

Locum Booklet

2009 - 2010

Rights & Responsibilities

THE PDA  **union**
strength in numbers

FOREWORD

Dear colleague

You don't need me to tell you how lonely and isolated the role of a locum can be when you find yourself with a problem or in difficulty at work for one reason or another.

It could be because you have turned up for a booking and you are told that you are not needed, or indeed not even expected; it could be that you fear for your safety when patients verbally or racially abuse you, or even more commonly these days that you have turned up to a pharmacy at which you expect to find sufficient staff to operate it safely but the reality is far from the truth of what you were led to believe. Self-employed locums with no employment or grievance rights always found it difficult to know where to turn for the best until the PDA emerged.

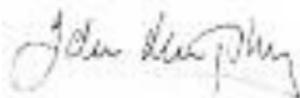
We set up the PDA in 2003 to give individual pharmacists, who felt vulnerable or unfairly treated, a focal point where they could find impartial and supportive advice given by legal and pharmacy experts whose sole job purpose was to defend and protect them.

We extended our representative rights and influence when we became a union in 2008 and last year we handled nearly 3000 queries of which over a fifth involved locum contract disputes. As such incidents are becoming more frequent, we have responded to our members' wishes by producing this guide to clarify your rights and to set realistic expectations in remedying any dispute or professional dilemma.

This booklet is not the definitive self-help guide to every problem that locums will face, but we have given you enough information in this publication to help you become more self-sufficient with immediate access to a reference source - at least until you can access more specific advice through the PDA.

The booklet is based on the experiences of the legal experts in the PDA, Orla Sheils in particular who has managed the delivery of this project, and with the support and input of the Locum Membership Group of the PDA Union. Whilst writing this foreword, I am reminded that the PDA Union will only thrive and become even more influential if practicing pharmacists become involved at grass roots level; I am therefore using this opportunity to ask you to consider playing your part by getting involved.

I recommend this booklet to you and I am proud to present another exceptionally useful risk management resource created by the PDA and PDA Union.



John Murphy, General Secretary The PDA Union

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CONTRACTUAL ISSUES

- **Your status**

Not everyone who works is an employee, for example employed under a *contract of service (the Employment Contract)*. Often individuals will set themselves up as independent contractors who work under a *contract for services* referring to themselves as locums.

Before deciding whether you should work as an *employee*, a *self-employed* contractor or even a *worker*, you should consider what each category of working individuals means, the rights that you will have depending on your status and what will work for you.

Employee

The majority of people who work are employees and work under a contract of employment. This should be in writing but can also be implied from your actions and those of the person you work for. The general test is that if there is a sufficient level of control over you, you are obliged to do the work given, and there is a requirement to do the work personally, you will normally be classified as an *employee*. As an *employee*, you can expect to be protected by employment legislation in respect of making a claim for redundancy payments and unfair dismissal, in addition to having the right to receive a written statement of the terms and conditions of your employment, statutory sick pay, statutory maternity, paternity and adoption leave and pay, among other benefits.

Self-employed

As a *self-employed* individual, you will effectively decide where you work, when you work and how you work. You will most likely provide your own equipment, you will negotiate your fee and could even be at liberty to provide another individual to do the work if you choose to. True self-employment therefore has the effect of a commercial contract between the parties. As a *self-employed* individual, certain rights afforded to those working as *employees* and *workers* do not apply to you. You do have some legal protection however which comes in the form of having the right not to be discriminated against and to enjoy a safe working environment whilst providing your services.

Workers

The definition of a worker can be less clear cut and in certain circumstances could include freelance locums. PDA employment lawyers will be able to confirm your status which will need to be clarified on a case-by-case basis.

TABLE OF RIGHTS

	Employee	Worker	Self-employed
Written Statement of Terms and Conditions of Employment	✓		
Rest Break Entitlement	✓	✓	
Maximum Working Week	✓	✓	
Paid Holiday	✓	✓	
Statutory Sick Pay	✓	✓	
Maternity Pay or Maternity Allowance	✓	✓	✓
Maternity Leave	✓		
Paternity Pay	✓	✓	
Paternity Leave	✓		
Adoption Pay	✓	✓	
Adoption Leave	✓		
Unfair Dismissal	✓		
Redundancy Payment Claim	✓		
Discrimination	✓	✓	✓

- **Entering into a locum contract**

Regardless of the route that you take to provide your services we feel that it is essential that you formalise the arrangements you make in writing to avoid any ambiguity and a possible dispute between all parties.

The absence of a written agreement is what causes us the most difficulty when advising our membership in general. Whilst you may enter into a relationship with the intention of becoming a self-employed locum for example, the end user (the company, organisation or establishment that uses your services) and even agencies may have other ideas perhaps considering you to be an employee or worker. If there is any dispute concerning this at a later date then it can be extremely difficult to prove your status and some of our members wishing to be classed as employees have had to take their cases to the Employment Tribunals to have their status determined. In addition to this, not having a written contract in place could result in unnecessary enquiries from Her Majesty's Revenue & Customs (HMRC) regarding your status and tax liability.

