IS IT WORTH A CANDLE?

Some hospital managers say “Don’t worry, the Trust’s vicarious liability will cover you all”, but can you rely on the Trust to robustly defend your reputation?

Protecting an individual pharmacist, after a serious incident, requires the spirited defence of that individual by an organisation experienced in pharmacist defence. The PDA is solely focused on the pharmacist and does not seek to protect the employer. In some cases, we even draw attention to the liability that should rest with the employer.

So what is the value of your employer’s promise to provide defence?

How can their defence offering ever avoid the conflict of interest that exists?

What is the likelihood that employer funded indemnity lawyers would act in a way that is detrimental to the interests of the employer?

What use is employer’s protection where:

• You resign or are dismissed by your employer?
• You make an error because the Trust’s protocols or staff are at fault?
• You argue in the Court of Appeal that only employers can commit the Medicines Act offence?

If ever there was a time for pharmacists to have their rights protected – then that time is now!

✓ More than £650,000 compensation already secured from employers who have treated pharmacists unfairly or illegally
✓ £500,000 worth of Legal Defence Costs insurance
✓ £5,000,000 worth of Professional Indemnity Insurance
✓ Union membership option available

13,000 pharmacists have already joined the PDA.

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Substantial progress made
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The good, the bad and the problematic
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A focus on membership benefits
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Why we have challenged the precedents of the past

It shouldn’t surprise me that some senior hospital pharmacy managers continue to explain to hospital pharmacists that they need not join the PDA. “Don’t worry, the Trust’s vicarious liability will cover you all” they say. Some have even told their pharmacists in the event that something goes wrong, the Trust can be relied upon to provide legal defence for them.

What use is that if I ask if it may not focus purely on the individual’s interests?

There is a better case to demonstrate why pharmacists should be cautious about this employer message and that they should instead join an effective representative organisation that has a demonstrable track record in defending pharmacists in serious situations, than the case of GLH.

As many pharmacists will now know, we have managed to successfully appeal Elizabeth Lee’s initial conviction and custodial sentence. It is important for all pharmacists to understand why this prosecution even happened at all and why we at the PDA, with Elizabeth’s permission, were determined to use her case to challenge the status quo.

Since the late 1990s a number of high profile cases emerged where pharmacists that had been involved in dispensing errors, linked to the death of a patient but where gross negligence manslaughter had been ruled out, were prosecuted for offences under the 1968 Medicines Act. Such cases included what have become known as the ‘peppermint water case’ and more recently the ‘Prestatyn case’.

No other healthcare professions who make errors at work face further criminal charges once gross negligence manslaughter has been excluded. The relevant practitioner is referred to their respective regulator to face professional proceedings. Not so in pharmacy, where the PDA is uniquely required to pursue criminal proceedings for Medicines Act offences. In addition, the prosecution in both these cases had been focused specifically on the individual practitioner and no significant attention was paid to the systemic working environments that they were required to work under. The person in the dock was a pharmacist, a pre-reg and even the technician – in none of these cases was it senior management or the employer.

We have always believed that the Medicines Act was never meant to punish individual pharmacists in this way and that its interpretation needed to be challenged.

The strategy we pursued in the Elizabeth Lee case is described on page 8, but this plan was only developed after lengthy brainstorming sessions on the legal meaning and the working environments and political considerations were all distilled many times over before we were ready. The plan did not just involve our appearance at the Court of Appeal, but required the garnering of support from within pharmacy, from other healthcare professions, kickstarting the debate about pharmacy protocols at parliamentary level and in government – a process that took more than two years.

It was necessary to research the detail of the Medicines Act and its origins and so went as far as finding a retired legal specialist who had developed the supervision policy handed to the government and invited to participate in a pan-professional review of supervision. This review will need to understand that the custom and practice in hospital and community is very different, as are various environmental factors such as staffing levels and expertise. We expect to be working closely with the professional bodies concerned as the new orders take over, in the meantime, we will be supporting and playing our part in the interim programme described.

Lindsey Gilpin
English Pharmacy Board Chair

“We are totally focused on creating a new policy on supervision which puts the availability of pharmacist at the heart of the remit that we invite the PDA to support this pan-professional initiative.”

Stopping Remote Supervision – what next?

The supervision arrangements in hospital pharmacy are different from those in community pharmacy and there are some very good reasons for this. However, when the government seeks to develop legislation to deliver a supervision model for pharmacy that is meant to fit all sectors of practice, then we have to say NO THANKS!

Many hospital pharmacists are aware of what happened when the RP regulations were imposed on their hospital (see p22).

Consequently, we say that the government’s remote supervision proposals need to be replaced by something that has been thought through properly and that has been developed by the profession instead.

Last winter, the PDA’s Stop Remote Supervision (SRS) campaign saw us back a group of RPSGB leadership election candidates. We thank all those pharmacists that supported our call as action as every one of those candidates was elected by a large margin.

Sadly, the launch of the new regulator, the GPhC, has been delayed until September 2010, as a result the pharmacists that we all supported will not be able to take charge until then.

This is unfortunate, as the current council innately chose not to back a call for the delay of the RP regulations in the summer of 2009 earning the mistrust of many members. Despite the fact that democracy has spoken, and pharmacists have made clear who they wish to be in control of their professional agenda, the current council has decided for its own reasons to cling onto power and through the RPSGB officers elections has not allowed any SRS candidates to take charge of the current RPSGB Council.

We feel that the current council continues to generate it amongst the profession. Despite these setbacks, we are pleased to see that the member supported candidates will not be deflected from their objectives. We have already been contacted by Lindsey Gilpin, the English Pharmacy Board Chair and invited to participate in a pan-professional review of supervision. This review will need to understand that the custom and practice in hospital and community is very different, as are various environmental factors such as staffing levels and expertise. We expect to be working closely with the professional bodies concerned as the new orders take over, in the meantime, we will be supporting and playing our part in the interim programme described.

The Interim Programme

July 2010
- PDA has already had early talks with the leadership of the new PLB and has been invited to take part in the pan-professional plan to resolve the Remote Supervision issue.
- Membership surveys will be undertaken during July, so that the views of pharmacists and the evidence is gathered to support the campaign.
- August 2010
- Based on member feedback, a Supervision Strategy day involving representatives of several pharmacy organisations is to be held with the aim of producing a practical review of the current supervision regulations – an alternative to the current government proposals.
- September 2010
- Initial ideas to be published for consultation within the profession. Opportunities for direct membership dialogue via an open forum at the British Pharmaceutical Conference and other pharmacy gatherings. Direct focus group meetings with pharmacists to be held in various locations.
- Professional dialogue opened up using all available channels (e.g. internet, letters in the PDA, magazine features etc.) so as to gauge the support of the profession.
- Initial draft of the pharmacists views on changes to supervision produced.
- Possible petition of the membership, if needed, so as to show the level of support.
- October 2010
- A new supervision policy handed to the government and the GPhC.

This outline plan has the support of the PDA, and we will be working in earnest to harness the views of PDA members. Watch out for our on-line surveys, petitions and focus group invitations.

We are determined to ensure that the policy on supervision is one that has been developed by the profession after a detailed consideration of how it is practiced in all of its different settings. Furthermore, whatever the result, we will never agree to a policy that allows employers to dictate what level of supervision is required, this must be a professional decision made by pharmacists in the interests of patients. If you want us to succeed then please be ready to offer your direct input and support when called for.

To comment on this article please go to www.the-pda.org

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MUR Update
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We ask that you support us.

