Hospital Edition

winter 09

insight

The magazine of the **Pharmacists' Defence Association**

Responsible Pharmacist

Are employers burying their heads in the sand?

Do your bit to halt remote supervision

Chairman's letter

Vote now to stop remote supervision

Mark Koziol, Chairman, The PDA

Contained in the Health Act was the proposal for the Responsible Pharmacist (RP) and Remote Supervision – the plan to operate a pharmacy in the absence of a pharmacist.

Some hospital pharmacists may feel that the release of the pharmacist from the pharmacy would be liberating and lead to new pharmacy roles, indeed, in many hospitals, this has been the experience. However, hospital pharmacists will know that the world of community practice is a very different one, increasingly controlled by large corporate interests where the most important consideration is the shareholder. As a defence association and pharmacist union we have experience of handling thousands of disputes between employers and pharmacists and these experiences tell us that remote supervision in the community setting will simply lead to a huge cost cutting exercise at the hands of some large pharmacy multiples. This would neither be in the pharmacists, nor the publics interest. Furthermore, its effect would ultimately be felt in all sectors of pharmacy.

We actively lobbied parliament and secured influential voices of support.
On March 1st 2006 in the House of Lords Baroness Murphy said;

"It seems to me – and this has been raised by the PDA too – that the provisions, may have the unintended consequence of lessening the public's access to a community pharmacist in more deprived areas and provide fewer safeguards for patients in terms of supervision for their medications. I fear that companies with several pharmacies will simply reduce the number of pharmacists they employ."

We were pleased when the government decided that it would put remote supervision onto the backburner for the time being.

We weren't ready

As we approached the launch of the RP regulations, it was obvious that the profession across several of its sectors was simply not ready and the PDA called for a delay. Time was needed to work through the operational aspects as many of the proposals were simply unworkable.

In July 2009, the government seriously considered this but sadly, at the RPSGB Council meeting of July 2009, with several sympathetic Council members unable to attend, only 3 members of Council voted for a delay. The RPSGB refused to back our call and the government proceeded.

So what have we learned?

The RPSGB Council could have played a pivotal role in ensuring that the RP regulations were delayed and then revisited. We could have been looking at an implementation date of spring 2010. However, due to its intransigence, pharmacists have been landed with a set of administratively burdensome and unworkable regulations, which place individual pharmacists at greater risk. Worst of all, what have they delivered?

1. They do not allow the sale of GSL medicines from pharmacies during the lunch break of pharmacists.

Unless of course you are one of those pharmacists who have been 'persuaded' to remain signed on, take the added risks upon your shoulders (often without pay) during your rest breaks (see page 8).

2. The two hour absence was supposed to enable pharmacists to develop additional healthcare roles away from the pharmacy.

Instead, some large employers are using the two hour absence to extend their business operational hours in the absence of a pharmacist so as to reduce costs.

3. They were designed primarily for the community sector and their effect on the hospital setting was supposed to be negligible.

However, their effect in some hospitals has been problematic. In some cases, resulting in the costly re-organisation of pharmacy operations creating a significant administrative burden and much inconvenience to patients (see page 22).

We believe that if Remote Supervision were to be allowed then we would see significant numbers of community pharmacies operating in the absence of a pharmacist for much longer periods. While this would deliver significant cost savings for companies and would be legal, it would be very detrimental to both the patients and the pharmacist's interests.

A community pharmacy without a pharmacist is never as safe as one with a pharmacist present.

So what next?

The government now intends to revisit its remote supervision proposals and if we are to halt the plan, then we will need to put the lessons learned to good use.

Crucially, the RPSGB has a pivotal role to play, it has considerable assets at its disposal. I believe that for too long these assets have been applied mainly to the benefit of the large employer, but these are pharmacist's assets and the time has come to apply them to pharmacist interests and not those of corporate shareholders. The campaign to Stop Remote Supervision may involve significant national PR work, parliamentary lobbying, generating media interest and harnessing the concerns of patient interest groups.

If we can be sure that the RPSGB is led by pharmacists who are against the vagaries of Remote Supervision and this is further re-enforced by a large representative union like the PDA, then a future Health Minister will find it very difficult to ignore such concerns.

And this is why the PDA has taken the extra-ordinary measure to support certain STOP REMOTE SUPERVISION candidates in the current election to the new Professional Leadership Body (PLB).

I urge all pharmacists to read the election feature on the adjacent page which provides details of the candidates being supported by the PDA. If they are all elected, then they will be able to ensure that the RPSGB will not be repeating its embarrassing performance over the RP.

If you want to stop the vagaries of Remote Supervision, then please vote for all of these candidates.

Contents

Why voting for these election candidates will deal a blow to Remote Supervision

We are being told that the profession demands a debate about Remote Supervision, but by whom? Some senior figures working for large multiples are keen to see the supervision rules 'changed' – but why?

When the PDA first suggested that the multiples would use Remote Supervision to allow them to run pharmacies in the absence of pharmacists for cost-cutting purposes, we were accused of scaremongering. However, when the two hour absence under the RP regulations became available, some of the multiples wasted no time in extending their business hours in the absence of the pharmacist.

So let us not kid ourselves, those supporters of Remote Supervision who genuinely believe that it could lead to new roles for pharmacists need to understand that pharmacy operates in a hostile commercial world where profits are maximised through cost reduction.

The PDA believes that if the new roles can be specified, then pharmacists will come forward to deliver them. This has been the case in hospital and primary care practice, so let us not abandon the unique and accessible role of the community pharmacist.

Contrary to popular belief, this is not just a community pharmacy issue. If Remote Supervision is allowed to go ahead, then its effect will inevitably spill over to all sectors of pharmacy.

What is needed is a solid team in place at the Professional Leadership Body, one that will take no nonsense from those who may seek to reduce costs at the expense of patient safety.

The PDA invited all pharmacists to support the PDA's campaign by agreeing to stand as **STOP REMOTE SUPERVISION** candidates. We were approached by 25 candidates involving both PDA and non-PDA members and a meeting was held so that the candidates could choose from amongst themselves, those that should become formal campaign candidates.

One of the selection criteria used was that the candidates possessed a good understanding of a wide range of issues facing the profession. It was always important to ensure that if they get elected, then they must be able to deal with matters way beyond just remote supervision.

We hope that you agree, that the candidates selected represent a good mix of experience, passion and specialist knowledge. They come from several sectors and we believe that they would make an excellent team to lead our profession.

The election rules are complex, put in its simplest form, you have a significant number of votes that you can place, the exact number depends on which country you are residing in. You can place your votes even to support candidates not from your particular sector.

The important thing is that you give the official **STOP REMOTE SUPERVISION** candidates described below your undivided backing. It is only if all (or the vast majority) of them are elected, alongside two good hospital candidates will their ability to address Remote Supervision be guaranteed.

If you want to deal with the threat of Remote Supervision, then we ask that you use your votes accordingly.

This feature has been written by the PDA and not by any of the election candidates.

Catherine Armstrong
Primary Care England

Martin Astbury
Community England

Sid Dajani
Un-reserved England

Keith Davies
Un-reserved & Community
Wales

Bob Gartside
Un-reserved & Community
Wales

John Gentle
Community England

Lindsey Gilpin
Community England

Shilpa Gohil
Industrial England

Tristan Learoyd
Academic England

Graham Phillips
Un-reserved England

Graeme Stafford
Un-reserved England

The Good, the Bad and the Ugly

The PDA Annual Conference Birmingham – February 27th & 28th 2010

Rarely has there been a time when the pharmacy agenda has moved so quickly, whether you are working in community, hospital or primary care, it is unlikely that you are unaffected by the consequences of some of the changes that have taken place this last 12 months. The 2010 annual conference will explore the most fundamental of these looking at those that are good, those that are bad and frankly, those that are plainly ugly. Matters that are of great concern to pharmacists include the **Responsible Pharmacist regulations** and the **impact of the Elizabeth Lee prosecution.** Worst of all, **the threat of Remote Supervision** is looming ever closer; find out how the PDA is tackling this issue and what role you will need to play going forward if you want to extinguish this threat to pharmacy.
In a strategic sense, there has been good progress made on some important PDA initiatives – such as **the individual pharmacist contract.**

Every year we study carefully the feedback that we receive from members at the end of our annual conference. One matter that comes up regularly is that we need to find more time to devote to matters of great importance. We have listened! As a consequence, our forthcoming annual conference, will, for the first time be held over two days. On Saturday 27th and Sunday 28th February 2010. This will provide delegates with flexibility and a choice of which of the 2 days (or both) to attend, increasing the amount of time that can be dedicated to singularly important issues.

As a further novel concept, if enough interest is shown, we will organise an evening social for those staying the night!

We urge all PDA members to consider attending this, the most important event in the PDA's calendar.

The PDA Annual Conference

The Good, the Bad and the Ugly!

Wrestling with issues that affect the lives of pharmacists.

- **The individual Pharmacist Contract – new ways to use your clinical skills in the NHS.**
- **Responsible Pharmacist – can the employers' intransigence win?**
- **Remote Supervision – preparing to stop this threat.**
- **The Elizabeth Lee prosecution – will the lawmakers concede they got it wrong?**

Delegates can choose to attend on one or two days of this event. Hotel and evening entertainment option available.

Saturday 27th and Sunday 28th February 2010
International Convention Centre – Birmingham

To see conference programme and book on-line **www.the-pda.org**

News

Career threatening complaints

The PDA has become aware of a number of serious complaints against pharmacists who are accused of inappropriate behaviour or comments, and in some cases sexual assault. Although relatively small in number, complaints in this area are growing and have the potential to unfairly ruin a pharmacist's career when unfounded. Quite rightly such complaints are treated seriously and the Society can act quickly using its legal powers to suspend or restrict a pharmacist's ability to work if it receives such a complaint. What is more concerning is that suspension or restrictions can be imposed even when the basis for the allegation is uncorroborated evidence from a single individual.

The rise in complaints appears to be linked to the greater involvement of pharmacists in providing patient services, such as MUR's or supervised consumption of methadone in private consultation areas. There are a number of ways that pharmacists can protect themselves from false allegations when involved in services that are conducted in private and/or involve physical contact with a patient.