When deciding what to include in your agreement you should as an absolute minimum always make provision for the following:

- Date of booking
- Duration
- Location
- Hours of work
- Hourly rate
- Travel or other expenses including mileage rate and any cap
- Notice period to be given or received in the event of cancellation by either side
- When you expect to receive payment

Other things you may wish to include could be a brief description of your duties, the workload you may have and details of staffing levels on the day. If you do not include these terms you could find yourself involved in a dispute. It may well be the case that you agreed verbally to provide your services for a higher rate than the end user usually pays for example, however, if there is any dispute concerning this at a later date then it could be extremely difficult to prove that any such agreement was made and consequently claiming the higher than usual rate could be a struggle if not impossible.

You should be wary of signing contracts that state you accept liability for any commercial losses incurred by the end user. Unless you have our Business Consultant policy the insurance that you have in place is unlikely to cover you for such losses and you could find yourself in the position of having to pay the end user a substantial sum of money in certain circumstances.

While many end users will have contracts in place for you to sign, we have prepared one which has been approved by HMRC for locums to use in whole or part and this can be found by visiting our website

www.the-pda.org

- **Cancellations before or on the day of a booking**

Once you agree to provide your services, the intention is that you will arrive on the day and do so. In some instances however, you will be contacted by the end user or agency if one is involved and informed that your services are no longer required. Alternatively this may not even occur until you actually arrive at the premises.

In such circumstances, we believe you are entitled to claim your fee for the day unless you have agreed in writing not to do so for example if the booking has been cancelled within an agreed notice period. The reason for this is that the end user has entered into a contract with you, that you will provide your services and you will receive payment for the same. By deciding to cancel this agreement, the end user is in breach of that contract. If you are unable to mitigate your losses by accepting alternative work then you have good grounds to claim your fee for the day or even the remainder of the booking.

With our help some of our self-employed members have been successful in claiming for a few days or months worth of work citing that they were unable to mitigate their losses. These cases have been settled before the hearing stage of the claim so at present, we have little guidance from the Courts regarding the length of notice that is acceptable when cancelling a booking. There appears to be an industry norm of three working days notice which we do not consider as being appropriate however as in our view this does not give enough time to either party to make alternative arrangements.

If your booking is cancelled **before the day of the booking** we recommend that you do the following:

- Ask the end user or agency to confirm matters in writing, by letter, email or even text.
- Contact them in writing explaining that they are in breach of contract by cancelling your booking and by providing you with insufficient notice contrary to your agreement or if no notice has been agreed in circumstances which make it impossible for you to mitigate your losses.
- Explain that you wish to be paid your fee for the day or the remainder of the booking or will accept the offer of another placement which must be a suitable alternative.
- If you have no success obtaining a suitable alternative placement submit your invoices as if you had provided your services minus the travelling expenses with a covering letter explaining matters and wait 30 days for payment.
- If you have still not received payment contact us and we will assist you further in attempting to recover your fee.

If your booking is cancelled on the **actual day of the booking** we recommend that you do the following:

- If you are at the pharmacy ensure that you speak with someone with authority to make a decision regarding whether you should remain and provide your services or leave the premises. This should always be an employee and preferably a manager.
- Contact the recruitment agency if you have been booked to provide your services through one. The agency will be anxious to protect their fees and should speak with the end user with a view to resolving matters.
- If you are told to leave ensure that you explain that you are available for work and intend to claim your fee for the entire duration of the booking.
- Submit your invoice as if you had provided your services including travel expenses if incurred with a covering letter detailing the incident and who was involved. Wait 30 days for payment.
- If you have still not received payment contact us and we will assist you further in attempting to recover your fee.

- **Can I cancel?**

In certain situations, you may need to cancel bookings. If you find yourself in this position we suggest that you give serious thought as to whether the period of notice you are providing is appropriate. The implications of failing to do so may be that you are reported to the 'regulator' in respect of failing to honour your commitments. Alternatively, the end user could decide to pursue you for any losses they have incurred. This could include and would not be limited to the increased costs of having to engage the services of another locum at an emergency rate or lost business as a result of the pharmacy being closed. Events that are unexpected and clearly beyond your control such as travel disruption, serious illness or the sudden death of a close relative should be good enough reason to permit you to cancel your bookings without providing the agreed period or a reasonable period of notice.

Another option that you have of course is to delegate the work you have accepted to another suitably qualified individual. This is one of the key principles of being classed as self-employed and whilst the end user has to consent to such a change, consent cannot be unreasonably withheld. In order to avoid disputes over the period of notice that should apply we strongly recommend that you stipulate in writing what period should apply. Furthermore, if you do need to cancel a booking for whatever reason you should inform the end user of your decision in writing setting out your reasons and keep a copy of this for your own records.

