**CASE AUTH/3504/4/21**

# COMPLAINANT v DAIICHI-SANKYO

## Promotion of Nilemdo and Nustendi

**A complainant, who was originally contactable but later became non-contactable, complained about compliance failings and patient safety risks with regard to the promotion of Nilemdo (bempedoic acid) and Nustendi (bempedoic acid, ezetimibe) on a number of webpages by Daiichi-Sankyo UK Ltd.**

**Nilemdo and Nustendi were both indicated in certain adults with primary hypercholesterolaemia (heterozygous familial and non-familial) or mixed dyslipidaemia, as an adjunct to diet.**

**The detailed response from Daiichi-Sankyo is given below.**

**1 Generic names**

**The complainant alleged that on the https://www.nilemdo-nustendi.co.uk/hcp/home webpage, the generic names provided in the top left-hand corner were far too small.**

**In addition, the big sized claim on this homepage 'When you and your patients are fighting to take back cholesterol control, add on oral, once-daily NILEMDO®▼ or NUSTENDI®▼' had the two products in capitals which was actually the most prominent mention and therefore generic names should have been provided within this block of text instead of in the top left-hand corner. The complainant alleged that this was a breach several times throughout the website considering the generic name was too small in the top left-hand corners via the logos throughout the website.**

**The Panel noted that for electronic advertisements the non-proprietary name of the medicine or the list of active ingredients, as required by the Code must appear immediately adjacent to the brand name at its first appearance in a size such that the information is readily readable.**

**The Panel noted Daiichi-Sankyo's submission that although the brand names in capital letters within the claim on the website homepage, as referred to by the complainant, might have been more prominent, the first mention of the brand name appeared in the top left-hand corner of the webpage, and the non-proprietary name appeared adjacent to this in a format that was readily readable.**

**The Panel noted Daiichi-Sankyo's submission that the website was certified in its final form on a standard desktop screen and a mobile device, both of which had readily readable non-proprietary names. On any individual mobile device, the size would depend on the settings selected by the individual user. The Panel did not know upon what device the complainant had viewed the material and so in what size the text of the**

**non-proprietary names had appeared. In the Panel's view, the non-proprietary names beneath the logos in the top left-hand corner of the homepage on the webpage PDF, which had been taken by the case preparation manager from the link provided by the complainant, did not appear to be readily readable and therefore, on the evidence before it, the Panel ruled a breach of the Code.**

**2 Claim 'add on to take back control'.**

**The complainant alleged that a claim underneath the logos 'add on to take back control' was misleading, hanging and inaccurate. There was no clarity as to what taking back control was against. In addition, as per the summary of product characteristics (SPC) for both products, adding on Nilemdo or Nustendi to those patients who had concomitant use with simvastatin >40mg daily was contra-indicated. Therefore, this claim was putting patient safety at risk as a busy health professional could easily view the claim as that the two medicines were suitable for any patients (note that both products were also contra-indicated in pregnancy and breastfeeding). This claim was present throughout the website (https://www.nilemdo-nustendi.co.uk/hcp/) and was alleged to be in breach of multiple Clauses of the Code.**

**The Panel noted that the claim 'Add on to take back control' appeared as a strapline beneath the Nilemdo and Nustendi logos which were in the top left-hand corner of each webpage on the website in question. The claim also featured as part of subheadings on a number of pages on the website.**

**The Panel noted Daiichi-Sankyo's submission that the claim 'add on to take back control' reflected the licensed indication of both Nilemdo and Nustendi which were to be used as 'add on' treatments for patients who were unable to reach LDL-C goals with their current therapies, ie add on to take back control of their cholesterol management. The Panel further noted Daiichi-Sankyo's submission that the opening page of the health professional section of the website clearly placed 'add on to take back control' in the context of cholesterol management.**

**The headline of the homepage stated in large black prominent font: 'When you and your patients are fighting to take back cholesterol control, add on oral, once-daily NILEMDO▼ or NUSTENDI▼'. Below this the indications for Nilemdo and Nustendi were given.**

**The Panel considered the immediate and overall impression to a busy health professional. Whilst the Panel considered that the claim 'add on to take back control' was ambiguous with regard to what exactly the medicines were being added to, it noted that this claim was within the context of the opening claim which referred to taking back cholesterol control, and the licensed indications for Nilemdo and Nustendi, which were prominently stated on the homepage. The Panel considered that the complainant had not established that the claim 'add on to take back control' was misleading, inaccurate, incapable of substantiation or a hanging comparison as alleged and the Panel therefore ruled no breaches of the Code.**

**The Panel noted the complainant's further allegation that the claim 'add on to take back control' was putting patient safety at risk as it might imply to a busy health professional that the two medicines were suitable for any patients which was not so. In this regard, the complainant noted that adding Nilemdo or Nustendi to patients taking concomitant**

**simvastatin >40mg daily was contraindicated and that both products were also contraindicated in pregnancy and breastfeeding.**

**The Panel noted Daiichi-Sankyo's submission that nowhere on the website were the products being promoted in patients on simvastatin >40mg, pregnancy or breastfeeding and that the claim 'add-on to take back control' could not, in any way, be regarded as a claim for the use of the product in pregnancy or breast-feeding.**

**The Panel further noted Daiichi-Sankyo's submission that in the 'Tolerability' section of the website there was clear reference to the contraindications in patients on simvastatin >40mg, pregnancy and breastfeeding and that the prescribing information on the website also stated the contraindications and referred the health professional to the Summary of Product Characteristics (SPC) prior to prescribing. The Panel noted, from the certified job bag material provided by Daiichi-Sankyo, that the website had a number of links to the Nilemdo and Nustendi prescribing information. The Panel did not have a copy of the prescribing information before it as it was not included in the job bag.**

**The Panel considered that the complainant had not established that the claim 'add on to take back control' implied that Nilmedo and Nustendi could be used in any patient or had no contraindications as alleged. Based on the complainant's narrow allegation, the Panel ruled no breaches of the Code including no breach of Clause 2.**

**3 Claim 'When you and your patients are fighting to take back cholesterol control, add on oral, once-daily NILEMDO®▼ or NUSTENDI®▼'.**

**The complainant submitted that the claim was also misleading and inaccurate as both products were only licensed in ADULT patients and the claim implied usage in even young patients by simply stating 'patients' and alleged multiple breaches of the Code.**

**The Panel noted that the full licensed indications for Nilemdo and Nustendi were stated on the homepage of the website including that the indication for both products was in adult patients. The Panel further noted Daiichi-Sankyo's submission that the prescribing information which was available through a single click link for both products included the licensed indications in adult patients. The Panel noted, from the certified job bag content provided by Daiichi-Sankyo, that the website had a number of links to the Nilemdo and Nustendi prescribing information. The Panel did not have a copy of the prescribing information before it as it was not included in the job bag.**

**The Panel further noted Daiichi-Sankyo's submission that there was no text or imagery contained within the website to suggest that the products were licensed in any patient population other than adults. In the Panel's view, health professionals would take particular care when prescribing for younger patients and were unlikely to assume that Nilemdo and Nustendi, indicated for primary hypercholesterolaemia or mixed dyslipidaemia, were suitable for children.**

**The Panel considered the immediate and overall impression to a busy health professional. There was no mention on the website or impression given that the medicines could be used in patients who were under 18 years old. In the Panel's view, the claim at issue was thus not misleading in relation to the licensed indication as**

