PRIMARY CARE PHARMACIST EDITION

summer 08

insight

The magazine of the Pharmacists' Defence Association

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Who supports you when a conflict arises?

Also inside

PDA Conference and Annual Report

Chairmans Letter

Medicines Use Reviews

Mark Koziol, Chairman, The PDA

We have been receiving worrying signals from a significant number of our members. Many community pharmacists have told us that they are being bullied by their employers to deliver MUR targets set by management. Failure to meet these targets has resulted in naming and shaming and threats of disciplinary action, or performance management measures, we believe that this is clearly, bullying in the work place.

Meanwhile, some primary care pharmacist members are telling us that many GP surgeries are being inundated with piles of MUR forms, many of which are deemed to be of little or no value. This has led to much unnecessary effort being expended by primary care pharmacists when dealing with the resultant paperwork and patients. In many instances, it is inevitably the surgery based primary care pharmacist who is left to pick up the pieces. We are also aware that complaints about inappropriate or poor quality MUR's are now being handled at Professional Executive Committee Level in Primary Care organisations.

There is no doubt that Medicines Use Reviews represent a real opportunity for pharmacy and, if done in the right way and under appropriate circumstances could deliver significant benefits for both patients and prescribers alike.

The issue as we see it, is that the pressure being placed by the larger pharmacy multiples on area managers to generate more income has resulted in financial targets for community pharmacists which are disconnected to the needs of patients, the needs of the heath service and the realities that community pharmacists find themselves in.

Financial incentives are not new to primary care practice, many GP surgeries are incentivised to deliver their targets such as for child immunisations, medication reviews and also through QoF points.

However, it is important to be sure that incentives can support quality and not just quantity and we believe that the work environment and support provided by pharmacy employers for their pharmacists must be conducive to being able to perform this task properly. It is telling that a common theme being developed by pharmacists who are in contact with the PDA on this matter is that whilst ambitious targets are being set, very little in the way of additional facilities or staff support is being provided, let alone any extra time being given.

The PDA is currently gathering information on this important issue, which in different ways affects both community and primary care pharmacists. We are keen to understand the magnitude of the problem and appeal to any primary care pharmacists who have views on this matter to share them with us; any submissions will be gratefully received.

April 2nd 2008 saw the birth of the PDA Union

I am confident that the unique blend of Defence Association, insurer and now union, provides the most formidable and cost effective form of defence available in pharmacy and is a vital tool for all in practice. This unique organisation is the first pharmacist union designed for all sectors of pharmacy practice. Importantly, the PDA is an organisation that unlike some pharmacy insurers (such as the National Pharmacy Association insurance company) is not in any way connected to or controlled by pharmacy employers.

In the next few weeks, the PDA union will be seeking to elect more representatives to its various member committee's and I would appeal to any primary care pharmacist PDA Union member wishing to make a difference to consider putting themselves forward. Please visit the Union section on the PDA website for details. The article on pages 18 and 19 gives further details of the recent inaugural PDA union meeting.

Naturally, the Union will primarily benefit PDA Union members; if you are not yet a member, then now would be a good time to consider joining at no additional cost.

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

CONTENTS

Cover Image: '**David Slings the Stone**' by James Tissot (1836-1902)

News

The PDA Union targets work-related stress

In a Health and Safety Executive (HSE) survey 13.6% of all working individuals thought their job was very or extremely stressful. Occupation and industry groups containing teachers and health-related professions are among the groups with a high prevalence of work-related stress. A PDA member survey indicated that phamacist stress levels are higher than the norm.

Pressure is part and parcel of all work and helps to keep workers and managers motivated. It is excessive or uncontrolled pressure that can lead to stress, there is no such thing as 'good' stress. Such stress undermines performance, is costly to employers (estimated to be responsible for 13.8 million reported lost working days per year), and above all, it made over half a million people ill, physically or psychologically, during the survey period.

Many of the early outward signs, such as irritability, mood swings, finding it hard to concentrate, should be noticeable to managers and should alert those with significant control and responsibility for workplaces to problems within the organisation.

To support members, the PDA Union will be launching a 'Stress Audit' in the summer months. The Union wants members to contribute in order to assess their own individual levels of stress and to help the PDA develop a hard hitting initiative to be launched later in the year to reduce stress levels for PDA members.

"The employer has a duty of care to its employees and others working in the pharmacy;" said Eddie Newell, the PDA Union communications officer, **"our members tell us that work demands are getting greater and causing them more angst. We want to get to the bottom of it and gather some meaningful information that will help us identify and quantify the difficulties our members are experiencing in this regard, as well as supporting them on an individual basis to deal with their particular circumstances."**

Mr Newell urges all members to take part in the 'Stress Audit' when further plans are announced in the near future.

PDA's response to RPSGB consultation on cases for non-referral to the Investigating Committee

The PDA welcomes the principle of reducing the number of pharmacists who are referred unnecessarily to the Investigating Committee. However, in its response to the 'Consultation on cases for non-referral to the Investigating Committee', the PDA told the RPSGB that this review is merely an attempt to treat the symptoms of bad regulation and does not address the causes sufficiently.

"We have been alarmed at the high level of referrals to the Investigating (formally Infringements) Committee," said Mark Koziol, Chairman of the PDA. **"In our view, the regulatory body has presided over a fitness to practise regime which has acted without any sense of proportionality. Whether a pharmacist has committed an outrageous misdemeanour or whether a minor complaint has been made against him, the pharmacist will be subjected to the same investigatory process".**

The PDA maintains this review has been inevitable because the Society is becoming swamped by the quantity of cases, the length of time each investigation is taking and the committee processes that are required to comply with the fitness to practise rules which the Society itself has written.

In its submission the PDA proposed;

- ✓ A screening committee to sift out complaints that do not warrant any further action
- ✓ Discretionary powers to be given to inspectors to conclude matters at a local level
- ✓ A **'No Case to Answer'** outcome to be introduced, in addition to **'No further action at this time'**
- ✓ Additions to the types of cases that the Society are recommending need not be referred; pharmacy contract acquisitions and commercial disputes between locums and employers
- ✓ An end to investigators giving greater credibility to the word of a complaining patient than that of a pharmacist, in the absence of any other evidence

STOP PRESS... Since the production of this article, the PDA notes that some of it's proposals have been implemented.

SHORTS

PDA to sponsor BPC 2008

The PDA will again be one of the major sponsors at BPC this year and will be distributing a number of complimentary one-day and three-day tickets to interested members in July as part of the sponsorship arrangement. Organisers are attracting more practising pharmacists by introducing a full day on Sunday 7th September. The PDA will be organising a special session on this day entitled **"Recognising and dealing with occupational stress in pharmacy".**

Pressure to perform MURs

The PDA has issued guidance to all pharmacists who are being pressurised into performing Medication Usage Reviews (MURs) against their professional judgment.

The pressures include bullying emails from company managers which threaten dire consequences for non delivery of targets. Some companies use harassing techniques such as "name & shame" where information is shared around a group of individuals with the intention of identifying and humiliating non-performers. The PDA refers to this behaviour as institutionalised bullying and it should not be condoned by employers, superintendent pharmacists or the RPSGB. Guidance from the PDA is on www.the-pda.org.

PDA overturns RPSGB Interim Suspension Order Application

Since April 2007 the Society has had the power, under the Pharmacists and Pharmacy Technicians Order 2007 to act quickly and seek 'Interim Orders' from two of the new Statutory Committees when it suspects that a pharmacist poses an ongoing and serious risk to the public or themselves. This means that where the Society believes it has grounds for serious concern about a pharmacist, it can apply to either the Health or the Discipline Committee for an Interim Order so that the pharmacist's registration be immediately suspended, or alternatively that their continuing ability to practice be made the subject of conditions, pending a full hearing of matters by the relevant Committee. The pharmacist typically has at most only a few weeks notice of the application and defending him/herself inevitably involves expert (and expensive) legal support, in order to protect the individual's position and basic rights. Suspension from the register results in a drastic loss of income and pharmacists face the full might of the Society's legal machine. Clearly there is a need to act quickly to protect the public when necessary, but a recent application for such an order caused astonishment at the PDA.