- Be familiar with the Professional Standards and Guidance for Patient Consent issued by the Society; this should be read in conjunction with its Guidance on Maintaining Clear Sexual Boundaries available at www.rpsgb.org
- The PSNC suggests every community pharmacy that has procedures which may involve physical contact with patients, or consultations carried out in confidential consultation areas should consider having a chaperone policy in place for the benefit of both patients and staff; details on www.psnc.org.uk

In pharmacy, the experience so far is for female patients to complain against male pharmacists; this reflects the trend for similar complaints in the medical and nursing professions, where male against male and male against female complaints are very uncommon.

PDA Advice

As pharmacists become more involved in services that require physical contact and take place in private, they should reflect on their own preparedness to undertake such roles. Pharmacists who work with certain patient groups may be particularly vulnerable to unwarranted complaints and should discuss the merits of a chaperone policy with their employer, in addition to close observance of the above guidance.

Locum risk management publication launched by PDA

The PDA Union has launched the 'Locum Booklet' which contains information and advice to help Locums in an emergency when faced with difficult contractual, health and safety and professional situations.

The Booklet covers issues such as, contractual rights and what to do if they are breached, what processes you should follow if fees are not paid or there is a dispute about rates or travel expenses.

"Locums can often prejudice their position or prolong the dispute unnecessarily by omitting to take certain actions immediately," said Orla Sheils, the legal advisor who managed the project. **"so we wanted to give them some pointers which will clarify their position and probably make the handling of the dispute a lot smoother further down the line"**

Information on Health and Safety legislation and how it applies to Locums is also a big feature of the Booklet.

"There are certain obligations on Employers which impact on Locums", continued Orla, **"and Locums should be aware of their [employers'] statutory duty and what to do should they find themselves in an impossible situation"**

The final part of the publication deals mainly with professional considerations which include what to do about under-staffing, dispensing errors or if the Locum is embroiled in an investigation by the Regulator or Primary Care Organisation.

Commenting on the booklet, John Murphy, the General Secretary of the PDA Union said "The booklet is based on the experiences of the legal advisors in the PDA and I am delighted with the end product which is a credit to their hard work and the support and input of the Locum Membership Group of the PDA Union. "The booklet is not the definitive self-help guide to every problem that Locums will face, but we have given enough information to help our members become more self-sufficient with immediate access to a comprehensive reference source - at least until they can access more specific advice through the PDA."

PDA meets Chairman Designate of GPhC

PDA executives recently met with Bob Nichols the Chairman designate of the newly proposed General Pharmacy Council (GPhC), the professional regulator which is planned to take over the role from the RPSGB in April 2010.

Mark Koziol, Chairman and John Murphy, Director represented the PDA and were joined by the newly appointed Chief Executive Officer of the GPhC, Duncan Rudkin who takes up his post in January.

Protocol deems that we cannot as yet divulge the content of the meeting but suffice to say that Mr Nichols is keen to listen to the PDA's forthright views on the proposed GPhC Standards during the current consultation process. **"We made our view known that standards should be aspirational and not a device for punishment and stifling innovative practice"**, Mark Koziol said. **"And Mr Nichols gave us both the impression that he would be taking our concerns seriously."**

Does the

The PDA prides itself on the quality of advice provided to members in defending their position when faced with a medical negligence claim, an RPSGB investigation, an employment or locum dispute and/or a criminal prosecution.

The quality of the counsel we give to our members needs to be of a very high standard because we are not **only** giving advice; more often than not we are assessing the risk to the member and sowing the seeds of a strategy for their defence. It is essential if we are to work as a defence association as opposed to the 'provider of generic advice', which may not fit the purpose, that we get as much relevant information as possible as early as possible and this means all the documentation and evidence that is available.

Any advice we give early on is with the intention of protecting the member's position, not just in the immediacy, but in the medium and long term of the dispute or claim. It is frustrating when a member decides not to take our advice or if they fail to give us all the information that we require. We cannot give the correct advice if we are only given half the story or damaging information that turns out to be pivotal to a case is then disclosed by the other side.

Every member has the right to seek legal and professional advice from wherever they choose but they must appreciate that if they decide that advice from another source is preferable to that of the PDA's and follow it, that if things go wrong after that point then it is usually difficult for the PDA to pick up the thread of someone else's wrongful advice as the damage is most likely already done.

"PDA membership is a priceless asset to have as part of a pharmacist's protective armour."

Reporting of negligent practice

There are occasions when our members decide not to inform us about a dispensing error or other complaint because they believe it to be unimportant. If the error comes to light some time later in the form of a claim passed on to us by the employer's insurer, the NPA, because they hold the pharmacist liable, and the question is asked of our member why they had not reported the incident to us, typical answers include **"I thought that the employer was taking care of it"** or **"it didn't seem to be going anywhere"**.

This can often prove to be an unfortunate misconception and cause serious complications if matters escalate to a compensation claim, a professional complaint or both. Early intervention by the PDA allows us to construct a strategy that is beneficial to our member's defence when dealing with significant errors or complaints. Failure to notify the PDA of dispensing incidents or complaints that are likely to lead to a claim may also cause problems with the insurance underwriters.

The 10 Golden Rules

As a general rule of thumb, it is important that you inform us if any of the following;

1. An error has occurred or wrong advice has been given and as a result the patient has used the wrong medication.
2. Any error with which you are remotely connected that may be linked to the death of a patient.
3. An error or wrong advice has been given that has resulted in harm being caused to the patient and/or they have sought medical attention.
4. An error that may not have caused harm but is sufficiently serious to be worthy of a full investigation (for example methotrexate 10mg tds dispensed to a patient instead of metclopamide, incorrect medication given to pregnant women or children).
5. The patient or the patient's representative insinuates that they intend to take the matter further; e.g. "I will report you", "You will not hear the last of this", "Can I have your name and the telephone number of your Head Office?"
6. An error is a repeated error (irrespective of whether you made the earlier error or not) or the same patient has been subjected to an incident before.
7. An incident has involved other health care professionals (e.g. the GP, nurse, hospital, day centres/case workers) or other authorities such as the PCOs, the Police, NCAS or the RPSGB.
8. The incident involves Controlled Drugs.
9. You have been asked to provide your insurance details.
10. You have been asked by the employer or PCO to provide a written report (other than an error log entry) of the incident or a letter of apology to a patient as a result of an error or incident.

We appreciate that sometimes there can be a complaint made which is unforeseen or unexpected, but in our experience if pharmacists apply the golden rules, they are unlikely to run into any nasty surprises in the vast majority of cases.

need to know?

Failing to disclose an incident

On application or renewal, potential members or current members are required to make a declaration about any incident, triggering event or health condition which if it had occurred during the policy period would have qualified for a claim being made. As is normal insurance protocol, if the applicant was not insured when that triggering event took place or health condition was diagnosed, then the policy will not provide cover for any claim for that incident or related to that condition. An uninsured driver would not, for instance, crash his car then take out an insurance policy and ask his insurer to provide cover for that claim.

If you have an ongoing dispute which involves you in a claim for medical negligence, criminal or regulatory proceedings, an employment dispute, or have been diagnosed with a medical condition that may affect your fitness to practice then the underwriter must be told at the application stage if you are a new member.

Current members need to have told the PDA of their incidents during the policy year as and when they occur, but they will also need to declare 'new' incidents which have not been officially reported on the original application form at the point of renewal. There are implications if the declaration is incomplete. In one case a member had been charged with a similar criminal offence on at least two occasions, one of which occurred whilst he was not insured and neither of which were declared on application or renewal. When the person was subsequently summoned to the Statutory Committee as a result of the Police reporting the second offence to the Society, he encountered problems with underwriting.

The declarations on the application forms were incorrect and this caused an insurance contract problem. The lack of disclosure undermined the efforts of the PDA to defend the individual. Despite this, the PDA allocated some discretionary funding to the defence of the member but as such processes require heavy legal representation costs, we did not have the funds to pay for the full costs of the hearing.

Lacking the relevant information is like working with one hand tied behind your back.

It is important that all declarations are made with due diligence.

"We exist to protect our members from the worst happening, to do so we need all the information so as we are not working with one hand tied behind our back or compromising the defence of the people we most want to protect."

If we know about them then we will always support our member through the underwriting process. It's worth noting that the number of times that pharmacists have excess premiums levied on them as a result of being involved in previous incidents is extremely rare, and it is only in exceptional cases where special conditions will be imposed.

Breaking cover

Professional Indemnity insurance is a priceless asset to have as part of a pharmacist's protective armour. It is important that continuity of medical negligence cover is maintained during your professional lifetime and if you change your cover provider you should check that continuity is assured. The reasons for this are that the incidents are often of a nature, the implications of which do not come to light until sometime after the offending act takes place. If you are on a career break, maternity leave or in retirement, not only do we maintain your cover free of charge but we also refund you for the balance of the policy premium that you will not use if your status changes mid-policy year; all you need to do to take advantage of this is to tell us what you are doing and when!

We exist to protect our members from the worst happening, to do so we need all the information so as we are not working with one hand tied behind our back or compromising the defence of the people we most want to protect.

Richard Nixon, the President of the United States of America, who resigned his position rather than risk impeachment, said years later that one of his regrets (and he wasn't big on regrets) was that *"I didn't tell my brief everything – warts-an-all"*; he realised that what the lawyers don't know they can't defend you against!

Responsible Pharmacist

PDA continues to work to resolve RP problems

In calling for a delay to the RP regulations, the PDA sought a period of time before the regulations 'went live' to try and 'fix' some of the unworkable proposals contained in the regulations. In the end, this call for a delay was not supported by the RPSGB and consequently it was not granted by the government.

However, the PDA continues to develop solutions and seeks to get them accepted by the wider pharmacy community; furthermore, we are daily supporting pharmacists who are attempting to react appropriately to the changes that the RP regulations bring to their practice. This special feature details some of the reactive issues and also describes some of the more proactive work in progress.