- **Unpaid fees**

Regrettably there will be occasions when you have provided your services, submitted your invoices and have not received payment despite waiting a number of months. We currently provide a discretionary service to our locum membership to assist with the recovery of these fees which are classed as debts. Before we get involved, we recommend that you write to the end user and if you receive no success after a 14 day period then contact us.

For your convenience, we have included a sample letter for you to use when claiming for your unpaid fees:

Dear (Pharmacy Manager/Area Manager)

Unpaid fees

I refer to the above and write to advise that I have not received payment of my fees in respect of services that I provided to your company on 1st January 2009.

The terms I agreed with Miss Smith via <Locum Agency> were as follows:

1st January 2009 Branch 123

8 hours @ £25.00 per hour

Travel expenses 236 miles @ 40p per mile plus £2.50 parking fee

Total Amount Due: £296.90

This amount has been outstanding for <X months> now which is unacceptable and I would therefore be obliged to receive payment within the next 14 days.

If payment is not received by then I will unfortunately have to consider pursuing this matter further.

I look forward to hearing from you in due course.

Yours Sincerely,

Mr. Jones

Court action is your final remedy and should you wish to pursue matters through the courts our advisers will be happy to explain the process to you and the level of assistance that we can offer. The service that we provide is not underwritten by your insurance and each case is decided on its own merits. At the stage of progressing matters to court it will be possible for you to claim interest for late payment of your fees, some award of compensation, and you may be able to recover the court fees and whatever the Court thinks is fair in terms of your lost earnings and travel expenses incurred in having to attend court.

- **Agency issues**

Whilst many of you will provide your services directly, some of you will find recruitment agencies to be of great benefit in securing bookings. If you decide to approach an agency you should make yourself aware of the relationship that you are entering into. **You should establish whether you will be a self-employed individual, a worker or an employee and ask for written confirmation of this.** If the intention is that you will be self-employed you should ask whether the agency considers that it has any contractual relationship with you or whether it is merely the facilitator of a contract that exists between you and the end user. The reason for this is that sometimes when things go wrong, for example communicating a cancelled booking to you, the end user and agency involved can seek to blame each other and you can then find yourself unsure of who to pursue for your losses.

Over the years our members have sought advice from us regarding issues that have arisen with their agencies. Some have been told that they will have to pay administration or introduction fees if they cease working as self-employed individuals and become employees of the end user. Others have been informed that they are prohibited from providing their services to certain end users with other agencies or from providing their services in certain locations. If you do decide to work through an agency we recommend that you find a reputable business. Read through any terms and conditions they may have carefully and be wary of those agencies who try to restrict your work or promise that you will receive much higher rates or enhanced benefits which have not been authorised by the end user and which will ultimately be challenged by them at the point you expect to receive payment.

For those of you who wish to complain regarding the conduct of a recruitment or employment agency you are able to do so by contacting the Employment Agency Standards Inspectorate at the Department for Business, Innovation and Skills.

- **Business transfers or service provision changes**

As an employee, when there is the transfer of a business undertaking or part of a business to a new owner or there is a service provision change, your terms and conditions should be safeguarded as if your original contract of employment was made with the new owner. **As a self-employed individual, you are not protected by the same legislation** and when there is a change you may well find yourself in the position of having your contract terminated. Any rights you have are as set out in the agreement you have with the end user who is transferring the business. As long as you are permitted to provide your services for the duration of the agreement in place or you receive the requisite period of notice to cancel your bookings you will unfortunately have no legal remedy in such a situation. If you have not received notice of the transfer please feel free to contact us and we can advise you of your appropriate remedy.

If you are providing your services and the employees you work alongside are being made redundant, you will not be entitled to claim a redundancy payment as only employees with two years service are eligible to do so.

- **Administration and liquidation**

In the recent economic climate many businesses have been forced to not only reduce their workforce but to cease trading altogether. There may be enough assets to pay all the debts of a company however some creditors may not receive payment if there is not enough money available. As an alternative to liquidation, administration may be considered. This is a court procedure which allows companies to exist in whole or part as ongoing businesses giving them some time to sell assets for greater value than it would perhaps have been possible if the company went into liquidation. It is also possible for a company to come to a compromise agreement with its creditors. If companies are facing these difficulties Administrators or Insolvency Practitioners will be involved and if you have an outstanding claim for locum fees you should direct your enquiries to whoever is appointed asking them if and when you will receive payment. They will be able to tell you where you are placed on the list of creditors.

- **References from end user**

There is no right for anyone to receive a reference from an employer or end user however if a reference is given employers and end users are bound to ensure that it is accurate. If you have concerns regarding the content of a reference you should ask that you are provided with a copy of the reference given relying on the Data Protection Act 1998 so that you can establish if there is merit in challenging matters.