Mark Kooter, Chairman, The PDA
RPSGB must not be controlled by the pharmacy multiples says PDA

Society has perhaps rather anxiously stated that it hopes that around 70% of currently eligible pharmacists will join. However, concerns are now emerging about the idea that some of the large community pharmacy multiples will automatically pay their employee pharmacists membership fees. The proposals that have been announced by several of the large multiple groups have all stated that they will review such funding going forward. According to Mark Koziol the PDA Chairman; “I believe that the large pharmacy multiples have controlled the professional agenda for far too long. There has been little in the way of strong representation for community employers, hospital, primary care, academia and industrial pharmacy. The emergence of a new professional leadership body is a perfect opportunity to redress that imbalance. However, if the multiples are allowed to be responsible for a substantialchunk of the Society’s subscription income, then there is a distinct danger that the RPSGB will simply become a mouthpiece for these large organizations and not become the professional leadership body for pharmacists that we all hoped for. I know that RPSGB staff will be concerned for the sustainability of their incomes, however a model that sees the profession effectively controlled by large multiples, could well harm the RPSGB by damaging its leadership credentials. This problem is seen in other organisations. We need the members to genuinely want to join the new body and to be active and whilst the employer funded model may seem attractive, if many pharmacists are only in membership because of their employer’s programme then this could be disastrous.” Continuing he said; “We need the new body to speak up for and be accountable to its pharmacists members across all the sectors, and it should do so without fear or favour. After all, we all know only too well the golden rule – he who has the gold, makes the rules. What the new body does not need hanging over it, is the prospect that if it does not support the multiple agenda, then it may, at the stroke of a pen, lose significant income.”

The PDA is set to meet with the new RPSGB Chief Executive and the President of the National Assembly in September and this will be an item on the agenda. Pharmaciststhat have strong views about this matter should make them known to the PDA.

To comment on this article please go to www.the-pda.org/i113

Disciplinary Committee Chairman oversteps the mark

In its submission to the GPhC consultation on standards, the PDA called for the GPhC to register non-pharmacist managers and directors of pharmacy companies in the future so that they could be struck off if their decisions harmed patients. The good news is that the Patients Association is singing from the same hymn sheet and has asked for much the same approach to be taken in the Health Service generally.

The PDA believes that some of its strategic matters have been neglected in the PDA’s response to the GPhC consultation on standards.

In a statement the health secretary for England, Andrew Lansley, said the report highlighted a point he had made repeatedly; “Patient safety must come first, that means allowing clinicians to focus on the patient’s treatment, rather than the diktas of managers. That’s why we will abolish top-down process targets and replace them with outcome measures, which drive improvements in the quality of patient care.”

The PDA will press the regulator to ensure that non-pharmacist managers are held accountable in situations where their conduct may cause harm to patients. Furthermore, the PDA continues to defend members against the imposition of inappropriate top down targets – such as those set for MURs.

Full details of the PDA submission are available on: www.the-pda.org/gphcstandards

PDA establishes office in Scotland

As membership of the PDA continues to grow, more and more cases are being handled in Scotland and as a consequence, the PDA has now opened an office in Edinburgh.

According to Mark Koziol, PDA Chairman; “Unlike handling cases on behalf of members in England and Wales, when we handle employment and other legal disputes on behalf of members in Scotland, we are often dealing with the impact of different legislation. Because Scotland is a different legal jurisdiction, we are increasingly seeking advice from Scottish legal sources and Scottish organisations. We have therefore decided to open a part time office in Edinburgh so that we can get closer to these issues and be closer to our members.”

One of the respondents warns against “hounding” these pharmacists. “Don’t be seduced by management into making do, thinking you are being heroic; you’re not, you just are being dangerous.”

The author of the report observed; “If anything goes wrong they [the healthcare professionals] are held responsible but they are not in charge. The key is the influence – and often the malign influence - of managers who are concerned with meeting targets.”

The healthcare professionals questioned could so easily have been pharmacists commenting on the way they are pressured into performing MURs or the way they ‘sell on’ MURs, that non-pharmacist managers are required to inherit the liabilities when they are not given the authority or control.

Non Pharmacist managers may harm patients and must be regulated.
Since the Responsible Pharmacist (RP) Regulations came into effect on 1st October 2009, pharmacists have been struggling to come to terms with their new legislative and professional responsibilities. As part of our support to members we have represented a number of individuals through company grievance processes, when they could not get answers to the many questions they had asked.

These grievance meetings tend to have a common pattern, in that company managers do not provide answers at meetings, preferring instead to seek “Head Office” advice. Head Office advice often takes months to arrive and in one case the grievance process took five months to answer the questions. We are of the view that they are treading very cautiously because they recognise the impact of the RP regulations upon their operations may have unwelcome consequences to their levels of control and also potentially a significant increase in their costs.

Nevertheless, from the responses given to the questions recently put, the PDA can now update all members on the latest employer interpretation of the RP regulations.

**Rest Break Procrastination**

After considerable pressure applied by the PDA’s legal team onto the Department of Health, in November 2009, the DoH and its lawyers conceded that the RP regulations had not taken into account the wider employment legislation. The DoH agreed that the RP should not remain signed on during a rest break as this was in conflict with the Working Time Regulations, which requires rest breaks to be periods where a worker must be enjoying an uninterrupted break, they must not be contactable nor be required to remain on the premises. Since then, the plan to find a professional solution to this quagmire was handed to the RPSGB.

However, in the two meetings to which pharmacy body representatives were invited, no meaningful progress has been made. The PDA is now receiving little in the way of progress reports when it pursues the RPSGB for information. It is a great shame that the RPSGB managed to clarify that large multiples could operate certain aspects of their business before the arrival and after the departure of the RP in August of 2009 and yet it appears to be still the issue that most affects pharmacists and impacts upon patients, that of rest breaks, is a matter that it is procrastinating over nearly one year later.

Another large multiple was struggling to find evidence to prove that a long serving pharmacist was responsible for a customer’s medicine going missing from the pharmacy a few weeks earlier, when it wasn’t delivered. The pharmacist was adamant she did not see it after checking it. After four stressful meetings, the company took the new approach that as the RP on duty at the time and that therefore she was responsible for securing the safe and effective running of the pharmacy she was responsible in any event for the pack going missing.

**Contactable Pharmacist**

Alliance Boots have clarified the role of the “Contactable Pharmacist”. If an RP whilst signed on, but absent, is not contactable or able to return within reasonable promptness, another pharmacist - a “Contactable Pharmacist” - must be found, according to the regulations. The other pharmacist must be “available and contactable” which the company define as meaning she is contactable by telephone and available to attend to matters brought to his/her attention by the pharmacy team who are still on the premises. The Contactable Pharmacist may need to get to the pharmacy within reasonable promptness in serious circumstances. The company has clarified that this ‘other’ pharmacist may decline to be the Contactable Pharmacist and in any event there is no additional remuneration or recognition for this role.

**Liability**

Numerous members report that whilst they are not yet signed on or signed out, but absent, members of staff are engaging in activities that are either unlawful under the regulations or have the potential to affect patient safety. We are not aware of any increased pay awards for this new role. Consequently employers have chosen not to consult with their pharmacist workforce. However, employment disputes handled by the PDA suggest no change in interpretation of the new regulations in this way, and consultants have confirmed the same interpretation is in force across a pharmacy.

A supermarket recently dismissed a pharmacist RP who exercised her professional judgment as RP and decided that a member of staff was neither competent nor capable of working in the dispensary. The supermarket decided that the aspiring dispenser’s right to be trained under their dignity at work policy, overrode the pharmacist’s professional decision on how best to satisfy a statutory responsibility to secure the safe and effective running of the pharmacy. The involvement of the supermarket’s lawyer did not provide support to the RP and merely reinforced the corporate view that the RP must work with this person or be dismissed, even though the pharmacist had used showed how well she could operate the carehome business and demonstrated that the dispensing dispenser was incompetent and a risk to patient safety.

