

community
pharmacist
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the magazine of the pharmacists' defence association

insight

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BREAKING OUT

Join us at the 3rd Annual PDA Conference

Birmingham ICC | February 25th, 2007

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Chairman's letter



by Mark Koziol.

Making some sense out of the regulatory madness

It is on public record that the PDA has been attacking what we consider to be over-regulation of pharmacists by the RPSGB with some vigour. We do this at national pharmacy meetings, in meetings with MPs and Lords, in the press and elsewhere.

Some have asked why are we doing this?, especially those who consider that the regulation of pharmacists is absolutely in the interests of the public. Let me explain.

We too believe that the regulation of pharmacists is important - every profession has a small minority of poor practitioners whose actions one cannot defend. We also accept that the old system is in need of modernisation. However, we believe that what pharmacists are currently enduring at the hands of the RPSGB is like more an exercise of needless victimisation of generally hard working and conscientious practitioners trying to do right by their patients.

Consider this - just a few years ago there were no more than 33 cases heard by the Infringements Committee, but in 2005, this rose to a shocking 874 cases with more cases in the pipeline.

Pharmacy has never had its regulatory credentials called into question in the past, it has never swept cases of poor practice under the carpet. So why has there been such a dramatic increase in regulatory activity?

In my view, it is the new systems and processes introduced by the RPSGB that have led to the current state of affairs. Processes that require the inspectors to transform all investigations into formal ones, resulting in formal consequences. This new regime believes that even trivial technical errors that can cause no harm to anyone, should result in a formal professional disciplinary record being set up against the pharmacist in question. At one stage, the Society even considered that traffic light offences were worthy of their attention. **This is regulation gone mad, and if it continues it will irreparably damage the profession.**

In the interests of the public and the profession, the RPSGB must re-introduce some sanity. We need good, modernised regulation, what we do not need and what the public does not require is for an ever-increasing proportion of our register to have been involved in a disciplinary process simply because the qualifying bar is needlessly low and because unnecessary zeal is being applied.

TAKING CHARGE...

Our PDA Annual conference in February will deal with the problems of overt pharmacist regulation and many other issues besides. In particular, we want to show pharmacists that they have rights in the workplace and also in dealings with their regulator – the RPSGB.

I urge all PDA members to join us at the conference in Birmingham on Sunday 25th February 2007.

Mark Koziol, Chairman, The PDA

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Don't forget!

You can download the Insight online

www.the-pda.org/publications/pub_insight1.html

The PDA Advisory Board...

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BREAKING OUT

As is already well recognised, professional developments in pharmacy have for a long time been dominated by the interests of large employers, be they the NHS or large corporate organisations.

Developing the core theme which has occupied the PDA since its inception just three years ago, this conference will explore practical issues in such a way that they will allow pharmacists to understand and therefore exert a much greater influence over important matters which ultimately affect their working environments, roles and livelihoods.

UNLOCKING THE POTENTIAL OF THE INDIVIDUAL PHARMACIST

We will be examining;

- **The 'responsible pharmacist' concept**
How this new legal status provides enhanced authority to employee and locum pharmacists
- **Remote supervision**
Limiting the impact of these risky proposals
- **Pay scales project**
Introducing a transparent pay-scale system for pharmacists
- **Agenda for Change**
Whose agenda is this?
- **Regulation gone mad...**
Introducing common sense into the regulation of pharmacists
- **Employment clinic**

And many more issues besides...

visit www.the-pda.org for more

ABOUT THE ICC

The International Convention Centre is situated on Broad Street in the centre of Birmingham, which is why some of the World's high-profile companies and leading associations choose the ICC for their event. It has continually proved to be one of Europe's most prestigious and professional venues.

Visit:

<http://www.theicc.co.uk/organisers/travel>
for travel details



The third annual PDA conference

Birmingham ICC Sunday February 25th, 2007

news

Find out what's happening...



Dual role split indicated by Foster Report

The much-awaited Foster Report considered whether the RPSGB could continue to perform the role of regulator and membership body simultaneously. Here is one of the recommendations;

The entire Council of the RPSGB may be appointed by government.

Approximately 50% to be lay representatives and 50% to be pharmacists and technicians



Effectively this means that pharmacists will be in a minority on the RPSGB Council and that members will no longer be able to vote for their

Council. Additionally, this non-elected group will then be able to decide what to do with members' assets, accumulated over more than 160 years

since the creation of the Society.

It is therefore increasingly likely that the current RPSGB Council will be pressed by the membership and take the decision to divest the role of regulation to the government. Such a move would enable the RPSGB to do what it was set up to do in the first place – to represent pharmacists.

As we go to press, it is understood that the RPSGB Council are holding several meetings convened specifically to decide its forthcoming strategy.

Pharmacist regulation blasted by Lib Dem MP

Liberal Democrat MP and pharmacist Sandra Gidley has criticised the Pharmaceutical Society for the way in which it regulates pharmacists. She has suggested that the Society must drop its bullying tactics when it investigates Fitness to Practise matters. In a recent article in the Chemist and Druggist magazine she said "The Society has spent too much of its time dotting its i's and crossing its t's, and not enough time representing pharmacists." "This mentality is stifling innovation and positive action on behalf of patients." "An example is where pharmacists are just saying no when patients ask them for emergency supplies because that's easier and it avoids slapped wrists."

Sandra Gidley's concerns are shared by the PDA and add weight to the Association's own position on this issue. The PDA has consistently pressed the Society on its Fitness to Practise



Sandra Gidley in parliament

direction for almost three years. As a further symptom of the consequences of overt regulation, the PDA has seen many examples of pharmacists choosing to leave the profession as a result of perceived over zealous treatment by the Society in its investigations. Anxiety over the way Fitness to Practise investigations are undertaken has reached the highest levels of the Society and RPSGB President Hemant Patel agreed that the Society must treat pharmacists with greater compassion.

As part of the PDA's ongoing parliamentary activity, Sandra Gidley is one of many members of Parliament that PDA has lobbied on wide-ranging issues affecting the individual pharmacist.

Shaping the future – PDA responds to consultations

Whenever the government intends to change laws or regulations in any way, it usually consults on its proposals before any changes are made. This principle also applies broadly to the RPSGB in so far as it consults with all relevant 'stakeholders'. Such consultations are often an appropriate opportunity to influence the final outcome, particularly if they throw up issues that may not have been previously considered. A major strategic aim of the PDA is to ensure that issues affecting the individual pharmacist agenda are properly articulated when these opportunities arise.

