INSIGHT

Issue 3 | Winter 2004 | The magazine of the pharmacists' defence association

WORDS INTO ACTION...

a 'wake-up call' for employee and locum pharmacists.

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WARNING! Read your employment contract carefully.

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pda
the pharmacists' defence association

NPA IN POTENTIAL CONFLICT WITH NEW MEMBERSHIP CATEGORY

…or, the difficulties with 'running with the hare and hunting with the hounds'.

The National Pharmaceutical Association (NPA) the body whose primary role is to look after the interests of its members i.e., the owners of community pharmacies announced that it would be setting up a new membership category for individual pharmacists – called 'NPA Link' in January 2005.

According to the NPA, the benefits of this new category would be that it would give members access to the NPA Information Department, that it would provide legal and personnel advice and that it would allow NPA Link members to make their views known to NPA Board members. Potential members would pay a schedule of fees to join ranging from £40 to £400 per year.

Some pharmacists have already expressed some concerns about this new proposal. Should the NPA attempt to both "run with the hare and hunt with the hounds?"

The difficulties with the NPA proposal:

INFORMATION DEPARTMENT

There is nothing wrong in charging pharmacists for access to the information department, however, most pharmacists work in an NPA members pharmacy and they would already be entitled to access to the information department with no fees to pay. Furthermore, pharmacists pay a membership fee to the RPSGB and they enjoy access to the Society's own information department based in the library and other sources of information elsewhere in the organisation.

LEGAL AND PERSONNEL ADVICE

It is here that some of the real conflicts emerge. What kind of legal advice can the NPA offer to an individual pharmacist if the nature of their enquiry is to do with an employment dispute with the employer - an NPA member?

What kind of personnel advice can the NPA give to an employee pharmacist who complains that he wants more support staff in the pharmacy but the employer (the NPA member) refuses to fund this?

What about a locum who is having difficulty securing his payments from an employer – an NPA member?

You may think that these are rare scenarios, but at the PDA, more than 50% (representing more than 300 cases in this last 12 months alone) of incidents dealt with are disputes between employers and employees / locums. As a result of PDA legal advice and personnel support, PDA members have secured approximately £90,000 worth of compensation payments from employers who have treated them unfairly, harshly or in breach of legislation or contract. Clearly, not all of these were NPA members, but with the NPA having around 90% of all community pharmacies in their membership, there is a very good chance that most of them would be. For locums, the legal advice and support provided by the PDA has resulted in almost £20,000 worth of payments made which had previously been withheld by employers. In cases when the PDA, acting on behalf of its member, arranges for an NPA member employer to be taken to an Employment Tribunal the NPA usually arrange the representation for their employer member; it is their role to look after the interests of employers.

In these types of scenarios which are very common, the NPA cannot look after both the employer and the employee without conflict or potential conflict of interest arising and consequently, its advisory service in this respect may be difficult to deliver to employees and locums.

> **"[the NPA] will "continue to remain faithful to its core membership constituency – community pharmacy owners"**
>
> *John D'Arcy, NPA Director*

ACCESS TO BOARD MEMBERS

Board members of the NPA are generally accessible and as part of their role are likely to receive views from individual pharmacists. Whilst they might lend an ear to individual pharmacists, they are nevertheless employers. It is possible that they may not want to take forward an issue or an idea because these might be detrimental to their interests as employers.

THE BIG CONFLICT FOR THE NPA

According to the NPA, they have set up this new membership category so that they will be able to secure a successful community pharmacy sector and an Association with strengthened authority and advocacy to reflect members' views. But which members' views? The employers or the employees / locums / primary care pharmacists? For they are distinctly different.

Significantly, the NPA rules have always stated;

"Where a conflict emerges between an employee (or locum) and the NPA member, the Association's allegiance always lies with the NPA member – the owner of the phamacy."

At the launch John D'Arcy, the NPA Director, stated that the NPA will *"continue to remain faithful to its core membership constituency – community pharmacy owners."*

Can two sides of the same organisation be truly independent?

If the NPA is to continue to give its primary allegiance to the owners, it may find it difficult to properly reflect the views of the individual employee, locum and primary care pharmacists. The new NPA category of members therefore may become little more than a poor and disenfranchised relation.

An organisation that genuinely reflects the views of individual pharmacists must be able to ask searching questions and be prepared to act on a range of issues which are important to employee / locum and primary care pharmacists, for example;

- When will individual employee, locum and primary care pharmacists be recognised as individual NHS contractors in their own right?
- Individual pharmacists have to take the responsibility for things that go wrong in the pharmacy through RPSGB and employer disciplinary procedures, civil actions and criminal proceedings (e.g., the peppermint water case). So when will individual pharmacists be given the control of the pharmacy environment in which they work?
- Who is going to address the issue of severe staff shortages and staff quality issues that so many employee and locum pharmacists complain about?
- What can be done for UK pharmacists who have their rates of pay reduced because their employers import large numbers of pharmacists from European countries - some of whom have difficulty in speaking English?
- What can be done for pharmacists who are treated harshly, unfairly or illegally by some employers?
- When will all employers be prepared to have representatives from the Pharmacists' Defence Association accompanying employees to internal disciplinary meetings?
- And many more besides

If the NPA remains silent on such issues, which are awkward but nonetheless critically important to individual pharmacists. The NPA initiative can never fully serve all the needs of individual pharmacists.

Unfortunately, by creating what the NPA has called a new membership category, some pharmacists may think that they will now enjoy some form of representation from the NPA. Whereas in reality, even the NPA has recognised that this is something that it cannot do; as John D'Arcy said in the Pharmaceutical Journal *"We cannot be all things for all men. We will continue to represent pharmacy owners."*

Realistically, only an organisation that is independent of the employers and of their representative organisation can play a full role in articulating the views and concerns of individual pharmacists. This is the very reason why the Pharmacists' Defence Association (PDA) was established. Already, the PDA has more than 10,000 members and has begun exploring the issues above and many more besides as is evidenced in the PDA progress report on pages 8 & 9.

STRIKING A SENSIBLE BALANCE

If the reasons for setting up this new NPA membership category are because it would like to secure a strong and successful community pharmacy sector, then the NPA could find a better way forward. The NPA should work with the PDA. The PDA has no conflicts with its responsibilities to employers and is an organisation which in a relatively short time has shown that it is serious about articulating and acting upon the concerns of individual pharmacists.

The PDA is prepared to talk to any organisations to further the agenda of the individual pharmacist as ultimately, such dialogue will be of genuine benefit to all in pharmacy. Should this occur, then much could be gained by both sides in exploring the 'Win-Win' scenarios for pharmacy owners AND individual pharmacists.

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Letters...

If you have any questions that you would like to see answered in depth by the PDA or, have an issue that you would like to write to us about then please contact us at:
The Pharmacists' Defence Association, The Old Firestation, 69 Albion Street, Birmingham, B1 3EA. or email us: info@the-pda.org

Can I close the pharmacy?

Dear PDA,

Let me give you some background information: I am employed as a full time pharmacist with one of the pharmacy multiples - even though I am an employee, I have become a "full" PDA member!