For legal reasons only an outline of the circumstances can be released. At the time of the events giving rise to the application, this pharmacist was newly qualified and during the early days of her professional career had a poor relationship with her community pharmacy employer. The employer then made a number of allegations to the Society about the pharmacist, which triggered a Fitness to Practise investigation. The pharmacist believed that her employer had failed in its duty of care towards her and did not provide adequate support at her workplace. Over 30 months after the allegations were originally made and without warning, the Society applied for an Interim Order against the pharmacist. She had been working successfully without incident or complaint since leaving her employer in 2005 and was stunned by this threat to her livelihood. With the support of the PDA, the Application for an Interim Order was successfully challenged. The Committee accepted legal submissions that the pharmacist did not pose any apparent ongoing risk and determined that she could remain on the register unconditionally, at least until the final determination of the disciplinary case against her. The Chairman of the Discipline Committee said that an Order could only be made if it was "necessary" and added that there had to be something presently going on that needed to be stopped; in the instant case, there was no allegation of any ongoing malpractice (only malpractice in the past) and therefore there was "no reason that an Interim Order was necessary".

"This is the first time an Interim Order application by the Society has been successfully challenged; it remains a shame however that whilst Statutory Committees now have the power to award costs against a Registrant, Company or the Society after final hearings of allegations, they have no such similar powers in respect of successful Pharmacist's defence costs, incurred through failed applications by the Society for Interim Orders," Graham Southall-Edwards the PDA Advisory Board Member and legal representative commented.

Registration Appeals Committee impact on **pre-reg students**

The Registration Appeals Committee (RAC) has been in existence since April 2007 and has heard a number of cases involving pre-registration graduates who, because of past misdemeanours, have been denied registration as a pharmacist, at the stage where the application is determined by the Registrar. The PDA has supported these students through the subsequent, traumatic and stressful appeal process, by providing expert legal support and representation at the Registration Appeals Committee hearing.

The PDA's experience has reinforced the importance of early legal advice to manage the whole process of registering with the Society and to maximise the chances of a successful appeal. The PDA urges members who are involved in tutoring to raise awareness of the benefits of free PDA membership with their pre-registration trainees. **An appearance before the RAC can cost several thousand pounds in legal fees; fortunately for those students who have already joined the PDA, they are covered for this event as one of the many benefits offered free to pre-registration members.**

Professional Regulation
Overloaded?

Part of the PDA's support to members is providing legal representation at meetings of the various Statutory Committees set up since April 2007. PDA executives were alarmed to learn recently that new cases coming before the Disciplinary Committee (DC) are not being listed for a hearing until well into 2010, a two-year wait at the time of publication. Considering that the new committees have only been in existence since April 2007, it is of great concern that a lengthy backlog has already developed. All cases are initially heard by the Investigating Committee (IC), also set up in April 2007, and cases that meet certain criteria then are referred for a full hearing before either the Discipline or Health Committee. The PDA also gives support to members at the IC stage by providing written representations. It is the PDA view that the Committee has, in the past, referred cases unnecessarily to the DC (and the Health Committee – 'HC') which would have been adequately, more effectively and more efficiently disposed of by one of the methods of disposal available to the IC.

More recently, there does seem to have been greater recognition that some cases can be effectively dealt with at the IC stage, without recourse to a full hearing; this therefore reduces pressure on the pipeline of cases heading towards the DC/HC. It is hoped that the IC can in the future learn from its early unnecessary referrals and find a balance which effectively filters out the less serious cases, in order that others can be dealt with within a reasonable timescale. As one PDA Advisory Board Member wrote in the Journal in 2006, if Justice is to be fair, it must not only be seen to be done; it must also be swift.

PDA call for clarity over the rules applied for non-referral cases

The Society operates a system of non-referral of single one-off dispensing errors to the Investigating Committee which fulfil certain criteria. A consultation exercise has recently taken place to extend the criteria for other types of cases (see www.the-pda.org for the PDA response). Although the sanction applied via the non-referral route (which is advice on conduct and a formal record made of the incident) is essentially the same as being referred to the Investigating Committee, the use of non-referral criteria is to be welcomed because it can reduce the cost, time and stress associated with a formal referral to a Statutory Committee. It has come to the PDA's attention however, that the Society can impose additional rules which are over and above those published and endorsed by Council. The PDA is aware that other unpublished criteria have been applied which have resulted in pharmacists being referred to the Investigating Committee despite the error being suitable for non-referral. These include errors involving the same family who have complained about separate errors involving different pharmacists, or where the same pharmacy (but different pharmacists) is involved in multiple errors. The PDA believes that arbitrary application of hidden rules is against the spirit of fair and transparent regulation and has raised this issue with the Society and through letters in the Pharmaceutical Journal.

How David took on Goliath

This anonymised piece, which is based on a real case, describes what can happen to pharmacists if they get embroiled in a civil claim because of a dispensing error in a NPA members pharmacy.

My nightmare started when I received a call from the supermarket pharmacy manager in September of 2003. He told me that I had made a dispensing error in May of that year whilst working as a locum; I had given Indomethacin 75mg three times a day instead of 25mg and that the patient had complained.

What followed was a four and a half year professional roller coaster ride during which I was fortunate to have been supported throughout by the Pharmacists' Defence Association (PDA).

Even though I couldn't remember the prescription, in good faith I just accepted that I had made the error because I assumed that the incident must have been thoroughly investigated. I was also told that the matter was "being taken care of" – little did I know what this would mean as the next I heard was that the National Pharmacy Association (NPA) passed the claim over to the PDA to settle.

The PDA advised that, initially at least, this seemed a simple claim for damages. However, some weeks later we learned that the patient had been signed off work for twelve months and could be further debilitated, apparently as a result of the error. Supported by medical opinion, her lawyers estimated the damages could be in the region of £90,000 plus her costs at that time of £10,000.

However the PDA did not want to expose me to any professional investigation and sought to balance common sense with the need to close the matter off as quickly as possible. They proposed an out of court settlement of £30,000 plus half of the claimant's legal costs, leaving the NPA to pay an equivalent amount as they had initially admitted liability in correspondence with the patient. The NPA refused, as it was their view that I was 100% liable; instead, they instructed a major legal firm and in a letter to the PDA they stated (paraphrased);

> [This pharmacist] is required by statute to make the supply in person or to supervise the supply being made and be in a position to intervene to prevent supply if it was inappropriate. [The NPA member's] position is that they have no liability and [the pharmacist] has no defence to the claimant's claim.

It became apparent to me that it was not the patient (who had a valid claim) that was my opponent, but my real adversaries were the NPA and their lawyers.

My shift on that fateful day was 8.00 am till 3.00 pm and the NPA alleged that since the label had been generated at 12.17pm, then I had been the pharmacist responsible for the error. When the claimant's solicitor made further disclosures a number of things became apparent.

I could not recognise the initial in the 'dispensed' or 'checked-by' box on the label. This pharmacy picked up prescriptions from the surgery at around midday and labels were produced in batches. Prescriptions were dispensed gradually throughout the day (the Pharmacy was open until 9.00pm) with priority being given if the patient arrived to collect in the meantime. When I saw the labeled original manufacturer's container being put in evidence I was suspicious because it was not my normal practice to dispense medicines in an original container.

In August 2006 the court papers arrived and this was quite daunting, as the claim for compensation was now for £150,000 plus interest and considering the evidence available, we believed that the NPA should be liable for half of the claim at the very least.

The NPA's lawyers tried to rely on the fact that my contract for services with the supermarket stated that I would be responsible in the event that anything went wrong. I saw the witness statement of the superintendent who claimed that the supermarket could never be held responsible for the mistakes of its locums. In my view this was all one way they did not take into account their responsibility in fulfilling the contract; what about the rest breaks that I should have had but was never able to take? What about the fact that I am not allowed to consume any food in the dispensary but then expected to stay there for sometimes up to 13 hours. They were too quick to pass the liability on to me for my liking.