**Professional Autonomy**

Prior to the RP regulations, many pharmacists found that no pharmacist company managers readily interfered with and even countermanded their professional decisions. This has not abated since the introduction of the regulations despite the enhanced autonomy the regulations were supposed to give. RPs are frequently pressured to change their minds when they attempt to close the pharmacy rather than to continue operating with unsafe resources. Requests for additional staff and resources by the RP so as to secure safe and effective operations are often denied or ignored.

A supermarket recently dismissed a pharmacist RP who exercised her professional judgment as RP and decided that a member of staff was neither competent nor capable of working in the dispensary. The supermarket decided that the aspiring dispenser’s right to be trained under their dignity at work policy, overrode the pharmacist’s professional decision on how best to satisfy a statutory responsibility to secure the safe and effective running of the pharmacy. The involvement of the supermarket’s lawyer did not provide support to the RP and merely reinforced the corporate view that the RP must work with this person or be dismissed, even though the pharmacist had used showed how well she could operate the carehome business and demonstrated that the dispensing dispenser was incompetent and a risk to patient safety.

**Disciplinary Meetings**

To date, the NPA passed this claim directly onto the RP, arguing that the PC side of the business was neither competent nor capable of working in the dispensary. The NPA decided to secure safe and effective operations are often denied or ignored. The NPA then sought to legalise the quasi-fault finding process to which the company had conceded that the RP should not remain signed on during a rest break as this was in conflict with the Working Time Regulations. The DoH has conceded that the RP should not remain signed on during a rest break as this is in conflict with the Working Time Regulations. As a result of this legislation, disciplinary meetings are supposed to be impartial, have no predetermined outcome with the disciplining manager reaching a decision based on the facts and any mitigation brought up by the employee during the meeting. The company had conceded that there was a situation which creates pressure for pharmacists to abrogate their statutory right to a physical and mental break by intimating they may face a limitation in employment opportunities if they sign out whilst doing so.

The DoH has conceded that the RP should not remain signed on during a rest break as this is in conflict with the Working Time Regulations. Another large multiple was struggling to find evidence to prove that a long serving pharmacist was responsible for a customer’s medicine going missing from the pharmacy a few weeks earlier, when it wasn’t delivered. The pharmacist was adamant she did not see it after checking it. After four stressful meetings, the company took the new approach that as the RP on duty at the time and that therefore she was responsible for securing the safe and effective running of the pharmacy she was responsible in any event for the pack going missing.

**The PD A continues to support members in many individual cases of RP conflicts providing support and assistance where possible. However, the question that is now presenting itself is that if a Stop Remote Supervision campaign is able to forestall remote supervision, then what exactly is the point of having the burdensome RP regulations at all? They are neither in the public’s nor in the profession’s interests. The PDA will be asking the government this question as we move forward as and the Remote Supervision issue is settled one way or another. At that point, we will be seeking membership support. Beyond that, we believe that there is much to demonstrate the caution with which employer led pronouncements on the effect of RP regulations should be regarded. Should pharmacists have doubts or concerns, they should seek advice from the PDA.

**What is the point of the RP regulations?**

The PDA continues to support members in many individual cases of RP conflicts providing support and assistance where possible. However, the question that is now presenting itself is that if a Stop Remote Supervision campaign is able to forestall remote supervision, then what exactly is the point of having the burdensome RP regulations at all? They are neither in the public’s nor in the profession’s interests. The PDA will be asking the government this question as we move forward as and the Remote Supervision issue is settled one way or another. At that point, we will be seeking membership support. Beyond that, we believe that there is much to demonstrate the caution with which employer led pronouncements on the effect of RP regulations should be regarded. Should pharmacists have doubts or concerns, they should seek advice from the PDA.

**Responsibility & Liability**

It appears to us that the largest employers do not accept that being an RP brings significant additional risk or changes liability, nor do they accept that the RP regulations involve any changes to employees contractual terms of employment. The PDA suggest that the employer must remain signed on during a rest break.

However, in the two meetings to which pharmacy body representatives were invited, no meaningful progress has been made. The PDA is now receiving little in the way of progress reports when it pursues the RPSGB for information. It is a great shame that the RPSGB managed to clarify that large multiples could operate certain aspects of their business before the arrival and after the departure of the RP in August of 2009 and yet it appears to be still the issue that most affects pharmacists and impacts upon patients, that of rest breaks, is a matter that it is procrastinating over nearly one year later.

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Substantial progress made as a result of the Elizabeth Lee appeal

The practice that has developed in the last decade for the Police to use the 1968 Medicines Act to prosecute pharmacists once gross negligence manslaughter had been ruled out and where the trend that the PDA was determined to stop, when Elizabeth Lee faced her initial trial in April 2009.

The only appropriate course of action, in the view of the PDA, was that if gross negligence manslaughter offences had been ruled out following investigation then the entire matter should then have been referred to the RPSGB and handled as a professional disciplinary and not as a criminal matter.

Although the PDA had dealt with several potential gross negligence manslaughter cases against pharmacists before, the case of Elizabeth Lee was the first one involving the PDA that was actually going the distance in this case to a High Court. Previous court cases, such as the peppermint water and the Prestatyn cases, which involved Medicine’s Act offences had all been managed by legal teams established through employers. Consequently, this case provided an opportunity to create important legal precedents which would potentially protect pharmacists in the future.

When Elizabeth Lee went to the Old Bailey in 2009 to face two charges under the 1968 Medicines Act, the PDA’s defence team argued that she should not have faced either of the charges as they simply did not technically apply in the case of a dispensing error.

The offence under Section 85.5 – for attaching the wrong label to the medicine, was not an offence that could have been committed by Elizabeth Lee as technically this was an offence that could only have been committed by a pharmacy business.

The offence under Section 64.1 – for providing the wrong product, was a section of the Act that the PDA argued was specifically designed to be used in situations where an adulterated product or a product of a poor quality was supplied and not at all designed to be used in dispensing error situations.

Had these arguments been accepted, then she would not have been convicted. Furthermore, in the future, other pharmacists would have been spared the experience too, as the Police would not have been able to use the Medicines Act in the way that they had previously.

At the original 2009 Old Bailey trial, following an initial not guilty plea from Elizabeth Lee, the PDA’s defence team approached the bench prior to the start of the hearing to put their legal arguments. However, the judge made it clear that it was unlikely that these arguments would succeed. It was also clear that any group made up of members of the public would be influenced by the judge’s directions on points of law which would have significantly reduced the chances of success. This created a further risk: had

Elizabeth Lee been found guilty after initially pleading not guilty, then she would have received a more severe sentence. Consequently, in a tactical move, the plea of guilty was pre-arranged for the Section 85.5 offence (wrong labelling), so as to enable these arguments to be heard in a higher court, the Court of Appeal.

Elizabeth Lee was therefore convicted for an offence under Section 85.5 (labelling offence) but the judge left the 64.1 offence in abeyance.

No one imagined that despite a guilty plea, which guarantees a ‘discounted’ sentence from the court, the judge would then give Elizabeth Lee a custodial sentence. This development was to result in substantial shockwaves reverberating throughout the entire profession of pharmacy and beyond.

The Appeal

The original strategy and legal arguments were maintained and on May 26th 2010, the Appeal of Elizabeth Lee was heard by three senior judges at the Royal Courts of Justice.

Added now to the list of objectives, was the task of overturning the custodial sentence handed down in the original hearing and also to ensure that this was to be the last court appearance for Elizabeth Lee.