Over the past few months my company has reduced the staffing levels significantly. I have discussed the potential risk to patients with both my Area Manager, and his Line Manager - who both seem to understand my concerns however have stated that they cannot increase the staffing levels due to budget pressures.

Often a pharmacist is left alone to both dispense and serve on the counter, and if it gets busy no one is available to offer any assistance. Since January 2004, I have reported 9 dispensing/near miss reports of which in 5 instances the pharmacist was alone, with no staff at all.

As my employer does not want to acknowledge this issue, where do I stand legally. Am I negligent for working in conditions knowing that patient safety is being compromised? If I (or any other pharmacist) is put in such a situation can I reasonably close the pharmacy, after advising the superintendent of the situation.

On a more positive note, thank you for setting up this organisation, all us little guys need all the help we can get!

I look forward to hearing from you soon.

Regards.

Pharmacist details supplied.

Dear Member,

The question is: where do you stand?

A pharmacist should not put patient safety at risk. You have a duty of care to the patient. If you genuinely believe that you are compromising patient safety then you will have to go through a professional decision making process, including a risk assessment of the implications and risks of continuing the service or not. Acting outside the public interest by closing down the pharmacy and depriving them of the service may outweigh your judgement of acting within the public interest deeming the pharmacy to be unsafe but not in all cases.

We have met with the RPSGB and they recognise that if a pharmacy is genuinely 'unsafe' then in an acute situation, a pharmacist may reserve the right to close it down in the interests of public safety. However, this would have to be an exceptional situation. They would not support the decision to close down the pharmacy on a 'general issue' or for an indeterminate amount of time but would if there was a major acute critical issue eg.

A significant amount of errors had been made in a short time because there were no other staff, and the pharmacist was now primarily involved in tracing a number of customers who had received the wrong medication etc, or a major health and safety issue had arisen etc.

In taking any action, you must not leave yourself open or vulnerable to charges that you acted contrary to the public interest.

OUR INITIAL ADVICE IS TO DO THE FOLLOWING:

- Record the times and dates of all the conversations you have had with your area manager and his line manager.
- Collate all the evidence you have on 'near misses'
- Conduct a risk assessment. Which issues can be risk managed and which cannot?
- Write to the Superintendent pharmacist with your evidence and ask him to disclose the rationale behind the staffing levels, pointing out that 'based on your evidence you feel it professionally incumbent upon you and in accordance with sound clinical governance to bring to his attention that the levels give serious cause for concern regarding patient safety'
- Also the letter should contain a phrase such as 'I have spoken to the PDA who inform me that in certain situations where pharmacists find themselves faced with acute patient safety issues then they may find it necessary, in the public interest, to take a decision to (temporarily) close down a pharmacy if the situation cannot be risk managed.'. Please 'cc' the letter to the PDA
- Ask for a RPSGB inspector visit, share your thoughts and evidence with the inspector, listen and make a record of the conversation. Ask them their opinion of the issue regarding putting patient safety at risk. By writing to the Superintendent you are putting the issue, not only into the clinical, but also the professional and corporate governance arena and creating a defence for yourself in the event that a major error occurs.

I hope that this is helpful. The PDA is making the issue of staffing levels a key plank of it's lobbying strategy for the forthcoming year.

The PDA.

Can my employer make me liable?

Dear PDA,

A recent posting on Private-Rx posed this question...

"RPSGB are increasingly asking if SOPs are followed when investigating errors - have you checked with the PDA if they will cover you if you are NOT using SOPs (either your own or the companies) after 1st Jan 2005?"

It seems that 'signing up' to a company's SOPs could put a locum's self employed status at risk. However, if one isn't 'signed up', how does one prevent the company off-loading all responsibility for errors onto locums, say, because they 'don't work according to the Company's SOPs'.

As Bob Gartside has pointed out on Private-Rx, despite the relentlessly increasing dispensing workload there is a trend towards lower staffing. My experience matches this, with area managers who are under head office budget pressure increasingly choosing not to replace pregnant staff and leavers.

Some weeks ago I casually asked an area manager if I should note the fact that I was working single-handed in the SOPs section of the branch diary, which prompted several rather anxious return calls to me to point out that "single handed working doesn't imply a shared liability". I was at a loss to fathom exactly what this meant, but it seems to me highly likely that in 2005 the Companies will try to use SOPs as a way of insulating themselves from the liability problems that their low staffing problems cause.

What is your advice in this matter?

Pharmacist details supplied.

Dear Member,

Your email raises some very relevant points which I can assure you are receiving attention here at the PDA.

1. Does signing up to SOP's put your self employed status at risk?

This is only the case if you have unswervingly accepted the SOP's by a passive process which creates a master and servant relationship. If however, you arrive at the pharmacy, examine the existing SOP and actively decide that you will follow it because it is safe, satisfactory and therefore not in the patients interest to change it - then it can be shown that you have acted as a self employed contractor who has weighed up the pros and cons and has chosen to proceed with the existing structures in place. Alternatively, when you make an assessment, you may decide that you are unprepared to follow the existing SOP for whatever reason, or indeed you may choose to amend all or part of the existing one and replace it with your own in so doing you have shown that this is no master servant relationship.

The important issue is not whether you have used the employers SOP - but that you have made a consideration of whether it should be used or not. If you have done that then you will not be affecting your self-employed status.

2. Do you take on all of the liability if you use your own SOP

Clearly, if you have replaced the employers SOP with your own and something goes wrong then the chances of them trying to attach more blame / liability to you will increase. You need to be aware though, that passing the blame onto the locum is now standard practice for many employers, indeed some of the largest employers now have a policy which requires their locums to carry their own PI insurance. Furthermore, we have dealt with many cases on behalf of PDA members where the claims have been passed on to us by the NPA. The issue is therefore not that employers will pass claims on if the locums use their own SOP's, since the claims are already being passed onto the locums whether the employers SOP 's are being used or not.

3. Does single handed working imply shared liability

I am not surprised that the relevant area manager rang back nervously to qualify himself. The issue of shared liability is as yet an unexploded powderkeg in pharmacy. The area manager was nervous because this is an important issue that the PDA has been discussing with employers and the NPA. It is our view, that whether the pharmacist is employed or self-employed, if an error is made then the employer MUST TAKE SOME SHARE OF THE RESPONSIBILITY IN MOST CASES. The reason why we believe this to be the case is that we know that when errors occur, the pharmacy environment is frequently a major causatory factor. It is the employer and NOT the employee / locum who controls the overall environment of the pharmacy (provision of staff, training, space, source of medicines supply, utilities, equipment) an employee/locum can only make minor adjustments to the working environment. Consequently, the employer cannot escape all responsibility. This shared responsibility approach is not unique, it is also a basic founding principle of the Health and Safety at work etc. Act 1974. Our surveys have found that in many situations, the pharmacy environment is a disaster waiting to happen and despite numerous complaints from employees / locums - some employers still operate a cost cutting regime. In such situations, we believe that the employer is not only part liable for any errors that occur, but probably professionally, and in some cases even criminally liable. You can imagine that this kind of debate, which we have already instigated is making some employers nervous and any dialogue on this subject 'out in the field' is likely to be met with very deft and careful handling by employers. The fact is, that one of the best forms of defence for individual pharmacists is to ensure that written records exist showing that the employers HAVE BEEN PUT ON NOTICE about deficient environments. This then makes them very substantially liable in the event that something goes wrong - they will not be able to insulate themselves from any repercussions and there is test case law to prove it. Our advice is ALWAYS write down any shortcomings and concerns about the pharmacy environment e.g. staffing levels, stock, quality of staff, workload etc. In the most serious situations - those that are a danger to the public - send them to the superintendent - as this then makes the superintendent responsible for acting on concerns. Failure to act would call the superintendent into serious question professionally. The dilemma that exists is that failure to do this by the pharmacist would call their judgement into serious question in the event that something went wrong but doing what we have described can leave the locum or employee vulnerable to having punitive sanctions taken against them for being troublesome e.g bookings cancelled or other employment consequences - and we have seen some employers do this. This unfortunately is a consequence of abuse of power of some of the pharmacy employers. Consequently, I can assure you that PDA is currently in discussions with various pharmacy organisations on this very subject and we will be launching a big initiative to deal with this problem in the new year.