Throughout recent months the PDA has been active in submitting views on numerous consultations (which can be found on our website). The

views expressed by the PDA in these instances are ones that have been generated after holding conferences, focus group meetings with members and/or surveys. The large amount of data gathered from reported patient safety issues and their resolution, gives the Association a unique perspective on how errors can be avoided and managed better after they occur.

Responses to consultations that have been undertaken in recent months by the PDA include;

- Governments Section 60 Order on pharmacist regulation.
- RPSGB's new Code of Ethics
- RPSGB proposed Fitness to Practise rules.

- The Foster Report on Non-Medical Health-care regulation
- The Chief Medical Officers report on Health-care regulation.

contribute:

Members who would like to contribute their views on these and any other consultations that emerge are invited to do so by calling **0121 694 7000** or email us at enquiries@the-pda.org

The full PDA responses can be found on our website at:

www.the-pda.org

Landmark case for Area Manager on the horizon

Does your employer require you to work more than 48 hours a week and also to do so without overtime payment? - If it does, it may be breaking the law and you may be able to claim payment too!

The Working Time Regulations 1998 ('WTR') implies a maximum working time of 48 hours in every contract of employment, meaning that

lengths to ensure that their management employees (whose hours can easily rise unnoticed due to pressure of work) do not work more than 48 hours a week. However, this appears not to be true of at least one major pharmacy multiple, where it has been alleged that it required at least one area

The various payments included Saturday locum fees which he feels were incurred when he had to cover for his pharmacist managers in order to give them a day off. In addition to this, there were the hours worked in excess of 48 hours on his normal day job of area management.

He argued that they were either implied to be paid as overtime to his contract of employment or due to be paid to him under a separate contract.

At the time of writing, the (now ex) Area Manager involved has successfully obtained a judgement against the company for damages, which are to be assessed by the Court later this year. The company, probably recognising that this could be a landmark case, is seeking to get the judgement set aside, arguing that it has no liability to make the payments claimed.

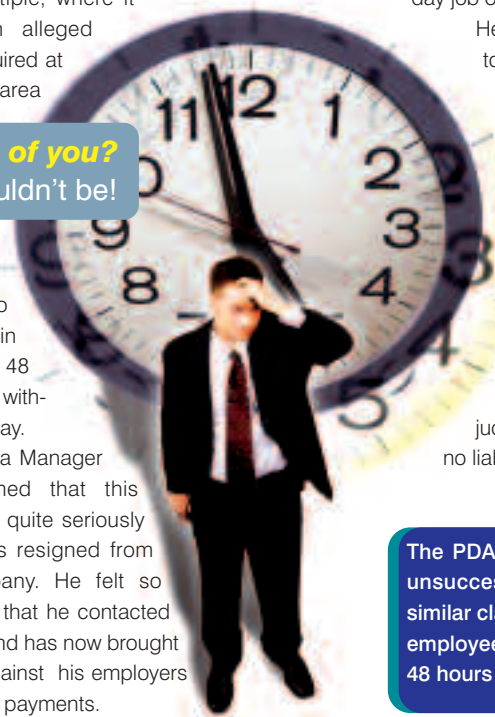
Are working hours getting the better of you? ...they shouldn't be!

employees cannot be required to work more than 48 hours for their employer in any seven-day period (the working week) - this includes all rest breaks, unless they exercise their right to opt out of these limits. Not only that, but employers are required by the Regulations "to take all reasonable steps, in keeping with the need to protect the health and safety of workers, to ensure that the limit specified is "complied with". The employer is also required to keep additional special records detailing the hours worked by employees who have opted out. Any employer that fails to do so may be committing a criminal offence, in certain situations, for which it can be prosecuted.

Many large companies go to considerable

manager to work well in excess of 48 hours and without extra pay.

The Area Manager has claimed that this made him quite seriously ill and has resigned from the company. He felt so aggrieved that he contacted the PDA and has now brought a claim against his employers for various payments.



The PDA believes that if their late action is unsuccessful this could lead to a flood of similar claims from other Area Managers and employees who are compelled to work over 48 hours unpaid.

RPSGB apologises to PDA members...

In recent months, the Royal Pharmaceutical Society's Fitness to Practise Directorate has been embarrassed into issuing several letters of apology to pharmacists who were wrongly implicated following flawed investigations into complaints.

In one particular case, in a submission made to the Infringements Committee, the PDA articulated the pharmacist's astonishment at the process he was dragged into and the fact that he had even been implicated in an anonymous complaint made some three years earlier. Our member was caught up only because he happened to be present at and co-operated with the belated investigation. He was not even employed at the pharmacy at the time the alleged unsubstantiated incident took place.

"Our member happened to be present in the pharmacy at the time the Inspector came to investigate the complaint" said John Murphy, Director of the PDA. *"Imagine how he must have felt after he co-operated with the Inspector, made it clear that he could not have been there at the time and assumed that the matter was closed"*

He then received a letter from the Fitness to Practise Directorate notifying him of his referral to the Infringements Committee. This letter invited him to comment and recommended that he should take legal advice before responding, because the matter could go before the Statutory Committee. The fact that this was a "standard" letter and the Directorate recommended no further action was irrelevant, could not excuse this approach. What this pharmacist experienced was the full weight of the Society's disciplinary process, presumably in the misguided interests of transparency.

We are pleased that the Society agreed to our member's demands for a full apology. It is reassuring to know that individual pharmacists are not the only people who make mistakes!

Stat Comm Chairman - one error - a striking off offence?

Pharmacists may well be astounded to learn of a recent Statutory Committee hearing in which the Chairman in his summing up suggested that one dispensing error committed by a pharmacist was sufficient to render him unfit to be on the register. Although in this case, he simply reprimanded the pharmacist in question - his views have caused much consternation within the profession.

Few pharmacists can confidently claim that they have NEVER made a single dispensing error: are we therefore to conclude then that the majority of pharmacists are not fit to be on the register?

This incredible finding poses more questions than it provides answers;

- Has the Chairman of the Statutory Committee ever seen the inner workings of a busy pharmacy?
- Is he aware of the important risk management work being undertaken by the National Patient Safety Agency which relies on data from dispensing and other errors to develop practice improvements? It is possible that his view could damage the goodwill and participation of pharmacists in this important work.
- How was it that this case could even have been referred to the Statutory Committee by the RPSGB in the first place?

find out more:

The PDA has more information about risk management and how it can help you online.