**alleged and the Panel therefore ruled no breaches of the Code including no breach of Clause 2.**

**4 Claim 'Add on NILEMDO® or NUSTENDI® to take back control NILEMDO® and NUSTENDI® are novel, oral options, which can be added to existing oral lipid lowering treatments (LLTs) to deliver the additional LDL-C reductions that uncontrolled patients at high/very high cardiovascular risk need†[1,2]'.**

**The complainant alleged that this claim was qualified in the footnotes with the following text, '† Concomitant use with simvastatin >40 mg daily is contraindicated. When NILEMDO® or NUSTENDI® is coadministered with simvastatin, the simvastatin dose should be limited to 20 mg daily (or 40 mg daily for patients with severe hypercholesterolaemia and who are at high risk for cardiovascular complications, who have not achieved their treatment goals on lower doses and when the benefits are expected to outweigh the potential risks)[1,2]'. Claims should not be qualified by footnotes and by deliberately hiding the information about simvastatin >40mg, this was a patient safety issue.**

**Nustendi was also contraindicated for the following: adult patients co-administered with a statin in patients with active liver disease or unexplained persistent elevations in serum transaminases. The complainant, again, alleged that both products could not just be used for any patients (due to specific contraindications) which this claim also did not make clear and alleged multiple breaches of the Code.**

**The Panel noted the claim at issue and the explanation for the dagger '†' used in it.**

**The Panel noted that section 4.1 'Therapeutic indications' of the Nilemdo and Nustendi SPCs both referred the reader to sections 4.2 (posology and method of administration), 4.3 (contraindications) and 4.4 (special warnings and precautions for use) when referring to the use of each medicine in combination with a statin.**

**In the Panel's view, given Nilemdo and Nustendi's therapeutic indications, the contraindication regarding concomitant use with simvastatin >40mg daily needed to be immediately apparent to health professionals in promotional material which referred to adding on to existing oral lipid-lowering treatments.**

**The Panel considered the immediate and overall impression of the claim at issue to a busy health professional. The Panel considered that the claim was misleading; read in isolation it implied that Nilemdo and Nustendi could be added to any existing oral lipid lowering treatments which was not so; the medicines were contraindicated with simvastatin >40mg daily. The claim could not stand alone and the Panel therefore ruled a breach of the Code. The Panel noted that the misleading impression could not be substantiated and a breach of the Code was ruled.**

**The Panel further noted the complainant's concern that the claim did not make it clear that both products could not just be used in any patient due to specific contraindications and in that regard referred to Nustendi coadministered with a statin being contraindicated in patients with active liver disease or unexplained persistent elevations in serum transaminases.**

**The Panel noted Daiichi-Sankyo's submission that for Nustendi, the footnote on the active liver disease contraindication had been provided for additional information only; it was not intended or required to qualify the claim. The Panel could not see the footnote regarding active liver disease on the certified job bag content provided by Daiichi-Sankyo and did not consider that the complainant had suggested that there was a footnote in relation to active liver disease. The Panel considered that the complainant's allegation was that the claim at issue misleadingly implied that Nustendi could be used in any patient which was not so due to specific contraindications which was not made clear in the claim.**

**The Panel noted that the Nustendi SPC stated that Nustendi coadministered with a statin was contraindicated in patients with active liver disease or unexplained persistent elevations in serum transaminases.**

**The Panel considered that the claim was misleading; it implied that Nustendi could be added to any existing oral lipid lowering treatments in all patients which was not so; the medicine co-administered with a statin was contraindicated in patients with active liver disease or unexplained persistent elevations in serum transaminases. Contrary to Daiichi-Sankyo's submission there was no footnote in this regard on the webpage at issue. The Panel noted Daiichi-Sankyo's submission that the 'Tolerability' section of the health professional website made clear reference to all contraindications for both Nilemdo and Nustendi. The Panel noted that each webpage had to stand alone and the Panel therefore ruled a breach of the Code. The Panel noted that the misleading impression could not be substantiated and a breach of the Code was ruled.**

**The Panel noted its comments and rulings above and considered that Daiichi-Sankyo had failed to maintain high standards and a breach of the Code was ruled.**
**The Panel noted that the supplementary information to Clause 2 gave examples of activities that were likely to be in breach of that clause which included prejudicing patient safety. The Panel noted its comments and rulings above and considered that the misleading impression given by the webpage at issue had the potential to adversely affect safety in patients for which each medicine was contraindicated and particularly in patients taking simvastatin >40mg daily and a breach of Clause 2 was ruled.**

**5 Claims 'NILEMDO® delivered a significant 17-28% LDL-C reduction (placebo-corrected) from baseline at 12 weeks, depending on risk factors and concomitant medicine[‡8-11]' and 'NUSTENDI® delivered a significant 38% LDL-C reduction (placebo-corrected) from baseline at 12 weeks [§12]'.**

**The complainant alleged that the two claims towards the end of the homepage did not provide absolute reduction in % LDL-C reduction but only relative reduction %, therefore breaching the Code twice. The same claims and issues were again present on the Efficacy section of the website. The same clauses as mentioned for the issues on homepage were breached again on this section.**

**The relevant supplementary information stated that referring only to relative risk, especially with regard to risk reduction, could make a medicine appear more effective than it actually is. In order to assess the clinical impact of an outcome, the reader also needs to know the absolute risk involved. In that regard relative risk should never be**

**referred to without also referring to the absolute risk. Absolute risk could be referred to in isolation.**

**The Panel noted Daiichi-Sankyo's submission that the percentage LDL-C reductions, quoted by the complainant, were not relative risk reductions but instead were percentage change reductions in LDL-C levels from baseline to week 12 (placebo-corrected) observed in the studies. The Panel did not have the studies in question before it; Daiichi-Sankyo had not provided the references to the claims.**

**The Panel did not consider, on the evidence before it, that the complainant had established that a breach of the Code had occurred as alleged and no breach was ruled in relation to each claim.**

**6 Claim 'NILEMDO® and NUSTENDI® are generally well tolerated when added to existing lipid-lowering treatments (LLTs) [1,2]'**

**The complainant alleged that the claim on the tolerability section was false as Nilmedo and Nustendi were not appropriate to add on to an adult patient initiated on simvastain >40mg. The complainant alleged multiple breaches of the Code.**

**In the Panel's view, it appeared that the complainant was concerned that the claim 'NILEMDO® and NUSTENDI® are generally well tolerated when added to existing lipid-lowering treatments (LLTs)[1,2]' was misleading as Nilmedo and Nustendi were not an appropriate add-on treatment in adult patients taking simvastatin >40mg daily, rather than having concerns about the use of the phrase 'generally well tolerated' *per se* and the Panel made its rulings in this regard.**

**The Panel considered the immediate and overall impression of the webpage to a busy health professional. The Panel noted that the claim at issue, 'NILEMDO® and NUSTENDI® are generally well tolerated when added to existing lipid-lowering treatments (LLTs)', was in large prominent font whereas the information on contraindications, including that concomitant use with simvastatin >40mg daily was contraindicated, appeared further down the webpage in much smaller font and not in the same visual field as the claim at issue.**

**The Panel considered that the claim at issue was misleading; it implied that the medicines could be added to any existing oral lipid lowering treatments and when doing so were generally well tolerated which was not so; the medicines were contraindicated in patients taking simvastatin >40mg daily. The claim could not stand alone and the Panel therefore ruled a breach of the Code. The Panel noted that the misleading impression could not be substantiated and a breach of the Code was ruled.**

**The Panel noted its comments and ruling above and considered that Daiichi-Sankyo had failed to maintain high standards and a breach of the Code was ruled.**

**The Panel considered that its ruling of a breach of Clause 2 under point 4 above adequately covered this matter and a further breach of Clause 2 was not warranted in the particular circumstances of this case and the Panel made no further ruling in this regard.**