The Success

After a considerable legal argument between the defence and the prosecution, the Appeal judges stated that (and we quote) “this was a case that raised novel issues about the construction of the Medicines Act” and they agreed with the PDA’s ‘novel’ construction. Consequently, they quashed Elizabeth Lee’s conviction and as a result, her custodial sentence was automatically erased.

The Disappointment

The Section 64.1 offence (for providing the wrong product) that had been considered at the original 2009 Old Bailey hearing had been left in abeyance. At the Court of Appeal, it was put to the judges that they should consider leaving the Section 64.1 offence in abeyance. This was because Elizabeth Lee had never pleaded guilty to that offence at the first trial. But also and more importantly, because we had been led to believe that new protocols were to be released immediately by the Crown Prosecution Service. These protocols would ensure that pharmacists who commit one-off dispensing errors which are related to a death and where investigations rule out gross negligence manslaughter should be referred to the RPSGB so as to face professional and not criminal proceedings under the Medicines Act.

Had the judges agreed to this proposal, then Elizabeth Lee would have been able to leave the court with no criminal conviction to her name and this was the whole aim of the PDA’s defence strategy.

“We succeeded in raising novel questions about the construction of the Medicines Act.”

However, the Crown Prosecution Service lawyers in a surprising rebuttal argued that no such protocol was imminent as discussions between the various parties that were working on it had reached an impasse. The impression created was that it could even take a year to resolve.

Furthermore, they indicated that if the judges did leave the offence in abeyance as requested by the defence team, then they would in any event instigate a fresh prosecution and trial for offences under Section 64.1 of the Medicines Act.

Full transcript of judgement

www.thepda.org/judgement

Even though the PDA’s team had legal arguments to defend such action, if it came, this was not a viable option as it was no longer appropriate to expect Elizabeth Lee to wait another long period to face the prospect of more court appearances, nor (quite understandably) did she have the desire to do so.

Consequently, under an established legal procedure the prosecution asked the judges to substitute the Section 85.5 offence with the Section 64.1 offence and with the agreement of Elizabeth Lee the judges did this. As far as sentencing was concerned, the judges stated that they agreed with our arguments that the original sentence that had been initially imposed was manifestly excessive and they ruled that the penalty should be a fine of £300 payable within 28 days.

The Result

• The original conviction of Elizabeth Lee for offences under section 85.5 of the Medicines Act have been overturned.

• Pharmacists (unless they are owners) should not be charged with such an offence again (nor for offences under Sections 52, 65.1, 65.2, 85.3, 85.4).

• With the appeal against the Section 85.5 conviction successfully upheld, the custodial sentence originally received by Elizabeth Lee is automatically overturned.

• The substitution of the Section 64.1 offence resulted in a conviction, but with a fine of £300.

The mission to decriminalise dispensing errors continues

Following this case and directly because of the surprise revelations about the alleged impasse over the Crown Prosecution Service protocols, the PDA applied significant pressure to both the Chief Executive of the Crown Prosecution Service and also to the new Pharmacy Minister, Earl Howe. Through previous dealings with Earl Howe on both the Elizabeth Lee case and also on Remote Supervision, the PDA knows that the new Pharmacy Minister shares our concerns. This pressure has been amplified by further letters from parliamentary supporters such as Baroness Camperdale who is the acting chair of the All Party Pharmacy Group.

A twist in the tale

In a further surprising twist to this tale, the long-awaited protocols (described in the next article) were finally and suddenly released not one year after the Appeal of Elizabeth Lee, but just three weeks after. The reality about the delays turned out not to match the report given by the Crown Prosecution Service to the judges in the court of Appeal and we cannot but wonder what the judges would have decided about leaving the Section 64.1 offence in abeyance had they known that they were indeed about to be released.

This last development has created many concerns within the profession and what it undoubtedly shows, is that the world of healthcare practice can truly be a hostile place. Members can be reassured that the PDA has already written to the Appeal Court judges and brought these ‘developments’ to their attention. At the time of going to press, we await a response.
The long awaited CPS Guidance

On 21st of June 2010, just 26 days after the Elizabeth Lee Appeal Court hearing, the Crown Prosecution Service published its dispensing error guidance to prosecutors.

The PDA put the idea of a CPS protocol to the government in the aftermath of the custodial sentence given at the original trial. The protocol was to apply in cases of one-off dispensing error that involved a death, but where gross negligence manslaughter had been excluded by a police investigation. The intention was to ensure that rather than instigate criminal proceedings, the Police would hand such matters to the professional regulator, The RPSGB, to take any necessary action.

While the guidance contains some modest improvements for pharmacists, it also contains bad news, additionally, parts of the guidance simply do not reflect the reality of pharmacy practice.

We examine the detail of the guidance.

**The GOOD NEWS**

- The new February 2010 Code for prosecutors
  - The main code for prosecutors was actually around the Elizabeth Lee situation. Within prosecution for pharmacists. It may have been updated in February 2010. This already contains a brand new test which states; "the suspect has made previous dispensing errors, especially if error logs are being used. We only need evidence that the suspect has made previous dispensing errors, especially if error logs are being used."

- Notification of the Medicines Act review
  - The guidance states that the forthcoming review of the Medicines Act is expected to change how it deals with human error in a pharmacy and it sets a timeframe for the changes to 2012. Despite stating that until the law is changed, the existing code and pharmacy legal guidance should be used, we believe that the very existence of these statements in the guidance is beneficial. If there are any similar cases in the near future, then we will be using this statement to explain to the Police that pharmacy prosecutions should be handled with care.

- Clarification of what the Medicines Act was intended for
  - Our research concludes that the part of the Medicines Act that has been used by the Police (Section 64.1) to deal with dispensing errors was not designed to deal with dispensing errors, but to tackle situations where dishonest medicine suppliers and manufacturers were providing adulterated or below standard medicine to the public — probably to maximise profits.

- The new February 2010 Code for prosecutors
  - The main code for prosecutors was actually around the Elizabeth Lee situation. Within prosecution for pharmacists. It may have been updated in February 2010. This already contains a brand new test which states; "the suspect has made previous dispensing errors, especially if error logs are being used. We only need evidence that the suspect has made previous dispensing errors, especially if error logs are being used."

- Notification of the Medicines Act review
  - The guidance states that the forthcoming review of the Medicines Act is expected to change how it deals with human error in a pharmacy and it sets a timeframe for the changes to 2012. Despite stating that until the law is changed, the existing code and pharmacy legal guidance should be used, we believe that the very existence of these statements in the guidance is beneficial. If there are any similar cases in the near future, then we will be using this statement to explain to the Police that pharmacy prosecutions should be handled with care.

- Clarification of what the Medicines Act was intended for
  - Our research concludes that the part of the Medicines Act that has been used by the Police (Section 64.1) to deal with dispensing errors was not designed to deal with dispensing errors, but to tackle situations where dishonest medicine suppliers and manufacturers were providing adulterated or below standard medicine to the public — probably to maximise profits.

**“The guidance does not guarantee that another Elizabeth Lee situation won’t happen again.”**

This ‘construction’ (as the judges would call it), would have formed an important plank of our defence argument had we had the opportunity to defend Elizabeth Lee’s Section 64.1 offence. We now find, couched in the first line of the CPS guidance the sentence; “The Medicines Act 1968 exists to protect patients from unscrupulous suppliers of medicines.” This statement underpins our arguments if we defend a pharmacist in the future, for it is obvious that a pharmacist who makes a human error is patently not an unscrupulous supplier of medicines.