The lobbying intensifies

Many meetings have already been held with the various relevant bodies at a frequency and intensity that we have not previously experienced. As an example, PDA has sought meetings with the Company Chemists Association Superintendents for more than three years with little result, during the last two months however, two meetings have already been held and a third is planned for early in the New Year. It is now clear that the RP regulations have caused problems not only for employees and locums but also for employers. Most employer organisations are now scratching their heads and wandering how on earth so much bureaurocracy and regulatory burden could have possibly been agreed to by the profession. We are encouraged by the number of matters that we previously expressed concerns over, but which were ignored, are now, albeit belatedly, securing support. Furthermore, there is a real concerted effort to progress some of the solutions proposed by the PDA and this has led to joint workings with relevant organisations.

But it is not just the CCA with whom we have met. We have also had meetings with the Department of Health to pursue our concerns over the conflict between RP regulations and rest breaks; with the RPSGB to discuss our concerns over pharmacists who are being asked to sign on from 8.00am when arriving at work at 9.00am; with the Independent Pharmacy Federation to discuss a range of concerns and also to propose solutions to the challenges posed by the RP regulations. We are also due to meet with the NPA in the near future.

GIVE US A BREAK!

On 22nd of May 2006, the governments spokesman Lord Warner explained to Parliament that; **"With safe systems of work and competent trained staff, the (RP) provisions should allow the pharmacy to continue to operate while the pharmacist takes a lunch break. Otherwise, if patients visit a pharmacy while the pharmacist is taking a rest break then they will not be able to obtain any medicines until the pharmacist returns – not even GSL's."**

It is clear that it was the governments intention to use the two hour absence provision to allow RP's to take their breaks whilst they are signed on so as to allow the pharmacy to continue to provide a basic service, to include the sales of GSL medicines. This was an important cornerstone of the governments RP programme. Unfortunately, the Department of Health in devising the RP concept did not take into account the Health and Safety and employment legislation and its impact upon their RP proposals.

This article explores how the concept of the RP conflicts with the employment and Health and Safety legislation in so far as they relate to statutory rest breaks and demonstrates that the two hour absence provision cannot be used to allow an RP to take a statutory rest break.

Prevailing conditions for absence

The RP is allowed to take up to two hours as a recorded period of absence during any 24 hour period. During this period, a number of basic activities are allowed to continue to lawfully operate in the pharmacy to include the sale of GSL medicines. For an RP to be able to utilise any part of the two hour absence provision, a number of conditions need to be observed by the RP;

- The RP must remain signed on and therefore still be taking over-arching responsibility for ensuring the safe and effective running of the pharmacy in his/her absence. The RP would be held responsible and liable for anything that occurred during the absence.
- The RP must be able to return with reasonable promptness if necessary.
- The RP must display a sign that indicates that they are the RP.
- The RP must remain contactable – or if not able to be contactable, then he/she will need to make arrangements for another pharmacist to be contactable instead.

The working time regulations

The Working Time Regulations apply whether the individual is employed or is a worker and they place a statutory responsibility on the employer of providing a minimum 20 minute rest break per six hour continuous working period. **It is not extended to a self-employed locum who genuinely pursues a business activity on their own account.**

According to the regulations, this must be a complete, physical and mental break away from the work station. It is also a period during which the worker must not be interrupted. This period must also allow a worker to be able to pursue any leisure activities that they wish so as to mitigate the effects of the work, such as going for a walk, or even going to sleep. This means that no conditions should be imposed upon the worker which seek to ensure that the worker stays on the premises and stays available (e.g. requiring them to have lunch in the consultation room) just in case that they need to be momentarily brought back into service.

This means that for the working time regulations to be observed in so far as the RP is concerned, then no conditions should be imposed upon this break period. The RP must not be able to be contactable during the break, nor must he/she be required to return with reasonable promptness.

"This means that no conditions should be imposed upon the worker which seek to ensure that the worker stays on the premises and stays available."

In addition to this, the employer needs to ensure that the rest period is clearly defined. In other words, an arrangement where the employer says, try and catch a break whenever you can, or try and fit in a series of shorter breaks to suit the business is not allowed under the regulations; the rest break needs to be pre-determined and protected. Because these regulations place the responsibility of ensuring that such breaks are taken upon the employer, any employer that does not put appropriate arrangements in place to support these principles is committing an offence under the regulations. Any employer who claims that his workers prefer not to observe the working time requirements and allows them to work without a break is also committing an offence.

The test case precedents

Employment and Health and Safety legislation provides many specific test cases that indicate how some of the prevailing conditions described would impact upon the rest break of a pharmacist. The ones that are relevant to the RP issue primarily deal with the issue of contactability and 'on call'. They also deal with another important concept; that of over-arching responsibility. Although the PDA has studied many of these cases and has found a considerable number that support the PDA's position, in this feature, because of space constraints we have only referred to a small number of these precedents.

On call arrangements – the requirement to remain contactable and to return with reasonable promptness.

1. The European Court of Justice in SIMAP v Conselleria de Sanidad y Consumo de la Generalidad Valenciana dealt with a doctor that was on call. It concluded that the whole period when the doctor was on call constituted working time. This case dealt with a doctor who was providing on call duties during which time he was required to remain on hospital premises. His employers argued that although he might be 'on call', there were often lengthy periods of time when he was not required and was not actually being called. They argued that although he was asked to remain on hospital premises, he was otherwise able to do whatever he wanted, they also argued that because they had provided a bed for him and allowed him to sleep during the often lengthy quiet periods during the night that his entire on call period did not constitute working time and therefore he did not deserve to be paid for this period.

The European Court of Justice confirmed however, that because he was required to remain on the premises, then irrespective of whether he was actually being called or not, or even whether he was awake or asleep, he was not able to pursue leisure activities. They concluded that his entire 'on call' period was indeed working time and that he was entitled to full payment.

Impact upon the RP

Consequently, where an RP is told that a break may be taken, but that the RP is required to stay on the premises then this does not constitute a break, it is 'working time' and means that the employer may have committed an offence under the Working Time Regulations, by not providing the required minimum 20 minutes statutory rest break per six hours of working time.

2. The Hughes v Graylins Case was heard by three judges in a UK Employment Appeals Tribunal and it dealt with an employee of a residential home who worked in the residential home for 8 hours per week. However, because she rented accommodation from her employer which happened to be on the grounds of the residential home, she was told that because of her proximity she would be expected to assist in emergency situations in her own time in the event that staff in the residential home were unable to cope. To do this, she would have had to return to the residential home with reasonable promptness. In reality, the staff were able to deal with most of the emergencies without the need to call her however, she was required to attend on about two occasions per month. The issue was that the employee claimed that her entire 'on call' time should be working time; the employer denied this claiming that she was hardly ever called.

The EAT concluded that her entire time where she could have been called in to assist was indeed working time, irrespective of whether she was called or not. They went further and stated that because of this, far from her employment being merely 8 hours per week, her actual working time was in fact 96 hours per week and that this was an amount that exceeded the total number of permitted hours in a week. Additionally, they stated that the worker was entitled to payment for the additional hours of the 'working time'.

"The RP who is asked to continue to carry the responsibility by remaining signed on during the lunch hour, is not enjoying a rest break at all."

Impact upon the RP

Consequently, this shows that if the RP is signed on and contactable, then whether the RP is contacted or not this represents 'working time', for which the worker is entitled to payment. It further means that any period where the RP is signed on, but absent and contactable cannot constitute a rest break. This also conflicts significantly with the requirements being placed on pharmacists by some of the largest pharmacy multiples where pharmacists are being told that they should take their lunch, remain signed on and not be paid for this added responsibility on the grounds that they are unlikely to be called.

The issue of Responsibility

3. In the case of Roberts v North Wales Police, a Police Sergeant who performed the function and duty of a custody officer was effectively the officer responsible for the safe custody of prisoners. Although other police officers where available in the police station, none of them had the appropriate rank or experience and thereby did not have the same level of responsibility.

When the time came for him to take a break, no other custody officer was available. Consequently, it was decided that the custody officer could take a break in the custody suite, other officers would deal with the routine custody issues in his absence but that he would continue to be the named custody officer and therefore continue to take the responsibility for that role. The issue was whether time spent in this way could constitute an 'uninterrupted period' of at least 20 minutes when, in view of the absence of any appropriate cover, he could have been called upon at any moment to resume his duties.

An employment tribunal found that this 'alleged' rest break period was not in fact a rest break at all but constituted working time. For although others were involved in the role in his absence, he still continued to be the responsible 'named' individual. The key to this finding was that unless another custody officer could substitute for the original custody officer, then the original custody officer's over-arching responsibility for the safe custody of prisoners continued – it made no difference whether he was in the custody suite or elsewhere away from the police station. This meant that even though a local arrangement had been made for him to take a rest break, with other police officers available and contactable this was in fact not a rest break at all, but working time.

Impact upon the RP

Consequently this shows that an RP who is asked to continue to carry the responsibility by remaining signed on during the lunch hour, to allow the pharmacy to operate lawfully, is not in fact enjoying a rest break at all, his lunch hour is still working time. In this situation the RP would be entitled to be paid for this time. It also shows that even if another pharmacist is given the role of being contactable, while the signed on RP was at lunch, then it makes no difference since the original RP continues to carry the responsibility. The only way that the RP could enjoy a statutory rest break is if he/she signs off.

So what next?

Considering that enabling the sale of GSL medicines while the pharmacist is at lunch was one of the stated objectives given when drafting the RP regulations, it would appear that it has all gone wrong. Far from enabling this, the effect of the employment regulations, coupled with general shortages of pharmacists means that, as written, the RP regulations will have the unintended effect of actually closing the pharmacy down during the statutory break of the pharmacist. Alternatively, it will result in large numbers of pharmacists especially in the community sector being denied proper statutory rest breaks by pharmacy operators.

The PDA called for a delay to the RP regulations, primarily so that unworkable problem issues like this could be resolved prior to commencement. Judging by the feedback and evidence that the PDA is now receiving, many employers are now operating unlawfully in so far as the working time regulations are concerned. There is also a significant resistance by some employers to review the contracts and terms and conditions of employment of their employees to reflect these new realities.

Some employers are using coercive tactics to try and persuade their RP's to remain signed on during their rest breaks.

The current regulations have produced an intractable operational problem from which there is no easy way out for either pharmacists or employers. The PDA is urging the government to urgently revisit and amend the regulations.

ARE EMPLOYERS BURYING THEIR HEADS IN THE SAND OVER RP CONTRACT REVIEW?