Another statement came from the pharmacy manager and it became clear that a major factor in their case against me was that the error investigation was undertaken by (in his own reckoning) a 'reliable' person. It became significant later that he had everything to gain by finding I was responsible, as he seemed to have been the only other pharmacist on duty after I left at 3.00 pm It was he who had concluded that after his detailed and careful investigation that it was I who had committed the error.

the claim for compensation was now for £150,000

It very much seemed to me that the NPA lawyers were painting their supermarket client as being a model operator and their pharmacy manager as being the ultimate professional, meanwhile I was being painted as unreliable and therefore guilty.

As the court case drew nearer, the claimant introduced new evidence that she had collected the medication at 7.30 pm, some four and a half hours after I had finished my shift. This meant that although I was there when the label was generated there was considerable doubt that I was there when it was dispensed and I could not have been there when it was handed to the patient.

We wanted further clarification but the NPA's lawyers were unprepared to give us details of the pharmacist in charge who relieved me – the PDA largely suspected that this may have been because the employer's records were incomplete. We couldn't get a witness statement from the Dispenser either. The NPA continued to argue their corner, but I was now being constantly re-assured by the PDA that the NPA member's position was weakening. It was a good feeling knowing that I had such a level of support.

there were further developments;

Firstly, it became obvious that the superintendent's statement contained a number of factual inaccuracies. These, added to the other pieces of information that we already had, started to give the distinct impression that this employer did not really know what went on in its own pharmacies. And secondly it came to our notice that their most 'reliable' witness, the pharmacy manager, had recently been removed from the RPSGB register for overlooking the payment of his retention fees. The credibility of the NPA's argument had been severely dented.

A few days before the case, the NPA were wavering and wanted to do a deal with the PDA, and offered 20% of the compensation; this was rejected. Three days before the case, they offered 49%; trying to make a point that they were less than 50% liable, but the PDA told them that it had offered 50/50 all along and

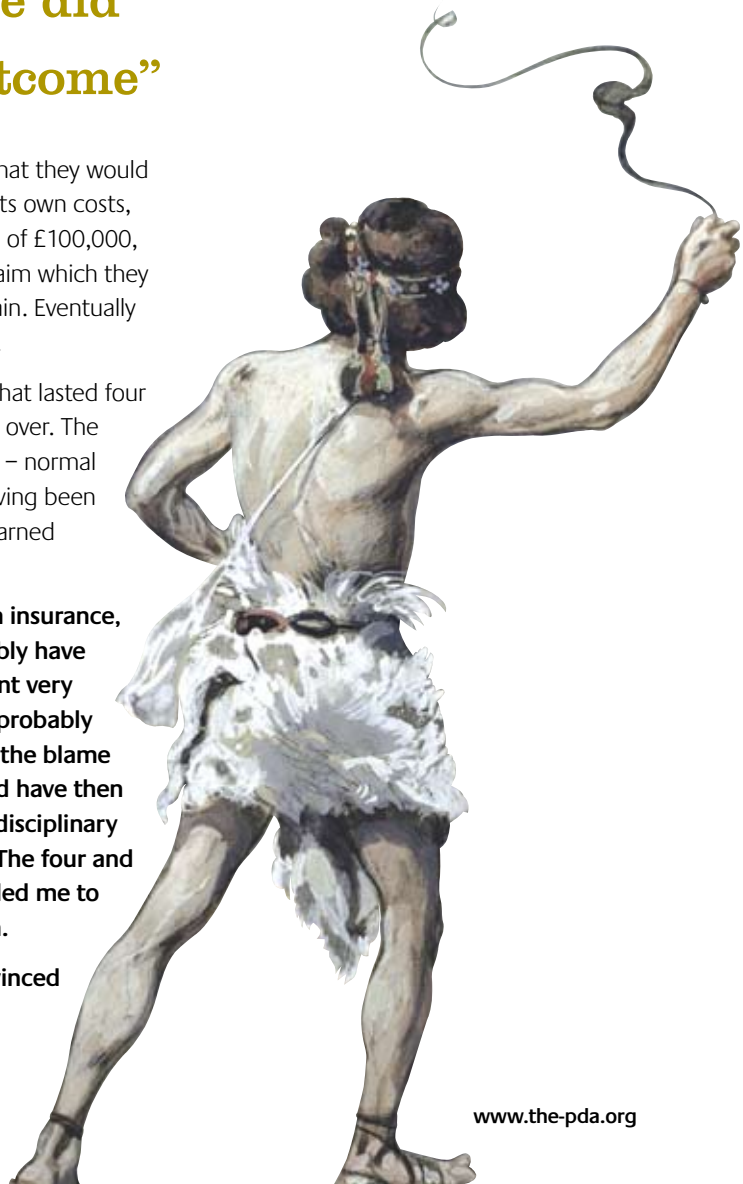
"NPA's lawyers were threatening financial consequences if we did not accept their preferred outcome"

I was surprised that throughout the case the NPA's lawyers kept reminding the PDA, that they were running up substantial costs which seemed to me to be excessive, and that they would seek to recover them if we lost. They also made an application to have the case heard in the High Court, which would have increased costs further had it been successful. The real eye-opener was when their lawyers wrote to inform us that their costs were approaching £92,000 (I could have bought a house for that – then!). This appeared to be just one of many attempts to intimidate us into paying up or face the consequences of a larger bill. To me this began to feel like David against Goliath; the NPA's lawyers were threatening financial consequences if we did not accept their preferred outcome. I sensed that their behaviour smacked of desperation and bullying because the PDA would not succumb.

In the last few days before the court case, it would not move AND that they would expect the NPA to cover its own costs, estimated to be in excess of £100,000, more than the original claim which they initially refused to entertain. Eventually the NPA's lawyers agreed.

So finally, after a matter that lasted four and a half years, it was all over. The cloud had been removed – normal life could resume, but having been bruised by the events I learned some salutary lessons.

1. **Had I not had my own insurance, the NPA would probably have settled with the patient very promptly. However, I probably would have inherited the blame - something that could have then resulted in an RPSGB disciplinary sanction against me. The four and a half year fight enabled me to defend my reputation.**
2. **If I had not been convinced of the need to carry insurance that was independent of the NPA before, I certainly am now. It dawned on me how vulnerable I would have been had I taken out an NPA locum insurance policy. No matter how the NPA tried to manage the conflict, it would have found itself funding and therefore controlling the defences of both myself and the supermarket.**
3. **I was the victim of accepting poor practice; pre-labeling, I have concluded, is an accident waiting to happen and I would be surprised if it is in any pharmacy's SOPs, but we all let it happen regardless and are vulnerable if errors are made by others; usually because of the tainted audit trail**
4. **I will never rely upon the 'say-so' of others that I have made an error, and I will conduct a thorough investigation to assess my involvement and risk**
5. **And finally I know where to go if I am in need of good advice and support.**



Employers to set up **national blacklist** for allegedly dishonest employees

Workers accused of theft or damage could find themselves blacklisted on an online register to be shared among employers. The National Staff Dismissal Register (NSDR) will become live by the end of May.

Those employees, who have faced allegations of misdemeanours such as stealing, forgery, fraud, damaging company property or causing a loss to their employers and suppliers and have been dismissed as a result, will be listed. Also on the list, and perhaps more worryingly, will be those who, on advice, resigned before they could face disciplinary proceedings at work. The details that could be on the database will include name, address, date of birth, national insurance number and previous employer; it may even include a photograph!

When determining whether or not an individual has a case to answer and should be dismissed, an employer is only required to have a genuine belief that the individual is guilty of the alleged misconduct and to carry out a reasonable investigation. It could therefore be the case that the falsely accused will be vulnerable.

Many unions and civil liberty groups have expressed outrage at the scheme. John Murphy, General Secretary of the PDA Union, said, "Whilst we do not, of course, condone criminal activity in the workplace, we believe that the creation of this register is just another sledgehammer to crack a tiny nut and could leave employers open to claims of defamation. Our view is that the Criminal Records Bureau check should be sufficient for this purpose and our concern is that the information contained on this new database will be available to potential new employers during the recruitment process regardless of whether or not an individual's guilt was proven. This could result in innocent pharmacists being refused an interview or even being rejected for roles they would have otherwise secured or even being refused an interview".