**The BAD NEWS**

- Responsible Pharmacist (RP) regulations
  - Embellished at the heart of the guidance is the principle that it is the RP who is now required to establish, maintain and keep under review procedures to ensure that a pharmacy is operating in a safe and effective manner. The RP will need to (and we quote) demonstrate that he or she had put in place and operated written standard operating procedures, defining individual responsibilities and accountability, establishing procedures for identifying andremedying poor performance and ensuring that the dispensary team are suitably trained and competent to undertake the tasks for which they are responsible.

- The good news
  - We examine the detail of the guidance.

**THE PERVERSE INCENTIVE**

- Due diligence defence
  - A substantial section of the guidance deals with what it calls due diligence defence. The trouble is that (and we quote) a person can prove that he or she exercised all due diligence to secure that the (Medicines Act 1968) was not contravened and that the contravention was due to the act or default of another person, he or she has a defence to a criminal charge.

The guidance makes reference to the potential liability that is faced by pharmacy technicians in the event of an error. For example if an RP establishes or operates to a robust protocol which is registered pharmacy technician in charge of the dispensary with the pharmacist undertaking only the initial clinical assessment of a prescription. Should the pharmacist then decide to work with patients directly in the consultation room, the counter or another area of the hospital pharmacy who has a dispensing error and gets the prescription and handing out of the prescription to the patient or ward, then in this example, a straightforward dispensing

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**So what is the verdict?**

We asked the CPS for a protocol that made clear that police led prosecutions of pharmacists for one-off dispensing errors were not appropriate and where gross negligence manslaughter had been excluded these cases should be handled to an authority that had the expertise to deal with them. These cases should be handled by the Pharmacy and Regulatory body as a professional disciplinary matter and not as a criminal prosecution.

However, what we got was not a protocol but instead some non obligatory legal guidance which does not deliver this objective. What does not appear to be understood is that once the authorities are involved in trying to prosecute a pharmacist, particularly when a death is involved, then emotive and subjective factors may drive criminal proceedings, even when gross negligence manslaughter has been excluded. At that stage, it is easy to see how there may still be a tendency to overly argue the public interest irrespective of the non obligatory ‘general guidance’ contained in the new CPS publication.

If ever there was any doubt about the extent the CPS will pursue their ‘aspect’, one needs only to study the report of the Appeal Court hearing.

There is nothing contained in this guidance to guarantee another Elizabeth Lee situation does not arise again.

Where to go from here?

We need an urgent review of the 1968 Medicines Act.

The MHPA continues to undertake the review of the 1968 Medicines Act and this is scheduled to be completed by 2012. However, the PDA will now be putting considerable pressure on the government to accelerate its efforts in this area; we need a much quicker change to the Act, even if only to the offending sections in the interim. Whilst the prosecution threat persists, pharmacists may be reluctant to participate in error log reporting, let alone be keen to undertake new pharmacy roles.

We will seek to influence the timing of the review process and also its final outcome. With the detailed understanding of the 1968 Medicines Act acquired for this case, we are well placed to express expert opinion for the benefit of pharmacists. We are aware that other pharmacy organisations are also feeding in their views.

Further to that, we are set to discuss our concerns about the CPS legal guidance with the government with a view of securing some improvements.

Finally, we stand ready to defend any other pharmacists from prosecution in the event that the law is not changed first.

Find the pharmacy guidance at: www.the-pda.org/pguidance

Find the Feb. 2010 CPS Prosecutor’s Code at: www.the-pda.org/prosecutorscode

www.the-pda.org

To comment on this article please go to www.the-pda.org/is/104

www.the-pda.org
The Royal Pharmaceutical Society’s (Registration) rules made under the Order, the power to retain a registrant on the register if there is an ongoing fitness to practice investigation is made explicit. The relevant rules come into force on 30 March 2007.

For the avoidance of doubt, the timelines for how this matter developed are detailed in the enclosed panel.

We believe that the Society deliberately procrastinated until (in its belief) it was too late for our member to do anything about it. Thus they claiming to assume the powers to investigate and possibly discipline her. We feel that this was an appalling abuse of its powers. The PDA expressed its reservations with the Society, but they refused to acknowledge that they had removed her name from the Register and continued to send a renewal and reminder notice.

The form former issue is a subject for another day, but why is the RPSGB relentlessly pursuing a pharmacist, who had removed herself from the Register before the Society assumed the legal powers to prevent her from doing so?

The RPSGB stated that the Pharmacist had removed herself from the Register before the Society had the power to stop her. Her resignation letter and receipt of certificate was acknowledged by the Society, but they refused to acknowledge that they had removed her name from the Register and continued to send a renewal and reminder notice. The former issue is a subject for another day, but why is the RPSGB relentlessly pursuing a pharmacist, who had removed herself from the Register before the Society assumed the legal powers to prevent her from doing so?

The RPSGB will go to in pursuing an ordinary pharmacy registration, who has served the profession with dignity for forty years and decided to (legitimately) retire from the profession because she was so distressed by the manner in which she was subjected to a disciplinary investigation.

The PDA received a letter four days after, but dated on the eve of the date on which the Society was to assume powers under the new Section 60 Order of 2007 (presumably constructed in the knowledge that the letter would be received after powers were assumed) stating that;

"Section 12 of the Pharmacy Act 1954 provides for removal from the register for non-payment of retention fee. In these circumstances Council may direct the Registrar to remove the pharmacist’s name from the register. To date the Council has not directed me to remove [this pharmacist]’s name from the register.

"I am unable to comply with your request to confirm that [this pharmacist] has been removed from the register in accordance with her requirements in her letter(s) of resigning.

Under the provisions of the Pharmacists and Technicians [Section 60] Order 2007
The PDA is aware of some tragic cases where pharmacists have buckled under relentless pressure from managers to meet targets and have even gone as far as resorting to falsifying company records to keep up with unreasonable demands. In such cases, the pharmacist’s work performance is significantly impaired due to a rise in such cases. It is the view of the PDA that some companies may believe that the financial rewards generated from the pharmacist’s work are an “encouragement” to produce large numbers of MURs, which can cause severe strain on the pharmacist’s mental and physical health.

Since the last article on MURs in the Winter 2009 edition of Insight, the PDA has helped hundreds of its members to deal with unreasonable pressure from managers to perform MURs.

The PDA is pleased to note that in every case where members have made their management aware of unreasonable pressure, the pharmacist has been supported and has been able to address the issue. However, Pharmacists should be encouraged by a number of successful experiences where PDA members have had a positive outcome.

**Area manager receives a gross misconduct verdict for aggressive behaviour**

John was subjected to increasingly threatening emails about his MUR performance over a period of six months. John’s area manager refused to believe that he was doing all he could to deliver the MUR target; visits and communications from the area manager became increasingly aggressive. After contacting the PDA for advice, John was advised to keep a diary about his treatment and archive the emails he was sent. John was determined to try and deal with the pressure he was facing with as little fuss as possible and forwar ded some of the worst emails to a senior pharmacist in his employer’s organisation in the hope that this would mean the area manager would stop bullying him. Unfortunately this inflamed the situation and the area manager angrily remonstrated with John at his next visit for going over his head. The bullying got worse after this and John agreed with his PDA case manager that the only option was to submit a formal grievance direct to the pharmacy superintendent.

As part of the support provided to members, John was helped to construct and articulate his grievance by an experienced advisor who also provided personal representation at the meetings. The pharmacy superintendent was provided with an extensive dossier of information and John gave a full account of what had been happening. John had followed the PDA’s advice very closely, the evidence that was presented was overwhelming and after a number of witnesses were interviewed, the pharmacy superintendent upheld every point of John’s grievance and agreed that the behaviour of the area manager was unacceptable and the emails he sent were threatening and aggressive.

