of the UK with the highest drug use, which included drug treatment centres, however the poster was also on public view.

The Appeal Board considered that Ethypharm's admission that it had knowingly 'pushed the boundaries [of the Code]' in using the poster, whilst acknowledging that naloxone was a prescription only medicine to which the requirements of the Code applied, and without seeking approval from health ministers, was unacceptable. The Appeal Board considered that Ethypharm had not demonstrated an adequate understanding of the requirements of the Code in this regard. The Appeal Board considered, noting the above, that Ethypharm had failed to maintain high standards and it upheld the Panel's ruling of a **breach of Clause 5.1**. The appeal on this point was not successful.

The Appeal Board considered that promotion of a prescription only medicine to the public might ordinarily lead to a ruling of a breach of Clause 2. The Appeal Board considered that opioid related overdose was an area of public health interest with support from various sectors within the health profession and the Government. The Appeal Board recognised that in this instance the campaign at issue was in line with the strategy of various public health bodies and government policy, and that Ethypharm had taken some steps to liaise with the Government to seek ministerial approval. In the unusual circumstances of this case, and overall, the Appeal Board did not consider that Ethypharm had brought discredit upon, or reduced confidence in the pharmaceutical industry and **no breach of Clause 2** was ruled. The appeal on this point was successful.

Complaint received **22 October 2022**

Case completed **12 October 2023**