We do hope that this is helpful,

The PDA.

Upset about attitude of large employers.

Dear PDA,

I work as a locum and have been on the register for over 25 years and for eight years owned a pharmacy.

I have become increasingly upset at the attitude of the large employers towards their employees. Whilst staffing levels are kept to a minimum, with no slack for holiday or sick leave, more time consuming initiatives and paperwork are constantly being added to the workload. Repeat prescription ordering, collection and delivery services, Medidose box filling and diabetes testing - all free and financed by having to churn out an ever increasing number of prescriptions.

Staff turnover rate is unsurprisingly high. Most counter staff do not complete their training before moving on to less stressful more remunerative employment.

The turnover of Area Managers is almost equally high, as they move up the company ladder. Interest in staff welfare is secondary to how many fire extinguishers have been sold (or whatever the latest gismo is on offer!). I remember with amazement a former area manager confiding to me her lack of understanding at how a pharmacist elsewhere had made a "stupid"dispensing error till I pointed out to her the similarity of name, strength and packaging of the drugs involved. I have no illusion that the company would support me if I made such an error.

This week I went to work at a busy branch of another company, with a supervised methadone service where staffing levels were equally precarious. A dispenser, a student counter assistant and me. We all stayed beyond hours to try (unsuccessfully) to clear the backlog of work. I did not sleep well that night!

Unfortunately I am too young to retire and too old to train for a new profession, so in pharmacy I must stay.

Pharmacist details supplied.

SIX FOLD INCREASE IN RPSGB DISCIPLINARY HEARINGS.

THE TOTAL NUMBER OF RPSGB INFRINGEMENT COMMITTEE HEARINGS IN 1993 WAS 56. IN 2003 IT WAS 333.

These days, RPSGB inspectors no longer have the flexibility that they used to and normally, no longer issue a local written warning to a pharmacist. Instead, pharmacists are increasingly receiving formal warnings from the infringements committee or worse. This can leave pharmacists feeling bewildered and frustrated.

The PDA has extensive experience of providing support to pharmacists in these situations and works tirelessly to ensure that pharmacists rights are protected in RPSGB disciplinary enquiries.

Find out how membership can benefit you;
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JOB ADVERTISEMENT

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Following the phenomenal growth of the PDA, the key role of membership services manager has been created. Responsible to the General Manager, this exciting new role will involve you in the delivery of a wide and growing range of new services to the membership of the PDA (currently10,000+).

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Please forward your cv with a covering letter to;
Suzanne Collins c/o The Pharmacists' Defence Association,
The Old Fire Station,
69, Albion Street,
Birmingham, B1 3EA

IS YOUR CONTRACT WORTH THE PAPER IT'S WRITTEN ON?

With more than 50% of all incidents handled by PDA involving disputes between employees and employers, a considerable amount of time has been spent examining contracts of employment.

SEND IN YOUR PROBLEM CONTRACT OF EMPLOYMENT CONTRACT CLAUSES…

This exercise has turned into something of an illuminating experience as in some cases, pharmacists have signed contracts which contain some pretty draconian clauses. PDA barrister Graham Southall Edwards, in his contracts feature on pages 10 & 11 gives guidance to PDA members on contractual matters, however, such is the extent of this problem that the PDA is now compiling a collection of what can only be described as 'clauses to watch out for' when taking on a new job or when given a new 'updated' contract to sign. The 'contract clauses alert' will then be made available to all PDA members and it is hoped that it will make them more aware of highly onerous clauses and so enable them to judge whether or not they wish to sign them, dilute them, delete them or whether they want to take on a job with a particular employer in the first place.

To help with this work, PDA appeals to pharmacists to send in any clauses that they are concerned about, ideally they should be highlighted and the whole contract should be sent – this can be done anonymously. However, care needs to be taken by employees to first ensure that such contracts do not contain clauses which prevent them from being shown to third parties as contravention could result in disciplinary consequences.

PDA members who want to have their contract of employment scrutinised by PDA lawyers will have a confidential face to face opportunity to do so by booking themselves an appointment at the contract clinic which will be running alongside the Annual PDA Conference on Sunday 27th of February 2005 in Birmingham.

Please send any contracts, in confidence, to:
John Murphy
General Mamger
The Pharmacists' Defence Association
The Old Fire Station
69 Albion Street
Birmingham
B1 3EA

<information

WORDS INTO ACTION

…waking up the individual pharmacist agenda on 27th February 2005 in Birmingham.

THE FIRST ANNUAL PDA CONFERENCE

a wake up call…

Early 2005 will see the first conference of the Pharmacists' Defence Association, at which many new initiatives will be unveiled. The conference will give PDA members the opportunity to hear about our latest developments. Members will be given a valuable opportunity to air views and share their concerns with other pharmacist employees, locums and primary care pharmacists. Importantly, the event is being organised to ensure that members are involved in influencing the direction and the future priorities of the PDA.

Established in 2003, the Pharmacists' Defence Association is beginning to make progress as is evidenced in the annual report (see pages 8 & 9). However, much of the work of the PDA in this first year has involved research, meetings, lobbying and a lot of behind the scenes work. However, the result is that the PDA now has a very ambitious programme lined up for 2005, all of which is designed to help look after the interests and to develop the agenda of the individual pharmacist.

If you care passionately about issues relating to your work or employment and feel that 'the powers that be' need to take your concerns more seriously, then you will find this very first National PDA event to be an important one to attend.

What issues will be addressed?

STAFFING LEVELS

Concerned that the staffing levels in your pharmacy are too low? Believe that the staffing levels in your pharmacy constitute a danger to the public?
Many pharmacists have been telling us that this is the case. The PDA policy on staffing levels will be discussed and debated allowing PDA members an opportunity to give input prior to publication.

VIOLENCE IN PHARMACY

Much concern has been expressed about violence in pharmacy, but actions are needed – not words. It is mainly the pharmacist employees and locums who face the violent customers and it is they who suffer the direct consequences. The PDA proactive stance on violence in pharmacy will be released, giving pharmacists the tools and a resource pack enabling them to address the issues.

DO YOU HAVE A PROBLEM WITH YOUR CONTRACT OF EMPLOYMENT?