Having contacted the Information Commissioner's Office for their comments regarding the lawfulness of the register, the PDA Union was informed that a statement will be prepared and released in the very near future. It does seem to be the case that provided the participants and operators of the register notify individuals that they intend to put their details on it, they may be able to do so. If this proves to be the case and if you are approached by your employer for your consent in order that they can pre-empt any future action to do this, we urge you to contact the PDA Union for assistance.

Anger over RPSGB election

A debate raged in the letters pages of the Pharmaceutical Journal in April and May over the RPSGB Council election candidates. Pharmacists wrote in to the Journal expressing their disquiet over the influence the multiples were trying to secure by putting up some of their senior employees as candidates.

The response from a senior Boots employee already on Council was indignant stating *"...we are grateful for the support that our employer affords us, which enables us to take an active part in supporting the profession and its future, but we are conscious that we were, or hope to be, elected by the membership, and as such are dedicated to serve in the best interests of the membership."* (PJ, 19 April 2008, p471).

Unfortunately in a later letter an employee, the author identifying him or herself as 'A Boots Pharmacist' (PJ, 10th May 2008 p566) revealed that a senior company director let the cat out of the bag and undermined her colleague by posting a message on the Boots internal bulletin board urging employee pharmacists to vote for senior company employees to *"...help maintain the company's key objective of being highly influential externally."*

In his letter the Boots employee who was not a member of the Boots Pharmacists Association (BPA), also questioned the relationship between it and Boots, describing it as 'too cosy' and criticised the BPA General Secretary's role in giving his backing to the senior Boots employees who were standing (PJ, 26th April 2008 p506-7); the letter from 'A Boots Pharmacist' left the readers in no doubt as to his feelings when he wrote *"Here is yet another example of a senior member of the Boots Pharmacists' Association either exhibiting a degree of naivety that ill becomes someone purporting to represent the interests of Boots employee pharmacists or someone who is unwilling to face up to the facts that Boots UK has a strategic objective of being highly influential externally and that the company believes that this can be maintained by electing its employees to positions on the Society's Council and the English Pharmacy Board."*

Mark Koziol of the PDA called on pharmacists *"...to consider candidates who, while not necessarily having the backing and support of an employer organisation, will nevertheless have a broad appreciation and sympathy for important professional issues as seen through the eyes of the individual employee and locum pharmacist."* (PJ, 19th April 2008 p471)

The BPA had an opportunity to join forces and merge with the PDA last year "We were so close to a symbiotic arrangement that would have been very beneficial to both the BPA's and our members" said John Murphy, Director, "but in the end we had to call off talks when we found out that they were prepared to listen to counter-proposals from senior management designed to undermine and exclude the PDA. The fact that they were prepared to consider them seriously damaged the relationship. As events have unfolded they have since accepted the overtures from the company but their behaviour at the time gave us sufficient insight to confirm that there would always be conflicts of interests between the two organisations aims and objectives. This episode I think demonstrates where the difference in our philosophy lies; we believe that you cannot represent your members effectively if you are prepared to 'cosy-up' to the employer".

PDA Annual Report 2007

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Annual report of the PDA 2007

As a defence association, the PDA operates in two ways: **reactively**, supporting members who have found themselves in difficult situations and **proactively**, seeking ways to prevent problems arising in the first place. Most importantly, in trying to help its members, the strategy of the PDA has been to draw attention to the fact that poor working environments for pharmacists contribute to many of the incidents that cause harm to patients and that ultimately draw pharmacists into legal, professional and personal difficulties. By focusing on issues linked to the working environment, the PDA is dealing with the causes of these incidents and hence is actively striving to reduce their frequency. Much of the work of the PDA in 2007 has been linked to this key area. The purpose of this 2007 annual report is to update members on the activities of the PDA during the calendar year.

Proactive developments

Horizon scanning and wider political developments are always important matters that inform the strategy of the PDA. In particular, the association is on the alert for issues that can detrimentally affect its members and the individual pharmacist agenda generally. In response to these, the PDA lobbies, persuades, responds to consultations and initiates debates within the profession whenever it becomes necessary to do so.

There have been many issues in which the PDA has been directly involved in 2007 which will be of importance to its members. During the year, the PDA took significant steps to enhance further its influence both within and outside the profession.

Remote supervision

The PDA has vehemently resisted this proposal which emanates from government. As many PDA members will know, the remote supervision policy would allow a pharmacy to be operated in the absence of a pharmacist, but the pharmacist would still be responsible for anything that happened during that absence. Rarely has the PDA considered a proposal that could lead to so many problems for both patients and pharmacists as this one. Having spent significant time and resources lobbying parliamentarians in 2006 on the potentially highly damaging effects of such a policy, we were encouraged to learn in early 2007 that the Department of Health (DoH) had decided to delay the consultation process for remote supervision until at least the issue of the responsible pharmacist (RP) has been dealt with. However, although this is some sort of a result, the delay, in its own way is problematic, because it means that the consultation about RPs is difficult to respond to, unless we know what the proposals on remote supervision will be.

Responsible Pharmacist

Initially, the PDA supported this concept as it seemed that this policy would represent a significant and welcome change to the way that pharmacies are operated. It was our understanding that the RP would be taking responsibility for the wider operation of the pharmacy, and would also be taking charge of matters such as workload and staffing levels. It was felt that this proposition could well result in finally getting rid of the excessive workload and staffing shortage problem that currently afflicts pharmacy (particularly in community practice). However, having attended several of the national DoH road show meetings, it became apparent that

the proposal was to become that the RP would take responsibility, but that the employer (superintendent) would still control the working environment. Such a proposition is simply not a realistic one for any pharmacist who is considering signing up for a RP position. Consequently, towards the end of the year, the PDA responded to the formal DoH consultation on this matter and suggested that the DoH should go back to the drawing board with the entire proposal as it was unsupportable in its current form; (details of the full PDA RP consultation response can be found on **www.the-pda.org**).

Application for Union status for the PDA

During 2007, the PDA began the application process to become a pharmacist union. More than half of all of the incidents dealt with by the PDA involve disputes between employers and employees/locums. This is something which under non-union arrangements has always been difficult for the PDA because it had no statutory entitlement to get involved in such a process, and in particular, to accompany PDA members at disciplinary meetings.

However, following the unionisation move this all changes. Union status will entitle the PDA to represent members in grievance, disciplinary and redundancy situations – something that will be of great benefit to PDA Union members.

Union status will also provide the PDA with greater access to government as well as to funding and grants to support its developmental agenda. During 2007, all PDA members were given an option (at no extra cost) to extend their PDA membership to include union membership). By early 2008, well over half of all PDA members had agreed to take up this extension, with more members opting for union membership every single day. An election was held to appoint the PDA Union's first officials, details of which can be found on **www.the-pda.org** and also in the summer 2008 edition of Insight magazine.

Working with other organisations

Royal Pharmaceutical Society

Several meetings were held with officials of the RPSGB during 2007 and the particular focus of attention has been on fitness to practise. Such meetings have generally discussed issues of principle, such as the PDA's concern that the RPSGB inspectors are using error log registers to embroil pharmacists in RPSGB disciplinary procedures, or that the general volume of cases being instigated by the RPSGB against pharmacists is unnecessarily high (higher in statistical terms than for disciplinary hearings held by regulators of doctors, dentists or nurses). These meetings have also been used to raise concerns about the numbers of errors made by the fitness to practise directorate when undertaking disciplinary procedures. Such errors have included mailing confidential details of disciplinary proceedings against pharmacist A to some other pharmacist (who is not in any way involved in the case). Several other situations have involved pharmacists who have never been involved in the matter that the RPSGB is alleging that they are guilty of; they had never worked at the pharmacy where the alleged incident occurred. In one case, the pharmacist was being singled out for discipline for an incident that occurred in a pharmacy at a time when the pharmacist was still a pharmacy student and could never have been involved. Usually after many months of correspondence and intervention from the PDA, the cases are unceremoniously dropped by the RPSGB.