**7 Claim 'Add NILEMDO® or NUSTENDI® to current oral lipid-lowering therapies to help uncontrolled patients achieve their LDL-C goals*†'.**

**The complainant alleged that this was a big claim at the start of the dosing section which was not appropriate in all patients. Ironically the claim was qualified by '*' which read '*Dependent on concomitant medication' in the footer of the same page. The complainant alleged that the claim was unqualified in relation to other therapies and the necessary clinical parameters to consider. It was very worrying that this important clinical information had been hidden away in small text at the bottom of the page as a footnote.**

**The Panel noted that the explanation for the dagger'†' used in the claim at issue took the reader to a footnote in much smaller, less prominent print at the bottom of the webpage which read '†Concomitant use with simvastatin >40 mg daily is contraindicated. When NILEMDO®/ NUSTENDI® is coadministered with simvastatin, the simvastatin dose should be limited to 20 mg daily (or 40 mg daily for patients with severe hypercholesterolaemia and who are at high risk for cardiovascular complications, who have not achieved their treatment goals on lower doses and when the benefits are expected to outweigh the potential risks)'.**

**The Panel noted that between the claim in question and the footnote was an illustration of two people pulling on a rope and a large prominent box with further claims and graphics. In the Panel's view, readers browsing the webpage would be drawn to the prominent claims and graphics and might not read the footnotes.**

**The Panel considered the immediate and overall impression to a busy health professional. The Panel considered that the claim was misleading; read in isolation it implied that Nilemdo and Nustendi could be added to any existing oral lipid lowering treatments which was not so; the medicines were contraindicated in patients taking simvastatin >40mg daily. In the Panel's view, the claim could not stand alone and the Panel therefore ruled a breach of the Code. The Panel noted that the misleading implication could not be substantiated and a breach of the Code was ruled.**

**The Panel noted its comments and ruling above and considered that Daiichi-Sankyo had failed to maintain high standards and a breach of the Code was ruled.**

**The Panel considered that its ruling of a breach of Clause 2 under point 4 above adequately covered this matter and a further breach of Clause 2 was not warranted in the particular circumstances of this case and the Panel made no further ruling in this regard.**

**8 Claim 'Can be taken with or without food, at a time that suits the patient [1,2]'**

**The complainant alleged that this claim towards the bottom of the page was not the case if a patient was already taking a bile acid sequestrant. In fact, this information was again only presented as a footnote, which stated, '**Dosing of NUSTENDI® should occur either at least 2 hours before or at least 4 hours after administration of a bile acid sequestrant'. This was allegedly a breach of the Code as claims should not be qualified by footnotes and should be capable of standing alone.**

**The Panel noted Daiichi-Sankyo's submission that the claim in question was in the centre of a box headed 'Choice of NILEMDO (bempedoic acid 180 mg) or NUSTENDI (bempedoic acid 180 mg + ezetimibe 10mg), a fixed-dose combination with ezetimibe'. Three claims appeared below: 'NILEMDO or NUSTENDI** is a once-daily tablet'; 'Can be taken with or without food, at a time that suits the patient'; and 'One dose for all eligible patients'. The Panel noted that the footnote (**) referred to by the complainant and Daiichi-Sankyo was in relation to the first claim rather than the claim at issue and appeared in small font beneath the box within a list of footnotes and read '**Dosing of NUSTENDI should occur either at least 2 hours before or at least 4 hours after the administration of a bile acid sequestrant'. It appeared to the Panel that the intended footnote was linked to the wrong claim and therefore readers may not have seen that there was a caveat to the claim at issue.**

**The Panel considered that the claim 'Can be taken with or without food, at a time that suits the patient' was misleading; it implied that both medicines could in all cases be taken at any time which was not so; dosing of Nustendi should occur either at least 2 hours before or at least 4 hours after administration of a bile acid sequestrant. The Panel therefore ruled a breach of the Code. The Panel considered that the misleading impression given by the claim could not be substantiated and a breach of the Code was ruled.**

**The Panel noted its comments and rulings above and considered that Daiichi-Sankyo had failed to maintain high standards and a breach of the Code was ruled.**

**The Panel considered that its ruling of a breach of the Code adequately covered this matter and it did not consider that the particular circumstances of this case warranted a ruling of a breach of Clause 2 which was a sign of particular censure and reserved for such use. No breach of Clause 2 was ruled.**

**9 Mobile version**

**The complainant stated that the mobile version of the website was different to that of the desktop version. On the mobile view, prescribing information was not provided as a single clickable link, one would have to try and search hard to find it as it was not present on any page of the mobile version.**

**The Panel noted, from the certified job bag material provided by Daiichi-Sankyo, that the website had a number of links to the Nilemdo and Nustendi prescribing information. The Panel did not have before it a copy of what was visible when each of these links was accessed.**

**The Panel noted Daiichi-Sankyo's submission that prescribing information was provided as a single click link on the mobile version of the website; the final form of the website on a standard desktop screen and mobile device was checked as part of the final form check by the medical signatory. The Panel noted that the complainant bore the burden of proof and did not consider that he/she had established that prescribing information was not provided as a single click link on the mobile version of the website or that the website had not been certified as required by the Code and no breaches of the Code were ruled including no breach of Clause 2.**

A complainant, who was originally contactable but later became non-contactable, complained about a number of compliance failings and patient safety risks with regard to the promotion of Nilemdo (bempedoic acid) and Nustendi (bempedoic acid, ezetimibe) on a number of webpages on the website https://www.nilemdo-nustendi.co.uk/hcp/ (Job Code BEM/20/0242, Date of preparation October 2020) by Daiichi-Sankyo UK Ltd.

Nilemdo and Nustendi were both indicated in certain adults with primary hypercholesterolaemia (heterozygous familial and non-familial) or mixed dyslipidaemia, as an adjunct to diet.

The complainant stated that the promotional activities for Nilemdo and Nustendi remained very poor and not in line with Code requirements. There was a clear lack of signatory knowledge and the multiple compliance issues had not been addressed.

Daiichi-Sankyo submitted that it had acted in line with the requirements of the Code by providing comprehensive information to enable the health professional recipients to form their own opinion of the therapeutic value of its products and that it had maintained high standards, which included regular ongoing training for all medical signatories and had not brought discredit upon, or reduced confidence in, the industry.

## 1 Generic names

### COMPLAINT

The complainant submitted that on the https://www.nilemdo-nustendi.co.uk/hcp/home webpage, the generic names provided in the top left-hand corner were far too small on this health professional homepage. This was the case whether viewing on a mobile or desktop version.

The complainant submitted that, in addition, the big sized claim on this homepage 'When you and your patients are fighting to take back cholesterol control, add on oral, once-daily NILEMDO®▼ or NUSTENDI®▼' had the two products in capitals which was actually the most prominent mention and therefore generic names should have been provided within this block of text instead of in the top left-hand corner. This was a breach of Clause 4.3 throughout the entire website several times considering the generic name was too small in the top left-hand corners via the logos throughout the website.

### RESPONSE

Daiichi-Sankyo believed that the generic names appearing adjacent to the brand names in the top left-hand corner on the health professional webpage did, in fact, appear in a format that was readily readable.

Clause 4.3 stated that for electronic advertisements the non-proprietary name of the medicine must appear immediately adjacent to the brand name at its first appearance in a size such that the information was readily readable.

The website was certified in its final form on a standard desktop screen and a mobile device, both of which had readily readable non-proprietary names. On any individual mobile device, the size would depend on the settings selected by the individual user (screenshot examples were provided).