- **Tax implications**

Being a self-employed locum can have tax benefits for the locum pharmacist and the end user. But beware, Her Majesty's Revenue & Customs (HMRC) have rules as to what constitutes a pharmacist's employment status; they are not interested in what you **CALL** the relationship that you have with the end user, they are only interested in the **NATURE** of the relationship. Here are some things to think about to protect your self-employed status and to differentiate yourself from an employee.

Hints & tips to protect your self-employed status with HMRC:

- Have a 'Contract for Services' in place.
- Pay your own tax and NI contributions.
- Be wary if the pharmacy at which you provide your services is your only source of income; if your only income is derived as a self-employed person performing locums, it is preferable to have as many as three different pharmacies to which you are contracted on a regular basis. Operating through an agency may also be proof of the test.
- There should be a level of personal risk in running your own business; for instance carrying commercial liability for any losses sustained as a result of your negligence usually articulated through the 'Contract for Services'.
- Ensure that you correct unsatisfactory work in your own time.
- Provide your own equipment; always take a MEP/BNF and your own work wear with you.
- Consider sub-contracting (usually with a person approved by the pharmacy owner).

HMRC may question your self-employed status if:

- You work solely for one employer.
- You receive 'Employee Perks' such as bonuses.
- You wear the employer's uniform.
- You undertake managerial or administration duties such as recruiting, inducting and training staff, are a key holder or perform such activities such as cashing up and claiming for staffs' wages.
- You have little control as to when you work, the activities which you undertake and the freedom over which you have to perform them.

For those of you seeking advice regarding tax matters your policy may entitle you to receive general advice relating to any investigation conducted by HMRC into your personal tax affairs. We suggest that you contact us on 0121 694 7000 with any queries at the early stages of any investigation and it is a requirement of your policy to do so in any case. Alternatively if you require general information regarding tax liability when becoming self-employed you can access the Inland Revenue's website **www.hmrc.gov.uk**.

We advise that you instruct a good accountant from the outset or go to our website and access PDA Plus for details of discounted accountancy services.

HEALTH AND SAFETY GUIDANCE

- **General duty of care**

All workers, whether they are permanent employees, agency staff or self-employed contractors are entitled to work in environments where risks to their health and safety are properly managed by their employer or end user (the company, organisation or establishment that uses your services). The basis of British health and safety law is the Health and Safety at Work Act 1974. This sets out the general duties which employers have towards employees and the general public. There are various regulations that have also been approved by Parliament which are intended to complement the general duties imposed by the Act.

The Act and Regulations cover:

- Provision and use of work equipment
- Personal protective equipment
- Manual handling procedures
- Noise levels
- Display screen equipment
- Temperature levels
- Toilet and washing facilities
- Drinking water
- Rest facilities
- Changing facilities

- **Responsibilities of employer/end user**

- Appropriate equipment to enable you to carry out your role should be provided.
- Employers/end users should ensure that staff you work alongside are competent.
- There should be enough toilet and washing facilities for use for instance 1 toilet and 1 washbasin for up to 5 people at work.
- Hot and cold running water should be provided with enough soap or other washing agents.
- Drinking water free from contamination should be provided.

- There should be a suitable seating area for you to use during rest breaks which needs to be clean and located where food will not become contaminated. There should be a means of heating food or water for hot drinks.
- If your work activity requires you to wear specialist clothing you must be provided with enough changing rooms for the number of people expected to use them.
- Lighting should be sufficient to enable you to work and move about safely.
- Fresh clean air should be drawn from a source outside the workplace and circulated through your workspace.
- For workplaces where the activity is mainly sedentary the temperature should normally be at least 16 degrees centigrade.
- Furnishings and fittings should be kept clean as well as floors, walls and ceilings.
- Workspaces should have enough free space to allow people to move about with ease. The volume of the room when empty, divided by the number of people normally working in it, should be at least 11 cubic metres.
- If work can be done sitting, seats should be provided. Seating should give adequate support for the lower back and footrests should be provided for you if you cannot place your feet flat on the floor.
- Doors and gates should be suitably constructed and fitted with safety devices if necessary.
- Adequate, suitable and secure space should be provided to store your own clothing and any special clothing.
- Suitable rest facilities should be provided for you if you are a pregnant woman and risk assessments should be carried out.

- **Rest break entitlements**

Workers but not self-employed individuals have the right to an uninterrupted unpaid 20 minute period of rest if they work 6 hours or more. This should be away from your workstation and consequently should be both a mental and physical break. The essence of a rest break is that the worker knows at the start of it that he/she has 20 minutes free from work to do as they please.

As a self-employed person you are free to negotiate your rest periods in the same way that you would your fee. Whilst it may be tempting to not have a break during your working day it is inconceivable that an individual providing their services as a pharmacist in a busy environment would work without one. It is your professional responsibility to ensure that you are fit to practice. The Code of Ethics states that pharmacists must ensure that they are able to comply with their legal and professional obligations and that their workload or working conditions do not compromise patient care or public safety.