According to the PDA's employment specialists and with reference to good employment and Health and Safety practice, the changes brought about by the RP arrangements have created an obvious need to review the contract and terms between pharmacists and their employers. The reasons will be described in this feature.

As a consequence, immediately prior to the implementation of the RP regulations on October 1st, we urged pharmacists to put their employers on notice and enter into formal dialogue with them so as to ensure that their contractual arrangements properly reflected the new realities. We simultaneously wrote to the HR directors of all of the largest pharmacist employers in the UK, indicating that they could be receiving requests from their pharmacists to review their contracts and terms.

As a result of this, already some pharmacists and their employers have entered into dialogue. Other employers however have rather disingenuously in our view developed a defensive mantra which states that **"The RP changes do not represent anything that would require a change in the employment relationship."**

In addition to this, the employers trade association – the NPA has publicly stated that they believe there is no change.

It is obvious that some employers, especially the largest multiples, fear that if many of their workers take them on over these changes then this could lead to an increased operational cost. It is clear that they will not have an appetite to hold such a discussion. However, we believe that the **"there is no change"** position lacks credibility and once it is challenged in an employment tribunal, it will be shown to be incorrect. We provide the specific areas that pharmacists will need to discuss with their employers if they are to deal with any review comprehensively. Furthermore, we invite any members who have had an unsatisfactory response from their employers and who may now wish to pursue a formal grievance, to make contact with us as we are keen to establish some good test case precedents in this regard.

THE ISSUES NEEDING CONTRACTUAL ATTENTION

1. Rest Breaks

A detailed article on the legalities of rest breaks is enclosed (P8). Members reading that feature will come to understand why there is a high likelihood that their contractual rest break arrangements may well need some attention. It is not proper for contracts or terms and conditions to simply state **"take rest breaks whenever you can"** or alternatively that they should remain silent on the issue of rest breaks.

2. Periods of absence

The RP regulations permit a two hour period of absence and already from our early experiences, this two hour absence is causing tensions. The main cause of these tensions is that the two hour absence was designed as a professional facility to be used at the discretion of RP's and only if they felt that when absent, they could still secure the safe and effective running of the pharmacy. They would need to remain signed on and be happy to take personal responsibility for the operations of that pharmacy in the event that something went wrong during their period of absence.

They would need to sign the RP register recording the period of absence and it is good practice to also record the reason for absence. During the absence period, the RP would have to display their named RP sign, they would have to be contactable (and if not, then another pharmacist would have to be) and they would need to be able to return with reasonable promptness. In other words, the decision to be absent would be dependent upon the RP's professional discretion as to whether it would be proper and safe to do so and if so, then a number of additional qualifying conditions would attach.

However, some employers are treating this two hour period of absence as some kind of a given cost saving and are acting in a way which virtually rosters in the absence when it suits the business. There appears to be no respect paid to the fact that the decision to be absent is for the RP to make, nor is any interest shown in whether or not the RP in being absent can satisfy the absence legal requirements described above. In the worst of these situations, pharmacists are actually being told that when they come to work at 9.00am, they should actually sign on from 8.00am retrospectively to cover the activities which have already occurred in the pharmacy before the arrival of the RP. This advice is not only problematic from an employment contract point of view, but is also illegal – attracting more problems for the employer / employee relationship.

In other instances, pharmacists are told that they should remain signed on and use the two hour absence when they take a rest break. This is also wrong (see rest break feature p8).

To add insult to injury, some employers have explained to pharmacists that when they are absent, they will not be paid as they are unlikely to be disturbed. No mention is being made of the fact that whether contacted or not, the only reason that the pharmacy is permitted to continue operating lawfully is because there is an RP signed on. Furthermore, contactable or not, should something untoward occur during the period when the RP is absent and signed on, it will be the RP who will be held responsible.

The idea that they remain signed on to allow their employers' pharmacy to operate lawfully and extend their business hours, but be told that they should receive no pay for this added responsibility defies logic. Consequently, many pharmacists have found these approaches insulting and unfair.

For these reasons, the agreements between workers and employers in relation to periods of absence must be set out clearly in revised contracts and any terms attaching.

3. Authority and who is in charge of the pharmacy

In the Pharmaceutical Industry manufacturers are required by the regulatory authorities to employ Qualified Persons (QP). The role of the QP is to ensure that any batches of medicines that are released from the factory have undergone the strictest of quality control measures. In other words, they take responsibility for checking the safety of medicines prior to release. Although the QP is often an employee, they carry a very significant level of personal responsibility. If a QP believes that a batch of medicines has not met the required standard, then that batch of medicines cannot be released, irrespective of the fact that the employer may have invested significant sums in bringing that batch through the entire manufacturing process.

This factor, protected by statute, produces a shift in the employer/employee relationship, almost an oasis of authority, as despite the fact that there is in existence a master servant relationship, in the case of the QP, no amount of pressure from the employer is allowed to require a QP to change his/her mind. This arrangement is in place to protect the public interest. The thinking behind the RP arrangements is very similar; however, whilst all the pharmaceutical manufacturers understand the regulatory, statutory and professional relationship between them and their QP (and this is enshrined in their contracts and terms) some employers of pharmacists are currently reluctant to enshrine such a position in their written terms.

Consequently, many RP's do not currently have proper written employment terms which set out clearly the new statutory responsibility. As far as their written terms are concerned, they do not yet enjoy the new **"oasis of authority"** that the new statute entitles them to. This means that they may have difficulties when (often non pharmacist) line managers arrive in their pharmacy or pharmacy department and seek unacceptable arrangements. Additionally, when an RP requires that the staffing levels or workload issues are adjusted to ensure the safe and effective running of the pharmacy, there may be problems with line management questioning the authority for such a request. For this reason, the authority of the RP must be set out clearly in the reviewed contracts and terms attaching as they will offer a written protection of authority and will act as a clear explanatory document for any line manager.

4. Risk assessments

Under the new RP regulations, the RP will be held statutorily liable for ensuring the suitability of any pharmacy procedure. It is the RP who is now required by statute to review the written procedures. This means that the RP must be able to undertake risk assessments when completing this task. This is an added statutory responsibility. Under Health and Safety legislation, if a worker is required to undertake a risk assessment, then a requirement to provide the requisite training to enable the worker to do this is placed upon the employer. A contract will always set out in written form the expectations placed upon the employee by the employer and also what an employee can expect from an employer. The contract will therefore need to be reviewed to ensure that both what is required of the employee (in relation to risk assessment) and also what will be provided by the employer (in terms of the training provision) are set out in written form.

5. Hospital pharmacy

Since the beginning of 2009, many hospital pharmacies have registered themselves as pharmacies with the RPSGB and therefore now fall under the scope of the newly amended 1968 Medicines Act. Consequently, in these instances, hospital pharmacies and the pharmacists that they employ also fall under the requirements of not only the RP regulations but also various wider 1968 Medicines Act requirements. This brings with it a raft of new responsibilities and also a regulatory burden that previously did not exist. As a minimum, hospital pharmacists should seek to ensure that their terms and conditions properly reflect the new legal and regulatory realities.

"There are important principles l
or swept under the carpet. From
statutory responsibilty, is expo
this added risk, the RP should be

6. Vicarious liability

It has long been understood in the hospital sector that if any protection (however superficial) was to be afforded to hospital pharmacists by their employers in the event of an untoward incident, then the activity that they were undertaking would need to be as a very minimum clearly described in their job specifications.

However, early signs are that many pharmacists are currently acting as the Responsible Pharmacist without a contractual requirement to do so. In such instances, hospital pharmacists are placing themselves into unnecessary risk, and should urgently ensure that their written terms are amended.

7. Standard Operating Procedures

The RP regulations place the responsibility for procedures in the pharmacy upon the shoulders of the RP. However, it is a common practice in pharmacy that many of the SOP's are developed centrally by employers and then disseminated in a top down arrangement to local pharmacy level. This in some ways can easily fit into the new RP regulations but only in the event that the RP is actually satisfied with the centrally produced SOP's. However, if the RP is dissatisfied with the Head Office SOP, then the RP is legally entitled to change or amend such a written procedure. We are learning that this position in itself is already causing tension between RPs and some employers.

- Some employers are placing conditions upon the RP's ability to make changes, such as requiring the RP to first discuss any proposed changes with their (sometimes non pharmacist) line manager. Should their line manager not be satisfied with the nature of the proposed change, then the RP may discuss this further with the superintendent pharmacist.
- After the Elizabeth Lee case, some employers have produced SOPs to cover almost every single possible eventuality in their pharmacies. However, some RPs believe these SOPs are undeliverable. What they say should happen can not occur consistently in a working pharmacy. In reality, it means that RPs can find themselves working outside of these SOPs routinely.

  In a recent magistrate's court hearing, a pharmacist and a technician were prosecuted for making a dispensing error. During the case, the court initially considered who should be held to account for what had happened. In answer to this, the large multiple employer's legal representative explained to the court that since their client (the employer) had delivered the SOP for the pharmacy, but that the pharmacist and the technician had obviously not followed the SOP, then the employer should not be held liable for what had happened.

  The court accepted this argument; consequently, in the event that an SOP is in place, then this puts the pharmacist and any staff member in a near impossible situation if the SOP cannot be followed in every day practice.
- The RP regulations require that SOPs are reviewed either after a critical incident has occurred in the pharmacy, or as a minimum, every two years. Will this mean that in the vast majority of pharmacies it will be the RP who happens to be working in the pharmacy on October 1st 2011 (the 2 year anniversary) who will be required to review the SOPs for that pharmacy?

here that should not be forgotten October 1st an RP carries greater osed to greater liability and for awarded greater remuneration."

8. Remuneration

Whilst the issue of potential dilution of control will be of concern, particularly for the largest employers, there is no doubt that any change in remuneration will be a much bigger concern. There is an important principle here that should not be swept under the carpet. A superintendent pharmacist carries greater responsibility than an employee or locum pharmacist, consequently, the superintendent has always enjoyed greater remuneration. From October 1st, a Responsible Pharmacist carries greater statutory responsibility, is exposed to greater liability than previously when simply in 'personal control' and for this added risk and responsibility, the RP should be awarded greater remuneration.