Many PDA members have found themselves in awkward situations because they were being required to do what they considered unreasonable things by their employers. However, because they had signed a contract of employment and this contained certain clauses – they discovered that they had no option but to comply or leave. (See article pages 10 &11).

THE PDA CONTRACT CLINIC

IS YOUR CONTRACT WORTH THE PAPER IT'S WRITTEN ON?

A contract of employment clinic will be staffed by PDA lawyers – so bring along your contract of employment and we'll get it thoroughly examined to see if there are any onerous or questionable clauses.

APPLICATION FORM

YES, please register me a place for the PDA 'WORDS INTO ACTION' conference.

Name

Address

Post code:

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FEES (Including Lunch):

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"IT HAPPENED TO ME!"

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EMPLOYMENT DISPUTES

New legislation gives employees far greater rights. We will explain what your employers can and cannot do.

THE PHARMACISTS' DEFENCE ASSOCIATION

ONE YEAR AFTER LAUNCH

The PDA was launched in September 2003 and in the first 12 months has attracted a membership of more than 10,000 making PDA the largest pharmacists' defence association in pharmacy.

By Mark Koziol
M.R.Pharm.S., Director, The PDA.

The PDA was primarily established for 2 reasons;

1. The practicing environment for pharmacists at the 'coal face' was becoming increasingly hostile in five main areas; Civil claims for compensation, employment and RPSGB disciplinary procedures, prosecutions and locum contract disputes.
2. A recognition that employers exercise a disproportionate amount of influence on the pharmacy agenda through the employer representative organisations such as the National Pharmaceutical Association (NPA) and the Company Chemists Association (CCA) which means that the views and concerns of the vast majority of the profession (employees and locums) are rarely articulated and acted upon in any meaningful way.

Strategically, the PDA has chosen to progress the above agenda by concentrating on four areas;

DEFENCE

The defence activities of the PDA are underwritten by insurance and can provide up to £10,000,000 worth of support per incident in the event of a dispute or an error or omission made by members. This means that PDA staff and lawyers can get directly behind PDA members and robustly support them in the event that they have a problem connected with their work as a pharmacist. In its first year the PDA handled more then 600 incidents on behalf of its members. 51% of these have been employment disputes, 26% are civil claims for compensation, 10% are locum contract disputes – mainly due to non-payment of locum fees, 8% RPSGB professional disciplinary procedures and 5% prosecutions.

During the year almost £90,000 worth of compensation was claimed from employers on behalf of employees who had been treated unfairly or harshly and a further £20,000 was secured on behalf of locums who had previously been unable to secure their pay from employers (through the locum contract dispute service which was launched in June 2004). In the majority of these disputes, PDA has had to deal with lawyers acting on behalf of employers or the NPA – the organisation that represents the interests of employers.

In a further 156 cases, the PDA has either settled compensation on behalf of members who have been involved in an error or omission with a patient, or is currently in the process of handling such a claim or incident.

PREVENTION

By examining incidents that have already occurred and developing the risk management agenda, PDA has shared the experiences of some PDA members with the wider membership and so has provided learning experiences. The PDA briefings are risk management tools which are sent not only to all PDA members but also to any pharmacists requesting them. As well as regular communication via written and electronic newsletters, the PDA website www.the-pda.org has had almost 8500 unique individual visitors who between them have visited the extensive PDA site on almost 52,000 occasions in the first year.

A series of conferences were organised for PDA members and many more have already been arranged to be held in 2005 to include the first National PDA Conference which will be held in Birmingham on Sunday 27th of February

INFLUENCE

During the year, PDA has undertaken several large-scale surveys and has worked with research establishments so as to provide data to underpin the work of the PDA. To support the research, numerous focus groups with PDA members have been held. The collective concerns of individual pharmacists are being identified and are being articulated on their behalf. The three areas of particular concern in the first year have been; Staffing levels in the pharmacy, Working hours and Violence in pharmacy. PDA policy on these issues is due to be published by early 2005. During the year, the individual pharmacist agenda has been articulated at meetings which have been held with officials from the RPSGB, NPA, PSNC, NPSA, BPSA and written submissions have been made to the DOH, CRHP, CCA and on the Shipman enquiry.

EXPERTISE

The PDA is managed by PDA Director Mark Koziol and PDA General Manager John Murphy who are both pharmacists and are based in the PDA administrative headquarters in Birmingham. The PDA Advisory Board, which is composed of fourteen individuals, supports them. Mostly they are pharmacists who are experts in their own field of practice and some are legally qualified. The board meets collectively twice a year to guide the over-arching direction of the PDA. Additionally, individual PDA Board members are involved in various ongoing PDA projects. The PDA Advisory Board is currently composed of Gordon Appelbe, Helen Critchlow, Richard Flynn, Robert Gartside, Duncan Jenkins, Jahn Dad Khan, Alan Nathan, Roger Odd, Shenaz Patel, Graham Southall Edwards, Paul Taylor, Joy Wingfield, Virginia Wykes and Veronica Wray who, having been a director of PR at the NPA, joined PDA to become the PDA PR manager early in 2004.

PLANS FOR 2005

CONFERENCES

Already a series of events were held at the end of 2004 and others organised for early 2005, culminating in the first Annual PDA Conference. The Conference agenda of the PDA is further developed by the PDA's strategy to support and work with like-minded organisations so as to develop events that are of interest to specific niche groups within the profession. For example – the joint PDA/ BPSA Pre-reg conference which is held in October which aims to help Pre-reg's pass their Pre-reg exam. The joint PDA / Pharmacy Law and Ethics Association events at the BPC, which in 2004 was entitled 'Can I be sued?' and the PDA Conference to explore the Legal Implications for Primary Care Pharmacists which is supported by various organisations.

> During the year, PDA has undertaken several large-scale surveys and has worked with research establishments so as to provide data to underpin the work of the PDA.

LOBBYING

Early 2005 will see the publication of the first official PDA Policy in the areas of Staffing levels, Working Hours and Violence in Pharmacy. PDA will then be pursuing a variety of channels to ensure that this policy is disseminated as widely as possible and will be taking steps to try and ensure that they are assimilated by the wider profession. More recently, PDA members, particularly part-time pharmacists have registered their concerns about the swingeing increases in the RPSGB retention fee. The PDA has now commissioned research to try and establish the possible extent of the workforce shortage disaster that this will create if, as is anticipated a large number of pharmacists choose to leave the register in 2005. Subsequently, the PDA will be arguing for the Society to take a more realistic approach to the fee structure. It is hoped that pro-active lobbying activity, backed up by hard data, will go a long way in helping to alleviate some of the concerns being expressed by individual pharmacists in all of the areas mentioned above.

EMPLOYEE REPRESENTATIVES

More than 50% of disputes handled by PDA on behalf of members in the first year are due to conflicts between employers and employees. In the event of a dispute Employers often have a Head Office or the NPA to turn to for support, whereas historically, employees had no-where to turn for help. As well as central support via PDA personnel and lawyers, PDA has established and is currently training a national network of employee representatives who will be available to support colleagues in their work organisations who find themselves in dispute situations by accompanying them to employment disciplinary meetings.