In the event that you make an error because you were tired or distracted as a consequence of deciding not to have a break, it will be no real defence to make this point to the Court or your professional regulatory body if it becomes involved. The PDA believes that there is a direct positive correlation between the number of errors a pharmacist makes and how tired they are. Most pharmacies allow for a break of up to 30 minutes unpaid and this should be taken up without hesitation.

The PDA recommends that anyone taking an unpaid rest break takes a mental and physical break and signs off as the Responsible Pharmacist. You should ensure that the superintendent pharmacist is aware of this also. Support staff should be aware that you are taking a break and patients advised of when you are due to return. If the end user does not wish to allow you to take a break we would advise that you contact the superintendent pharmacist to register your concerns and inform the PDA.

- **Personal injury**

Employers and end users need to ensure that slip and trips risks are controlled to ensure employees, visitors such as self-employed locums and members of the public do not slip, trip and fall. Floors should be suitable for the workplace and work activity as well as being kept in good condition and free from obstructions so that everyone can move around safely. Should you have an accident at work you should report this in the accident book and to the pharmacy manager so that a written record of the incident exists. It will be useful for the end user to know what happened and to then assess whether or not they need to take corrective action. Depending on how serious the injury you have sustained you may wish to seek compensation from the end user for an accident you have had at work to include compensation for the pain you have suffered, time you have spent unable to work, medical expenses and future problems arising from your injury. Whilst your insurance with us will not cover a claim for lost earnings alone our personal injury specialist lawyers will be happy to advise you regarding the merits of a potential personal injury claim which could include a claim for lost earnings. We strongly advise locum pharmacists to obtain separate illness and accident insurance to cover claims for their lost earnings alone. Please see PDA Plus for more details.

- **Dealing with difficult staff or patients**

The end user's duty of care to you encompasses a duty to protect you from the actions of staff and can extend to the actions of third parties such as patients.

Many of you may have found yourselves in difficult situations with staff or patients with some becoming aggressive or even violent. The Health and Safety Executive defines work-related violence as *any incident in which a person is abused, threatened or assaulted in circumstances relating to their work*. This can include verbal abuse or threats as well as physical attacks which can of course damage an individual's health through anxiety and stress.

Unfortunately some of our members have been treated appallingly by staff and patients with some being bullied, shouted at, spat upon, threatened with knives, asked to come outside of the premises or have been subjected to racist abuse. In the latter case we recently supported our member in pursuing criminal proceedings against a patient's husband who was convicted of an offence under the Public Order Act 1986 and ordered to pay our member compensation.

As early as 2004 we undertook our own research into workplace violence and created a 'Resource Pack' for pharmacists which can be found on our website. In addition to this we established a 'Violence and Abuse Log' facility on our website which members can use to register their concerns in confidence regardless of whether they are requesting assistance. Over the years we have been using this facility as a research tool to examine trends in personal safety and identify circumstances and locations which are of higher risk than others.

We urge all our members who feel intimidated or who have been assaulted by staff or patients to report every incident to the end user and recruitment agency (if involved) immediately. Depending on the seriousness of the matter you may wish to contact the police and you should contact the PDA so that we can advise you if matters escalate to legal proceedings.

• **Maternity rights**

For those of you who are self-employed and pregnant, you are entitled to claim Maternity Allowance in the following circumstances:

- You are registered self-employed and paying Class 2 National Insurance Contributions or hold a Small Earnings Exception Certificate.
- You have very recently been employed or self-employed.
- You have been self-employed for at least 26 weeks in the 66 weeks up to and including the week before your baby is due. Part weeks count as full weeks.
- Your pay averaged £30.00/week over any 13 weeks in the above period.

Maternity Allowance is paid at £123.06 from 5th April 2009 or 90% of your average weekly earnings whichever is less. It is paid for up to 39 weeks and is not liable to Income Tax or National Insurance Contributions.

The basic allowance normally changes annually for the new tax year. For up to date information visit www.direct.gov.uk

- **Disability rights**

It is unlawful for an end user to discriminate against a disabled person. With regards to self employed individuals, The Disability Discrimination Act 1995 provides that discrimination should not occur in the following circumstances:

- in the terms in which the end user allows an individual to do the work.
- by not allowing the individual to do the work or continue to do the work.
- in the way the end user affords the individual access to any benefits or by refusing or deliberately omitting to afford the individual access to them or
- by subjecting the individual to any other detriment.

If you feel that you have been discriminated against on the basis of your disability please contact The PDA for advice.

- **Health & Safety policy**

Employers who employ five or more employees are required to prepare a written statement of health and safety policy having assessed the risks to health and safety involved. The aim is to ensure that employers/end users consider the nature of the dangers in their workplaces and what should be done to reduce those dangers. Additionally, providing individuals with a policy will increase their awareness of the hazards perceived by the employer/end user. Small businesses are given some latitude when it comes to implementing health and safety measures, however if you have any concerns we ask that you contact The PDA.