There was, therefore, no breach of Clause 4.3 since both the desktop and mobile versions of the websites had readily readable non-proprietary names.

Although the brand names in capital letters that the complainant referred to might be more prominent, Clause 4.3 required the non-proprietary names to appear immediately adjacent to the brand name at its first appearance.

Daiichi-Sankyo submitted that as per Clause 4.3 (for electronic materials) the first mention of the brand name appeared in the top left-hand corner of the homepage, and the non-proprietary name appeared adjacent to this.

The disclaimer at the top of the webpage in the grey box was not the electronic advertisement referred to in Clause 4.3. This disclaimer served as another alert or indication that the website was for health professionals only, and as such, acting as a filter and considered part of the main website page. Therefore, the brand names on the top left of the screen in the main website page were the first mention of the brand names. This was, therefore, not a breach of Clause 4.3 since this disclaimer was not an advertisement and the non-proprietary names of the products had been included adjacent to the first mention of the brand name in the website advertisements.

**PANEL RULING**

The Panel noted that Clause 4.3 required that the non-proprietary name of the medicine or a list of the active ingredients using approved names where such exist must appear immediately adjacent to the most prominent display of the brand name in bold type of a size such that a lower case ‘x’ is no less than 2mm in height or in type of such a size that the non-proprietary name or list of active ingredients occupies a total area no less than that taken up by the brand name. The Panel noted, however, that for electronic advertisements the non-proprietary name of the medicine or the list of active ingredients, as required by Clause 4.3, must appear immediately adjacent to the brand name at its first appearance in a size such that the information is readily readable.

The Panel noted Daiichi-Sankyo’s submission that although the brand names in capital letters within the claim on the website homepage, as referred to by the complainant, might have been more prominent, the first mention of the brand name appeared in the top left-hand corner of the webpage, and the non-proprietary name appeared adjacent to this in a format that was readily readable.

The Panel noted Daiichi-Sankyo’s submission that the website was certified in its final form on a standard desktop screen and a mobile device, both of which had readily readable non-proprietary names. On any individual mobile device, the size would depend on the settings selected by the individual user. The Panel did not know upon what device the complainant had viewed the material and so in what size the text of the non-proprietary names had appeared. In the Panel’s view, the non-proprietary names beneath the logos in the top left-hand corner of the homepage on the webpage PDF, which had been taken by the case preparation manager from the link provided by the complainant, did not appear to be readily readable and therefore, on the evidence before it, the Panel ruled a breach of Clause 4.3.

**2 Claim ‘add on to take back control’.**

**COMPLAINT**

The complainant submitted that the claim underneath the logos which read 'add on to take back control' was misleading, hanging and inaccurate. There was no clarity as to what taking back control was against. In addition, as per the SPC for both products, adding on Nilemdo or Nustendi to those patients who had concomitant use with simvastatin >40mg daily was contra-indicated. Therefore, this claim was putting patient safety at risk as a busy health professional could easily view the claim as that the two medicines were suitable for any patients (note that both products were also contra-indicated in pregnancy and breastfeeding too). This claim was present throughout the website (https://www.nilemdo-nustendi.co.uk/hcp/) and was in breach of Clauses 7.2, 7.3, 7.4, 9.1 and 2.

**RESPONSE**

Daiichi-Sankyo disagreed with the allegation that the claim 'add on to take back control' was misleading, hanging and inaccurate.

Daiichi-Sankyo submitted that the claim 'add on to take back control' was supported wholly by the licensed indication for both products.

Both Nilemdo and Nustendi were licensed and intended to be used as '*add on'* treatments for patients who were unable to reach LDL-C goals with their current therapies, ie add on to take back control of their cholesterol management. Daiichi-Sankyo submitted that this was very clear even at the first glance from the opening page of the health professional section of the website (a screenshot of the first page of the website was provided) which clearly placed 'add on to take back control' in the context of cholesterol management; the screenshot included the claim 'When you and your patients are fighting to take back cholesterol control, add on oral, once-daily NILEMDO▼ or NUSTENDI▼'.

Daiichi-Sankyo stated the licensed indication for Nilemdo and Nustendi as follows:

<u>Nilemdo:</u>

'*Nilemdo is indicated in adults with primary hypercholesterolaemia (heterozygous familial and non-familial) or mixed dyslipidaemia, as an adjunct to diet:*

- *in combination with a statin or statin with other lipid-lowering therapies in patients unable to reach LDL-C goals with the maximum tolerated dose of a statin (see sections 4.2, 4.3, and 4.4) or,*

- *alone or in combination with other lipid-lowering therapies in patients who are statin-intolerant, or for whom a statin is contraindicated.'*

<u>Nustendi:</u>

'*Nustendi is indicated in adults with primary hypercholesterolaemia (heterozygous familial and non-familial) or mixed dyslipidaemia, as an adjunct to diet:*

- *in combination with a statin in patients unable to reach LDL-C goals with the maximum tolerated dose of a statin in addition to ezetimibe (see sections 4.2, 4.3, and 4.4),*

- *alone in patients who are either statin-intolerant or for whom a statin is contraindicated, and are unable to reach LDL-C goals with ezetimibe alone,*

- *in patients already being treated with the combination of bempedoic acid and ezetimibe as separate tablets with or without statin.'*

Daiichi-Sankyo submitted that as this claim reflected the licensed indication, it was therefore not misleading and not a breach of Clause 7.2. In line with the requirements of Clause 7.4, '*Any information, claim or comparison must be capable of substantiation'.* Daiichi-Sankyo submitted that the claim, '*Add on to take back control'* could be fully substantiated from the SPCs of the products, therefore there had been no breach of Clause 7.4.

Daiichi-Sankyo submitted that as no claims had been made comparing the use of either Nilemdo or Nustendi to any other therapy, the allegation that the claim was 'hanging' was unfounded. The claim 'add-on to take back control' was a direct comment regarding the licensed indication application of the two products. There was no comparison, implied or actual. Accordingly, there had been no breach of Clause 7.3. Based on the above, the claim was not misleading, hanging or inaccurate, Daiichi-Sankyo submitted that there was subsequently no breach of Clauses 7.2, 7.3, 7.4, 9.1 and 2 of the Code.

The complainant referred to the contra-indication in patients on simvastatin >40mg (a screenshot was provided), pregnancy and breast-feeding. However, nowhere on the website were the products being promoted in these patient groups. Specifically, the claim 'add-on to take back control', the subject of the complaint, could not, in any way, be regarded as a claim for the use of the product in pregnancy or breast-feeding.

Furthermore, in the 'Tolerability' section of the website, there was clear reference to the contraindication in patients on simvastatin >40mg, pregnancy and breastfeeding. In addition, the prescribing information (PI) was available on the website which also stated the contraindications as well as 'referring the HCP to the Summary of Product Characteristics (SmPC) prior to prescribing'.

Therefore, Daiichi-Sankyo denied any allegation that it had hidden or withheld any safety information or information regarding contraindications; it had provided comprehensive information to allow health professionals to make an informed decision about the products. Daiichi-Sankyo therefore denied the allegations related to Clauses 7.2, 9.1 and 2.

**PANEL RULING**

The Panel noted that the claim 'Add on to take back control' appeared as a strapline beneath the Nilemdo and Nustendi logos which were in the top left-hand corner of each webpage on the website in question. The claim also featured as part of subheadings on a number of pages on the website.

