

**Summary of findings of Code of Practice Standing Committee findings – Complaint #139 under the Code of Practice (v.15)**

**Merck Sharpe and Dohme New Zealand Limited and Novartis Limited**

**Code of Practice Standing Committee:** Dr John Cadenhead, Dr Richard Robson, Dr Philip Rushmer, Stuart Knight, Dr Ian Griffiths.

**Hearing:** 26 September 2011.

**Complaint:** Elements of the complaint by Merck Sharp and Dohme New Zealand Limited are addressed to an ad placed in the NZ Doctor Magazine dated 20 April 2011 by Novartis Limited.

The Committee was considering breaches to clause 3.3 and 3.4 of the Code:

*Clause 3.3 “Exaggerated or all-embracing promotional claims must not be made and unqualified superlatives must not be used. Promotional claims should not imply that a medical product, or an active ingredient, has some special merit, quality or property, unless this can be substantiated and is referenced.”*

*Clause 3.3.3 “All promotional claims must be current, accurate, and capable of substantiation and must not be misleading either directly, by implication, by scale or by omission. Graphics should not be used in any way which might mislead; for example, by their incompleteness or by use of suppressed zeros or unusual scales.”*

*Clause 3.4.1 “Comparisons must be made on a factual and fair basis and be capable of substantiation in accordance with the balance of medical advice.”*

*Clause 3.4.2 “Comparisons must not mislead by distortion, by undue emphasis, or in any other way. “Hanging” comparatives – those that claim a product is better, stronger or more widely prescribed – must not be used.”*

The Committee upheld this complaint. The Committee found the comparison made in the advertisement misleads by distortion. The Committee found no factual and fair basis for claims in the advertisement in breaches of 3.3.2, 3.3.3, 3.4.1 and 3.4.2.

**Remedy:** The Committee found there had been a breach of the Code. Novartis will no longer use this comparative claim in any advertising materials and must pay cost and disbursements of the proceedings.