John was then asked what he wanted as an outcome to his grievance and decided that due to the behaviour of the area manager which appeared incapable of being rectified, he no longer wished to work for him. As a result of the grievance, the area manager was disciplined for gross misconduct and issued with a severe sanction, including having John’s store being removed from his area.

**Non-Pharmacist store manager is demoted**

Another pharmacist had severe problems with her store manager pressurising her to complete MURs. This non-pharmacist store manager even waited outside the consultation room and harassed the pharmacist in front of patients to see if an MUR had been completed so that he could enter better figures onto his area managers report. The manager’s behaviour gradually got worse and culminated in some very offensive comments being made to the pharmacist after the manager lost his temper with the pharmacist for not meeting the MUR target.

Like in John’s case, the pharmacist was given extensive support to raise a grievance and was represented by a PDA union official at the meeting to discuss her concerns.

As a direct result of the PDA’s intervention, the non-pharmacist store manager was disciplined for gross misconduct and removed from his managerial position. Both of these examples show that by using established employment processes along with support from the PDA, pharmacists can protect themselves from the bullying behaviour that seems prevalent in some organisations.

**Developments at Co-op**

Some pharmacists employed by the Co-operative pharmacy have found themselves invited to disciplinary meetings for failing to meet the company target of two MURs per day. Some documents seen by the PDA confirm that any shortfall in the MUR target on one day has to be made up on subsequent days. This approach clearly has the potential to place enormous pressure on pharmacists when workload or lack of suitable patients makes two MURs per day an impossible goal to reach, let alone three or more on subsequent days. As part of its support to members, experienced PDA representatives have been supporting members who have been called to disciplinary meetings established by Co-op. Ahead of these meetings, they made contact with the HR advisors supporting the disciplining managers in order to request information needed for the members to defend themselves.

The PDA is pleased to note that in every case where members have come to us for advice about being disciplined by the Co-op for failing to meet MUR targets, the meetings have subsequently been cancelled and the allegations dropped after our intervention.
A friend in need is a friend indeed

The PDA set up PDA Plus, our PDA member exclusive benefits package, so as to find a range of services that would save our members money and others that would be highly valued because they are complementary to pharmacists’ professional and work related needs. John Murphy, PDA Director, reviews some of the services.

An important threshold that the providers of these services had to reach before becoming part of The PDA Plus portfolio is that they would work in partnership with us. In other words, if we were to put services under the PDA umbrella, then the organisations that provide them must have similar values and motivations for success to the PDA. In short they must have the individual and their needs at the heart of what they offer.

We now provide ways and means for members to make significant savings on car hire, holidays, eating out, etc (which is dealt with in more detail on the opposite page) and we have a number of organisations that provide services which we see as vital if an individual is going to practice with total peace of mind.

Our partnership with PG

One benefit we are particularly proud to be associated with is the Income Protection Plan from PG Pharmaceutical & General Provident Society.

The consumer magazine Which? opens an article on its website on “Income Protection; how does it work” very pointedly:

“Millions of us have policies like critical illness, private medical insurance and payment protection, sold to us over the years by salespeople who convinced us we needed protecting. However, whilst they were right about the protection, they were wrong about the policies. The one protection policy every working adult in the UK does need is the very one most of us don’t have - income protection (IP).

Do you believe that illness, accident or disability will, of course, never happen to you?

Currently 2.2 million people of working age will be off work for at least six months because of sickness and disability, and more than 2.6 million people are claiming incapacity benefit (source: www.dwp.gov.uk); so clearly it does happen and it can happen very unexpectedly.

I was struck by a posting that I saw on Locum Voice - an electronic community for pharmacy locums. The posting was made just after we had launched The PDA Plus brochure in which we brought our members attention to the PG Income Protection Plan. The ‘poster’ was a young healthy woman who had a particularly nasty tobogganing accident and shared her dilemma with her ‘virtual’ colleagues.

“It was nearly a good start of the year for me, apart from a sledging accident I’ve had on the 9th of Jan. My leg was practically crushed from the knee down, I’ve about 5-6 fractures plus a broken ankle. I’ve been in hospital ever since, I’ve had two operations, nearly missed some other ones...but now I’m home. And wondering, how many of you people are insured for income protection?

When I came back from hospital I was looking through my unopened mail and I found a brochure from PDA where they asked: “In case of an accident, can you manage on government Employment and Support Allowance?”... Well, I can answer that question now, and the answer is no, I can’t manage on 60 quid a week, but how was I to know? See that destroyed woman with long hair in the picture who holds her head in her hands while the husband looks at her from a distance? I could modelo for that, I’ve even got pain and true feelings.

And since I have time, I wonder just how many locums are actually insured. Was I a fool not to get insured, or is it normal?"

There was an interesting range of responses to her question, some admitting that they didn’t have cover but acknowledging that they were running a ‘risk.’ Others told heart-warming stories about how they came to use their IP plan to a very useful effect.

Food for thought

Over the next few insights we will be looking at different ways that you can save the cost of your membership by using the services we offer through The PDA Plus scheme. In this article, we feature the Gourmet Society scheme, which is heavily discounted to members.

“Eating out is one of those luxuries that we are prepared to sacrifice when a recession bites. A survey conducted by market analysts ‘Buckingham Research’ found that three-quarters of British families will stay at home during the recession rather than eat out at restaurants. Couples and single people are also less likely to go out over the coming year.

One of the ways you can maintain your normal ‘eating out lifestyle’ with the added benefit of saving the cost of your PDA membership is by trying out the Gourmet Society scheme, which encourages you to eat out at least as much, if not more for less.

Being a fee paying member of the Gourmet Society entitles you to two meals for the price of one or 25% off a meal including drinks (depending on the establishment).

I was rather sceptical so I tried it out for myself and the scheme, claiming that it has over 3,500 restaurants or eateries, threw up nearly 140 establishments within a 25 kilometre radius of my postcode in Nottingham. I was very impressed; not only were there so many but there were a good quarter of them that I recognised and I had eaten out at a variety of those locations on at least twelve occasions over the last eighteen months or so.

I won’t need any encouragement to get enrolled on the Gourmet Society scheme because I could have saved at least £350 on what I had been billed in those restaurants over that period of time if I had known about it.”

Annual subscription usually costs £35.50, but you can join for just £24.95 and get two months extra FREE.

There are many offers available through PDA Plus which members will be well advised to research before making buying decisions; it could save a lot of money. We have searched for the best companies to partner with and negotiated for the best price.

Go to www.the-pda.org to find out more about THE PDA PLUS

A friend in need is a friend indeed

There is still the myth however that such plans will not pay out to self-employed people however, this is not the case with PG who already work with many self-employed pharmacists. For those of you who think that your employer will give you sufficient sick pay, the Which? article gave advice as to how to assess whether or not Income Protection insurance is a requirement and suggested that you ask these questions of yourself:

• Will your employer pay you a percentage of your salary indefinitely if you are off sick?

• If not, and you are part of a couple, could you pay all the bills and live on your partner’s income indefinitely?

• If not (or you are single) do you have savings you could live off indefinitely?

It further went on to state that in its investigations it found that the vast majority of IP plans give only 50 or 60% of income back to the insured and that (all) policies pay out after you have been off work for a period of time known as the ‘deferred period’.

The good news is that there are options for you to take out a plan with PG which will replace as much as 70% of lost income and they offer ‘Day One Cover’ – especially useful for locums.

In the early days of the PDA, one of our members found himself in a difficult situation. He had had a brain haemorrhage which had kept him off work for some months.