The Panel noted Daiichi-Sankyo's submission that the claim 'add on to take back control' reflected the licensed indication of both Nilemdo and Nustendi which were licensed and

intended to be used as '*add on'* treatments for patients who were unable to reach LDL-C goals with their current therapies, ie add on to take back control of their cholesterol management. The Panel further noted Daiichi-Sankyo's submission that the opening page of the health professional section of the website clearly placed 'add on to take back control' in the context of cholesterol management.

The headline of the homepage stated in large black prominent font: 'When you and your patients are fighting to take back cholesterol control, add on oral, once-daily NILEMDO▼ or NUSTENDI▼' Below this the indication for Nilemdo and Nustendi were given.

The Panel considered the immediate and overall impression to a busy health professional. Whilst the Panel considered that the claim 'add on to take back control' was ambiguous with regard to what exactly the medicines were being added to, it noted that this claim was within the context of the opening claim which referred to taking back cholesterol control, and the licensed indications for Nilemdo and Nustendi, which were prominently stated on the homepage. The Panel considered that the complainant had not established that the claim 'add on to take back control' was misleading, inaccurate, incapable of substantiation or a hanging comparison as alleged and the Panel therefore ruled no breach of Clauses 7.2, 7.3 and 7.4.

The Panel noted the complainant's further allegation that the claim 'add on to take back control' was putting patient safety at risk as it might imply to a busy health professional that the two medicines were suitable for any patients which was not so. In this regard, the complainant noted that adding Nilemdo or Nustendi to patients taking concomitant simvastatin >40mg daily was contraindicated and that both products were also contraindicated in pregnancy and breastfeeding.

The Panel noted Daiichi-Sankyo's submission that nowhere on the website were the products being promoted in patients on simvastatin >40mg, pregnancy or breastfeeding and that the claim 'add-on to take back control' could not, in any way, be regarded as a claim for the use of the product in pregnancy or breast-feeding.

The Panel further noted Daiichi-Sankyo's submission that in the 'Tolerability' section of the website there was clear reference to the contraindications in patients on simvastatin >40mg, pregnancy and breastfeeding and that the prescribing information on the website also stated the contraindications and referred the health professional to the Summary of Product Characteristics (SPC) prior to prescribing. The Panel noted, from the certified job bag material provided by Daiichi-Sankyo, that the website had a number of links to the Nilemdo and Nustendi prescribing information. The Panel did not have a copy of the prescribing information before it as it was not included in the job bag.

Clause 7.2 stated, *inter alia,* that information, claims and comparisons must be accurate, balanced, fair, objective and unambiguous and must be based on an up-to-date evaluation of all the evidence and reflect that evidence clearly. They must not mislead either directly or by implication, by distortion, exaggeration or undue emphasis.

The Panel considered that the complainant had not established that the claim 'add on to take back control' implied that Nilmedo and Nustendi could be used in any patient or had no contraindications as alleged. Based on the complainant's narrow allegation, the Panel ruled no breach of Clauses 7.2.

The Panel noted its rulings above and consequently ruled no breach of Clauses 9.1 and 2.

**3 Claim 'When you and your patients are fighting to take back cholesterol control, add on oral, once-daily NILEMDO®▼ or NUSTENDI®▼'.**

**COMPLAINT**

The complainant submitted that the claim was also misleading and inaccurate as both products were only licensed in ADULT patients and the claim implied usage in even young patients by simply stating 'patients'. This particular claim breached Clauses 3.2, 7.2, 7.4, 9.1 and 2.

**RESPONSE**

Daiichi-Sankyo submitted that the licensed indications for Nilemdo and Nustendi were stated on the homepage of the website, and clearly stated the indications for both products as per the summary of product characteristics (SPCs) in adult patients (a screenshot was provided). Within the licensed indications boxes for the products, there were links to the prescribing information (through a single click link) for both products which, again, included the licensed indications in adult patients.

Daiichi-Sankyo submitted that there was no text or imagery contained within the website to suggest that the products were licensed in any patient population other than adults. There was no promotion outside of the licensed indication and therefore no breach of Clause 3.2.

As there were no claims or images about the use of Nilemdo or Nustendi in patient populations outside of their marketing authorisation and not misleading, Daiichi-Sankyo submitted that there was, therefore, no breach of Clauses 3.2 and 7.2. There was no claim for the use of the product in any other population, therefore there was nothing Daiichi-Sankyo could possibly substantiate. Accordingly, there could be no breach of Clause 7.4.

As a consequence, there was no evidence that high standards had not been maintained (no breach of Clause 9.1) or that confidence in the industry had been reduced (no breach of Clause 2).

**PANEL RULING**

The Panel noted that the full licensed indications for Nilemdo and Nustendi were stated on the homepage of the website including that the indication for both products was in adult patients. The Panel further noted Daiichi-Sankyo's submission that the prescribing information which was available through a single click link for both products included the licensed indications in adult patients. The Panel noted, from the certified job bag content provided by Daiichi-Sankyo, that the website had a number of links to the Nilemdo and Nustendi prescribing information. The Panel did not have a copy of the prescribing information before it as it was not included in the job bag.

The Panel further noted Daiichi-Sankyo's submission that there was no text or imagery contained within the website to suggest that the products were licensed in any patient population other than adults. In the Panel's view, health professionals would take particular care when prescribing for younger patients and were unlikely to assume that Nilemdo and

Nustendi, indicated for primary hypercholesterolaemia or mixed dyslipidaemia, were suitable for children.

Clause 7.2 stated, *inter alia*, that information, claims and comparisons must be accurate, balanced, fair, objective and unambiguous and must be based on an up-to-date evaluation of all the evidence and reflect that evidence clearly. They must not mislead either directly or by implication, by distortion, exaggeration or undue emphasis.

The Panel considered the immediate and overall impression to a busy health professional. The Panel considered that there was no mention on the website or impression given that the medicines could be used in patients who were under 18 years old. In the Panel's view, the claim at issue was thus not misleading in relation to the licensed indication as alleged and the Panel therefore ruled no breach of Clauses 3.2, 7.2 and 7.4. The Panel consequently ruled no breach of Clause 9.1 and Clause 2.

**4 Claim 'Add on NILEMDO® or NUSTENDI® to take back control NILEMDO® and NUSTENDI® are novel, oral options, which can be added to existing oral lipid lowering treatments (LLTs) to deliver the additional LDL-C reductions that uncontrolled patients at high/very high cardiovascular risk need†1,2'.**

**COMPLAINT**

The complainant submitted that this claim was qualified in the footnotes with the following text, '†Concomitant use with simvastatin >40 mg daily is contraindicated. When NILEMDO® or NUSTENDI® is coadministered with simvastatin, the simvastatin dose should be limited to 20 mg daily (or 40 mg daily for patients with severe hypercholesterolaemia and who are at high risk for cardiovascular complications, who have not achieved their treatment goals on lower doses and when the benefits are expected to outweigh the potential risks)[1,2]'. Claims should not be qualified by footnotes and by deliberately hiding the information about Simvastatin >40mg, this was a patient safety issue.

Nustendi was also contraindicated for the following: adult patients co-administered with a statin in patients with active liver disease or unexplained persistent elevations in serum transaminases. The complainant, again, alleged that both products could not just be used for any patients (due to specific contraindications) which this claim also did not make clear. Once again, this was a breach of Clauses 7.2, 7.4, 9.1 and 2.

**RESPONSE**

Daiichi-Sankyo submitted that this claim where Nilemdo and Nustendi could be added to existing LLTs was reflective of the licensed indication for both products and could be substantiated by the SPCs for the products. The footnotes provided additional information and were not needed to qualify the claim. The claim itself stood on its own merit and was substantiated by the SPCs.