Some of the meetings with the RPSGB tended to be more positive; in particular, meetings to discuss the PDA's sponsorship of the British Pharmaceutical Conference (BPC). In 2007, the PDA was the principal sponsor of the BPC; this gesture was designed to show that the PDA is keen to work closely with the Society in the future as it loses its

Royal Pharmaceutical Society of Great Britain

The future of the Society

The PDA welcomed the government's announcement that it intends to take the regulatory role away from the Society by 2010. For several years, the PDA has maintained that the RPSGB has not only been unnecessarily over-regulating pharmacists, but that it had almost abandoned its important professional leadership and support role in favour of regulatory activity. As a consequence it had inflicted significant damage to the membership and also to its own professional standing as a professional body for pharmacists. During 2007, the PDA gave formal evidence to both the governments Carter review committee and the RPSGB's Clarke Inquiry as they considered the future of both regulation and professional leadership.

It is the position of the PDA that pharmacists need a strong professional leadership body that can both nurture and support the development of the profession and also to provide pharmacists with the tools necessary to their jobs.

(Details of the full PDA response to the Clarke Inquiry on **www.the-pda.org**).

regulatory role.

Department of Health

Several meetings, both formal and informal, were held with senior DoH officials to discuss a wide range of issues. These were primarily the PDA's concerns about the responsible pharmacist and remote supervision proposals. Meetings also focused on the future role of the new pharmacy regulator (The General Pharmaceutical Council) at which the PDA set out its concerns about the current regulatory philosophy of the RPSGB, which the PDA feels is highly damaging to both the public and professional interests of pharmacy.

National Prescribing Centre

Meetings were held with the National Prescribing Centre to discuss matters of mutual interest. As a result, it is possible that in 2008, some form of joint project working will be announced.

Boots Pharmacists Association

Talks between the PDA and Boots Pharmacists' Association about a possible merger ended in 2007 when it became apparent that BPA was concerned that this could have a negative effect on its relationship with Alliance Boots head office.

Boots Alliance

A meeting between the PDA and Alliance Boots was held at AB head office in Nottingham. The PDA representatives explained to both the then Superintendents of Boots and Alliance Pharmacy that it was seeking to secure union status; with a significant proportion of AB employee pharmacists as its members (Autumn 2007) the PDA would be seeking formal relations with the company in the future. This was a very positive meeting which also discussed matters of mutual concern.

Others

Many other meetings (both formal and informal) were held with officials of numerous other organisations and also with employers. The intention of these meetings was to ensure that the voice and the agenda of the individual pharmacist is put forward in the most appropriate way.

The PDA continues to handle record levels of incidents on behalf of members. The volumes of cases being handled was up by 9% over last year and came to 2,046 in the year 2007.

Reactive developments

Employer/employee -locum disputes

One hard statistic that refuses to go away is that disputes between employers and employees/locums represent more than 50% of all of the incidents handled. The 15% growth in the volume of these cases over the previous year indicates the increasingly hostile environment in which many employed pharmacists and locums are working (**Figure 1.**)

The most common forms of dispute are;

- Where senior management commences disciplinary action against employee pharmacists on grounds that are highly questionable or where grounds for such action simply do not exist. In many instances the deterioration in the relationship is caused because pharmacists have initially asked management to put right questionable work practices or environments.
- Where concerns expressed by employees about professional/ environmental matters are ignored by senior management.
- Where locums are booked by agencies or directly by employers and then the employer either substantially delays payment of the locum fee, or decides to unilaterally change the terms of the booking after the period of duty has been completed by the locum, e.g. refuses to pay the pre-agreed travel expenses or hourly rates.

The PDA will always attempt to handle such disputes initially by mediation whenever possible. In many instances, a PDA involvement results in the parties being able to resolve their issues very quickly without matters having to be

PDA activity Employer / employee locum dispute cases

Fig 1. An increase of more than 15% over last year

taken further. However, the fact that in 2007 more than £200,000 has been successfully claimed by the PDA on behalf of its members from employers who have treated them harshly or illegally shows that not all employers are keen on this style of mediation. This also shows that remedies do exist to deal with inequitable employment situations and that the PDA will not shy away from taking legal action on behalf of members if necessary. The total amount secured from employers in this way is now in excess of £450,000. Increasingly, employers are coming to realise (sometimes the hard way) that an organisation now exists that does look after the interests of their employees and locums.

Civil claims

As the reputation of the PDA continues to grow, we are finding that when an alleged negligence claim occurs and a patient is demanding compensation, the National Pharmacy Association (NPA) is passing more cases over to the PDA to handle where our member is involved. Sometimes, where an employer believes that their employee or locum has caused the error, it is the employer who asks the PDA to handle such matters. In other cases, where an incident is initially being handled exclusively by a hospital trust, the PDA gets involved to ensure that the interests of the member can be protected, particularly where a death of a patient is involved.

However, increasingly, both the NPA and the employers are finding that when the PDA handles a compensation claim on behalf of a member, the case is dealt with in a different way. It has to be remembered that the NPA primarily looks after the interests of its members – the employers. Protection of the brand image might be more important to NPA members than defending the pharmacist's reputation. Trusts will also have a brand image and may want to protect themselves as much as possible.

The PDA, however, handles matters in a different way; at the forefront of our mind is the reputation of our member and not that of the employer. Consequently, in many situations, where a settlement might otherwise have been made promptly and with the minimum amount of fuss to protect the employer's brand, the PDA spends a lot of time examining and researching an incident to establish whether the fault lies with the PDA member, employer or some other third party.

It is easy to see how this different approach could easily conflict with the NPA's more likely approach, which is to primarily seek to protect its member. Or the probable approach of a trust, in seeking to dispose of a complaint promptly. It is unlikely that any employer would wish to see any attention drawn to the fact that they, too, could have erred because their systems or working environments were defective.

This policy has proved very fruitful for the PDA and its members; on many occasions, it has been possible to establish, on closer examination, that in an incident where it had been claimed by the employer or the NPA that a PDA member had been responsible (either civilly or professionally), it subsequently becomes apparent that the employer needs to take some or even all of the responsibility. There have been several incidents where had it not been for the intervention of the PDA, pharmacists would have been held (professionally) responsible for incidents for which they could not reasonably be held responsible. We recall one case where in correspondence with a claimant, the NPA had accepted blame on behalf of a PDA member, at a time when no comprehensive investigation had yet been held to establish the facts. Following a thorough investigation by the PDA, it was possible to extract the member from some potential liability with half of the liability being placed with the employer.

These matters may seem incidental to many pharmacists, but they are fundamental to the principle of pharmacists being able to protect their own interests properly in error situations where there is a potential negligence claim (or professional disciplinary matter) by carrying their own independent protection. Pharmacists should be cautious about relying on their employer's insurance, or on any individual insurance scheme provided to them by the NPA or any other employer organisation such as the NHS clinical negligence scheme.

PDA activity Civil claims (£ thousands)

Fig 2. Largest claim in 2007 was £150,000

Litigation is an extremely expensive business, and that is why it is so important to be protected by an organisation that looks at an incident through the eyes of an employee or locum and not through those of an employer.

In one case in 2007, in protecting the PDA member, a court appearance was just a few days away; however, the lawyers acting for the NPA finally backed down and agreed that the employer should accept some blame. Some of these cases, despite not actually getting to court, still resulted in compensation and costs of more than £200,000. In one case in particular, involving a locum PDA member, a case went to a full civil court hearing. After six days of hearings, the judge was persuaded that the error committed by the pharmacist had not caused any harm to the patient and therefore the patient was not paid the £150,000 of compensation being claimed. However, because the NPA's lawyer persuaded the judge that the cost of the court case was entirely down to the actions of the locum and not of the proprietor, the judge awarded the NPA's costs of the case (a significant five figure sum) against the locum.

These cases clearly show that the NPA is there to primarily protect the interests of employers and the PDA exists to look after the interests of the individual pharmacist – these two interests are rarely the same. The total cost of claims settled by the PDA in recent years is in excess of £500,000. **Figure. 2** shows an increase of 25% on the previous year.