- **Sanctions for non-compliance with Health & Safety law**

The duty imposed on employers/end users is limited in the sense that they must do what is reasonably practicable. What this means is that the degree of risk that exists must be balanced against the time, cost and difficulty of taking measures to avoid the risk. Regrettably certain end users are not very observant of health and safety legislation at all and many choose to ignore requests from their staff or visitors for guidance on what to do in particular situations. For many smaller businesses health and safety is an afterthought and it only really occurs to them to draft and implement a policy when things go wrong and someone suffers some harm or injury.

Our advice to all of our members is to ask for a copy of the health and safety policy and familiarise yourself with it. If there is anything you feel has not been addressed that relates to the environment in which you provide your services or has been addressed but not implemented, you should raise this with the end user.

If the matter is not dealt with appropriately you may contact the Health and Safety Executive. Health and Safety Inspectors can give advice in respect of how to comply with the law and they have the powers to enforce it. Measures that can be taken include issuing fines, improvement notices, prohibition notices and/or awarding compensation to those affected by the breach.

PROFESSIONAL CONSIDERATIONS

- **Before the day of a booking**

Before the booking you may wish to contact the end user. It may well have been some time since you agreed to provide your services and you may feel that it is appropriate to remind them you will be arriving to work allowing them to make any necessary arrangements. Some locums find doing this helpful and another benefit is that you are able to clarify the number of staff who will be working alongside you, the workload that will exist and directions to the pharmacy itself if required.

- **The day of a booking**

On 1st October 2009, the Responsible Pharmacist Regulations came into force. For those of you working as responsible pharmacists you will need to display a notice detailing your name and registration number, stating that you are the responsible pharmacist (RP). The PDA recommends that you display a notice informing the public of your absence when you are signed on. These are available from our office. The notice should have a professional appearance but the design and layout is at your discretion. It will also be useful to take with you the terms of the booking, telephone number of your agency if you have been booked through one and the pharmacy contact details as well as this booklet.

Always ensure that you arrive on time and as soon as it becomes obvious that you will be arriving later than expected telephone the pharmacy to explain your position and to establish that they still require your services and have no intention of booking another locum pharmacist. Any significant delay on your part for example arriving one hour late could result in your booking being terminated on the basis that you have breached the terms of the agreement entitling the end user (the company, organisation or establishment that uses your services) to cancel with immediate effect.

When you arrive at the pharmacy make sure that:

- You establish who the RP is.
- If you are the RP you display the RP notice stating your name and registration number.
- As the RP you complete the pharmacy record.
- You can locate the pharmacy procedures.
- The pharmacy procedures cover all of the procedures taking place in the pharmacy.
- You know how to change the pharmacy procedures if this is required.
- If you review and change the procedures a clear audit trail is in place and you have notified the relevant person i.e. owner or superintendent pharmacist.
- All staff members who should be there are present.
- The computer systems are working properly.
- You review any messages left by the previous pharmacist.
- If you are planning to be absent for up to 2 hours you let the staff know. It is good practice to record the reason for your absence also.
- The staff know what procedures they should follow when you are absent and your expected time of return.
- The staff know who to contact if you are not contactable.
- You have seen the refrigerator log and that it has been completed.
- You acquire the CD Keys and keep them in your possession at all times.
- You are aware of when the staff will be finishing for the day and when they intend to take their breaks so that you are confident your working environment is safe.

It is important to remember that if any of the points emphasised in this chapter causes serious concern when you present yourself on the day, you should report this to the owner or superintendent pharmacist, keep a contemporaneous note, and inform the PDA where applicable.

Taking some time to familiarise yourself with the company or organisation's Standard Operating Procedures should be incorporated into the time that you have agreed to provide your services as it is essential part of you being able to do so and it should not be necessary to consider this is unpaid work. It is also advisable to keep a record of all your bookings made noting the days you were the responsible pharmacist which could prove to be helpful at a later date.

- **Dealing with dispensing errors**

At some point in your pharmacy career you will make an error when dispensing medication, in such circumstances where the error comes to your notice you should take the following action:

During the complaint/error

- Take personal control of the situation; do not allow others to sort it out. Make sure that you interact with the patient/representative personally.
- Conduct a brief investigation to establish that an error has occurred.
- Establish as quickly as possible whether or not the patient has consumed the medication and whether or not they have been caused any harm. If so recommend the necessary action (seeking urgent medical attention for example). If not, give the patient reassurance and recommend that they speak to their GP if they have any reservations.
- If the patient's representative has returned to bring the error to your attention ensure that you enquire as to the patient's well-being and follow the advice as above.
- Apologise to the patient; you should not admit liability at this stage but you should show regret that an error has occurred ("I am sorry that you have been subjected to this error" is different from saying "I am sorry that I caused you harm by committing this error").
- Reassure the patient that you will conduct an investigation and review processes to minimise the risk of such a reoccurrence and if they wish you will send a report to them.
- Deal with the complaint objectively and with empathy whether it is your error or not.