Find out more about risk management at www.the-pda.org

Remote Supervision

...the plan to operate a pharmacy in the absence of a pharmacist

a proposal compromising patient safety

One of the most substantial pieces of work undertaken by PDA in recent months has been the lobbying of Parliament in relation to its **concerns over remote supervision.**



During meetings with MPs and Lords, it is apparent that they quickly realise what a bad idea remote supervision actually is and how it represents an unnecessary risk to the public. As a consequence of much lobbying, parliamentarians have raised concerns in the Houses of Parliament. Enclosed are some of their contributions taken from verbatim Hansard reports;

House of Lords, March 1st, Baroness Murphy

"It seems to me – and this has been raised by the Pharmacists' Defence Association too – that the provisions, if not properly implemented, may have the unintended consequence of lessening the public's access to a community pharmacist in more deprived areas and provide fewer safeguards for patients in terms of supervision for their medications."

I fear that companies with several pharmacies will simply reduce the number of pharmacists they employ, in remote rural and inner City areas where there are recruitment problems leading to the creation of a two tier system."

House of Lords, May 22nd, Baroness Barker:

"I am struggling to ascertain exactly what exceptional circumstances would have to arise for it to be acceptable for a responsible pharmacist not to be on the premises. I am concerned that a responsible pharmacist has a role to play not only in the dispensing of prescriptions, but in community health. It is a role which we all support. I do not see how barcoding, robotics

and videolinks, as described by the minister, could help in that work."

"The days on which pharmacists really earn their money are those when they are working in the back and happen to hear something going on in the front. They wander out to join the conversation, whereupon they pick up details such as adverse reactions on repeats, and are even able to detect certain conditions by a persons odour or pallour. Those details could not be picked up by remote means, but they often lead to important medical interpretations."

House of Lords, May 22nd, Earl Howe

"It is not appropriate to allow a pharmacist's professional responsibility to be divided between two or more sets of premises. We could envisage a multiple retailer deciding that a single pharmacist could take responsibility for the in-house pharmacies in a clutch of supermarkets."

House of Lords, June 26th, Earl Howe

"The use of technology should not be encouraged as a substitute for pharmacists being physically present in a pharmacy because technology, however good it is, merely introduces new challenges for patient safety. Pharmacists cited a case in California where 4,700 people received incorrect medication when a dispensing robot went wrong

If a pharmacist is absent from the pharmacy, to what extent is it safe for him to rely on support staff to follow the rules laid down in SOPs. The PDA tells me that it regularly encounters inci-

dents of support staff acting outside their competencies and putting patient safety at risk. So in creating flexibility for pharmacists to be absent, there is an inevitable trade-off in the form of potential risk to patient safety. None of us wants to see that compromised."


Government responses from Lord Warner

"I repeat our commitment to work closely with the RPSGB and others as we have been doing so already, in developing these regulations."

"It will be up to the responsible pharmacist to determine whether to allow remote supervision of the activities in the pharmacy for which he is responsible, provided that the conditions within the regulations are met. The responsible pharmacist would not be obliged to permit supervision from another location."

What next?

The PDA was invited to discuss its concerns with the Department of Health. More recently, the PDA was invited to present its concerns to an RPSGB Health Bill committee. At that meeting the PDA began to describe a possible way forward, basing its ideas on a premise that the only circumstances under which a pharmacy should be allowed to operate in the absence of a pharmacist was if the continued presence of the pharmacist would prevent a pharmacist from dealing with a critical incident off the premises or if the pharmacist was taking a mental and physical rest-break. Even under such circumstances, only a limited range of activities would be permitted.

The government has promised in Parliament that it will not finalise the exact regulations until a full consultation is held with the relevant parties in pharmacy and the PDA will be included in that exercise. The full submission of the PDA will be prepared in readiness for this following more consultation with members. 

PDA AT BPC2006

For the fourth time since its inauguration in 2003, the PDA had a presence at the British Pharmaceutical Conference in September. The Association also occupied a stand in the main area of the exhibition.



The 2006 British Pharmaceutical Conference took place at the Manchester International Convention Centre from 4 to 6 September and had the theme "Personalised medicine in healthcare".

Mark Pitt, PDA Membership Services Manager said "It is important for us to be visible at this event. The PDA is now a significant force in pharmacy and this conference is a useful forum for the officers of the association to meet the movers and shakers in pharmacy." He went on to say "We have a great opportunity in a forum such as this, to extend our influence both informally and in public sessions".

Almost one hundred PDA members were allocated a complimentary one-day pass for the conference. This initiative was welcomed by many PDA members, who may otherwise not be able to justify the cost of entry. This offer also helped create a better distribution of delegates from the various sectors of pharmacy.

team could be found at various sessions, putting pertinent questions to the speakers and joining in lively debate. In particular, Mark Koziol, Chairman of the PDA, was able to put speakers on the spot with some searching questions.

Conference content

There was plenty of choice to interest all branches of the profession, from the purely scientific to looking at health care from the perspective of the patient. The PDA team was particularly interested in selecting those sessions that could impact on the organisation and its members, with regulation and revalidation top of its agenda.

The main session discussing the subject was chaired by Jim Smith, formerly Chief Pharmacist for England, with two of the three speakers on the platform from the Department of Health. Inevitably, regulation and revalidation was never

far from delegates' minds and there was much discussion of the topic elsewhere at conference; for example the Chief Pharmacists of the home countries were bombarded with questions on their views as to whether the Society should split or not during a panel discussion.

The address by Karen Hassell, the first confer-

There was active participation by PDA at the recent BPC conference



ence practice chairman, would be of special interest to employee pharmacists. Her topic was recent research into job satisfaction. Worryingly, research suggests that pharmacists are much less satisfied with their work than are the workforce in general. It is of particular concern that the levels of job satisfaction are lowest in the two sectors that are the biggest employers of pharmacists: community and hospital. Many factors contribute to the situation, and these must not be ignored.

find out more:

More detailed coverage of the topics mentioned above can be found overleaf. Don't forget you can download the previous issues of Insight at

www.the-pda.org

**It is important for us to be visible at this event
...the PDA is now a significant force in pharmacy**

"We had over two hundred applications for these passes and were sorry to disappoint so many of our members who were not successful," said Mark, "We were taken aback by the response and will be seeking to repeat this initiative in the future."

When not actually manning the stand, the PDA

THE PDA CHALLENGES RPSGB OVER REGULATION

Christine Gray, head of corporate governance at the Society, was speaking at a session on regulation and revalidation and what it meant for the future of pharmacists

...Chaired by Jim Smith, ex-Chief Pharmacist of England. Her remit was to discuss what the Section 60 Order would mean for pharmacists and technicians. "At present, there is an all or nothing situation, reprimand or remand," she said. She also thinks there must be a wider range of sanctions and that the Society should take a more sensitive approach to those brought before it because of poor performance brought on by health impairment.