Professional disciplinary hearings

This is an important and growing area of PDA activity. The number of cases where the PDA had to offer members support in situations that could have led to, or did lead to professional disciplinary sanctions in 2007 rose by 47% to 840. The two main areas involved were;

1. Coroners inquests
This included hospital and community pharmacists in situations where patients had died. In these instances it is usual for a range of healthcare practitioners and also, in cases which have occurred in a hospital, for the trust to be involved to some extent. PDA members who have been supported by the PDA in these circumstances have found this support to be invaluable and have realised how vulnerable they could have been had they relied on the trust for support in these situations.

2. RPSGB disciplinary activity
There is no doubt that the fitness to practise directorate of the RPSGB is becoming increasingly active. In 2007, the PDA supported members in 708 cases by providing advice, mentoring or even direct representation at an RPSGB inspector's interview, and lawyers and barristers at statutory committee hearings (**Figure 3**).

Criminal proceedings

Many pharmacists consider that criminal proceedings pertain only to rogues who have been guilty of some heinous crime. However, what many PDA members have found through harsh experience is that the practice of pharmacy is one of the most highly regulated healthcare professions. Many of the laws which relate to it render any pharmacist who inadvertently falls foul of the regulations being subject to criminal proceedings. Examples include the 1968 Medicines Act and the Misuse of Drugs Act where a dispensing error or a missed entry in the controlled drugs (CD) register respectively, can result in a criminal prosecution.

Some areas where the PDA has supported members involved in potential criminal proceedings include:

1. Allegations of NHS fraud because of erroneous endorsing of prescriptions.
2. Allegations of NHS fraud following investigations into claiming for medicine use reviews that have not been performed.
3. Arrests of members on suspicion of manslaughter as a consequence of dispensing errors.
4. Criminal prosecution for failure to keep legal register entries of CDs.

Growth of the PDA

The membership of the PDA continues to grow and has now exceeded 13,000 members (**Figure 4**). One significant achievement is that almost 60% of all new members join the PDA through word-of-mouth recommendation. The growing membership numbers is one of the important qualifying

PDA activity RPSGB / Professional cases

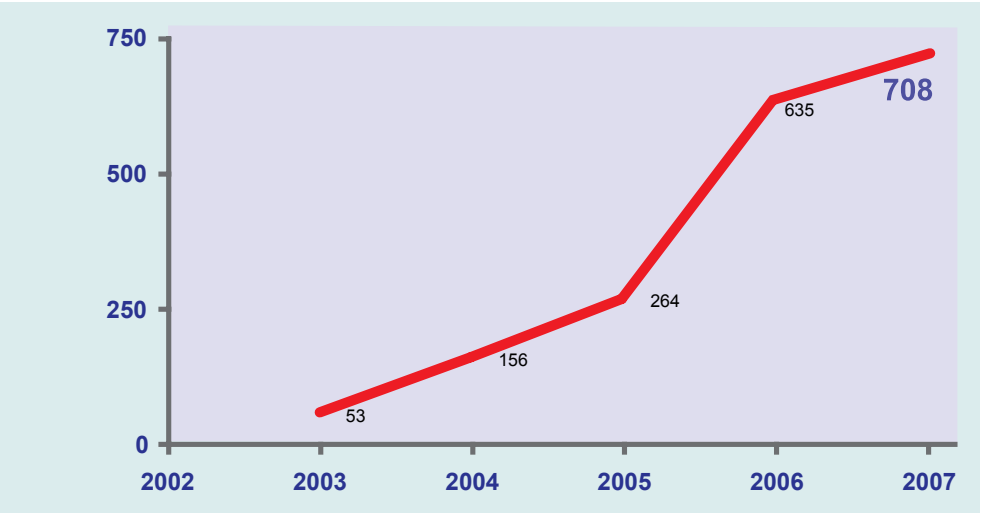

Fig 3. Concerns about professional accountability continuing to grow

pre-requisites for the unionisation initiative. Membership numbers of this order mean that as a union, the PDA will enjoy significant rights, and this should make the task of improving the working environment of the employee and locum pharmacist that much more achievable.

Fig 4. Significant membership numbers auger well for unionisation exercise

People of the PDA

The considerable legal funds available to all members by virtue of the insurance element of their membership and also the wide range of Defence Association style benefits will only be of real value if they can be applied in the right way. The individuals involved in running the PDA have the knowledge and experience to ensure that, in every sense of the word, the PDA is an organisation that not only defends your reputation but also seeks to influence the broader political and practice environments so as to improve the prospects for individual pharmacists.

The individuals involved in running the PDA are broadly split into two groups;

The Office based team and the PDA Advisory Board

The Office based team

Co-ordinating all of the activities provided by the PDA and also developing new services, direction and strategy is the PDA office based team. Those staff members directly employed by the PDA must be dedicated to the core aims of the PDA and passionate about defending the interests of the individual pharmacist.

Mark Koziol M.R.Pharm.S.
Chairman
Responsible for the outward facing relationships important to the PDA, Mark is also significantly involved in developing the strategic direction of the organisation.

John Murphy M.R.Pharm.S.
Director
Responsible for delivering the defence services of the PDA, John heads a team of both office based staff and the 15 member PDA Advisory board.

Mark Pitt M.R.Pharm.S.
Membership Services Manager
Responsible for ensuring that the advisory services are in place, Mark ensures that the quality and scope of the advice services provided are substantial.

Karen Weekes BA(Hons) Law & Bus, LLDIP, PgDip Legal Practice
Solicitor
As a qualified lawyer, Karen is involved in the detailed defence of members who have issues involving employment law.

Orla Sheils LLB (Hons) Law & Gov, PgDip Legal Practice
Legal Adviser
As a former clerk to the Employment Tribunals, Orla assists members in disputes between PDA members and employers.

Katherine Minchin
Senior Administrator
Katherine joined the team at PDA in 2003 and she is generally the first point of contact for PDA members.

June Cluley
Administrator
June has worked as a PIA administrator since 1997 ensuring that all renewal procedures are undertaken in an accurate and timely manner.

Sandra Dudley
Administrator
Supporting the general administrative requirements of the PDA.

The Advisory Board

The PDA Advisory Board is a carefully selected group of individuals renowned in their particular field of expertise. Collectively, this provides PDA members with access to a very wide range of skills available to support the aims of the PDA.

Individual PDA Advisory Board members will be involved to a greater or lesser extent in different areas depending on their own particular expertise.

Offering guidance and support to members when they endure situations which leave them feeling isolated and exposed.

Gordon Appelbe LLB, PhD, MSc, FRPharmS
Gordon is a specialist in pharmacy law and ethics and RPSGB regulatory and inspectorate matters. As an advisor to the Pharmacy Insurance Agency since 1993 , he has an extensive experience of advising pharmacists who are subject to an RPSGB or police investigation .. A legally qualified pharmacist, he is the co-author of Dale and Appelbe's Pharmacy Law and Ethics.

Elizabeth Doran M.R.Pharm.S.
Liz was the President of the British Pharmaceutical Students Association from 2002-2003 and since that time she has been a resident hospital pharmacist. Liz is significantly involved in the PDA's hospital pharmacy membership section and also with the PDA's student member programme.

John Farwell F.R.Pharm.S
John has undertaken work assignments for many NHS trusts as an independent pharmaceutical consultant. Before this, he has been, among other posts, chief pharmacist for several hospitals. John is involved in assisting with PDA members with disciplinary issues in the hospital sector.

Richard Flynn MR Pharm.S
Richard is experienced in encouraging best practice in relation to pharmacists and the issues that they face. Familiar with employment best practice, Richard has been significantly involved in supporting PDA members with work related disciplinary issues in community pharmacy.

Robert Gartside BSc (Pharmacology), FRPharmS, Diploma in Network Analysis
Bob worked in research in the pharmaceutical industry, then built a community pharmacy group on Merseyside before moving to North Wales. Secretary of the Local Pharmaceutical Society since 1980. Elected member (past Chair) of the Welsh Executive, Royal Pharmaceutical Society since 1990. Member of numerous Welsh government working parties.

Duncan Jenkins MSc PhD MRPharmS
Duncan works primarily in the primary care pharmacy arena. He commissions community pharmacy based services such as smoking cessation and emergency contraception provision. Expert sitting on the Medicines Management Services Collaborative panel and is a committee member of the Primary Care Pharmacists Association.