The footnote that the complainant was referring to for both products regarding the contraindication for patients on simvastatin >40mg was not intended or required to qualify the claim, but instead provide additional information to inform the health professional's decision making.

Daiichi-Sankyo submitted that for Nustendi, the footnote on the active liver disease contraindication had been provided for additional information only. The footnote was not intended or required to qualify the claim. The claim itself stood on its own merit and was substantiated by the SPC.

The 'Tolerability' section of the health professional website made clear reference to all contraindications for both Nilemdo and Nustendi. This information was also present in the prescribing information which was available on the website and advised the health professional to refer to the SPC prior to prescribing. The SPC was provided as a link on the website for health professionals to directly access.

As the footnotes referred to by the complainant were not required or intended to qualify the claims and were simply providing additional safety information for the health professionals to raise awareness of contraindications, therefore, this was not misleading and the information was supported by the SPC. Thus, there had been no breach of Clauses 7.2 and 7.4. Daiichi-Sankyo UK denied any allegation that it had hidden or withheld any safety information or information regarding contraindications; it had provided comprehensive information to allow health professionals to make an informed decision about the products. Consequently, there was no evidence that high standards had not been maintained (no breach of Clause 9.1) or that confidence in the industry had been reduced (no breach of Clause 2).

**PANEL RULING**

The Panel noted that the '†' in the claim at issue 'Add on NILEMDO® or NUSTENDI® to take back control NILEMDO® and NUSTENDI® are novel, oral options, which can be added to existing oral lipid lowering treatments (LLTs) to deliver the additional LDL-C reductions that uncontrolled patients at high/very high cardiovascular risk need†1,2' took the reader to a footnote in small print at the bottom of the page which read:

> '†Concomitant use with simvastatin >40 mg daily is contraindicated. When NILEMDO® or NUSTENDI® is coadministered with simvastatin, the simvastatin dose should be limited to 20 mg daily (or 40 mg daily for patients with severe hypercholesterolaemia and who are at high risk for cardiovascular complications, who have not achieved their treatment goals on lower doses and when the benefits are expected to outweigh the potential risks).[1,2]'

Clause 7.2 stated, *inter alia,* that information, claims and comparisons must be accurate, balanced, fair, objective and unambiguous and must be based on an up-to-date evaluation of all the evidence and reflect that evidence clearly. They must not mislead either directly or by implication, by distortion, exaggeration or undue emphasis. The supplementary information to Clause 7 required that claims in promotional material must be capable of standing alone as regards accuracy etc. In general claims should not be qualified by the use of footnotes and the like.

The Panel noted that section 4.1 'Therapeutic indications' of the Nilemdo and Nustendi SPCs both referred the reader to sections 4.2 (posology and method of administration), 4.3 (contraindications) and 4.4 (special warnings and precautions for use) when referring to the use of each medicine in combination with a statin.

In the Panel's view, given Nilemdo and Nustendi's therapeutic indications, the contraindication regarding concomitant use with simvastatin >40mg daily needed to be immediately apparent to

health professionals in promotional material which referred to adding on to existing oral lipid-lowering treatments.

The Panel considered the immediate and overall impression of the claim at issue to a busy health professional. The Panel considered that the claim was misleading; read in isolation it implied that Nilemdo and Nustendi could be added to any existing oral lipid lowering treatments which was not so; the medicines were contraindicated with simvastatin >40mg daily. The claim could not stand alone and the Panel therefore ruled a breach of Clause 7.2. The Panel noted that the misleading impression could not be substantiated and a breach of Clause 7.4 was ruled.

The Panel further noted the complainant's concern that the claim did not make it clear that both products could not just be used in any patient due to specific contraindications and in that regard referred to Nustendi coadministered with a statin being contraindicated in patients with active liver disease or unexplained persistent elevations in serum transaminases.

The Panel noted Daiichi-Sankyo's submission that for Nustendi, the footnote on the active liver disease contraindication had been provided for additional information only; it was not intended or required to qualify the claim. The Panel could not see the footnote regarding active liver disease on the certified job bag content provided by Daiichi-Sankyo and did not consider that the complainant had suggested that there was a footnote in relation to active liver disease. The Panel considered that the complainant's allegation was that the claim at issue misleadingly implied that Nustendi could be used in any patient which was not so due to specific contraindications which was not made clear in the claim.

The Panel noted that the Nustendi SPC stated that Nustendi coadministered with a statin was contraindicated in patients with active liver disease or unexplained persistent elevations in serum transaminases.

The Panel considered that the claim was misleading; it implied that Nustendi could be added to any existing oral lipid lowering treatments in all patients which was not so; the medicine co-administered with a statin was contraindicated in patients with active liver disease or unexplained persistent elevations in serum transaminases. Contrary to Daiichi-Sankyo's submission there was no footnote in this regard on the webpage at issue. The Panel noted Daiichi-Sankyo's submission that the 'Tolerability' section of the health professional website made clear reference to all contraindications for both Nilemdo and Nustendi. The Panel noted that each webpage had to stand alone and the Panel therefore ruled a breach of Clause 7.2. The Panel noted that the misleading impression could not be substantiated and a breach of Clause 7.4 was ruled.

The Panel noted its comments and rulings above and considered that Daiichi-Sankyo had failed to maintain high standards and a breach of Clause 9.1 was ruled.
The Panel noted that the supplementary information to Clause 2 gave examples of activities that were likely to be in breach of that clause which included prejudicing patient safety. The Panel noted its comments and rulings above and considered that the misleading impression given by the webpage at issue had the potential to adversely affect safety in patients for which each medicine was contraindicated and particularly in patients taking simvastatin >40mg daily and a breach of Clause 2 was ruled.

**5 Claims 'NILEMDO® delivered a significant 17-28% LDL-C reduction (placebo-corrected) from baseline at 12 weeks, depending on risk factors and concomitant medicine[‡8-11]' and 'NUSTENDI® delivered a significant 38% LDL-C reduction (placebo-corrected) from baseline at 12 weeks [§12]'.**

**COMPLAINT**

The complainant alleged that the two claims towards the end of the homepage did not provide absolute reduction in % LDL-C reduction but only relative reduction %, therefore breaching Clause 7.2 twice. The same claims and issues were again present on the Efficacy section of the website https://www.nilemdo-nustendi.co.uk/hcp/efficacy (Job Code: BEM/20/0242 | Date of preparation: October 2020). The same clauses as mentioned for the issues on homepage were breached again on this section.

**RESPONSE**

Daiichi-Sankyo submitted that, for background and context, the clinical trials for bempedoic acid and bempedoic acid/ezetimibe fixed dose combination (FDC) were not measuring the risk reduction in CV events since these trials were measuring the LDL-C levels in patients compared to baseline. Relative risk reductions were therefore not possible to calculate in this context, and therefore the Clause 7.2 requirement for absolute risk reduction did not apply in this context.

The percentage LDL-C lowering figures referred to by the complainant did not refer to risks; they were LDL levels. The clinical trials for bempedoic acid and bempedoic acid/ezetimbime were not event-driven and were instead related to the measurement of LDL-C levels (a continuous variable). The clinical trials that the LDL-C reductions referred to by the complainant were measuring a continuous variable throughout the study, rather than an event driven study for which the calculation of absolute risk and relative risk would be appropriate. In the case of studies where a continuous variable such as LDL-C was being measured, there was, therefore, no risk reduction to calculate since there was no 'risk event' being recorded.

With reference to Clause 7.2, it was stipulated that 'relative risk should never be referred to without also referring to the absolute risk. Absolute risk can be referred to in isolation'. However, the % LDL-C reductions quoted by the complainant were not relative risk reductions but instead were percentage change reductions in LDL-C from baseline to week 12 (placebo-corrected) observed in the studies.