Talking specifically about new Fitness to Practise requirements, Paul Atkinson a principal in the regulatory branch of the Department of Health and closely involved in drafting the Section 60 regulations set out his views. Central to his message was the idea that both Fitness to Practise investigations and also re-validation of pharmacists could be done locally. He also suggested that employers existing processes could be used to support some of this work, as this would prevent duplication of effort.

Employer involvement in investigations – a non-starter?

One of the major concerns held by the PDA is that the government has suggested that employers could be involved in both a local Fitness to Practise investigation and in revalidating pharmacists periodically. However as PDA Chairman Mark Koziol explained to the panel, on many occasions an employer could in some way be involved or implicated in a Fitness to Practise issue, e.g. a serious error in a pharmacy. This would make the employer a co-defendant in any proceedings that followed – with this in mind, a proposal that would effectively make the employer both the co-defendant and the investigator would be fraught with danger.

The suggestion to allow an employer to be involved in the periodic revalidation of pharmacists i.e., to decide whether the employee is suitable to stay on the register of chemists was ill conceived. Mark Koziol described how some



Mark Koziol
"employer involvement a non-starter"

employers bully and mistreat their pharmacist employees, particularly when the employees have resisted policies laid down by employers that they consider to be lacking in safety. The consequence of such a suggestion, not only means that pharmacists in such situations could be forced out of their jobs (as occasionally happens at the moment), but that they could also lose their professional registration - the whole idea is a non starter.

Astonishingly, Paul Atkinson explained that the original idea had been to simply allow the RPSGB to take the findings of employers on trust; however, he publicly conceded that these conflicts of interest were not ones that the government had previously considered and they would now have to address these.

Section 60 Order will not stop another Shipman disaster.

PDA Advisory Board member Gordon Appelbe expressed his concerns over the fact that the Section 60 Order was a draconian proposal, which blatantly rode rough shod over Human Rights legislation. He explained that he was aware that much of the thinking behind the Order had been motivated by a desire to prevent

another Harold Shipman catastrophe. The irony was however, that none of these changes would ever stop another determined Shipman type individual and as a consequence the changes were a futile exercise that did no more than cause unnecessary burdens on pharmacists and healthcare professions generally.

Section 60 Order will not be able to regulate companies

Returning to the employer situation, Mark Koziol explained that environmental issues cause many errors and mistakes in pharmacy. Examples include poor staffing levels, excessive workloads and poor equipment. These were issues which are generally under the control of employers, and yet the Section 60 Order was silent on the employer issue.

Effectively this means that only individual pharmacists could be regulated by the Order. The result is that the Section 60 Order would never be able to deal with the root causes of many of the problems, merely the symptoms; pharmacists making mistakes due to excessive workloads, inadequate staffing levels or poor working environments. He explained that this was a major deficiency in the Order, which would impact directly on patient safety. He asked when the government would address this problem by looking more closely at the regulation of companies.

Paul Atkinson conceded that the Section 60 Order had been designed with individuals in mind and because of that, it would not be possible to simply amend it. However, he did suggest that in due course additional legislation could be considered which could deal with this discrepancy.

In private discussions with DOH officials, the PDA has learned that in total, eight changes had been made to the Section 60 Draft as a result of the views received during the statutory consultation. A full version of the PDA Section 60 consultation submission can be found on www.the-pda.org

Inadequacy of employers' insurance?

It has long been the position of PDA that pharmacists should carry their own cover in the event



that they find themselves in a conflict with their employers...

The Association was surprised to hear Ms Gray, telling delegates that an employer's insurance policy may be sufficient for some employees. Her statement underpins the PDA's belief that many people have misconceptions about personal indemnity and legal defence insurance and the view that individuals should rely upon their employer's insurance for their defence. The PDA believes that such a view expressed by a senior member of staff of the professional body is misguided, is damaging to the pharmacists best interests and questions the Society's credibility in pronouncing on such issues. In the PDA's experience, the environment is becoming more hostile toward individual pharmacists and relying on their employer at a time when they are potentially in conflict with them will not be to their advantage.

The PDA continues to argue that Pharmacists should avoid reliance on their employer's insurance, or any insurance policy provided by an employer representative organisation - like the NPA.

Let's get personal

Karen Hassell posed the question 'why is it important to know how satisfied pharmacists are with their jobs?' Dr Hassell was giving the first practice chair lecture, "Let's get personal: do pharmacists like their work?"

It is important to ask the question because there is a well-known association between job satisfaction and mental health, including stress, anxiety and depression. In addition, when workers are not happy, productivity goes down, absenteeism rises as does staff turnover. "There can be an exit from the job, and even the profession," she said.

Dr Hassell came to the podium armed with the results of various studies looking at job satisfaction within pharmacy. There is plenty of evidence showing that in community pharmacy, if the pharmacist is young, male and from an ethnic minority he has less job satisfaction. This is because of the daily demands of the job, the professional role, counter-prescribing and time pressures. Reasons for leaving the profession included, long hours with no break, the workload,

isolation from their peers and other health-care professionals, and not using their skills to the full.

Has the time come to split the dual role of the Society?

When the four UK Chief Pharmacists at the Department of Health initiate a debate about the Society's future as both a regulator and a representative body - the leaders of the profession tend to listen carefully. It was therefore no surprise that many of the RPSGB elected council officers and senior staff attended, what turned out to be one of the most controversial and lively sessions at this year's BPC.



Bill Scott
"regulation to be done by experts"

Bill Scott, Chief Pharmacist for Scotland said that the public trust had been affected by disasters such as Shipman and others and there was now a growing feeling that regulation must be done by experts. He argued that the role of a regulator was to define professional boundaries and to police them, whilst it was the role of a leadership body to constantly push and expand those boundaries. He suggested that two possible models could exist; one was the current model, where the Society was both the regulator and the professional leadership body. The other model was where these two functions were split and two separate bodies, one a regulator and the other a membership/professional leadership body undertook these roles.

Strongly hinting that it would be the two distinct bodies that would produce the ideal framework for both public protection and development of the practice of pharmacy, he said, "This is key as to whether we grow and succeed or whether as a profession we are stifled." Keith

Ridge, Chief Pharmacist for England went on to suggest that there were already a number of bodies that provided good professional leadership for pharmacists and that the [professional leadership style] Society could work collaboratively in a collegiate style structure to provide a strong leadership body. He added "A lengthy debate on the Society's role as a regulator and professional leader would frustrate pharmacists' future prospects. We are at the crux of great change and opportunity. We don't need a five-year debate. If you want this [splitting of the two roles], it can be done fast."