John Jolley FRPharm.S , FIQA.
John is primarily an industrial pharmacist, he has an Institute of Directors certificate in Corporate Direction, requiring skills in assessing compliance with Guidelines for directors including elements of employment legislation. He is qualified with the Institute of Quality Assurance to undertake corporate audits on companies quality management systems and to conduct technical due diligence assessments.

Diane Langleben M.R.Pharm.S
Diane spent 15 years working as a hospital pharmacist before switching direction and becoming editor of Hospital Pharmacy. She now works as a freelance writer on pharmaceutical matters and assists with the production of the PDA's Insight magazine.

Alan Nathan FRPharmS
Alan is an expert in Pharmacy law and ethics and has served as the chairman of the RPSGB Infringements committee. Specialises in Continuing professional development, stress management and Pre-registration training and registration examination.

Bharat Nathwani M.R.Pharm.S.
Bharat is a locum pharmacist. As an RPSGB Council member between 2004 and 2007, Bharat gained very substantial experience of pharmacy law and ethics and many pharmacy organizational matters. Bharat is significantly involved in supporting the PDA's numerous responses to statutory and other consultations.

Shenaz Patel MRPharm.S
Shenaz has experience of community pharmacy for large multiples / supermarkets / independents, both at operational and management level. Recruitment, training and development, disciplinary and some employment law at operational level. Shenaz is directly involved in managing several PDA projects.

Mark Provost M.R.Pharm.S. MSC Strategic IT Management Information Technology
Mark has extensive experience of pharmacy and pharmacy computer issues. Mark has been involved in many of the PDA pre-launch focus group meetings and has been primarily responsible for the PDA website www.the-pda.org which is designed to provide much of the support that is currently lacking for employee and locum pharmacists.

Graham Southall-Edwards MA (law), LLM., B.Pharm., MRPharm.S
Graham is a pharmacist and barrister Experienced Pharmacist with 35 years experience in Pharmacy with 20 years as a locum. He is experienced in highly contentious 'tort' and contract Court battles, particularly those with large corporates. Graham is very substantially involved in supporting PDA members in criminal (Police and other), RPSGB disciplinary (Statutory Committee enquiries) and also in civil claims for compensation.

Paul Taylor LLB (hons)
Paul is a lawyer who specializes in pharmacy, Corporate Fraud, Regulatory & Serious Complex Crime. Partner and Head of Business Crime & Regulatory Unit of Panone & Partners Paul is the Lawyer who acted in the Peppermint Water gross negligence manslaughter case securing an acquittal

Joy Wingfield FRPharmS, LLM, MPhil, FCPP
Joy is a professor specialising in the application of law and ethics to pharmacy practice, particularly community pharmacy, Joy is the Co-author of Dale and Appelbe's Pharmacy Law and Ethics. Operation of disciplinary and enforcement processes at RPSGB. Risk management and resolution of ethical dilemmas. Joy is significantly involved in supporting the PDA in many of its consultation responses.

The future of the **RPSGB** – The Clarke Inquiry

RPSGB HQ?

Most pharmacists will by now be aware that the RPSGB is to have its two primary roles separated, with regulation going to a General Pharmaceutical Council (GPhC) and the membership role going elsewhere.

So what – we have heard many of our members say to us. It has to be remembered that the Fitness to Practice Directorate's regulatory activities – which the PDA believes has been excessive, will have discouraged many pharmacists from wanting anything to do with the Society or its offspring.

And herein lies the rub; at the PDA we support the creation of the new body. This is because we routinely see situations where our members have problems because there is a lack of support available to enable them to do their jobs properly. Pharmacists need support with their CPD and soon, also with revalidation. Currently, there is no one body in the profession that offers this support. Pharmacists are facing many threats, such as remote supervision which we believe has emerged because the RPSGB has been so weak and divided that it has sleepwalked its way into supporting this dangerous idea.

We believe that the Society has become fat and complacent on its guaranteed membership fees and as a consequence Lambeth has a large, very well paid administration which has become remote from the day to day concerns and realities of pharmacy practice.

The reason why the PDA supports the creation of a new professional leadership body is simply because it provides an opportunity to sweep out the cobwebs and create a newly focused organisation that can be relevant to the practicing lives of pharmacists.

The Clarke Inquiry was established by the Society to try and propose what the new professional leadership body should look like.

After seeking views of our members, the PDA submitted a substantial contribution to the work of this inquiry which is available on **www.the-pda.org**.

In April, the Inquiry findings were published (**www.theclarkeinquiry.com**) and whilst containing many good proposals, some ideas are of concern such as;

- **A new Executive board should be set up comprising four elected representatives and five paid officials.**

We believe that one of the reasons why Lambeth constantly appears to be dysfunctional is because the non elected staff and lay representatives exert such a big influence over the direction of the Society, often, despite the wishes of the elected representatives. This cycle must be broken. The Inquiry suggestion that paid officials should sit in the majority on an executive committee must not be allowed to happen.

- **A Transitional committee is established which is to produce a prospectus, which will then seek to persuade members to join the new association.**

We believe that the first job of the transitional committee is to ensure that the potential membership (pharmacists) deliver the substance of any such prospectus. Once this process is completed, the transitional committee must ensure that there is a referendum of all pharmacists so as to ensure that pharmacists take ownership of the exercise. As such, the Clarke proposal to design a prospectus and then seek buy in, must be turned on its head.

The PDA has also organised several surveys to test what the membership thought about the following Clarke Inquiry proposals.

- Membership should be given to pharmacy technicians.
- There should be a seat on the Council and on the National boards for Pharmacy Technicians.
- Pharmacists who are not registered with the GPhC, should only be allowed associate membership of the new body.

Headline findings

In total, more than 1200 members participated in surveys which were run for two weeks at the end of April 2008. There was a spread of respondents from all sectors of the profession broadly representing the % that work in each sector and their responses did not vary significantly from sector to sector.

Technicians

93% respondents do not think that full membership of a professional leadership body is appropriate for technicians.

60% did not feel that associate membership was appropriate but this would reduce to 36% if they were educated to degree level.

Of those respondents who were prepared to have technicians in membership in some form, almost 60% stated that they would not wish them to have a seat on Council.

55% of respondents would not join the new body if technicians were to be given full membership, this dropped to 29% who would not join if technicians were accepted into associate membership.

Pharmacists

Nearly 70% of respondents thought that Pharmacists not regulated by GPhC should be allowed full membership with only 6% who did not believe that they should not be allowed to join the new body at all.

The PDA has been invited to work closely with the Transitional Committee to develop the new leadership body. It is our intention to ensure that any such collaboration will seek to deliver a new body that will serve the interests of pharmacists. We will be seeking more views from PDA members in due course.

Your union

Michael Radcliffe
PDA Union Official

John Murphy
General Secretary

Rebecca Ellis
Hospital Pharmacist Representative

Mark Koziol
Assisant General Secretary

The new PDA Union was officially formed on April 2nd 2008, this feature looks at who is holding which office and what they had to say

John Murphy, general secretary of the PDA Union, has high hopes for the new Union. "This is the first cross-sector union for pharmacists; it has a strong membership base, the financial model works and the timing is right," said Mr Murphy.

Union status gives statutory rights of representation, something that is very valuable when more than half of PDA activity deals with employment disputes. Mr Murphy stressed that the aim was to consult and negotiate rather than litigate for those of its members who are part of the 95 per cent of pharmacists who are either self-employed or employees. "A union," said Mr Murphy, "will strengthen the collective voice of the individual."

Michael Radcliffe, an official of the PDA Union, paraphrasing John F Kennedy, told delegates: "Ask not what your Union can do for you, but what you can do for your Union". He urged members to become involved by standing for office in one of the five membership groups, representing the different settings in which pharmacists work. There will be an executive body comprising five people (one from each of the membership groups) and six who will be directly elected. The executive will also be advised by working parties which will be set up do deal with specific tasks, for example, stress in the workplace.