From the homepage referred to by the complainant (screenshot provided), the 17-28% LDL-C reduction for Nilemdo and the 38% LDL-C reduction for Nustendi were percentage change in LDL-C from baseline to week 12 (placebo-corrected). Since there was no 'risk reduction' being measured, therefore the alleged breach of Clause 7.2 was not applicable, and therefore there was no breach of Clause 7.2.

**PANEL RULING**

The supplementary information to Clause 7.2 states that referring only to relative risk, especially with regard to risk reduction, can make a medicine appear more effective than it actually is. In order to assess the clinical impact of an outcome, the reader also needs to know the absolute risk involved. In that regard relative risk should never be referred to without also referring to the absolute risk. Absolute risk can be referred to in isolation.

The Panel noted Daiichi-Sankyo's submission that the percentage LDL-C reductions, quoted by the complainant, were not relative risk reductions but instead were percentage change reductions in LDL-C levels from baseline to week 12 (placebo-corrected) observed in the studies. The Panel did not have the studies in question before it; Daiichi-Sankyo had not provided the references to the claims.

The Panel did not consider, on the evidence before it, that the complainant had established that a breach of the Code had occurred as alleged and no breach of Clause 7.2 was ruled in relation to each claim.

## 6 Claim 'NILEMDO® and NUSTENDI® are generally well tolerated when added to existing lipid-lowering treatments (LLTs)[1,2]'

### COMPLAINT

The complainant alleged that the claim on the tolerability section: https://www.nilemdo-nustendi.co.uk/hcp/tolerability (Job Code: BEM/20/0242 | Date of preparation: October 2020) was false as Nilmedo and Nustendi were not appropriate to add on to an adult patient initiated on Simvastain >40mg. This was again a breach of Clauses 7.2, 7.4, 9.1 and 2.

### RESPONSE

Daiichi-Sankyo provided a screenshot in which the 'Tolerability' section of the website referred to by the complainant was shown and submitted that the claim 'generally well tolerated' was an acceptable claim for the overall safety of the products, based on the information in the SPCs. In addition, looking at the SPC and the studies carried out for Nilemdo and Nustendi, this was saying that they were generally well-tolerated on balance and not indicating that the product was free of side-effects.

Daiichi-Sankyo submitted that the generally well-tolerated claim was not misleading and could be substantiated by the SPCs for Nilemdo and Nustendi. The term 'generally' referred to all LLTs rather than for simvastatin specifically. Therefore, there had been no breach of Clauses 7.2 and 7.4.

Daiichi-Sankyo submitted that the complainant had referred to the contraindication with simvastatin >40mg, however, the contraindication with simvastatin >40mg was the first item that was included in the Nilemdo and Nustendi safety information. As well as the simvastatin contraindication, all other contraindications for Nilemdo and Nustendi were included as well as the 'Special Warnings and Precautions' for use (as per the SPC) thus allowing the health professional to view upfront the safety information in a transparent way. This was then followed by a listing of adverse events in line with the SPC for each of the products. The information regarding Simvastatin had been included clearly in the 'Tolerability' section of the website and SPCs and was thus not misleading.

Daiichi-Sankyo submitted that, therefore, this meant that there was no breach of Clauses 7.2 and 7.4. By including all of the safety information from the SPCs in the Tolerability section of the website, there had been no breach of Clause 9.1 since high standards had been maintained. Consequently, there had been no prejudice to patient safety, therefore Daiichi-Sankyo submitted that there had been no breach of Clause 2.

**PANEL RULING**

In the Panel's view, it appeared that the complainant was concerned that the claim 'NILEMDO® and NUSTENDI® are generally well tolerated when added to existing lipid-lowering treatments (LLTs)[1,2]' was misleading as Nilmedo and Nustendi were not an appropriate add-on treatment in adult patients taking simvastatin >40mg daily, rather than having concerns about the use of the phrase 'generally well tolerated' *per se* and the Panel made its rulings in this regard.

Clause 7.2 stated, *inter alia,* that information, claims and comparisons must be accurate, balanced, fair, objective and unambiguous and must be based on an up-to-date evaluation of all the evidence and reflect that evidence clearly. They must not mislead either directly or by implication, by distortion, exaggeration or undue emphasis.

The Panel considered the immediate and overall impression of the webpage to a busy health professional. The Panel noted that the claim at issue, 'NILEMDO® and NUSTENDI® are generally well tolerated when added to existing lipid-lowering treatments (LLTs)', was in large prominent font whereas the information on contraindications, including that concomitant use with simvastatin >40mg daily was contraindicated, appeared further down the webpage in much smaller font and not in the same visual field as the claim at issue.

The Panel considered that the claim at issue was misleading; it implied that the medicines could be added to any existing oral lipid lowering treatments and when doing so were generally well tolerated which was not so; the medicines were contraindicated in patients taking simvastatin >40mg daily. The claim could not stand alone and the Panel therefore ruled a breach of Clause 7.2. The Panel noted that the misleading impression could not be substantiated and a breach of Clause 7.4 was ruled.

The Panel noted its comments and ruling above and considered that Daiichi-Sankyo had failed to maintain high standards and a breach of Clause 9.1 was ruled.

The Panel considered that its ruling of a breach of Clause 2 under point 4 above adequately covered this matter and a further breach of Clause 2 was not warranted in the particular circumstances of this case and the Panel made no further ruling in this regard.

**7 Claim 'Add NILEMDO® or NUSTENDI® to current oral lipid-lowering therapies to help uncontrolled patients achieve their LDL-C goals*†'.**

**COMPLAINT**

The complainant alleged that this was a big claim at the start of the dosing section (https://www.nilemdo-nustendi.co.uk/hcp/dosing) which was not appropriate in all patients. Ironically the claim was qualified by '*' which read '*Dependent on concomitant medication' in the footer of the same page. The complainant alleged that, once more, this breached Clauses 7.2, 7.4, 9.1 and 2 as the claim was unqualified in relation to other therapies and the necessary clinical parameters to consider. It was very worrying that this important clinical information had been hidden away in small text at bottom of the page as a footnote.

**RESPONSE**

Daiichi-Sankyo submitted a screenshot of the section of the website that the complainant was referring to. It stated 'Add Nilemdo or Nustendi to current oral lipid-lowering therapies to help uncontrolled patients achieve their LDL-C goals'. The footnotes that were linked with the claim were 'dependent on concomitant medication' and also the simvastatin contraindication >40mg.

The claim specified that Nilemdo and Nustendi were used as add-on treatments.

The footnote '*dependent on concomitant medication*' was not there to qualify the product claim, but instead to provide additional information to the reader that results might vary depending on the specific lipid-lowering therapies already being used to treat the patient.

The claim specified that Nilemdo and Nustendi were used as add-on treatments: '……to help uncontrolled patients achieve their LDL-C goals'. It was not claiming that Nilemdo or Nustendi should be used as a monotherapy. This would also be seen by the reader in the context of the focus of the entire website as being for 'add-on' treatment.

Daiichi-Sankyo submitted that, clearly, the nature of the specific base cholesterol treatment, to which Daiichi-Sankyo's products were added, ('*current oral lipid-lowering therapies'*) would have an effect on the attainment of LDL-C goals, so the footnote '*dependent on concomitant medication'* could not be regarded as a *qualification* to the claim since it already stated this in the claim itself because, and obvious, that results were dependent on the original treatment.