PDA Chairman Mark Koziol agreed and indicated that for a long time he had believed that one single joined up body was better for everyone, however due to the substantial increased level of Society disciplinary scrutiny being experienced by pharmacists (874 referrals to the Infringements Committee in 2005 alone) he felt that the Society as currently structured had damaged its professional leadership credentials in the eyes of the members. He had now changed his mind due to the path the Society seemed to be following. He added that as each day went by the rising number of cases prosecuted by the Society meant that pharmacists were walking in fear of the Society. He felt that any delays in splitting the roles would make it an uphill struggle to regain the Society's appeal to members. This could make voluntary membership of the RPSGB in the future doomed to failure.

Pharmacist, Dr Angela Alexander questioned how it could be that those working at Lambeth could ever support such a split between regulation and membership, since many of their jobs relied on continuing the status quo. The Secretary and Registrar along with other members of staff expressed concerns during the debate, at what the four chief pharmacists appeared to be proposing. Alan Kershaw, a lay member of Council indicated that whilst creative tensions within a single body were one thing; confrontation between two separate bodies with separate aims was quite another.

In response, Bill Scott suggested that he hoped that the profession was sufficiently mature to be able to undertake the changes without a bloodbath.

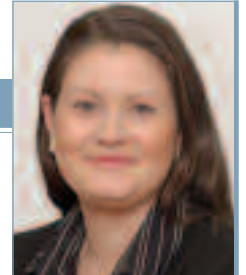
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Employment tribunals

by Orla Sheils

PDA Paralegal



...the first in a series of articles discussing employment related matters.

1. How and where to bring a claim...

This article focuses on where and how to bring an employment claim, the types of claims that can be made and procedures to be followed through to the stage of receiving a judgment.


Of the defence cases that the PDA handles, around 60% are employment related. Making or defending a claim in the Employment Tribunals

should be accepted and in our experience, settling claims by way of compromise agreements has resulted in the dispute being resolved to the satisfaction of our members. In the last two years almost £200,000 has been awarded to PDA members by employers in this way.

agement Discussion takes place. Essentially, this means that both parties are invited to attend the tribunal to identify the issues and make arrangements for the future conduct of the case.

2. A **Pre-Hearing Review** is essentially an interim hearing to determine any preliminary matters relating to the proceedings. Pre-Hearing Review issues include but are not limited to determining whether or not an individual is an employee, has the required length of service to bring a claim, or to decide whether or not the claim or part of it should be struck out on the basis that it is vexatious or has no reasonable prospect of success.

3. A **Full Hearing** is generally used to dispose of the claim by hearing evidence. On the day of the hearing parties will attend the Employment Tribunals and argue their case before the panel. Witnesses, including the claimant will give evidence as to their version of events and may be cross examined by the other side or asked questions by the panel. This can be an unpleasant experience as the other side will focus on the weaknesses of the claim or defence and are effectively seeking to discredit the other sides witness evidence. Both parties are given the opportunity to summarise their case and the panel then make a decision based on the evidence they have heard. The decision is sent to the parties and will either state that the claimant has been successful or unsuccessful in which case the claim is dismissed.

4. A **Review or Appeal Hearing** can take place when parties avail of the opportunity to ask for a review of a decision or appeal to the Employment Appeals Tribunal, which is the higher court. 

In the last two years almost £200,000 has been awarded to PDA members

is not intended to be an easy route to resolving an employment related dispute and the view of the Employment Tribunals is that it is not about having your day in court. On the contrary, Employment Tribunals should be the last resort having exhausted internal grievance and appeals processes. While the PDA is committed to providing full legal assistance where possible, we have to bear this in mind when considering whether to have the case heard or whether the dispute should be settled prior to lodging proceedings or indeed before the hearing takes place.

Thought is given to the possible professional implications particularly when a member is defending a claim and it is important to consider the impact of court proceedings for the individual involved. While some cases can take a few months to be resolved, others may last for a year and it can be an emotional and stressful experience for members and their families. Details of Tribunal proceedings may be released into the public domain and if a member's case is dismissed and it is determined that it was more than likely to be unsuccessful, an award of costs can be made against the member.

Member's cases are therefore thoroughly and thoughtfully assessed and after proper consideration, advice is given as to whether their claim or defence has a reasonable prospect of success. It may well be that we decide that an out of court settlement

What are they and what do they do?

Employment Tribunals are judicial bodies established to resolve disputes between employees and employers over employment rights.

What type of claims do they determine?

Examples of claims one can bring include but are not limited to claims for unfair dismissal, redundancy payments, discrimination on the grounds of sex /race /sexual orientation /disability/ religion or belief/ and now age, breach of contract, unpaid wages, unpaid holiday pay and a failure of an employer to provide a written statement of the particulars of employment.

How do you make a claim?

A claimant (the person making the claim) must make a claim in writing on a form (ET1) provided by the Employment Tribunals and must adhere to the relevant time limits for making a claim. For example in the case of an individual alleging unfair dismissal, the individual must lodge their claim within 3 months from the date of termination of employment. When a response is received from the respondent it is sent to the claimant.

Hearings

There are generally 4 types of hearings that can take place:

1. A Chairman can direct that a **Case Man-**

find out more:

Further articles will explore the types of claims and the likely awards in greater detail

www.the-pda.org

The Section 60 Order - the RPSGB rules

by Dr Gordon Applebe LLB, PhD, FRPharmS. PDA ADVISORY BOARD MEMBER



Gordon Applebe expresses his concerns, about the grim prospects for pharmacists under new RPSGB regulatory rules.

I am very concerned that the consultation on the draft rules of the Society have been rushed through at an indecent pace when the substantive Section 60 order made under the Health Act 1999 has not yet been implemented following its consultation period.

The s.60 Order will no doubt be altered and I understand that a number of changes have already had to be made to it following its consultation. No doubt further thought will be given to it as a result of the Foster Review on the Regulation of the Non-Medical Healthcare Professions. The Society is rushing headlong into these changes. Surely it would be sensible to give more time for all concerned to understand the major changes that are about to take place. There is further concern that the Society has been, and is already, implementing some of these rules at this time as if it had the power to do so - which as yet it has not.

uary and if he fails to pay by that time his name will be automatically removed from the Register irrespective of the circumstances.

- The registrant must declare any criminal convictions or police cautions to the Society. It is interesting to note that the Society has been exercising this provision for two years although as yet it has no power to do so as the s.60 order has not been implemented

- Disciplinary powers and Fitness to Practise rules run to 55 pages.