THE HOSPITAL SECTOR

Although the PDA was not originally established to support Hospital Pharmacists, such has been the call from pharmacists working in hospitals that PDA intends to open up its membership to hospital pharmacists in 2005. Currently discussions with the Guild of Healthcare Pharmacists are ongoing to see if there is a possibility of the two organisations working together so as to deliver a wider range of potential benefits for hospital members.

LOCUM CONTRACT FOR SERVICES

Currently, the Contract for Services that is widely in use in the community pharmacy sector by locums and employers, is the document that was produced some years ago by the NPA. However, the NPA is an organisation whose main aim is to look after the interests of employers. Consequently, it is understandable that this NPA document is silent on many contractual issues which would be important to locum pharmacists, such as staffing levels in the pharmacy, safety in the workplace and other environmental issues which are mostly the responsibility of the employers. PDA has developed a more balanced Contract for Services, which deals more appropriately with both employer and locum issues. The PDA Contract for Services is undergoing final Inland Revenue clearance and should be available to locums by the end of 2004.

IMPROVING THE SERVICE FOR PDA MEMBERS

With the plans for expansion, coupled with the steady rate at which PDA members are joining and using the services of PDA, more permanent staff are required at PDA's administrative Headquarters. At the end of 2004, PDA began the recruitment process to secure additional pharmacist support to assist with the growing provision of services to PDA members. (See advert on page 5)

To find out more about us and how membership can benefit you visit us on line at **www.the-pda.org**

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WARNING!:
PLEASE READ CAREFULLY BEFORE AGREEING TO ENTER INTO CONTRACTS

An alarming trend, which sees pharmacists signing contracts of employment, without first studying them carefully has caused more than its fair share of problems. Our PDA Pharmacist Barrister reports.

By Graham Southall-Edwards
MA(Law)., LLM., B.Pharm., M.R.Pharm.S. Barrister-at-Law / Pharmacist

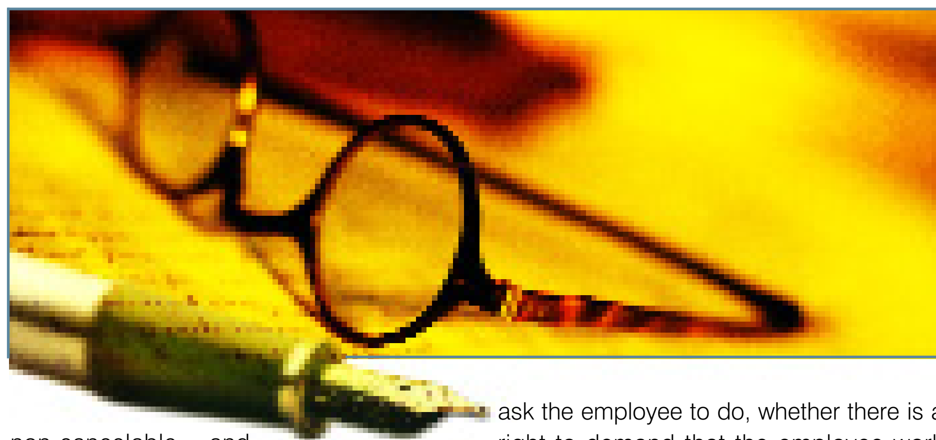
When one person says to another that he or she will perform a service, or sell / transfer goods, in consideration for a payment by that other, a contract is made which is binding and generally incapable of subsequent, unilateral variation or cancellation, without the agreement of BOTH parties. Whether or not this agreement is verbal or in writing is irrelevant as far as the law of contract is concerned, provided of course that both parties are honest about the terms of their agreement. Here of course is where the matter of getting it in writing becomes important, as sadly most verbal contracts have two different versions of the terms and conditions agreed, depending on who is in default and what is at stake if the defaulting party admits the original terms agreed. The only exception to this rule is if the matter under discussion involves property (real estate), where if a sale or lease exceeding three years is involved, the contract must always be in writing.

Most of the problems that have been referred to the PDA in the last year that I have had to deal with where Pharmacists are in dispute with contractors or employers, have centered around a lack of understanding of contract law and its harsh effects.

LOCUMS

Locums who are self-employed should realise that when they make an agreement to do a week's locum in (say) a month's time, they are LEGALLY BOUND to do it. Employers too are legally bound to honour a commitment that they make with locums. If locums fall ill, the proprietor company is entitled to look to them for losses it sustains as a result of what a Court will see as the locum's default. The fact that there was a 'reason' (illness) does not absolve the contracting party of their liability to perform the agreed contract. This reasoning also applies to employers.

Currently, in the absence of any written agreement , there seems to be a notion in the locum industry that '3 days notice' is all that is required. Whilst this may be an industry held view of professional liability; i.e., the reasonable notice allowed for the proprietor to get another locum, without damaging the pharmaceutical services, it is NOT the law. Granted, there are some 'customs' with some of the large multiples that in such circumstances 'the loss falls where it can best be carried', meaning that the multiple can more easily get a replacement than the locum, but these are really simply concessions not to sue and enforce the proprietor's strict rights in law. Similarly, many people contract through agencies and many others do so on 'standard terms' imposed by the proprietor; these terms and conditions may vary the usual legal situation that a contract, once made, is



non-cancelable and enforceable against the defaulting party, almost in any event.

However, there is a perfectly acceptable way to deal with this strict legal situation; in the worst case scenario, locums could take such potential damages as part of their 'overheads' in a year. Alternatively they should seek to insure or otherwise make provision (e.g. by a deputising arrangement with others) for such contingencies. Importantly, the locums and employers could also agree in a written contract that cancellations may be made within strict time limits, or alternatively a Force Majeure clause could be agreed, which absolves either side from performing its side of the contract in genuine 'un-forseen disaster' situations. The soon to be released PDA 'contract for services (see page 7) will help locums as it contains both the timeframe cancellation and also the Force Majeure clauses and also many other clauses which would be useful for the execution of a locum agreement.

CONTRACTS OF EMPLOYMENT

In the past year, I have been asked to handle countless employment disputes about what the employer can and cannot ask the employee to do, whether there is a right to demand that the employee work elsewhere, whether a pre-registration training period can simply be terminated at (say) month 10 by the employing training-place provider, what notice is required to be given by one party to another, what the employee may do (and for whom) outside the hours during which he/she is contracted to serve the 'master', etc. In almost every situation, my answer has been: "let's see the contract of employment."

When I receive the signed contract of employment, this is usually where the employee's problems start. The reason for this is that all too often the employee has agreed to terms, which give the employer the right to do what it is seeking to do and deny the employee the right to do otherwise. When they are told that they must accede to their master's wishes, pharmacist employees frequently groan and complain that it is 'unfair'. But the problem is sadly that they have freely assented to the terms that were proposed by the employer earlier and are thus bound by them.