- Do not specifically blame others; deal with the complaint as you would wish the complaint to be dealt with had you made the error, whether you had or not. Try not to criticise the actions of other healthcare professionals.
- Do not speculate as to the harm the error could have caused the patient.
- Do not offer the patient details of your insurers.

After the complaint/error

- If the patient has consumed the medication whether or not they have been caused harm, contact the patients GP.
- Conduct a thorough investigation and if appropriate a root cause analysis making recommendations for practise improvement.
- Ensure that you report the matter to the superintendent pharmacist and make a record of the error in the appropriate format.
- Ensure that either you or the contractor writes to the patient to report on the findings. If you are prepared to leave this to others then ensure that you receive a copy of the communication.
- Make a contemporaneous note of the nature of the error/complaint;
 - your interaction with the patient/representative
 - your recommendations to the patient/representative
 - the reasons for the error/complaint
 - recommendations to changes in systems and to your own practise (if appropriate)
 - mitigating factors (e.g staffing levels, work load, conditions etc)
- The PDA will give members the most appropriate advice to reduce the risks of escalation and as it is also a condition of members' insurance you should make a report of the incident immediately to the PDA if
 - It has resulted in harm being caused to the patient.
 - The medication may not have been consumed but potentially could have been extremely serious and the GP would class it as a critical incident. (eg; methotrexate tds given instead of metclopamide).
 - The patient insinuates that they intend to take the matter further; e.g. "I will report you", "You will not hear the last of this", "Can I have your name and the telephone number of your Head Office?"

- It is a repeat of an error or the same patient has been subjected to an incident before.
- Other health care professionals (e.g. the GP, nurse, hospital, day centres/case workers) or other authorities such as the PCOs or the Police have been demanding explanations.

Post booking information of an incident

Locums may well receive a call from a contractor informing them of an incident that has occurred allegedly whilst they were on duty. In such cases the locum is advised to:

- Get as much detail as possible about the error; date, name, medication, material evidence, copy of the prescription, written correspondence if appropriate etc. Resistance by the contractor to you obtaining this information is unacceptable and you should not take no for an answer.
- Take control and if the above information is not forthcoming seek out the evidence personally.
- Ascertain categorically that you were involved in the incident.
- Report the incident to the PDA using the criteria above before volunteering insurance details.

• Complaints made to the regulator

Some dispensing errors or other incidents are reported to the professional regulator by companies, PCOs, patients or even support staff working alongside you in the pharmacy. Whilst the regulator does not generally refer cases involving single one-off dispensing errors, to the Investigating Committee for determination it will still investigate matters and pharmacists may still receive a letter of advice which remains on their file for five years. The Regulator will also consider complaints regarding your conduct whilst practising if complained against.

Generally, the first contact you will have with a Fitness to Practise Inspector is when he/she visits the pharmacy you are providing your services to or by telephone. It could be months following the incident complained of and you may have little or no recollection of events. It is a condition of your insurance to inform the PDA immediately should you become aware of any such incident as it may result in a claim or legal proceedings involving you. Legal proceedings include professional disciplinary tribunals.

It is also important to inform the PDA immediately as we are anxious to ensure that you put forward as robust a defence as possible having regard to all the information that the inspector has in her/his possession; here are some tips on how to conduct yourself if you find that you are the subject of an investigation that you have otherwise been given no prior notice of.

Do's

- If you have advanced information that the Inspector wishes to speak to you, take advice from the PDA before entering into discussions.
- Ask for full disclosure of the documents, complaints, material evidence etc before discussing the incident.
- Take the approach by the Inspector to be formal to elicit information about your alleged involvement in an incident.
- Be aware that anything that you say is never off the record.
- Ask as many questions as possible.
- Conduct your own thorough investigation before commenting.

Don'ts

- DON'T be afraid to respectfully ask the inspector to rearrange if their appearance or telephone call is not convenient or so unexpected that you would need to take advice.
- DON'T respond to any questions unless you have seen the evidence and have taken advice.
- DON'T comment or speculate on anything that might have happened; if you don't know, or have no evidence then don't comment at all.
- DON'T sign any notes of an 'informal' chat.
- DON'T continue a discussion if at any time you are cautioned by the Inspector that "anything you say will be taken down in evidence"; end the discussion and seek representation.
- DON'T ever attend an interview alone which is tape recorded at which you are advised that you have the right to be accompanied by a legal adviser.

If you are required to attend a tape recorded interview under caution with the Inspector which will attract the right to be accompanied by a legal adviser and if we are able to be in a position to support you through this we obviously need to know as soon as possible so we can make the necessary arrangements.

- **Staffing levels**

As discussed earlier, it is your responsibility to ensure that your workload or working conditions do not compromise patient care or public safety. It is for this reason that you need to ensure that you are comfortable with the quantity and quality of staff you are working with, the workload you have undertaken and any other factors which influence your ability to perform your job such as noise levels.