- Excessive power is given to the Registrar to initially decide what actions should be taken against registrants with no real initial screening process.

In some circumstances, the registrar may even restore a name which has already been removed voluntarily so that it can be erased under the disciplinary proceedings instead.

...What a nonsense and a waste of time and money.

A nightmare for pharmacists...

The bundle of documents which accompanied the draft rules consultation were useful, but without ploughing through the 141 pages of the Rules themselves one is not aware of what all the changes will bring. This is a nightmare for the average pharmacist who basically does not know what is going on and may not understand the legal phraseology. Many pharmacists to whom I have spoken do not appreciate the complexity and the potential outcome.

The Rules deal with several aspects of the Society's work a few are listed in this short article

- The registrant has to pay his fees by 1st Jan-

- Following any erasure there can be no restoration for five years. This imposes stress and difficulty in obtaining up to date training in order to be satisfactorily restored - if ever. No thought of rehabilitation.

- The Society is giving itself powers to inform employers of any allegation against a pharmacist even before it is substantiated and powers for the Registrar to force a pharmacist to undergo a medical examination or an assessment of professional performance.

No escape

Watch out too, if you want to voluntarily retire from the register. The Registrar, if he feels that the applicant has made a false statement as to

his fitness to practise, may refuse to accept such a retirement. In some circumstances, the registrar may even restore a name which has already been removed voluntarily so that it can be erased under the disciplinary proceedings instead.

...what a nonsense and a waste of time and money.



Even minor traffic offences may be considered in your registration

basic rights denied...

I consider these rules are draconian, denying rights, including some Human Rights, punishing wrongdoing, obstructing any form of rehabilitation and restoration. Most pharmacists could now easily fall foul of these rules. These rules are enforcing a punishment form of regulatory control and driving a further wedge between the regulatory role of the Society and its membership. The Society needs to remember that it started as a professional membership body and still is the Royal Pharmaceutical Society of Great Britain. Until now it had an excellent record in balancing the two roles. That will cease if the s.60 Order and these Rules become reality and the sooner the Society divests itself of its regulatory role and returns to being solely a professional body for pharmacy the better.

It could be you...

by Mark Pitt

MRPharmS. PDA Membership Services Manager



We'd prefer that our members won the lottery, rather than have the finger of a professional or **disciplinary investigation** pointed at them...

Unfortunately the chances of winning the jackpot are very slim compared with the risk of encountering a professional or employment issue.

In 2005, the RPSGB concluded 874 investigations into the conduct of its members. In addition to those matters, the Society is routinely notified of details of any criminal convictions received by its members. Information from the 2005 Register of Pharmaceutical Chemists indicates that on 5th August 2005 there were 46,396 pharmacists registered. Just over 40,000 of those pharmacists were on the practising register.

Using this information it is possible to estimate that pharmacists face approximately a 1 in 46 chance of a professional complaint being made against them.

This shocking statistic is only one part of the equation. Over 50% of the incidents notified to the PDA are employment related, with 500 employment or contractual issues being dealt with by our office in the first half of 2005 alone. Many of the issues brought to our attention demonstrate just how vulnerable pharmacists are to these types of problems.

There are common themes to many of the professional incidents reported to the PDA and this article looks at some examples of what can go wrong with error reporting and how pharmacists can avoid common pitfalls.

Error investigation

The PDA regularly receive calls from pharma-

cists who have been contacted by the local RPSGB inspector about an error they are completely unaware of. Occasionally this is because the patient has complained directly to the Society rather than to the pharmacy itself or the head office. More often than not, it is because the pharmacy has neglected to notify the pharmacist responsible, that an error has occurred whilst they were on duty. The patient can be aggrieved if the pharmacy staff or company does not deal with their complaint properly and therefore feels a formal complaint to the RPSGB is the only way to resolve the matter.

Locum pharmacists who may no longer be working at the pharmacy when the error comes to light are more vulnerable to this problem. However employees who move between pharmacies have also reported similar issues. Evidence gathered from many PDA reported cases, suggests that early intervention by the responsible pharmacist can often reduce the risk of a complaint being escalated through more formal channels such as the PCT or the RPSGB. It is not uncommon for patients to say when interviewed, that the only reason they chose to report was because their complaint is not being dealt with properly or taken seriously.

The pharmacist responsible for an error is able to give a valuable first hand input into the pharmacy's own investigation of the incident and provide a more balanced view of the environmental or staffing issues that may have contributed. Incorporating the views of the responsible phar-

macist allows a better quality of error analysis and should lead to a more robust action plan to prevent a reoccurrence. This contribution is lost if the pharmacist is unaware there has been a problem. It also means the pharmacist is not prompted to review their own practice to avoid a repetition of the error.

Of more concern is the destruction of evidence relating to an error by pharmacy employees, when an error has occurred. The identification of the responsible pharmacist is critical to investigating any professional complaint and this is severely hampered by poor complaint handling protocols where the label and audit trail evidence is routinely discarded. The PDA are aware of one major pharmacy chain where important evidence relating to a complaint, belatedly notified to a pharmacist has been destroyed. This meant the responsible pharmacist could not be conclusively identified out of several possible individuals when a compensation claim was made.

The PDA member involved in the incident described above was very distressed to receive a letter from the insurers of this pharmacy chain, which identified her as the responsible pharmacist for an error. This was the first time she was aware of any error being made and naturally wished to investigate what happened, in order to identify any changes that may be necessary in her own practice. Attempts to view the returned medicine in order to identify any signature on the labels were thwarted by the pharmacy manager, who had thrown away the medicine containers. The man-

RPSGB Law & Ethics Bulletin:

Notification of error.

In the light of several cases being brought before the Royal Pharmaceutical Society's Infringements Committee, pharmacists are reminded that where an error occurs and the subsequent completion of an error log is made by someone other than the person who made the mistake, it is essential that the pharmacist

responsible for the error is notified.

(Maintaining an error log is a good practice requirement and should be included in pharmacies' standard operating procedures.)

This is important so that the pharmacist responsible can take necessary corrective steps to prevent a reoccurrence of the error and can examine his or her current working practices or

personal standard operating procedures to identify areas that may require attention and need strengthening. Notification to the pharmacist responsible will also highlight training requirements which should then be duly addressed and will provide the opportunity for professional development. This requirement applies equally to employee and locum pharmacists.

ager had decided that our member was responsible for the mistake, but for some unexplained reason chose not to notify her. Following intervention by the PDA, evidence was uncovered that demonstrated our member was not in fact responsible for the error and therefore not liable for the claim. This was very welcome news for the pharmacist concerned, who was worried that a RPSGB investigation would be held into the matter.