9. Locum pharmacists

Many of the points described above also apply to self employed locum pharmacists, especially because locums will fall under the scope of the same professional regulatory, health and safety and healthcare law. Locums will not have contracts of employment however, their contractual arrangements should be covered by a contract for services. An updated version of a locum contract for services can be found in the RP tools section of the PDA website.

Amending and renegotiating your contracts and Terms and Conditions of Employment.

The list of issues described is not exhaustive and are intended to assist pharmacists and their employers in undertaking an informed discussion to enable them to review their terms. Should pharmacists learn that their employers are unprepared to hold such a discussion in good faith, then they may pursue a grievance procedure. PDA members may contact the PDA for support.

Work in progress

Trying to resolve the RP operational problems

Many RP issues, particularly around rest breaks and contractuals are currently the subject of either meaningful and constructive discussions between employers and their pharmacists or are now turning into formal grievance procedures. The PDA is currently supporting many pharmacists through these processes.

Additionally, the PDA is also working proactively to try and deliver some possible solutions which may make the RP regulations more workable. Some of this work is being done independently, and some is actually being done in collaboration with the Company Chemists Association, as they too have reason to see this mess resolved. Some of the proactive work includes the development of;

- **A slim-line universal SOP**

  The idea is that locum pharmacists may take with them from pharmacy to pharmacy a slim-line universal SOP that could be used in any initial acclimatisation period while they get used to and learn about the more substantial regular SOPs for that pharmacy. Therefore, they will not be expected to sign off the normal pharmacy SOP in the event that there has been no real possibility of being able to read, digest and agree to it prior to signing on at 9.00am.
- **A Remote RP Sign on Sign off facility**
  This is developing into a joint project between the employers, the PDA and also the new regulator. We have a facility that is currently being tested and opening discussions have already been held with both employer representatives and officials of the new GpHC.
- **Rest Breaks**
  We believe that our lobbying work around rest breaks is about to produce a result. We are pressing the RPSGB and the DoH to provide some guidance on this matter urgently.

  Watch this space for more developments!

News

Swine Flu emergency measures;
under what circumstances are you insured?

Every local Primary Care Organisation (PCO) will have plans in place to deal with the threat of Swine Flu and although these will be broadly the same across the UK they may use pharmacists' expertise in different ways, such as:

- **In their normal daily practice through patient contact**
- **Giving advice through official media such as help lines or web sites**
- **Being an integral part of a distribution strategy with direct access to patients who present themselves or send a representative for relevant medication**
  - The pharmacist's role may be only to distribute the medication and counsel the patient or their representative/carer
  - The pharmacist may be involved in a more clinical role and making decisions on whether the patient should be treated.

Some members have expressed concern about the level of detail in the protocols issued by their PCO and we do recognise that these are not as prescriptive as are PGDs, however the PDA's position is that pharmacists should be involved in this initiative and therefore it must seek to help members by extending their cover to provide peace of mind. There are certain aspects of the protocols that may not be acceptable in normal circumstances but in the interest of the Public Health agenda we accept that in exceptional circumstances the benefits of being more pragmatic in practise may well outweigh the risks as it is important for as many people as possible to have access to treatment.

Pharmacists will still need to be aware of their own competency limitations and operate within them; there may come a time when a member will have to make a professional judgement and take action in the patient's best interests that would fall outside of their normal duties. In such circumstances, pharmacists are advised to ensure that they can justify any such decision and also make a written record.

Members can therefore rest assured that during these emergency measures they will have the full support of the PDA to cover them in whatever capacity they are asked to contribute to these emergency procedures under their current policy; cover is unaffected whether or not the activity is operated out of registered pharmacy. This relaxation to the conditions of PDA cover extends to this particular national emergency initiative only; and will not be applicable to any other circumstances.

Swine Flu Vaccination
STOP PRESS

The PDA has agreed with its underwriters to temporarily extend professional indemnity cover for all PDA members regardless of their policy who are involved in Swine Flu vaccination programmes delivered via practice-based commissioning, subject to meeting any training or accreditation requirements. This extension is only for the NHS Swine Flu vaccination programme and only for the duration of the current programme.

Pharmacists warned; do not proceed with 'Caution'

The PDA has expressed its concerns over the willingness of pharmacists to accept a police 'Caution' under threat that a prosecution will ensue if they don't.

Although there is a real temptation to accept a 'Caution' when balancing it against the prospect of potentially acquiring a criminal record, it is no protection against the professional consequences of being subject to an investigation by the pharmacy regulator.

If a pharmacist accepts a 'Caution', the police usually inform the regulator at the earliest opportunity as pharmacy is deemed to be a 'reportable profession'. If for some reason their reporting processes fail, the pharmacist is still obliged to declare the 'Caution' within seven days so either way the information, when received by the regulator, will initiate an investigation into the pharmacist's fitness to practice.

There may be cases whereby accepting a 'Caution' is appropriate and the PDA will advise pharmacists of that; but there is a propensity for pharmacists to accept such a sanction under pressure because they believe that, even though they protest their innocence, the matter will be concluded quickly with no further embarrassment of being involved in such an experience or stigma attached to being detained.

It is also the case that if a pharmacist is challenged by the police for some misdemeanour that they take advice from either their local or the duty solicitor. In our experience such solicitors (and the police for that matter) may not have knowledge of the consequences of accepting a 'Caution'. What they may not understand is that the pharmacist will be reported to the professional regulator and that their livelihood will be at risk.

Nor may they appreciate that the Disciplinary Committee does not 'look behind' the offence to judge whether or not the pharmacist was innocent. The Committee deem that by accepting the 'Caution the pharmacist has already admitted guilt.

The PDA has been involved in cases whereby employers have encouraged the police to arrest pharmacists on the grounds of theft or fraud. In the PDA's view many of these arrests do not give grounds for any of these charges; however by accepting the 'Caution' as a pragmatic option, pharmacists may have prejudiced their position and increased the chances of being removed from the Register.

The PDA advises pharmacists to always seek advice from its lawyers before agreeing to accept a police 'Caution'.

THE PDA union
strength in numbers

Progress so far.

The PDA Union became listed last year and official union status has provided statutory rights to represent members in grievance and disciplinary hearings. This has been done with increasing success, protecting members from unfair treatment as a result of unreasonable behaviour by some employers.

Independent Status

The next and most important stage of development will be to achieve 'Independent' status which will provide collective negotiation and representative rights. This should be achieved before the second anniversary. This will require the union to demonstrate it has conducted its affairs legally and democratically whilst operating as a 'listed' trade union and that there is no reliance, financially or otherwise, on any employer.

One of the main criteria that the Union Certification Officer will be examining is the capability to negotiate and consult at a national level, which is already being done most notably with respect to the RP regulations and the (employment) contractual changes that have ensued. The union's growing influence on the national stage should be apparent to him as demonstrated in meetings with employer representative organisations and in recent correspondence between the PDA Union and the Minister of State for Health, Mike O'Brien, regarding the campaign to delay the RP regulations;

in a letter to the PDA he stated:

"....I also considered other matters [that PDA have raised]," he said, *"such as the concerns the PDA helpfully raised in a meeting with officials in relation to rest breaks."* He went on; *"On rest breaks, as you know, this is a complex matter involving the Working Time Directive [Regulations]; we are therefore in the process of seeking legal advice, and officials will be in touch with the PDA in due course to discuss this further."*

There is now widespread acknowledgement that the PDA has clearly shown how the RP regulations completely contradict and disregard the employment rights of the individual.

Objections received

When application for listed union status was initially made in 2008 an objection from an undisclosed body was made; presumably in an attempt to strangle the PDA Union at birth, but the reservations of the detractors were dismissed by the Certification Officer. If an organisation objects to the forthcoming Independent status application then their identity will need to be disclosed.

There has been quite a bit of interest in Congress House, the home of the TUC, in the progress of our fledgling Union because there has not been a new trade union formed for over twelve years. This fact is probably a reflection of the way labour relations has evolved over the years where the British labour market has become much more flexible and the powers of trade unionism have been curtailed. In this context the formation of the PDA Union is a formidable statement by pharmacists who are seeking to have their rights protected, their voices heard and the collective power of their influence recognised as they never have before.

Next step - Bye-elections

The challenge now is to get as many pharmacists as possible involved in the grass-roots of union activity – through the membership groups. Bye-Elections will be held in April 2010 and we will be seeking nominations for the Membership Groups in February 2010 in the following categories; Hospital Employees, Community Employees, 'Primary Care and Specialists' and Locums.

PDA members are urged to get involved and to play their part in pharmacy's not so quiet revolution!

GPhC chief would welcome Locum involvement.

Bob Nichols, Chairman Elect of the new pharmacy regulator the General Pharmacy Council has signalled to locums that he thinks that they are underrepresented in pharmacy which has stimulated some to suggest that there should be an organisation that represents locums' interests.

"The PDA and PDA Union are the only organisations that have stood up for locums and provided them with a focal point of support for many years..."

Mr Nichols is new to Pharmacy but we know he is a quick learner and he was informed that a representative group already exists by Lindsey Gilpin during a recent meeting. *"He wasn't aware that we have a very strong constituency through the PDA Union Locum Membership Group."* said Lindsey who is also a member of the English Board and the founder of the web forum, LocumVoice, *"The last thing we want is yet another organisation to fragment pharmacy or dilute the voice of locums when we have a perfectly effective democratic organisation already functioning that can represent our views. The PDA and PDA Union are the only organisations that have stood up for locums and provided them with a focal point of support for many years, so locums would be better served by joining an organisation rich in experience with weight behind it rather than setting up a new one from scratch."*

Lindsey also urged pharmacists to get involved and contribute to the locum agenda by putting themselves forward for election to the fourteen-strong Locum committee when bye elections take place in April 2010.

Discrimination Overview

At the PDA, we receive a large volume of complaints from our membership claiming that they have been discriminated against in the workplace. The concept of discrimination can be difficult to explain and the purpose of this article is to assist members in understanding what discrimination is, when it can arise and what their rights are if it does.

What is discrimination?

Discrimination occurs where an individual is treated less favourably on the basis of their sex (or marital status), race (or nationality), sexual orientation, religion (or belief), age or disability.