THE TAKEOVER

A very common situation which occurs is the 'takeover'; the small pharmacy or small chain is devoured by the larger multiple and after a few weeks the training coordinator arrives and says something like: *"Hi, I'm Sue the take-over/merger executive; as you know, this shop was taken over by X-Chem Limited last month and these are your new contracts of employment, which you are required to sign – just have a read of them and sign the bottom to say you've read them please and I'll take them back with me when I leave this afternoon."*

Now by virtue of what is known as 'TUPE' [the Transfer of Undertakings (Protection of Employment) Regulations 1981*], employees' contract rights are maintained, despite business transfers to new owners. In short, employees of a business which is taken over by another, retain their original contractual rights, as per their existing employment contracts (and the applicable terms and conditions) with the old business owner and their employment with the new owner is deemed to have commenced at the time that employment with the old owner originally started. Employment Rights should therefore be unaffected and in so far as length of service is concerned, they are not. However, new owners often wish to include different terms and conditions, such as a right to require different hours to be worked, a right to transfer the employee to another branch, dictate holiday dates, change working practices and existing agreements, restrict the employee's right to work for other employers outside of employment times, etc., etc. One way to do this is just to put the new or varied terms and conditions in the 'new contracts' which are presented to the vulnerable, existing staff and then to get their signed assent at this first visit.

Unfortunately Pharmacists as a whole seem to be very 'compliant' and such assent is rarely withheld. The effects of assenting so easily to the new owner's employment terms often turn out later to be catastrophic for the employee, when the new area manager turns up and starts to make demands that would have been impossible under the old contract e.g., the new place of employment is to be thirty miles away from the existing pharmacy, or the hours are to be changed substantially making childcare arrangements impossible.

Strictly speaking and as a matter of law, if the new owner is offering no more pay or other benefits (in legal terms "no fresh consideration"), then the new or varied terms assented to are no more than what lawyers call a "gratuitous promise, unsupported by further consideration" and should be unenforceable. However, it seems that if they are satisfied that the employee had the opportunity to read the new contract terms and signed them freely, then most courts and

> **When I receive the signed contract, this is usually where the employee's problems start. The reason is that all too often the employee has agreed to terms, which give the employer the right to do what it is seeking to do and deny the employee the right to do otherwise.**

employment tribunals will find that the "further consideration for the agreement" was simply the assurance given to the new employer that the employee would continue to perform his/her obligations under the employment contract generally**.

Very often, pharmacists will say *"I've not got a contract"*; by this the employee of course means that he / she does not have a written contract, because as has already been explained earlier, there IS ALWAYS a contract, even if it is only a verbal one. Unlike self-employed locums however, the employee is fortunate here; section (1) of the Employment Rights Act 1996 ['ERA1996'] requires a "written statement of particulars of employment" to be given to all employees within not more than two months. [This statement can be in more than one part and may be given in installments]. If this is not provided, then under section (11) of the ERA1996, an employee can apply to an Employment Tribunal to have the terms and conditions of the contract determined; very often the penalty for employers who are found to have deliberately flouted the law, is that doubts about terms & conditions are interpreted in favour of the employee.

Unlike consumer law however, where there is a wealth of legislation to protect the 'weaker party' in the contracting relationship there is very little statutory control of the terms and conditions which may be put into contracts of employment by employers***. Employers naturally want to be in control of their employees and therefore seek to include terms, which give them maximum power over their employees and greatest flexibility with demands for change; this is to be expected, as businesses succeed through strength.

So the message to those making and signing contracts is: "If you sign it, you will almost certainly be irrevocably bound by it, unless the other party will agree to subsequent variation of the agreed contract terms". In particular, the message to employees is: "READ IT AND DON'T SIGN IT, UNLESS YOU ARE HAPPY WITH IT; YOU DO NOT HAVE TO SIGN CONTRACTS WHICH ARE GIVEN TO YOU BY NEW OWNERS IN TAKE-OVER SITUATIONS."

** TUPE' [the Transfer of Undertakings (Protection of Employment) Regulations 1981,* SI1981 Nr. 1974], as variously amended by UK legislation since that time and as more recently amended pursuant to the European Community Acquired Rights Directive (77/187/EEC, as itself amended by Directive 2001/23/EC),*

*** For those who wish to understand more see the test case : Williams –v- Roffey Brothers & Nicholls (Contractors) Ltd., [1990] All ER 512; available from the All England Law Reports, or by e-mail from the writer of this article at epls@netway.at .*

**** such as the Unfair Contract Terms Act 1977 and the Unfair Terms in Consumer Contracts Regulations 1999.*

advisory_board**member** ▼

Graham is a pharmacist and Barrister with 35 year's experience in Pharmacy As a Barrister-at-Law, he has a very wide experience of highly contentious 'tort' and contract Court battles. Areas of speciality include law of contract (including employment), Tort (including negligence), EU Law, Company Law, Credit & Insolvency. Considerable experience and expertise in advising Pharmacists facing criminal (Police and other) / Statutory Committee enquiries.

CAN I BE SUED?

"Clinical negligence and its impact on pharmacy practice" was the theme of a session at the BPC 2004,arranged by the Pharmacy Law and Ethics Association and the PDA.

Douglas Simpson Reports
F.R.Pharm.S.

Negligence in a pharmacy context…

Dr Adela Williams | Dr Peter Harrowing | Dr Duncan Jenkins | John Murphy

Dr Adela Williams, a solicitor, referred to a number of leading cases. For a claim to succeed in the tort of negligence, there needed to be a duty of care owed between the parties, a breach of that duty (a negligent act), and causation of injury (a link between the negligent act and the injury).

In the pharmacy context, a duty of care existed in;
- Dispensing in response to a prescription
- Supplementary prescribing
- Providing advice on a prescribed medicine
- Supplying and advising on an over-the-counter medicine
- Providing advice in relation to symptoms, even if no medicine had been supplied

Dr Williams referred to the case of Dwyer in the 1980s, where a pharmacist had been held negligent for dispensing an overdose of Migril. The patient had suffered gangrene and the pharmacist had been ordered to pay almost half the damages. The court had held that, though the pharmacist had followed the prescription, he had a duty to consider what he was dispensing, which in that case, he had failed to do.

Turning to the question of who set the standards of care required by the courts, Dr Williams referred to the leading case of Bolam v Friern Hospital Management Committee (1957). In this case it had been held that a doctor was not guilty of negligence if he had acted in accordance with "a practice accepted as proper by a responsible body of medical men skilled in that particular art". In the pharmacy context, this would be a reasonable body of community or hospital pharmacists.

But that did not mean that the courts would not scrutinise those standards. So, while it would be the profession that set acceptable standards, if that standard was out of line with what the courts thought reasonable, it would be challenged.

On the pharmacist's advisory role, Dr Williams said that this would come under increasing scrutiny as that role developed. Dr Williams said that a patient could not properly consent to treatment if he had not been properly advised about it. To obtain valid consent, the patient needed to be told about the nature and purposes of treatment and the associated risks. Cases had shown, however, that where a risk was particularly high the courts would scrutinise any decision not to disclose the extent of it. Where there was a significant risk of substantial injury, the courts would not agree that a reasonable doctor or pharmacist would not have disclosed it.

Patients seeking advice on the use of medicines might wish to be informed of the risks associated with those medicines, if it was not provided there could be issues of liability.