The PDA has been actively lobbying the Fitness to Practise Directorate highlighting common problems encountered by our members when involved in professional disciplinary investigations. It is pleasing to note that these concerns have been recognised in a recent Law and Ethics Bulletin. See box: "RPSGB Law & Ethics Bulletin"

Future editions of Insight will highlight other areas where pharmacists are at greater risk of being involved in a complaint or error.

take note:

Pharmacists should also take note of the following points, to keep to a minimum the chances of a complaint escalating or being wrongly implicated in an error.

- ✓ Place a clear identifiable mark or signature on every label every time you check or dispense a medicine.
- ✓ Locums should provide a contact number for any queries that may arise after they have left the pharmacy.
- ✓ When notified about an error for which you are being held responsible, it is important to investigate the circumstances and use this information to review personal protocols or procedures. Any deficiencies in staffing levels, pharmacy standard operating procedures or environment factors, which may have contributed to the mistake being made, should be notified to the pharmacy.
- ✓ Try to view any audit trail evidence available, such as the returned medicines in order to determine if the mark or signature on the label is yours, before accepting responsibility for an error.
- ✓ When labels are produced, days in advance of dispensing the medicine, problems can arise in identifying the responsible pharmacist if an error occurs. This is particularly so if a pharmacist cannot be confident that they always sign every label on each item they check or dispense.
- ✓ Wherever possible take an active part in resolving the error and be confident that the matter is being handled to the satisfaction of the patient. Check any follow up actions agreed, such as sending a letter to the patient, has been completed.

> www.the-pda.org

Beware of insuring with the NPA

...unless you are a pharmacy owner!

In a recent advertising campaign, the NPA claims that it has always given "stacks of expert advice" and that it is now advising that pharmacists and others should take out the NPA's professional indemnity insurance.

...This advice however, does not mention that the NPA is an organisation whose primary role is to look after the interests of NPA members i.e. the owners of pharmacies – not the individual pharmacists or locums who work for their members.

The NPA's constitution has always stated that; "Where a conflict emerges between an employee (or locum) and the NPA member, the Associations allegiance will always lie with the NPA member – the owner of the pharmacy."

Consequently, any individual who takes out insurance with the NPA runs the risk of having the handling of their claim affected by the NPA's primary constitutional concern – which is to look after the interests of their member and not that of his employee or locum.

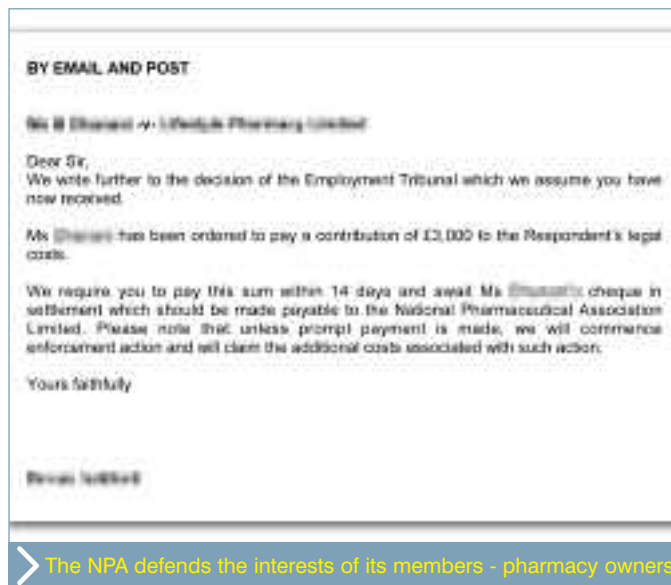
The PDA has received a complaint from a pharmacist who did take out the NPA's insurance, only to be told when he came to have a dispute with a large multiple employer, that the NPA could not help him because this employer was one of their largest fee paying members. In the end, the NPA did apologise for this suggesting that a mistake had been made – this pharmacist is now a Full PDA member.

The PDA believes that what the NPA should not be doing is attempting to provide independent PI insurance to individual pharmacists or others because it could place it in a serious conflict situation in the event that something goes wrong in the pharmacy. Moreover, pharmacists who do take up the NPA offer should understand that if things get tough, they may end up relying on an insurance policy that is controlled by their

employers representative organisation.

If anyone is in any doubt that the NPA will enforce its members (the employers) rights strenuously, they should study the enclosed letter. This was sent to a Pre-reg who had had a legal dispute with her employer. At the conclusion of the case the NPA's lawyers threatened the Pre-reg with legal action if she did not pay the NPA a sum of £3000.

These are undoubtedly the actions of an organisation that is clearly looking after the interests of its members; the employers – and the NPA performs that role very well.



The PDA believes that anyone who provides PI insurance for individual pharmacists must think, breathe and act in such a way as to ALWAYS put the interests of the pharmacist AHEAD of that of the employer.



Pharmacists are urged to think carefully before they take out their individual protection.

What would you have done?

by a PDA panel lawyer

One of our members was involved in a Statutory Committee case that raised a number of **important issues for locums, part-time pharmacists** and the profession at large.

Our member worked Thursdays to Saturdays at a relatively quiet pharmacy. The pharmacist owner worked there on Mondays to Wednesdays. The standard practice at the pharmacy was to dispense prescriptions, bag the dispensed items and put them in a drawer ready to give them out when patients came in to collect them.

If an item was not collected on the day it was dispensed, it would be handed out when the patient next came in, by whoever was on duty at the time.

Mr 'A' was an elderly patient with Parkinson's disease. One Wednesday, when the pharmacist owner was on duty, Mr A's wife brought in a prescription for her husband for Pergolide 50mcg. In error the owner pharmacist dispensed Pergolide 1g and put the labelled item in a bag, ready for Mr A's wife to collect. 'Mrs A' came in the next day, by which time our member was on duty. The dispensed item was handed to Mr A's wife by an assistant without any involvement on the part of our member.

Two days later on Saturday, our member was on duty again, alone in the pharmacy, when a telephone call came in from Mr A's wife. She said her husband was vomiting and dizzy and asked if the Pergolide might be to blame. Our member asked Mrs A to read what it said on the packaging - she did so, but did not mention the strength shown on the original box, just what was on the dispensing label. Our member did not look Pergolide up in the BNF. Had she done so, she would have seen that dizziness and vomiting were common side effects of Pergolide, however, those side effects could also occur with the lower 50mcg dose. In any event, it was not clear that Mr A had actually taken any of the incorrect medication at that point.