The law

Whilst legislation governing sex and race discrimination has been in existence since the 1970s, the other strands did not come into force until 1995 (Disability) 2003 (Sexual orientation, Religion and belief) and 2006 (Age). Discrimination law for the most part is therefore a relatively recent concept.

When might discrimination happen?

Unlike unfair dismissal, discrimination can take place at any stage of the employment relationship or for the self employed period entered into. You could therefore be discriminated against in the recruitment process (refusal of interview or offer of a job), your time at work (with regards to poor pay, benefits, training, a lack of promotion, disciplinary action being taken), being dismissed, or even post termination (receiving an adverse reference).

Types of discrimination

Discrimination can be "direct", where the reason you are being treated differently is obviously on one of the six protected grounds. It can also be "indirect" where there is equal treatment for example between all races, but the policy of your employer has an adverse impact disproportionately on one race. For those of you who are concerned about being punished for alerting your employer to the fact that you have been discriminated against, the law protects you from being "victimised". You are also protected from "harassment" which essentially is unwanted conduct which has the purpose or effect of violating your dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for you.

Difficulties proving discrimination

Discrimination is not easy to prove and if alleged will in the majority of cases be taken very seriously by employers and colleagues. Care should be taken to ensure that the reason you are being treated less favourably than others is on one of the six protected grounds. The mistake that many individuals make is that they regard themselves as being treated differently which may well be true, but the reason for the difference in treatment is not one of the six leagally acknowledged discriminatory grounds. Consequently, whilst these individuals may have a remedy in pursuing grievances claiming that they have been unfairly treated they cannot allege discrimination bringing legal proceedings on the basis that they have been discriminated against.

Unfortunately, another mistake individuals make is to believe that because for example they are the only female in the workplace and they are being treated differently, this treatment must be because they are female and this constitutes discrimination. Much more than this is required to prove discrimination and to assist you further in understanding what is needed we have provided a few examples of "direct" discrimination for you to consider.

Examples: Direct Discrimination

Sex Discrimination

A woman pharmacist is unsuccessful in her job application. She is the only female to apply for the position along with one male. The man was given the job but when the employer was challenged they admitted that he had fewer qualifications and much less experience than the woman.

Race Discrimination

A Nigerian pharmacist is dismissed for failing to report dispensing errors he made and failing to follow SOPs. Two weeks previously, a Non-Nigerian pharmacist received a first written warning for the same offence. Both individuals had clear disciplinary records and the same length of service.

Sexual Orientation Discrimination

A gay male is denied a promotion to the position of Pharmacy Manager. During a feedback session he is told that the reason he was not promoted is because *"he is a bit like that gay guy off the telly"* and no one will take him seriously as a manager.

Religious (or Belief) Discrimination

A Muslim self-employed locum has his bookings cancelled as a consequence of taking a break to pray notwithstanding the fact that an agreement was reached on this issue weeks earlier.

Age Discrimination

A pharmacist who is 50 years old is informed that he has been selected for redundancy. When challenged, his employer tells him he has been in the job long enough and it is time to give his younger, dynamic colleagues a chance to prove their worth.

Disability Discrimination

A disabled individual who has a hearing impairment but can lip read very well is dismissed from her position as pharmacist after a patient complains that he does not feel comfortable being treated by her. No concerns relating to her ability to do her job are raised.

These examples are perhaps simplistic however the various strands of discrimination will be explored in greater detail in further publications of Insight and will be found on our website: **www.the-pda.org.**
Future articles will include illustrations of "indirect" discrimination, discrimination by association, defences to claims of discrimination and the role of the Equality and Human Rights Commission with regards to enforcing the law.

THE PDA PLUS
additional member benefits

An enhanced membership benefits scheme

The PDA prides itself on listening to its members through focus groups and surveys. Following on from one strand of discussions, in the Autumn of 2008 a range of new and additional benefits to PDA members was launched which we called PDA PLUS.

This initiative recognised that beyond their work as pharmacists, PDA members do actually have a life! PDA members have needs that go beyond those simply dictated by their occupations. They go on holiday, buy wine, use hotels and dine out.

PDA PLUS provides access for members to a range of specially negotiated preferential services that are designed to save them money. These benefits are also available to immediate members of the family.

To give PDA members peace of mind, where possible these special offers come with an exceptional discount guarantee. This means that if you can find these services from these providers on a like-for-like basis at better prices anywhere else in the UK, then PDA Plus will not only honour that lower price, but will also compensate you for your trouble by giving you monetary vouchers.

We reckon that it will take only a few short months of regular use of the PDA Plus Benefits service on routine purchases, for members to save themselves enough to fund their entire annual PDA membership subscription – eg. six meals at the 2 for 1 offer or one holiday for the family with considerable discounts.

In addition to that, in some instances, the provider will pay an introductory fee to the PDA, which because it is a not-for-profit organisation, will mean that any income so generated will help to fund more services for members.

The Win Win Scenario

We believe that **this creates a classic WIN – WIN scenario**: PDA members and their families save hard-earned income by gaining access to quality services at guaranteed discounted rates. The PDA generates additional funds which it can use to keep PDA membership subscriptions down while still being able to invest more in developing more services for members.

A wider range of benefits now launched!

At the launch, the PDA PLUS benefits scheme considered mainly leisure benefits. However, after recent member comments and suggestions, we have now also developed a further range of benefits that support members in their practice. These include;

A CPD support service

Are you concerned about the RPSGB's threat to refer pharmacists to the Investigating Committee for failure to comply with the CPD requirement?

The PDA's CPD support partner provides PDA members with a choice of bronze, silver, gold and platinum standard support service with 30% discount for PDA members.

Income protection in the event of sickness or accident

How long would your employer continue to pay your salary in the event that you fell ill?

How do you replace your self-employed income if you have an accident?

Working with the Pharmaceutical & General Provident Society, the PDA has delivered preferential terms for members for this very established mutual scheme which provides income in the event of sickness or accident for pharmacists.

Specialist self-employed accountants

This is a tried and tested annual accounts and tax return service for locums with a very preferential price promise.

Tax refund service

Have you been overcharged on your tax bill, have you claimed back all of your allowances especially those particular to pharmacy?

The average taxpayer is due a refund of more than £200, but has no idea.

Refunds negotiated so far range from a few pounds to more than £11,000.

No refund – no fee charged.

Private Medical Insurance

Preferential rates provided by some of the leading providers including BUPA, AXA, PPP.

Leisure benefits

Foreign holiday discounts
Discounts on hotel stays in the UK
2 for 1 restaurant discounts
Holiday care hire – significant discounts
Days out at Merlins Attractions: 15-20% reductions.
Many more besides!

We will continue to develop the range of benefits available to PDA members and further announcements will be made in due course.

The full range of benefits currently available can be found on:
www.the-pda.org/pdaplus

Professional regulation –

You couldn't make this up!

Sometimes, the professional regulation cases that we deal with at the PDA can be likened to something that resembles a tragic Shakespearean play. Sadly none of these cases are entertaining; in this feature we expose the drama.

Much ado about nothing

"A traditional comedy which has the potential to turn into a tragedy."

A pharmacist was on duty when the repeated mistake of others came to light. The pharmacist did everything within her power to address the mistake, arrange for the correct medication to be dispensed and delivered to the residential home to ensure that the patient was not disadvantaged overnight. As the error came to light late on in the day and as she was a locum and could not remain behind to accept the erroneous medication (she did not have the keys to the pharmacy) she made arrangements to have it collected by the delivery driver the next day and left a note for the pharmacy manager to ensure that it would be followed up.

Following a complaint, an investigation showed that the medication had not been collected until some days after the incident and as there was more than one pharmacist implicated, the Society's inspector recommended that those that were directly involved in committing the error should receive an advisory letter and that no action should be taken against the PDA member who had handled the complaint "professionally throughout".

When the results of the investigation were referred to the Investigating Committee (IC) she was advised to accept the Inspector's recommendation; the report was non-contentious and therefore there was no necessity in our view to make a detailed submission in defence. It never occurred to us that the IC would overturn this recommendation of the society and seemingly ignore the facts in the case summary. They did; and issued our member with a letter of advice.

"Dost thou not suspect my place? Dost thou not suspect my years? O that he were here to write me down an ass" - Act 4, scene 2

However the letter of advice was not to advise our member in the handling of complaints, but to advise her on how to prevent dispensing errors occurring in the first place. Our member was most distressed and her line manager was so incensed that he wrote to the Society expressing his amazement that the locum pharmacist had been implicated.

The IC to our surprise then re-heard the case on the strength of the letter without giving the pharmacist any indication that they were doing so. They decided that she still should receive a letter of advice though this time citing a different clause of the Code of Ethics and deeming that she should have taken responsibility for the collection of the unused medication.

The PDA wrote to the Director of Regulation stating that if the Committee overturns a recommendation without giving the pharmacist the benefit of being able to submit their full version of events. Then it (the Committee) is acting unreasonably by making such a decision without the full facts.

"I am a wise fellow, and which is more, an officer, and which is more, a householder, and which is more, as pretty a piece of flesh as any is in Messina, and one that knows the law,…." - Act 4, scene 2

We also pointed out that they had reviewed the case based on a letter from a third party who was not on record as her representative and at no time did they inform the pharmacist that a review was taking place. The Committee, in our view, having decided to review the case, had disadvantaged her by not giving her the benefit of seeking legal advice. Therefore, the committee had not afforded our member a fair hearing.

To their credit, the Committee Secretariat decided that they did have the powers to reconsider the allegations under rule 15(3) and invited a submission so as the case could then be heard by a different committee.

The PDA congratulated them for taking this approach in the interests of fairness and justice; the decision was 'that no further action should be taken'

"O Hero! What a Hero hadst thou been!" - Act 4, scene 1

Macbeth

"Look like the innocent flower, but be the serpent under 't."
Act 1, scene 5

If an allegation is made against a pharmacist and the Society decide that it is of such potential seriousness that they

A Shakespearean tragedy?

must remove the pharmacist from practicing because if true they could be a danger to the public, they can apply for an Interim Order which either stops or restricts the pharmacist from practicing until a full case can be heard by the Discipline Committee.

In some cases such action may be justified, particularly if someone is quite obviously a danger to themselves or the public which should be evident by their well documented and observed behaviours.

