

Recommendation No. 1 concerning the Pharma Cooperation Code (PCC)**Failure of healthcare professionals and healthcare organisations to consent to disclosure****Background**

On 24 June 2013, the General Assembly of the European Federation of Pharmaceutical Industries and Associations (EFPIA) adopted the new EFPIA Code on Disclosure of Transfers of Value from Pharmaceutical Companies to Healthcare Professionals and Healthcare Organisations (EFPIA HCP/HCO Disclosure Code), which was incorporated into the Code of Practice 2019 as part of the Code Consolidation 2019. scienceindustries is responsible for the implementation of these requirements in Switzerland. Accordingly, the Code of Conduct for the pharmaceutical industry in Switzerland was drawn up in cooperation with expert groups and patient organisations (Pharma Cooperation Code, PCC) on 6 September 2013 and re-approved in its revised form by the scienceindustries Board on 14 May 2020.

Sections 24.1, 25.1 and 25.2 PCC require the signatory companies to disclose pecuniary benefits granted by them to professionals (HCP) or healthcare organisations (HCO) on their corporate websites which are accessible to the public.

Section 24.2 PCC recommends the pharmaceutical companies make reference in contracts with HCPs or HCOs to the fact that the pecuniary benefits linked to the contractually agreed service are to be disclosed pursuant to this code. For this purpose, these agreements stipulate that the recipients of the pecuniary benefits agree to disclosure.

Only a few pecuniary benefits are exempt from the disclosure obligation (Sections 24.3 and 24.4 PCC).

In connection with the implementation of the PCC, the question of how a signatory company should proceed if an HCP or an HCO declines to give its consent to disclosure is raised on several occasions.

Recommendation

The main reason why HCPs/HCOs must give their written consent to disclosure lies in the stipulations of data protection law. Consent to data processing and data disclosure is essential before a company may proceed. The situation in the European context is not fundamentally different. Pursuant to the EFPIA Code of Practice 2019 the individual obligation of disclosure is the basic principle (Art. 23, Section 23.05).

In Art. 23 Section 23.05, the EFPIA Code makes provision for the possibility that pecuniary benefits may be disclosed in an aggregated (summary) form in cases where for legal reasons individual disclosure is not possible. Pursuant to Section 21.4 PCC the pharmaceutical companies arrange consultancy and service contracts with HCPs or HCOs by means of a written agreement. In this context they call the attention of the contracting partner to the fact that the pecuniary benefits linked to the contractually agreed service are disclosed on their website (see Section 24.2 PCC). By appending his signature, the contracting partner confirms that he has been informed of and agrees to the disclosure.

If an HCP or an HCO declines to consent to disclosure, any pharmaceutical company concerned is advised not to sign an agreement because individual disclosure is no longer a possibility in this

case for reasons of data protection law. However, the aim of the PCC, namely that of creating extensive transparency, is best achieved through individual disclosure and should therefore always be pursued. This is a **recommendation** by the Code Commission.

Withdrawal of consent

According to current general legal practice in relation to the data protection act, in Switzerland consent to data processing and data disclosure can in principle be withdrawn at any time. **However, such a withdrawal has no retroactive effect but in principle applies only for the future.**

Should a signatory company be confronted with a withdrawal of consent after providing the service and payment of the pecuniary benefits, it is recommended that this be noted and confirmed in writing to the HCP or HCO withdrawing consent, pointing out in the same letter that in accordance with the contractual agreement disclosure will take place for the provided service and relevant payment.

Once again, the decision on continuation of further cooperation for the future after consent has been withdrawn is left entirely to the discretion of the signatory company. With a view to the desired objective of transparency, the signatory company is also recommended in that case not continuing the cooperation or to do so only with the exclusion of any pecuniary benefits in favour of the HCP/HCO withdrawing consent. However, if the cooperation is nevertheless continued, pecuniary benefits would have to be disclosed in a summarised/aggregated form, but this should be avoided.