Our member did not feel it appropriate to ask Mrs A, an elderly lady, to return to the pharmacy to bring the tablets for inspection, bringing her husband with her or leaving him on his own. She did not think an error had been made, because she knew the owner to be a careful pharmacist. Instead, she advised Mrs A to call her GP's emer-

The PDA provided an expert witness who gave evidence to the Statutory Committee that our member's actions fell within an acceptable range of responses in the circumstances

gency service immediately. Telephone records later showed that Mrs A did so. An ambulance was called. Mr A later died in hospital, but this was due to his underlying condition, rather than from an overdose of Pergolide.

Our member and the pharmacist owner were brought up before the Statutory Committee. Against our member, it was alleged, firstly, that she had not carried out her professional duties in connection with the dispensing of the Pergolide and, secondly, that she had not inter-

vened appropriately when she took Mrs A's telephone call. The PDA's lawyer argued that to prove misconduct the RPSGB would have to show that something worse than negligence had taken place. The PDA provided an expert witness who gave evidence to the Statutory Committee that our member's actions fell within an acceptable range of responses in the circumstances. **ES**

outcome:

The Statutory Committee found the owner guilty of misconduct because of his dispensing error and reprimanded him. The allegations against our member, were dropped.



vened appropriately when she took Mrs A's telephone call.

The PDA's lawyer represented our member at the Statutory Committee hearing and he argued that she had no involvement in the dispensing of the pergolide as the item was entirely complete at the time she came to work. The position regarding the telephone call was more complex. There were plainly a number of things our member could have done, such as checking the BNF or visiting the patient to check the medication, or insisting that someone bring the medication to

Even if you have not dispensed the items, it is worth checking

Remember: always contact the PDA as soon as you become aware that an incident has occurred
www.the-pda.org

Staff appointments

As a direct consequence of its growth and strategic direction, the PDA is proud to announce **three new key staff appointments**.



> Karen Weekes

Karen, a solicitor, was previously with the Citizens Advice Service where she specialised in providing advice and representation to claimants and respondents in employment disputes and national training seminars in relation to employment legislation for other CAS

"We believe that we offer an unrivalled legal service to our members. The current cost of an individual's annual membership would buy less than one hour of a high street solicitor's time and we want to improve our members access to this important cornerstone of our offer."

John Murphy, Director of PDA.



> Orla Sheils

Orla joins Karen as the PDA Paralegal. Both legal experts have been brought into the in-house team to strengthen the legal service we offer to our members, particularly in the field of employment and locum contract disputes.

"I am delighted to have joined such a forward thinking organisation as the PDA. To date, I have enjoyed the variety of work and contact with our members. I am committed to ensuring the PDA not only meets the expectations of its members' in defending the rights of individual pharmacists, but exceeds them."

Orla Shiels, PDA Paralegal.



> Maleeha Bari

Maleeha, a pharmacist, is now the PDA Teacher Practitioner. In line with its strategic objectives, the Association is raising the awareness of the risk management agenda as widely as possible, including at undergraduate level.

"We know from speaking to a number of academics, Heads of School amongst them, that they would welcome help and support in our area of expertise. We have at our disposal many interesting relevant case studies and experiences, which provide excellent learning opportunities."

Maleeha Bari, Teacher Practitioner.

Among other skills, these two appointees have extensive experience in advising individuals, assessing and supporting claims and defending respondents in employment tribunals.

Maleeha will also be responsible for supporting the PDA's extensive risk-management educational programme.

'Independent Prescriber' plans announced.

The PDA has been indemnifying Supplementary Prescribers since their inception almost two years ago. At the time a statement was made to the effect of 'The Primary Care Consultants Policy will afford you full protection during your training and as a practitioner until the risk assessment is complete and a new policy and premium is in place.'

This arrangement is still in place for Supplementary Prescribers and the Association has also been able to secure a similar temporary arrangement for Independent Prescribers, whilst they are undergoing training, Mark Koziol, PDA Chairman announced in October 2006.

"We wanted to reassure members, so that they could continue their training and development with peace of mind. We have come to an arrangement that our Primary Care Policy will cover their risk whilst training to be an Independent Prescriber" said Mark. "We are planning to have a new policy in place from January 2007 that will reflect the changing roles in Pharmacy and the increasing risks, Independent Prescribing being just one of them."

In the meantime, members who are about to, or are undergoing training as an Independent Prescriber and wish to secure cover should contact the PDA either through the website address below or by calling us on 0121 694 700.

Could you be getting more from your Professional Indemnity insurer?

We guarantee that no other Pharmacist's PI provider delivers benefits to employees and locums as comprehensive as those provided by the PDA.

Much more than PI insurance:

- Demand compensation from your employer if you are treated harshly at work
- Take your side if your error may have been caused by actions of your employer
- Organise conferences and provide bi-monthly risk management information
- Support locums in situations where employers refuse to pay fees promptly

Perhaps that's why **more than 11,000** members have already joined!

...have you?

www.the-pda.org | 0121 694 7000

The Pharmacists' Defence Association is an appointed representative of the Pharmacy Insurance Agency, which is authorised and regulated by the Financial Services Authority



16 ~~SIX~~ FOLD INCREASE IN RPSGB DISCIPLINARY HEARINGS.

DON'T FACE PROBLEMS ALONE.

The number of RPSGB Infringement committee hearings in 1993 was 56, in 2003 it was 333. *...874 in 2005*

who's defending your reputation?

When a complaint about a pharmacist is made to the RPSGB, the Society is duty bound to act in the public interest. An increasingly litigious culture produces many more complaints, consequently, RPSGB inspectors spend much more time investigating and acting upon them.

These days, the inspectors no longer have the flexibility that they used to and cannot issue a local written warning to a pharmacist. Instead, increasingly, pharmacists are receiving formal written warnings from the Infringements Committee - or worse. This can leave pharmacists feeling bewildered and frustrated.

At the **Pharmacists' Defence Association** we have extensive experience of supporting pharmacists in these situations. We always work tirelessly to ensure that the rights of pharmacists are protected during an RPSGB disciplinary enquiry and in the more serious cases, we will send a PDA representative to accompany the pharmacist. We provide legal defence costs support, should the case go to a Statutory Committee hearing.

You might call it defending your reputation; we would have to agree.

▶ £300,000 worth of Legal Defence Costs Insurance

Pharmacy employment specialists available

Online employment advice centre

Professional indemnity insurance

→ have you?

11,000 pharmacists have already joined the PDA.

Visit our website: www.the-pda.org

Call us: 0121 694 7000