Usually, companies and organisations will have guidance regarding the minimum number of staff required to operate the pharmacy effectively and you may wish to ensure that the minimum requirements are being complied with by establishing if there is a staffing or workload model in use. Ultimately however it is a matter for you to determine and if you do not feel that the environment is safe you should take immediate steps to remedy the situation. If your requests for assistance are not met; or for example pharmacy staff are constantly being taken from the pharmacy to work on supermarket check outs, you should give serious consideration to closing the pharmacy if patient safety is compromised, informing the superintendent's office and the Primary Care Organisation. Unfortunately, this is quite a common issue that locum pharmacists have to deal with, however the alternative is to work under tremendous pressure most likely without a rest break and take the risk that you will not make an error.

Concerns about staffing level - decision making

Are there other suitably trained staff available locally doing non-essential duties?

Yes

The Pharmacist can reallocate the available trained staff resource to support the delivery of a safe and efficient pharmacy service. This may involve liaising with a manager or the pharmacy superintendent when there are unresolved or competing demands for staff resource. At times of high workload, staff should only be completing essential tasks necessary for the provision of a safe service to patients.

No

Can the workload be managed?

Yes

A combination of increasing the level of skilled staff and managing workload may also be an option.

The workload can be managed to match the level of staff and expertise available. One way of achieving this is by prioritising urgent prescriptions, extending waiting times, restricting other professional services or advising patients of alternative pharmacy provision. At all stages patients should be kept informed and the RP should be prepared to justify their decisions if a complaint is made about the level of service.

No

When staffing levels cannot be increased to a safe level and/or the workload is too great to safely cope with, consideration can be given to closing the pharmacy on a temporary basis in order to re-establish safe working practices. The pharmacy superintendent should be informed as well as the local Primary

Care Organisation of this decision

- **Managing support staff**

Many locum pharmacists believe that it is not really their responsibility to manage the staff working alongside them and it is a great concern to us that a large proportion of our locum membership are treated poorly by support staff with many feeling bullied. On a daily basis we receive reports that our members are verbally abused by support staff, have their workload dictated to by others, blamed for mistakes that were not of their making and when delegating work, have staff refuse to do it without good reason. Some members have even reported support staff leaving the premises without permission and without the pharmacist's knowledge just because they felt like it. ***Such behaviour should not be tolerated under any circumstances.***

To avoid this happening to you it is imperative to assert yourself as the pharmacist in charge/responsible pharmacist at the outset, overseeing the days activities and assigning tasks to individuals where appropriate. Support staff should be aware that you are responsible for the professional service for the duration of your placement there and consequently need to monitor and prioritise the workload. All too often pharmacies operate without a permanent pharmacist manager and some support staff will take advantage of this lack of direction or the fact that their regular manager is absent for the day. They will be only too aware that you do not have the authority to discipline them for acting contrary to company policy or common standards of behaviour, however you should be supported by the company or organisation you are providing your services to. Any problems you experience with support staff should be brought to the attention of the individual in a constructive manner. This should preferably be in a private area away from other colleagues and if necessary should be documented and reported to the individual's line manager so that the matter can be investigated upon their return.

It is entirely a matter for you to decide whether you should do this or not. In making your decision you should bear in mind future working relationships and consider the likelihood of that particular individual making a vexatious and malicious complaint against you that you will then have to defend having decided not to complain initially.

USEFUL CONTACTS

- **The Pharmacists' Defence Association Union**

The Old Fire Station
69 Albion Street
Birmingham
B1 3EA

Tel: 0121 694 7000
Fax: 0121 694 7001
Email: enquiries@the-pda.org
Web: www.the-pda.org



- **Royal Pharmaceutical Society of Great Britain**

1 Lambeth High Street
London
SE1 7JN

Tel: 0207 735 9141
Fax: 0207 735 7629
Email: enquiries@rpsgb.org

- **Pharmaceutical Society of Northern Ireland**

73 University Street
Belfast
BT7 1HL

Tel: 02890 326927
Fax: 02890 439919

- **Employment Agency Standards Inspectorate: Department for Business, Innovation & Skills**

(For information regarding the conduct of recruitment or employment agencies)

Bay 487
1 Victoria Street
London
SW1 0ET

Tel: 0845 955 5105

USEFUL CONTACTS

- **Citizens' Advice Bureau**
(For advice on a range of issues)
Web: www.citizensadvice.org.uk
- **Government**
(For online information on employment rights and benefits)
Web: www.direct.gov.uk
- **Health & Safety Executive**
(For concerns regarding health and safety at work)
Tel: 0845 345 0055
Web: www.hse.gov.uk
- **HM Revenue & Customs**
(For advice on tax, national insurance and sick pay matters)
Web: www.hmrc.gov.uk
- **Information Commissioner**
(For information regarding the Freedom of Information Act and Data Protection Legislation)
Tel: 0845 630 6060

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