But where this becomes unjust regulation, in our opinion, is where there is only one witness and the complaint may be vexatious, it transpires that pharmacists cannot defend themselves against the allegations by summoning the complainant as a witness.

In a recent alleged sexual assault by a pharmacist, the chairman of the panel ruled in an Interim Order hearing that he would not allow cross-examination of the ONE complainant witness and he would not allow the registrant or his employer to give evidence as to the facts. The Interim Order hearing was not there to establish facts, the chairman judged, only to establish if the allegation was serious enough to warrant the imposition of conditions to his Registration or removal of the pharmacist from contact with the public, by his suspension.

The Society decided that they wanted the pharmacist suspended and so brought the application.

"Out, damned spot! out, I say!" - Act 5, scene 1

Although the Society may wish to be seen to be doing the right thing to protect the public, there were other ways of achieving the same aim in these circumstances and it would be unreasonable to deprive the pharmacist of his livelihood based on such flimsy evidence.

The Society eventually agreed to the PDA's original recommendation that there be a restriction put on the pharmacist's practice, this being simply not to hold consultations with females in the consultation room on his own.

Pharmacists must now be aware that in these days of draconian regulation they can no longer rely on the adage that ***'you are innocent until proven guilty'***.

"Things without all remedy should be without regard; what's done is done"
- Act 3, scene 2

The Merchant of Venice

Shylock seeks his pound of flesh

As a pharmacist you can now find yourself, not only funding your own legal costs but also the legal costs of the Society in prosecuting the case against you.

We have represented pharmacists recently who have been subjected to an application by the Society to recover their costs, which has also included the cost of security staff and the tea and biscuits that have been provided for the witnesses and their legal team.

Applications for costs made by the Society are now becoming the norm but thankfully they have not succeeded with many. The Society's position is that, since the Order of 2007, 'costs follow the event' and that where there is a finding against a pharmacist that justified the bringing of proceedings, those costs fall to be paid by the pharmacist who brought the proceedings on themselves, by reason of what they did (or did not do).

In one instance they have been successful and have won a costs order from a woman with three children and the sole income source for the family, who was prosecuted for assaulting a policeman when he (and eight other Police officers) tried to remove her from a housing benefit office.
She would not move from the building because she was homeless with her children and was very emotionally charged.

The Society applied for costs because at the Disciplinary Committee hearing she had contested the charges; she was not on the register in the UK at the time of committing the offence - she was registered abroad - and also she would not admit that her fitness to practice was impaired as a result of the actions she took to what she saw as protecting her children. Even the Magistrate at her trial showed compassion and expressed that he had sympathy with her dilemma, but our regulator found that her fitness to practice was impaired and that the public had to be protected.

"If you prick us, do we not bleed? if you tickle us, do we not laugh? If you poison us, do we not die? and if you wrong us, shall we not revenge?" - Act 3, scene 1

She was given a warning as to her future conduct and ordered to pay a proportion of the Society's costs.

More sinister in our view is the subtle threat that the Society's legal representatives make that if a particular defence argument is run, then they will make a costs application, if it does not succeed.

Although it is supposed to be a double edged sword and the pharmacist ought to have the same right, in any cases where we have asked for costs, because the Committee has not found the pharmacist wanting we have been told that the Society have the right to bring the case because they are acting in the public interest.

"The devil can cite scripture for his own purpose"
- Act 1, scene 3

as the Bard said; the Court may sentence you once for an offence (a fine of a few hundred pounds) and then the RPSGB seeks an Order against you, which can harm your income by an amount equal to 500 times the fine!

"And thereby hangs a tale"
(the taming of the shrew)
- Act 4, scene 1

Ensure changes to your 'Contract

Pharmacists will never be immune to the impact of the recession whilst working in a commercial environment nor can they be unreasonably protected from government cuts in the NHS.

One method used to control costs, of which we have had recent experience, is to change employees' contracts to introduce terms that, in the company's view, "improves the flexibility of the work force".

Superdrug has recently introduced a new employment contract for all pharmacists; although they claim that they had been 'in consultation' for some months the true implications did not become obvious to their employees until they were being told to accept the new terms or be dismissed.

Members who contacted the PDA expressed the view that they were not aware that the consultation was taking place until the 'new contract' was presented as a fait-a-compli. Other employees were passive in their acceptance of the process until the reality of what had happened suddenly dawned on them; regrettably, some are still probably completely oblivious and may well remain so until the company choose to rely upon any of the new clauses which disadvantage them.

What rights do employees have if new contract clauses are proposed?

At the outset employees must be prepared to be active and ensure representation during consultations on their employment contract. Can you imagine that doctors or nurses allowing contractual terms to be implemented without negotiations and consideration for changes in contract?

It is the employers' responsibility, when making widespread contract changes to:

- Produce and communicate a case for the changes outlining what the proposed changes are, who it will affect and why they need to make them
- Enter into a consultation period whereby they take views from groups or individuals who are affected by the change.
- Following the consultation period, further communicate what changes they have made as a consequence of the consultation.
- Discuss, on a one-to-one, the impact any changes will have on individuals concerned and asses whether or not they have specific needs.

Contract clauses that cause concern

Our initial thoughts on the Superdrug contract were that it is one sided allowing the employer the greatest flexibility it could possibly have with regards to work patterns and environment. We are aware of examples where other employers' processes are flawed and where they believe that the reason of 'business need' is reason enough to impose changes. However there are enough unjustifiable clauses in the Superdrug contract to cause us serious concern and from which all employees should learn if they are faced with a similar situation.

"....We can require you to perform new or additional duties/responsibilities."

This appears to allow the employer to make changes to an individual's 'duties or responsibilities' without consultation or notice. This may have implications for those who do not wish to be the Responsible Pharmacist or take on advanced or enhanced services.

"....You agree that if we need you to do so that you will work in excess of an average 48 hour working week and that you therefore agree to opt-out of the 48 hour average limit set out in the Working Time Regulations 1998. If the law in future permits, you agree that our average working hours should be measured against whatever reference period we may reasonably decide should apply."

> **"It is unlawful to subject a worker to any detriment for refusing to sign an opt-out agreement"**

The law determines that an individual worker and his/her employer can validly agree to opt-out of the 48 hour maximum working week imposed by the Working Time Regulations. We believe that inserting this term in the contract is disingenuous of the employer. It is implied that there is no choice in the matter and they are getting an 'opt-out' agreement through the back door. A worker has protection against being forced to work long hours and it is unlawful to subject a worker to any detriment for refusing to sign an opt-out agreement. It is important that employees who do not agree with a clause such as this make it clear before they sign the contract or by giving notice (usually one week) in writing as soon as possible.

"....For the avoidance of doubt, we treat Sundays as a normal working day. You will therefore be expected to work Sundays if we require you to do so. If you wish to opt out of working Sundays altogether you must give your line manager 8 weeks notice. Upon the expiry of the notice your number of contracted hours will be reduced accordingly, unless your line manager is able to allocate you additional hours during the week."

# of Employment' are done fairly

This clause puts anyone who does not want to work and has not before worked on Sundays in a detrimental position and means that the employee is giving power to the employer to permanently cut contracted hours if they wish to do so. This clause potentially discriminates against individuals who view Sundays as a day of rest or prayer for religious reasons and may be viewed as unfair for those who have caring responsibilities or simply have a preference not to work Sundays. Employees who do not wish to work Sundays for whatever reason should make this clear to their employer.

"...You must not undertake additional employment outside of the group...This includes undertaking duties as a locum pharmacist out side of your employment by the Company."

This means that employees will be prohibited from doing locum work outside normal working hours. Many employed pharmacists also undertake locum duties and most employers understand this. Some of you may find this clause could result in a significant drop in your total income, particularly those pharmacists who have a portfolio career, are employed part-time and have other arrangements. The reality is that your employer should only be concerned with other employment you have outside its business if it can be said that it interferes with their business. In most situations any employer preventing you from working elsewhere as a locum is in our opinion going beyond what is necessary to protect its' business interests. Clauses such as this should state at a minimum that the consent of the employer will not be unreasonably withheld for those seeking to work elsewhere.

Can I be dismissed and will this be fair?

Employees may be dismissed from their employment for fair reasons only. Dismissal for refusing to sign a contract with new terms and conditions could be considered a fair reason by an Employment Tribunal in certain circumstances.

What needs to be considered is the balance between an employer's need to change the existing terms against the employee's need to keep things as they are. The Courts have in the past appreciated that some employers have had no choice but to make changes in order to keep the business afloat and have found that employees refusing to accept changes have been unreasonable in doing so.

The following factors could render a dismissal fair:

1. **A genuine and meaningful consultation process has been followed.**
2. **A sound business reason exists for making the changes proposed.**
3. **If it is necessary or even vital to the survival of the employer's business that the new terms and conditions are accepted; it is then up to the Employment Tribunal to determine the balance between how vital and the employee's rights.**
4. **A large proportion of employees have accepted the terms already. This could be evidence as to the reasonableness of the changes but would not decide the case alone.**
5. **If a trade union had recommended the proposed changes.**
6. **If the majority of employees sign the contract the minority are put at increased risk of being dismissed fairly.**

The employer must still consider individuals' personal and domestic circumstances which are unique to the employee and the fact that the employee is simply happy with the terms as they are and have no desire to change them. Consequently it is important that employees should raise any concerns with their employer and obtain written responses before signing any new contract.

Signing the contract means acceptance of it!

In the case of Superdrug, the PDA believes that too many changes had been put forward and that dismissal would have been challengeable; however those pharmacists who signed the contract are now deemed to have accepted the changes.

If employees wish to challenge their employer and risk dismissal then only those with one years' continuous service are eligible to bring a claim for unfair dismissal and therefore those with less than one year would be advised to sign their contract informing their employer that they are doing so not because they agree with the changes but because they feel that they have been left with no other option.

Pharmacists who are unable to comply with contractual changes on religious grounds may have a case to argue that they are being discriminated against on the basis of religious beliefs; one years' continuous service is not required for such a claim.

Whilst success cannot be guaranteed, the PDA is reasonably confident that employees with at least one years' continuous service who cannot comply with changes to their contract due to having caring responsibilities or on religious grounds would succeed in bringing unfair dismissal claims in an Employment Tribunal.