Although the consultant signed him off as fit to do ‘work’ he did not want to work as a pharmacist until he was convinced that he could trust all his cognitive skills. It was sensible for him to ‘work-shadow’ another pharmacist (in a non-earning capacity of course) until he, and the other pharmacist were both satisfied that he was not a danger to the public. I am happy to say that the member made a full recovery.

His then insurers however, once he was pronounced fit to do any kind of work (e.g. stacking shelves in a supermarket or delivering newspapers) no longer continued to pay out. PG, on the other hand, can cover a pharmacist until they are able to resume their pharmacy career - one of the benefits of joining a society which specialises in your profession.

The reason why the relationship between PG and the PDA works is because we have two ‘like-minded’ organisations, both not-for-profit, dedicated to the needs of pharmacists.

What works for us and our members, works for PG.

In addition to this, all PG’s policy holders gain a rare financial advantage in the form of an investment element designed to provide a cash lump sum for their retirement. As a mutual organisation, any surplus is returned to the membership - irrespective of any claims that an individual may have made.

Finally, as a PDA member, we have arranged for you to enjoy a 15% discount off the first three years’ contributions. A friend in need is a friend indeed!

To find out more about income protection go to: http://www.the-pda.org/ldaplus

I could have saved £350.

John Murphy, PDA Director

To comment on this article please go to www.the-pda.org/ij107

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Workplace Pressures Campaign - Is the RPSGB the solution or part of the problem?

The PDA recalls numerous meetings going back over several years with senior RPSGB officials, prior to spring 2009, where it tried to push the Society into acting on workplace pressures and to force employers to improve working conditions.

The Society wasted several years as it continued to deny its very existence due to what it claimed was a lack of evidence.

So although it came out of the blue, the PDA cautiously welcomed the U-turn in the spring of 2009, when the Society announced that it was now to launch its Workplace Pressures Campaign.

This RPSGB initiative was launched in a high profile PR campaign which at times almost appeared to indicate that the Society had discovered a shocking (and hitherto unknown to anyone else) problem within the profession - that thousands of pharmacists are suffering from unacceptable levels of stress in the workplace.

The campaign was to be personally spearheaded by no less than the Society’s President Mr Steve Churton.

Question mark over RPSGB commitment

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In January 2010, Alliance Boots announced that it proposed to cease accrual of benefits under the defined benefits (final salary) pension scheme with benefits from that scheme (reflecting salaries and length of service at the date of closure of the scheme) being transferred to a new employer.

In its place the company introduced a ‘defined contribution scheme’ the final benefits of which will depend on the contributions made by the employer (supplemented by the employee)

There are more than 1000 PDA members working at Alliance Boots and on their behalf we took issue with the following matters;

The current scheme was not in deficit

The final salary scheme had already been closed to new staff and as it was in surplus, there seemed to be no reason for the company to change the scheme for current members other than to take advantage of the current downturn in the economy to reduce its contributions to the pension fund and transfer greater risk from the employer on to the individual.

Financial implications

Our members who were currently in the defined benefit scheme could be disadvantaged financially by being moved to the new scheme. Although the company state that they will receive a contribution of employee to employer of 1:2, this may not compensate for the losses they would have accrued through staying in the original scheme.

The method used to close the scheme

Having made a proposal to cease accrual of benefits under the scheme the method used by the company to achieve this was in our opinion and that of our expert advisors not illegal, but not within the spirit of the law.

The vehicle used by the company to move employees from one scheme to another was TUIP- Transfer of Undertakings (Protection of Employees) legislation. The original purpose of this was to protect employees’ rights when they have been taken over by another employer; however pensions are exempt from transfer under this legislation and by setting up a new company (a vehicle still owned by Alliance Boots) and transferring all employees into it, Boots had no obligation to transfer the original, more preferable pension scheme to the employee. If the employee had refused to transfer to the new company then potentially they could have been dismissed. We believed that this was outside the TUPE legislation for purposes for which it was not intended. And frankly what option did the employee have but to accept it?

The consultation

We wrote to the Chief Executive of Alliance Boots setting out our concerns and they have set out to justify their consultation process. We have pointed out in reply that;

• Although the company was obviously happy to consult with the ‘in house’ Pharmacists’ Association (PDA), it did not appear to wish to do so with the PDA even though PDA has more pharmacist members than does the BPA.

• The company argued that it would have been prepared to stop the reform of the scheme based on the results of the consultation process, but we find this difficult to accept given the time taken within which such a major decision was made. This massive logistical exercise involved consulting with 45,000 employees, amending the proposals, getting applications made to the new scheme and transferring everyone to the new management services company. This could not have been done without many months of preparation yet executed in three to four months (however, this timescale did comply with the legal requirements for consulting with employees).

• We have asked why the TUPE regulations were used for purposes for which they were not intended, but have received no response.

To comment on this article please go to www.the-pda.org/ij109

To comment on this article please go to www.the-pda.org/ij110

Contesting the new Alliance Boots staff pension scheme

Who is trying to protect your pension nest-egg?

Members’ rights to reserve their position

Within the process, there appeared to be no space for contingency; this was a company with a mission! Many of our affected members were concerned and wanted to know how they could resist the momentum and how to protect their rights. We recommended that they should enter into the new pension arrangement as so they would not be disadvantaged but should “reserve their rights” to challenge the clause which made it conditional that they waive their rights to any accrued benefits from the ‘old’ scheme. This would create a true test of the company’s flexibility.

However, Alliance Boots informed the PDA that they would not accept any ‘reserving of rights’ and would deem such applications to be invalid thus making members ineligible for entry into the new scheme from 1st July and that as a consequence their death in service benefit would be affected.

The PDA had taken expert, independent legal advice at every step of the process and passed it on to our members. We believe that our advice was appropriate and reasonable.

The PDA has reverted to the Pensions Ombudsman in the hope that they will make a challenge. However, we have been warned that the likelihood of success is limited. Through our parliamentary connections, our hope is that in future, at least the loophole in TUPE legislation can be closed to prevent large employers using TUPE in such a way.

The PDA awaits a response from the Pensions Ombudsman.
A focus on HospitalRP issues – why hospitals should be exempted from these regulations.

It is well known that the RP regulations were primarily designed for application in the community setting. However, as the RP regulations came nearer, it became clear that the RP regulations would impact upon hospital pharmacy practice to a much greater extent than anyone had previously imagined.

The RP regulations create a number of new operational requirements that must be met by RPs and create new criminal offences for those who fail to observe these, such as for not making a record and for not keeping the record for five years. It is obvious that these regulations were all about being able to hold individual pharmacists to account in the event of a problem. Bearing in mind that the profession has just about had its fill of needless exposure to criminal convictions and the fact that our research showed that the profession was just not ready for these new regulations, the PDA called for a delay to the implementation of the regulations in July 2009. This call for a delay was backed by a petition, which attracted more than 5,000 pharmacist signatures. A delay would have given a period where the professional could try and bed in the regulations away from the threat of professional and criminal sanction.

When the RPSGB Council came to consider this, they asked whether the Guild of Healthcare Pharmacists felt that hospital pharmacy was ready to implement the regulations. Surprisingly, the Guild position was that it was quite content for the regulations to go forward on October 1st. Sadly, the Guild chose not to support a call for the delay, notwithstanding the exposure of hospital pharmacists to criminal sanctions that the regulations would produce. The RPSGB Council then voted not to support the PDA’s call for a delay and the RP regulations went live on October 1st 2009.

“Surprisingly, the Guild position was that it was quite content for the regulations to go forward on October 1st.”