In the pharmacy context, breach of duty of care might arise from;
- Dispensing the wrong medicine or a contaminated product
- Dispensing the wrong strength or giving inadequate or incorrect advice regarding usage
- Advising the incorrect route of administration
- Giving incorrect directions for use or other improper labelling
- Recommending use of an inappropriate medicine (e.g., in the context of allergy, concomitant illness or use of other medication)
- Giving inappropriate advice on interpretation of symptoms

TRAINEES

On the question of who provided care, the courts had also held that patients were expected to receive the same standard of care from a trainee as they would from an expert – this has implications for Pre-reg's.

THE 'BUT FOR' TEST

Irrespective of how negligent a pharmacist had been, if that act of negligence did not cause the injury complained of or if the injury would have occurred in any event, the complainant could not succeed in a claim of negligence. The basic test was the "but for" test. The claimant could only succeed if he could show that, but for the defendant's negligence, he would not have suffered the injury.

After describing how damages were awarded, Dr Williams said that it was essential for pharmacists to have indemnity insurance.

RECORD KEEPING

It was important to keep written records but Dr Williams acknowledged that it was not possible for pharmacists to keep a record of every piece of advice issued, particularly in an over-the-counter context. If a complaint arose in this area, a pharmacist would rely on his usual practice in the circumstances of the case; i.e., if a pharmacist recommended a particular product he could claim that it was always his standard practice to warn against a particular complication. Records should be kept for at least three years.

HOSPITAL PHARMACY

Dr Peter Harrowing (director of legal services, United Bristol Healthcare NHS Trust), said that there were special risks in hospitals. Patients tended to be more unwell and were less familiar with their medicines. They might be receiving specialised treatment, e.g., chemotherapy, via high-risk routes of administration.

It was essential that risk be managed properly.

"Everything we do in our professional practice is based on risk management and risk minimisation, Dr Harrowing declared. *"Patient care is a balance of risk vs benefit."*

Consent was an important element of civil cases. Patients often claimed that, if they had known about the risks of a medicine, they would never have taken it.

"Medicine complication" was one of the major causes of clinical negligence. This included:
- A medicine administered to a patient with known allergy or interaction with another medicine
- A medicine administered by an inappropriate route
- No information on adverse effects being given to patient
- A failure to listen to patients' concerns

Risk was managed through clinical governance, having robust procedures, and providing necessary resources and training.

If risk management failed and patients harmed, professionals could become embroiled in complaint procedures, investigations and litigation.

Negligence could arise, among other things, through "act or omission" or through acting beyond one's competence and failing to seek advice or assistance.

For the patient, a negligent act could have several consequences, including pain and suffering, a sense of grievance and a desire for compensation.

For a pharmacist facing an allegation of negligence, it could mean;
- Loss of confidence in professional competence
- Frustration at an inability to satisfy the patient
- Anger at lack of gratitude
- Loss of confidence in the system

It could also lead to feelings of guilt and bitterness and fear of criticism in the media, in the courts or by one's peers. Other fears were of disciplinary action or unemployment.

Pharmacists could reduce the risk to themselves by paying attention to such matters as competence, workload and stress levels.

Where something did go wrong, the pharmacist should inform others, offer an explanation to the patient, make notes and make sure everyone learnt from the experience.

PRIMARY CARE

Dr Duncan Jenkins (primary care consultant pharmacist) said that he was not aware, yet, of any primary care pharmacists being sued but he suggested that it was only a matter of time before one was.

He said that the roles of practice based pharmacists were being extended and their exposure to risk was greatest.

There was a diversity of employment arrangements. Some pharmacists were employed by PCOs and worked within practices under the direction of the PCO. Others were employed by the practice, while yet others were employed by third-party companies. Within those categories, some pharmacists were self-employed and had portfolio careers. With the new general medical services contract, some pharmacists would become partners in GP practices.

Under all these circumstances, pharmacists were becoming more closely aligned with the prescribing process and having access to an enhanced level of information about the patient through clinical records. This would lead to greater expectations and to greater responsibility, accountability and potential for negligence.

Some activities of primary care pharmacists required core competencies, others (like running specialist clinics) needed acquired competencies. There was variation in the competencies of pharmacists working in practices and variation in the level of supervision exercised by PCTs.

Some doctors said that they were accountable for everything in their practice. In reality, liability was probably shared, as with prescribing errors not picked up by pharmacists.

Dr Jenkins said that pharmacists were doing things they had not done before and systems were as yet not properly developed. Duty of care was not clearly defined, for example, did a pharmacist working in a GP practice have a duty of care for all patients in the practice or just those that he worked with directly on, say, a medication review?

Pharmacists working at PCO level and producing bulletins also ran the risk of being sued for product defamation when writing about the performance of products.

Dr Jenkins recommended that pharmacists carry out risk assessments of new ways of working. They should examine;
- The nature of the risk
- The severity of the potential outcome
- How likely that outcome was
- What could be done to reduce the risk

All parties should be involved in this.

Since pharmacists in GP practices were isolated, it was important that peer review and professional supervision be built into services.

Practice pharmacists should draw up written protocols with their GPs. They should monitor and report incidents, learn from mistakes and check on their insurance as PCTs now insisted that primary care pharmacists carry their own indemnity insurance.

COMMUNITY PHARMACY

Mr John Murphy (general manager, PDA) said that civil action against community pharmacists accounted for 26 per cent of incidents handled by the PDA. Types of dispensing error included the supply of a product with a similar name to that prescribed, supply of the wrong preparation (eg, eye instead of ear drops), transposed labels, wrong doses, misread prescriptions and incorrect calculations.

Mr Murphy recounted details of a case arising from a dispensing error for a sufferer from epilepsy. The patient had complained to the PCT, which had brought its complaint handling protocol into play. As a result the pharmacist had written a fulsome apology to the patient in which she, in effect, had admitted liability. Mr Murphy said that pharmacists finding themselves in such a position should seek advice before putting anything in writing. He urged pharmacists to have a protocol for dealing with complaints. From the incidents reported to the PDA by members, four out of ten had escalated because the complaint had been initially handled badly.

Discussing confidentiality, Mr Murphy referred to a case involving the supply of an owing of Viagra tablets. The assistant had handed the tablets to a relative of the patient and had disclosed the details. The patient took action for breach of confidentiality.

That should not have happened, and that was why standard operating procedures and protocols were so important.

When faced with a problem concerning medicines supply to a particular patient, pharmacists should follow a professional decision making process and record their thinking as to why they came to that conclusion.

Mr Murphy warned pharmacists against accepting poor working conditions. Employers were putting pharmacists under increased pressure through adding to work-load and reducing support staff. It was pharmacists' responsibility to ensure that they did not operate in an environment that was likely to cause patient harm.

NAMING AND SHAMING

It is clear that the interests of employers are best served by a workforce that is happy and feels secure in their work. Consequently, it is little surprise that the vast majority of employers try to make their employment policies legal fair and transparent.

In short they want to attract and retain good staff. However, situations do routinely emerge where either an otherwise decent employer has managed to get it wrong in a particular situation or because of poorly trained local management. Alternatively there are also those instances where there is a bad employer who appears to have no interest in fairness, decent behaviour or legality.

An alarming proportion of cases handled by PDA on behalf of members are to do with disputes between employees / locums and employers (52% of all incidents handled in the last 12 months). In this last year PDA has supported members on more than 300 occasions where incidents have occurred.