The second footnote for the contraindication of simvastatin >40mg again was not there to qualify the claim, since the claim did not mention simvastatin or contraindicated patients. It had been provided as additional information in a transparent way, so that the health professional was provided with additional information. Daiichi-Sankyo UK had not hidden nor withheld any clinical information and had prioritised patient safety throughout the website. Therefore, since the footnotes were not being used to qualify the claim and not misleading, Daiichi-Sankyo submitted there had been no breach of Clauses 7.2 and 7.4. Consequently, there had been no breach of Clauses 9.1 or 2.

**PANEL RULING**

The Panel noted that the '†' in the claim 'Add NILEMDO® or NUSTENDI® to current oral lipid-lowering therapies to help uncontrolled patients achieve their LDL-C goals*†' took the reader to a footnote in much smaller less prominent print at the bottom of the webpage which read '†Concomitant use with simvastatin >40 mg daily is contraindicated. When NILEMDO®/ NUSTENDI® is coadministered with simvastatin, the simvastatin dose should be limited to 20 mg daily (or 40 mg daily for patients with severe hypercholesterolaemia and who are at high risk for cardiovascular complications, who have not achieved their treatment goals on lower doses and when the benefits are expected to outweigh the potential risks)'.

The Panel noted that between the claim in question and the footnote was an illustration of two people pulling on a rope and a large prominent box with further claims and graphics. In the Panel's view, readers browsing the webpage would be drawn to the prominent claims and graphics and might not read the footnotes.

The supplementary information to Clause 7 required that claims in promotional material must be capable of standing alone as regards accuracy etc. In general claims should not be qualified by the use of footnotes and the like.

The Panel considered the immediate and overall impression to a busy health professional. The Panel considered that the claim was misleading; read in isolation it implied that Nilemdo and Nustendi could be added to any existing oral lipid lowering treatments which was not so; the medicines were contraindicated in patients taking simvastatin >40mg daily. In the Panel's view, the claim could not stand alone and the Panel therefore ruled a breach of Clause 7.2. The Panel noted that the misleading implication could not be substantiated and a breach of Clause 7.4 was ruled.

The Panel noted its comments and ruling above and considered that Daiichi-Sankyo had failed to maintain high standards and a breach of Clause 9.1 was ruled.

The Panel considered that its ruling of a breach of Clause 2 under point 4 above adequately covered this matter and a further breach of Clause 2 was not warranted in the particular circumstances of this case and the Panel made no further ruling in this regard.

**8 Claim 'Can be taken with or without food, at a time that suits the patient[1,2]'.**

**COMPLAINT**

The complainant alleged that this claim towards the bottom of the page was not the case if a patient was already taking a bile acid sequestrant. In fact, this information was again only presented as a footnote, which stated, '**Dosing of NUSTENDI® should occur either at least 2 hours before or at least 4 hours after administration of a bile acid sequestrant'. This was allegedly a breach of Clauses 7.2, 7.4, 9.1 and 2 as claims should not be qualified by footnotes and should be capable of standing alone.

**RESPONSE**

Daiichi-Sankyo provided a screenshot of the section of the website that the complainant was referring to.

Daiichi-Sankyo submitted that the claim in question was in the centre of the figure and was 'Can be taken with or without food, at a time that suits the patient'. The footnote that the complainant referred to was not there to qualify the claim, but instead to provide additional information for the health professional in a transparent way. This information in the dosing section of the website was very clear, not misleading and could be substantiated by the SPCs. Therefore, by providing additional information rather than qualifying the claim, Daiichi-Sankyo submitted there had been no breach of 7.2, 7.4, 9.1, or 2.

**PANEL RULING**

The Panel noted Daiichi-Sankyo's submission that the claim in question was in the centre of a box headed 'Choice of NILEMDO (bempedoic acid 180 mg) or NUSTENDI (bempedoic acid 180 mg + ezetimibe 10mg), a fixed-dose combination with ezetimibe'. Three claims appeared below: 'NILEMDO or NUSTENDI** is a once-daily tablet'; 'Can be taken with or without food, at a time that suits the patient'; and 'One dose for all eligible patients'. The Panel noted that the footnote (**) referred to by the complainant and Daiichi-Sankyo was in relation to the first claim rather than the claim at issue and appeared in small font beneath the box within a list of footnotes and read '**Dosing of NUSTENDI should occur either at least 2 hours before or at

least 4 hours after the administration of a bile acid sequestrant'. It appeared to the Panel that the intended footnote was linked to the wrong claim and therefore readers may not have seen that there was a caveat to the claim at issue.

Clause 7.2 stated, *inter alia,* that information, claims and comparisons must be accurate, balanced, fair, objective and unambiguous and must be based on an up-to-date evaluation of all the evidence and reflect that evidence clearly. They must not mislead either directly or by implication, by distortion, exaggeration or undue emphasis. The supplementary information to Clause 7 required that claims in promotional material must be capable of standing alone as regards accuracy etc. In general claims should not be qualified by the use of footnotes and the like.

The Panel considered that the claim 'Can be taken with or without food, at a time that suits the patient' was misleading; it implied that both medicines could in all cases be taken at any time which was not so; dosing of Nustendi should occur either at least 2 hours before or at least 4 hours after administration of a bile acid sequestrant. The Panel therefore ruled a breach of Clause 7.2. The Panel considered that the misleading impression given by the claim could not be substantiated and a breach of Clause 7.4 was ruled.

The Panel noted its comments and rulings above and considered that Daiichi-Sankyo had failed to maintain high standards and a breach of Clause 9.1 was ruled.

The Panel considered that its ruling of a breach of Clause 9.1 adequately covered this matter and it did not consider that the particular circumstances of this case warranted a ruling of a breach of Clause 2 which was a sign of particular censure and reserved for such use. No breach of Clause 2 was ruled.

**9 Mobile version**

**COMPLAINT**

The complainant stated that the mobile version of the website was different to that of the desktop version. On the mobile view, prescribing information was not provided as a single clickable link, one would have to try and search hard to find it as it was not present on any page of the mobile version. This was allegedly a breach of Clauses 14.1 (as mobile version should have been certified separately as different final form), 9.1 and 2.

**RESPONSE**

Daiichi-Sankyo confirmed that prescribing information was provided as a single click link, on the mobile version of website. Daiichi-Sankyo submitted that this was checked as part of the final form check prior to certification by the medical signatory and therefore, there was no breach of Clauses 14.1, 9.1 or 2.

The complainant also alleged that the mobile version of the website (screenshot provided) should have been certified separately. However, this was not a requirement of the Code which stated that the final form of the material must be certified. Daiichi-Sankyo submitted that the final form of the website on a standard desktop screen and mobile device was checked as part of the final form check by the medical signatory which fulfilled the requirements for Clause 14.1; therefore, there had been no breach of Clauses 14.1, 9.1 or 2.

**PANEL RULING**

The Panel noted, from the certified job bag material provided by Daiichi-Sankyo, that the website had a number of links to the Nilemdo and Nustendi prescribing information. The Panel did not have before it a copy of what was visible when each of these links was accessed.

The Panel noted Daiichi-Sankyo's submission that prescribing information was provided as a single click link on the mobile version of the website; the final form of the website on a standard desktop screen and mobile device was checked as part of the final form check by the medical signatory. The Panel noted that the complainant bore the burden of proof and did not consider that he/she had established that prescribing information was not provided as a single click link on the mobile version of the website or that the website had not been certified as required by the Code and no breach of Clause 14.1 was ruled. The Panel consequently ruled no breach of Clauses 9.1 and 2.

**Complaint received** **17 April 2021**

**Case completed** **6 December 2021**