If employees wish to challenge contractual changes in such circumstances, we would advise that they write to their employer stating that they do not agree to it on the basis that it represents fundamental changes to the contract and they do not consider their refusal to comply with the changes to be unreasonable.

Consequently, if an employee is dismissed for refusing to agree to new terms they will consider themselves to have been unfairly dismissed and can seek the appropriate remedy through an Employment Tribunal.

Members who find themselves in a similar situation in future would be advised to make use of the collective impact that the PDA Union can have on their behalf.

Responsible Pharmacist requirements:

The changes to the 1968 Medicines Act were primarily designed to have an impact upon community practice in particular, enabling pharmacists to get involved in extended roles. Initially it was thought that it was unlikely that there would be much of an impact upon hospital pharmacy, however, as launch date got closer, the reality dawned that the changes would substantially affect hospital pharmacy practice. The relevant bodies were warned but meetings with the Department of Health to handle these matters were delayed until the summer of 2009.

The PDA has always considered that many of the requirements of the regulations are simply unworkable and would also cause major problems in hospital pharmacy. It is surprising therefore that despite the PDA's call for a delay to the implementation of the regulations, both the Guild and the Hospital Pharmacists Group of the Society expressed their contentment for the regulations to go forward on October 1st. Belatedly, in early September guidance for hospital pharmacists was produced by the RPSGB. This feature deals with some of the operational issues that have emerged since.

Before 1st October 2009

The Medicines Act 1968 stipulated that a retail pharmacy business must have a pharmacist in "personal control" and because of various test case interpretations – mainly those of statutory committee chairmen; this came to mean physically present in the pharmacy:

- To sell GSL medicines, creating an anomaly since other retail outlets do not require the presence of a pharmacist.
- To supervise (able to intervene and advise) the sale of P and POM medicines

NHS legislation requires a pharmacist to supervise the supply of all medicines directly.

"The PDA has always considered that many of the requirements of the regulations are simply unworkable and would also cause major problems in hospital pharmacy"

From 1st October 2009

The Health Act 2006 amended the relevant sections of the Medicines Act 1968 to require a "responsible pharmacist" (RP) to be in charge of each registered pharmacy rather than simply be in personal control. It also requires the RP to ensure, and take statutory responsibility for, the safe and effective running of the pharmacy. These new statutory requirements are meant to guarantee that an over-arching quality framework is always in place in the pharmacy and as a consequence, the regulations now;

- Require a RP to be signed on as a pre-condition of the pharmacy being able to operate lawfully.
- Allow the pharmacy to operate lawfully in the absence of a pharmacist, including the sale of GSLs, but only if a RP is signed on. The maximum period of absence is 2 hours in any 24 hour period.

Registration of Hospital Pharmacy Departments

A department in a hospital can use the title "pharmacy" without the need to be registered with the RPSGB if activities are limited to those carried out in the course of the business of the hospital.

However, the hospital pharmacy must be registered with the RPSGB if;

- POM or P medicines are sold or supplied to patients who are not part of the same legal entity e.g. to a private hospice or a patient of another trust or health board.
- Supplies are made to a separate legal entity e.g. community pharmacy or private hospice.
- A pharmacy business operates from the premises for the retail sale of P medicines.

Complications are inevitable when pharmacy departments within the same Trust or Health Board provide exactly the same services but to different clients. Different registration of premises requirements will necessitate because of the new regulations, consequently, this will result in variations in the responsibilities of staff groups between registered and non-registered hospital pharmacies.

During 2009, as a consequence of the activities and clarifications that were emerging from the RP discussions, many hospital pharmacy departments decided to register with the RPSGB. This has created a significant number of operational and risk management considerations.

If a hospital pharmacy is registered with the RPSGB, it must comply with the RP regulations. However, the regulations only apply when the hospital is undertaking activities that require registration.

The pharmacy may be involved in 'registerable activity' for a small proportion of the time e.g. supply to a private hospice. As in-patient supplies are exempted from the regulations, hospitals will need to consider flexible operational and staffing approaches to ensure that they can move smoothly and efficiently between the two regulatory regimes.
No wonder many pharmacists are puzzled as to how all this regulatory burden and inconvenience could have ever been agreed.

Satellite pharmacies

If these units are intended to service the needs of any third party provider, under the regulations they will now need to be a registered pharmacy and will need a RP; consequently, some hospitals are currently reviewing the future of these satellite arrangements. One solution may be to relocate these to registered premises, however, this brings a number of new problems as the registered premises may be some distance from the original location and the service to patients may suffer.

how do they affect hospital pharmacy?

Impact on the management of the hospital pharmacy

A technician-led dispensary which is part of an unregistered premises or does not form part of premises registered with the RPSGB has no requirement for a RP to be in charge.

However, a technician-led RPSGB registered pharmacy, must have a RP in charge when activities that require registration are taking place.

Consequently a RPSGB registered technician-led dispensary will require clear definitions of pharmacist and technician roles, responsibilities and accountabilities to ensure the RP can be satisfied that the safe and effective running of the pharmacy is secured as stipulated by the Responsible Pharmacist Regulations 2008.

Responsibility for securing the safe and effective running of the pharmacy

The responsible pharmacist when signed on, even when absent, continues to be responsible for the safe and effective running of the pharmacy. To enable each pharmacy to comply with legislation for providing 'registered services', several different pharmacists may need to act as the responsible pharmacist during the course of the day. The R.P. Regulations requires each of these pharmacists to have responsibility to establish, maintain and review pharmacy procedures.

However, hospital dispensaries are increasingly managed by dedicated technical staff whose qualifications and experience equip them to order, store, prepare, deliver and dispose of medicinal products in a safe and effective manner. Some hospital pharmacists have expressed the view that these dedicated technical staff may be in a better position to ensure the safe and effective operation of the pharmacy than would their more clinically orientated hospital pharmacist colleagues.

This expertise may even enable them to establish, maintain and review pharmacy procedures within their knowledge and competence more effectively than a pharmacist who adopts the role of responsible pharmacist infrequently.

It is a simple risk management principle that responsibility for each pharmacy procedure should be allocated to those who have most knowledge and experience of the subject, however, the Health Act requires this to be a pharmacist, which for the reasons described will, in some cases be less than an ideal solution. This is an area where a meaningful accommodation between technicians and RPs must be reached, it is also an area where discussions between the PDA, DoH and the Society are still being held.

Standards of pharmacy practice

Currently there are few statutory standards for inclusion of pharmacies on the register of RPSBG. This is expected to change when the new pharmacy regulator, the General Pharmaceutical Council (GPhC), is established and takes over the regulation of premises. The GPhC will then be required to establish and promote standards for safe and effective practice and only those pharmacies that can comply with the relevant standards will be allowed to remain registered. This could potentially result in a variation in standards between registered and unregistered hospital pharmacies.

Breaches of legislation and standards

It appears that many pharmacists are acting as RPs for Trusts and Health Boards without a contractual requirement to do so. It has often been suggested that vicarious liability is dependent upon the duties being listed within the job description and that, in the absence of official written indication this may affect that (albeit superficial) protection. This will not be an issue for PDA members as they will automatically be covered to act as an RP; for those who are not PDA members, we recommend that they check their PI insurance status.

What activities can be undertaken?

The RPSGB suggests that the professional clinical and legal check of a prescription requires a RP to be in charge of the premises and needs to take place under the supervision of a pharmacist and the supervising pharmacist will need to be physically present at the (registered) pharmacy. However;

- Hospital prescriptions are sometimes dispensed for external third party providers e.g. hospices or surgeries, and professionally checked by pharmacists integrated into the ward or clinic team.
- These pharmacists have specialist clinical knowledge and access to patients' medical histories not readily available to a pharmacist working in the dispensary.
- The specialist pharmacist's expertise may provide a safer, patient-focussed review of a prescription for those in their care than can be provided by a pharmacist in the dispensary.
- Such prescriptions may be professionally checked away from the dispensary e.g. in a private hospice. They may be transmitted electronically to the registered pharmacy.

For perfectly clear, patient centred reasons, the RPSGB guidance may not be ideal in this instance and will need to be revisited. This matter is to be discussed with the RPSGB and DoH in January 2010.

> "No wonder many pharmacists are puzzled as to how all this regulatory burden and inconvenience could have ever been agreed"

Conclusion

The Responsible Pharmacist Regulations 2008 were an attempt to enable primarily community pharmacists to work more flexibly and make better use of their clinical training and the skills of pharmacy staff. However, as a result, many hospital pharmacies have had cause to register with the RPSGB, consequently, the pharmacists that work in them now fall under the scope of the amended Act. We recommend that any newly registering pharmacies comprehensively review the roles of their pharmacy personnel, the specific responsibilities of staff members and the overall procedures. The PDA continues to hold meetings with the RPSGB and the government to assess how the practical operational quanda ries can best be handled.

RPSGB Headquarters

ANOTHER DAY. ANOTHER RESTRUCTURING OF THE NHS.

ARE YOU AFFECTED?

In the last year the PDA has supported many hospital pharmacists who are concerned about their employment prospects.

Who's defending your reputation?

The NHS is one of the largest employers in the world, but it is also an employer that is particularly keen on constant restructuring and reorganisation. The real effect is felt by the people who are employees - in terms of their jobs, their terms and their pay and as is usually the case, there will be winners and losers.

Whilst laws exist to protect the rights of employees, hospitals have HR departments to fall back on.

They will have their interests well covered - but will you?

We have already provided more than 10,000 of our members with advice and support and now, through union status, we have the legal right to accompany members to certain internal meetings.

In many cases we resolve disputes through mediation, but in others we pursue employers who have treated our members harshly, illegally or unfairly. Already, we have secured more than £500,000 worth of compensation for our members from employers in this way.

You might call this defending your rights and your reputation. We would have to agree...

Pharmacy employment specialists available
Union membership option available
Experienced hospital pharmacists available
Backed by £500,000 of Legal Defence Costs insurance
£5,000,000 worth of Professional Indemnity insurance

now more than 15,000 → have you?

~~11,000~~ pharmacists have already joined the PDA.

Visit our website: **www.the-pda.org**

Call us: **0121 694 7000**

defendingyourreputation

pda
the pharmacists' defence association

PDA210/1209