Broadly these incidents fall into four main categories;

1. Situations where employers have attempted to handle an incident in a particular way which either through naivety or due to not taking legal advice first, was incorrect. Once they are contacted by PDA on behalf of their employee (the PDA member) they immediately change course to ensure that they act properly.

2. Situations where pharmacies have been taken over and the new owners have persuaded employees to sign new contracts of employment almost on an incidental informal basis. Upon signing, the employees discover that their new terms and conditions are substantially different to their previous ones and they now feel disadvantaged. Sadly, once the new contracts are actually signed then there is very little that can be done.

3. Situations where some PDA members have had unrealistic expectations as to what their position actually was. In many such instances, although they felt very aggrieved by what had happened to them - and what had happened was indeed shocking - it nevertheless becomes apparent that for a variety of reasons there is little that can be done. For example their length of service does not give them any meaningful entitlements and protection under the employment legislation, or they may have unwittingly signed a contract of employment that contained some very employer friendly clauses – much to their disadvantage. Nevertheless, by contacting the PDA, they are at least able to make a more objective assessment as to what their true position is.

4. Situations where there has been a major conflict between the employer and the employee and where the relationship has become seriously damaged. Or alternatively, where employers have already committed themselves to a certain course of action and once they are contacted by PDA, they refuse to alter course believing that to do so would be seen as a sign of weakness. In some of these cases, the employers have used what the PDA would consider to be appalling tactics to try and force the employee out of their employment. For example, applying what they believe to be disciplinary procedures but which in fact are nothing more than intimidation, harassment and constructive dismissal. In such cases, the PDA takes a very proactive stance and instructs lawyers to protect the PDA member, In the course of the last nine months alone, PDA has secured almost £90,000 compensation for PDA members who have been treated in this way and there are several more such cases currently underway.

> **“In some of these cases, the employers have employed what the PDA would consider to be appalling tactics to try and force the employee out of their employment.”**

Through a regular focus on employment issues via both the PDA Insight magazine and also through the PDA Briefings, PDA will be bringing the common problems to the attention of pharmacists.

By disseminating the learning points, it is hoped that pharmacists will be able to avoid similar situations. However, it is this last category of employers who give cause for the biggest concern. Thus far, the PDA has managed to deal with most of these ‘rogue’ employment situations through the legal process, however, it is clear that prevention is much better than cure. Moreover, the receipt of £5,000 worth of compensation may well be a hollow victory when the recipient had to first endure many weeks of stress, grief and possibly other health issues.

Consequently, PDA is currently taking legal advice to consider the circumstances under which it would be appropriate to name employers who have acted in a truly inappropriate manner. It is hoped that a name and shame approach in the future may well act as a strong deterrent to employers who manifestly flout the rules.

PDA would be keen to get the views of members on this issue and invite members to let their views known via email to us at:
enquiries@the-pda.org

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Do you want to be a PDA employee representative?

The largest category of incidents that PDA has had to deal with on behalf of members is disputes with employers, representing more than 50% of the 600 incidents handled by PDA in the last 12 months.

Many of these employment disputes develop into full blown legal issues or even Employment Tribunals because the disciplinary process applied by some employers does not comply with the accepted procedures as described in employment legislation.

> **“Experience has shown that in situations where a PDA representative has been allowed to attend an employment disciplinary meeting, this has hugely reduced the likelihood of an improper process.”**

The biggest problem is that some employers appear not to know what they can and cannot do in disciplinary meetings. In turn, the majority of employees know very little indeed about their rights in these situations. Consequently, we believe that in some instances, disciplinary meetings are not handled properly, to the disadvantage of the individual employee pharmacist.

An example of this is when an employee attends a disciplinary meeting, they are either alone, or are accompanied by untrained, inexperienced or even non-pharmacist colleagues. In some instances, they may even be accompanied by a work colleague that has been nominated by their employer.

Unlike a disciplinary interview set up with an inspector by the RPSGB, the PDA is not allowed to send in a representative to support a pharmacist in employment disciplinary situations. Under employment law however, an employee is entitled to be accompanied by a fellow work colleague.

Experience has shown that in the small number of situations where a PDA representative has indeed been allowed to attend an employment disciplinary meeting, this has hugely reduced the likelihood of an improper process.

Consequently, the PDA hopes to be able to provide that valuable support to employee pharmacists on a much wider scale by enabling employed PDA members to act as the official ‘work colleague’ to participate in this important role.

The theory behind this new service is simple, as an employee of their employers organisation, PDA employee members are automatically entitled to attend a disciplinary meeting in the official capacity of ‘work colleague’ within their employers organisation, so long as they are nominated by the employee involved in the disciplinary process. The time spent on performing this role would, in the majority of cases be funded by the employer as part of normal salary. Importantly, it will be necessary for such nominated ‘work colleagues’ to be able to play a meaningful role when they are asked to attend such a meeting and to this end they would need to be trained.

As an employee representative, PDA would provide volunteers with;

- Training to enable them to provide this service within their employer’s organisation. PDA would invite them to a centrally organised training event.
- Access by telephone to PDA lawyers who would be on stand-by in the event that they or the work colleague that they were supporting required instant telephone access to legal advice during a meeting.
- Expenses to cover the costs of travel and any incidental expenditure that they had incurred and that could not be claimed from their employer..
- An extension of their Insurance to ensure that their role was covered.

It is intended to set up a network of such employee representatives within each employer organisation – the larger the employer and the more geographically spread, the greater the number of employee representatives that would be needed.

Subsequently, should a fellow employee be called to attend an employment disciplinary meeting, PDA would arrange for their nearest PDA employee representative to be nominated by them and arrangements would be made for them to attend.

Not everyone will be suited for this important role however, from the experiences of the pharmacists involved so far, it is clear that they find their involvement to be extremely professionally rewarding for them personally and highly beneficial for the work colleagues that they have supported.

Pharmacists who are interested in finding out more about becoming an employee representative, should contact PDA on 0121 694 700 or email us at enquiries@the-pda.org.

POOREST EMPLOYERS PAY THE MOST

…IN COMPENSATION

In the last nine months PDA has secured almost **£90,000 compensation** from employers who have treated their employees unfairly or illegally.

who's defending your reputation?

Most employers manage their employees well, but others don't. Historically, employee pharmacists have had little in the way of support if and when they have found themselves in situations where they are being treated harshly or, sometimes, even illegally. To an extent, this has been one of the reasons why some employers engage in poor employment practice. In dispute situations employers often have a Head Office to fall back on or they can turn to the NPA for advice. They will have their interests well covered – but will you?

We provide our members with advice and support in employment dispute situations. Since the launch of PDA, we have advised and supported more than 300 pharmacists and in some cases have secured compensation payments for them. This has resulted in some employers changing employment practices to avoid problems in the future.

If you feel that you have been treated harshly or unfairly by your employer, then why not do something about it?

You might call it looking after your interests; we would have to agree.

£250,000 worth of Legal Defence Costs Insurance.
Pharmacy employment specialists available.
On-line employment advice centre.

Find out how membership can benefit you;

Visit our website: www.the-pda.org

Call us: 0121 694 7000

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