Since then, there have been growing concerns being expressed by hospital pharmacists about these regulations and we decided to establish whether this is a localised problem or something much broader. Members will have seen that we have undertaken various surveys and member feedback initiatives. This feature takes a snapshot view of how the RP regulations are currently perceived by hospital pharmacists. The results of our findings are worrying and they bring us to conclude that the regulations serve no useful purpose in hospital pharmacy. The capacity of hospital pharmacy to be able to observe the RP regulations to the letter of the law is limited and as a consequence, some hospital pharmacy departments are not at all able to meet the requirements. This exposes pharmacists to the prospect of criminal and professional sanction. Worse still, where attempts to comply with the regulations are being observed they significantly hinder hospital pharmacy operations and in some cases even lead to the closure of some patient services. We examine specific aspects of our findings;

Insufficient preparation leads to a lack of clarity and perception.

The various government departments commenced some additional RP work to focus on hospital practice in the summer of 2009. The hospital RP toolkit was not released until the end of August, leaving just a few weeks before the implementation date. This meant that many senior managers were not ready to induct their departments in time for the initial start date. Surveys have shown that many hospital pharmacists did not receive a briefing about the RP regulations before October 1st, at which time is that nine months later, a significant number (in excess of 40% of respondents) claim that they have still not had an RP induction.

While the absence of an induction is obviously problematic, it is becoming apparent that some senior managers are still not at all clear about the regulations.

Comments from some senior managers which have been received by the PDA include;

“This is all about one pharmacist signing other pharmacists in and out on a rota system.”

“The RP regulations do not change anyone’s culpability, I would still be made answerable for any errors.”

“These regulations make no difference to those signing on as RPs.”

The fact that this is a wider problem is confirmed by responses that we are receiving from many more junior pharmacists when they confirm that their concerns are not being addressed by management;

“When we organise meetings to try and get some answers about RP, there is clearly a great deal of confusion.”

“We are just not being offered the full legal implications of the role of the RP.”

“The Chief Pharmacist told us that it didn’t really make any difference to us, we raised some objections, but they did not listen.”

“The dispensary manager is a technician and could not answer all the issues that we raised.”

“I have been filled into a false sense of security as I have never been told what I am signing up to do.”

Clearly, there is also evidence to show that many pharmacists do fully understand the regulations, however, in those cases, they are frequently able to offer powerful testimony as to their operational unworkability.

A general review of the many responses that we have received show that many hospital pharmacists just don’t know what they don’t know. This has led to many of them acquiescing to being RPs because it is the ‘done thing’ and because it is expected of them – they do not want to be seen by management as being awkward.

Even the most basic examination of the regulations will confirm that the RP regulations are anything but “business as usual” requiring RPs to take new statutory responsibility for significant aspects of the pharmacy operation and for them to comply with specific operational activities. We are not supportive of the application of the RP regulations in the hospital setting, but we nevertheless advise pharmacists who have not had an RP induction, or where there is a lack of clarity about the regulations, that they are facing unacceptable risks and may find themselves the focus of criminal investigations, which some prior planning could have otherwise mitigated.

We urge senior pharmacists to establish what their hospital’s ‘RP’ policy actually is and to ensure that it is fully compliant with the regulations. Once that is established, then this should be communicated to all those affected by it in an unambiguous way. Any departments that have not yet provided a formal induction of the RP regulations should seek to urgently address this.

What about insurance arrangements?

Some pharmacists, when they complain about the lack of information from senior management about RP regulations, are simply being told “Don’t worry, the trust’s vicarious liability will cover you.”

What they are saying is that if a pharmacist falls foul of the RP regulations and ends up with a criminal, professional or employment sanction, then the Trust will stand up to defend the pharmacist. This advice is seriously misinformed. That this suggestion could even be contemplated, demonstrates that those who make it have no idea of what an employment, criminal or professional investigation can look like. From the many thousands of cases handled annually by the PDA, we can confirm that no hospital pharmacist should be satisfied with such a response as in reality, employers will be much more interested in making sure that their reputations remain intact. Indeed, if a hospital pharmacist is the subject of sanctions due to falling foul of the RP regulations, judging by the results of surveys that we are receiving, it is very likely that we will be seeking to draw Trusts into the firing line for a lack of proper preparation for these regulations.

The unworkability of the regulations.

It is now obvious that aspects of the regulations do not fit easily in the hospital pharmacy setting. This ‘infit’ situation manifests itself in numerous ways;

- Junior staff are left to sign on as RPs simply because they spend more time in the dispensary. However, because they tend to have a hierarchy of more senior staff in managerial positions above them, they cannot exercise the professional control that the regulations would require them to. It is therefore inappropriate to expect them to deliver and review departmental protocols and to hold them responsible for securing the safe and effective running of the pharmacy.

- This is the way the RP regulations are holding them to account.

“The dispensary is managed by technicians who are in positions of authority, they tell me what to do even if I as an RP disagree, they are also in charge of all of the other dispensary staff.”

- RPs are often not in a position to make any clinical interventions on prescriptions as the clinical pharmacy input is being made remotely (usually on the wards). Consequently, many pharmacists are very reluctant to sign on as RPs as the regular functioning of the hospital pharmacy service mitigates against the intended application of the regulations.

- Our surveys are showing that routinely, RP registers are not being maintained, as required by the RP regulations, resulting in many departments operating unlawfully, in some hospitals, certain individuals are even given a specific mop up role where they sit down to fill in the gaps by entering lists of pharmacist names into the RP registers. Whilst this may be a pragmatic approach, it makes a complete mockery of the regulations.

“I have been given the job of RP monitor, it is my job to fill in the names.”

- Because of the regulations, some patient services such as out of hours supplies to other hospitals have been reduced. Others, such as specialist satellites or even satellite pharmacies in community hospitals have been closed down making life more difficult for patients. It would appear that these regulations are of no benefit to hospital pharmacists and that they are also impacting in ways which were not anticipated on patients.

The RP situation in hospitals is a subject that could fill an entire magazine. As a junior pharmacist in the organisation, I seriously think that this regulation needs to be reviewed as a situation where I sign on as being responsible for safe and effective operations which are outside of my control and beyond my competency is unlikely to be beneficial to the patient, the profession or the organisation.

Once all of the data has been analysed, the PDA intends to make contact with the Pharmacy Minister asking that he exempts hospital pharmacy from the regulations. In the meantime, we ask that all hospital pharmacist members participate in our ongoing surveys, as the more information that we can gather, the greater will be our chance of securing some positive outcomes.
IS IT WORTH A CANDLE?

Some hospital managers say “Don’t worry, the Trust’s vicarious liability will cover you all”, but can you rely on the Trust to robustly defend your reputation?

Protecting an individual pharmacist, after a serious incident, requires the spirited defence of that individual by an organisation experienced in pharmacist defence. The PDA is solely focused on the pharmacist and does not seek to protect the employer. In some cases, we even draw attention to the liability that should rest with the employer.

So what is the value of your employer’s promise to provide defence?

How can their defence offering ever avoid the conflict of interest that exists?

What is the likelihood that employer funded indemnity lawyers would act in a way that is detrimental to the interests of the employer?

What use is employer’s protection where:

- You resign or are dismissed by your employer?
- You make an error because the Trust’s protocols or staff are at fault?
- You argue in the Court of Appeal that only employers can commit the Medicines Act offence?

If ever there was a time for pharmacists to have their rights protected – then that time is now!

- More than £650,000 compensation already secured from employers who have treated pharmacists unfairly or illegally
- £500,000 worth of Legal Defence Costs insurance
- £5,000,000 worth of Professional Indemnity Insurance
- Union membership option available

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