"Many pharmacists are working in dispensing factories"

Representatives from some of the membership groups talked about their hopes for the future. Eddie Newell, communications officer for the Union and part of its employee membership group, described some of the issues facing employees. "Many pharmacists are now complaining about stress; they feel that they are working in dispensing factories and not using their skills and expertise," said Mr Newell. He believes that the PDA Union will be an enabler; it will protect the terms and conditions for members, secure adequate remuneration and improved working conditions.

Rebecca Ellis, Chair the hospital membership group, told the audience that of the 7,000 hospital pharmacists in the UK, 2,500 were members of the

needs you!

Lindsey Gilpin
Locum Representative

Bharat Nathwani
Treasurer

Duncan Jenkins
Primary Care Pharmacist Representative

Eddie Newell
Communications Officer

PDA with 1,500 of these already in the Union. "Many hospital pharmacists are represented by the Guild of Healthcare Pharmacists, but that is now part of Unite and is just too big," she said. Ms Ellis believes that the PDA Union will help with training issues, staffing levels, out-of-hours services and the European working time regulations.

Mark Koziol, assistant general secretary, rounded off the session by urging members to encourage their colleagues to join the Union. "If we get more than 50 per cent of pharmacist employees to join, the PDA Union will be able to do much more. The White Paper (Pharmacy in England: building on strengths – delivering the future) will give massive opportunities to pharmacists, and our Union is going to exploit this," he said.

> **"the union will establish a policy on specialist fees for advanced and enhanced services"**

Lindsey Gilpin, representing the locum membership group, believes the Union will establish a more acceptable national policy for time frames on locum booking cancellations and specialist fees for advanced and enhanced services.

Duncan Jenkins, for the primary care/specialist pharmacist group, feels that the Union can help with some of the issues facing primary care pharmacists, such as levelling out the variation in grading across PCTs and can enable the introduction of an 'individual contractor status' to challenge the status which has resulted in contracts always being awarded to owners of pharmacies.

The PDA Union receives its official 'Listing'

The first stage on the road to becoming an independent trades union was recognised by the Certifications Officer for Trades Unions. In a letter to The PDA on 13th May 2008, Mr Cockburn wrote, "the name 'The PDA Union' has now been entered in the list of trades unions maintained by my office".

This gives individual members statutory rights to be represented in disciplinary, grievance or redundancy situations. Following a period of time during which the Certification Officer needs to satisfy himself that the Union is achieving certain criteria, he will entertain an application for Independent status. This will give the PDA Union collective consultation and representation rights under employment law.

THE PDA union
strength in numbers

Pharmacists' risks when working with ACT's

Delegates at this years PDA conference in Birmingham

What are your liabilities when delegating your professional responsibilities to accuracy checking technicians (ACTs)? You may think you know, but not only could you be wrong, your assumptions could be the basis of a professional negligence case against you, delegates were told recently at the fourth annual PDA conference; "Risks, Responsibilities and Representation" held in Birmingham;

With the proposed changes to supervision regulations, following the responsible pharmacist consultation, and with the Government's call for community pharmacists to deliver clinically-focussed services, a time may come when a pharmacist may be away from their pharmacy, delegating dispensing responsibilities to a pharmacy technician. There are parallels even now with the use of Accuracy Checking Technicians (ACTs). Pharmacists are increasingly being coerced to devolve their responsibility to non-regulated and in some cases under-trained staff. But if this happens, who would take responsibility for dispensing errors?

Community pharmacist, Bharat Nathwani believes that, present or not, the responsible pharmacist will still be liable and accountable for whatever happens in the pharmacy.

Every dispensary standard operating procedure (SOP) has to show the qualifications of each member of staff. But how can these be verified? Mr Nathwani pointed out that, although the 2002 National Framework defined the areas of competence that ACTs must have, the Royal Pharmaceutical Society has yet to set a professional standard. However, the actions of pharmacists are closely regulated by the Royal Pharmaceutical Society. Consequently, in the event of a dispensing error made by an ACT the responsible pharmacist, not the technician, would face investigation.

Pharmacists have to have confidence in the people with whom they work, but often have to take it on trust that they have the qualifications they say they have, and moreover, that they are not prone to making dispensing errors. This is especially the case for the locum pharmacist who may be in control of the pharmacy for a limited time and who will necessarily have limited experience of the ACT's performance and of the pharmacy's procedures.

Professor Joy Wingfield, a leading expert on pharmacy law and ethics, concurred with Mr. Nathwani's reservations. "Who takes responsibility when a registered or accuracy checking technician makes an error? Who knows? " she said. The Royal Pharmaceutical

Society has traditionally shown that the buck stops with the pharmacist. However, she thought that the Society and the Department of Health had not given enough thought to the question of liability with regard to the new status of technicians.

Professor Wingfield pointed out that pharmacists can be brought before the criminal courts charged under section 64 of the Medicines Act for supplying an incorrectly dispensed medicine, and when a patient has died, the pharmacist could be charged with manslaughter.

Furthermore, there is the Corporate Manslaughter Act and Corporate Homicide Act 2007, which came into force in April. Companies – as corporate bodies - now have to accept liability for deaths because of their negligence. This legislation was introduced as a reaction to disasters such as that of the Herald of Free Enterprise ferry on which 193 people died in 1987, and the Potters Bar rail disaster in 2002. But, Professor Wingfield asked, if this applied to pharmacy management after a case involving a dispensing error, who would stand in the dock? And for large pharmacy multiples, where would responsibility be devolved under this legislation? Would the directors of the company be charged? Or would the superintendent pharmacist be held responsible? Or would liability remain in the hands of the manager of the pharmacy or the responsible pharmacist concerned.

"Pharmacists should take care," Professor Wingfield advised. "SOPs only go so far. They do not fit every situation. Where an error has occurred, the employer could try and recover damages from the employee pharmacist. The situation is even worse for locums".

She added that there is much uncertainty about ACTs because there has been no official clarification of their roles and responsibilities. It was crucial that this was addressed so that pharmacists know what technicians can cope with. However, so far, nobody is answering the questions.

Alan Jenkins, a barrister, who specialises in cases coming before disciplinary tribunals advised that, to guard against risk, pharmacists have to observe all the protocols and guidelines, and question assumptions. He informed delegates that many errors involve more than one person. He said: "Don't assume that the other person is qualified to do what he is doing".

He described the various types of manslaughter, one being gross negligence. If the defence is that the accused has not been grossly negligent, it can be difficult to establish a clear line between the defence and prosecution case. Another problem for the defence is that juries are not familiar with the charge and assume that the case is a particularly bad one; there can also be a risk of confusing the seriousness of the error with the seriousness of the consequences.

Like Professor Wingfield, Mr Jenkins sees problems ahead with the new corporate manslaughter law. He envisages the likelihood of a corporate offence with the prosecution of individuals for gross negligence, with the threat of cutthroat defences. He warned: "If you have two or three in the dock as well as the corporate body, they will just slash each other up!"

Mr Jenkins compared a potential prosecution situation for a locum or an employee pharmacist with a moving umbrella in a storm. An umbrella will provide shelter in a storm, but the extent of the shelter provided was determined by the person holding the umbrella. Mr Jenkins said: "Employers will protect themselves, and assure employees that their lawyers will look after them as well." However well meaning the employer may be, during the course of the 'storm', the employer's "umbrella" of defence may move to keep the employer dry, leaving the individual employee out in the rain.

Given that the pharmacist's responsibility is well-defined legally, and that there is uncertainty about the responsibilities of ACTs, individual pharmacists need to have their own protection against liability, a "raincoat" in case the employer's "umbrella" of defence moves; a little water goes a long way. The indemnity cover offered by the PDA provides just such a "raincoat".

"Who takes responsibility when a registered or accuracy checking technician makes an error?"

Professor Joy Wingfield

QUESTION

The question was asked by delegates 'is my insurance invalidated if I delegate checking of prescriptions to the ACT'. John Murphy Director of PDA explained to the conference; "We cover pharmacists for activities that are deemed to be acceptable practise by the Law and Ethics Committee of the RPSGB. The Society's guidance is that a pharmacist must take responsibility for the dispensing process and be directly involved in the clinical appropriateness of the supplied medicine." He went on, "We are a risk management organisation and although we insure pharmacists within these parameters, we would expect that they take all reasonable steps both to minimise the risk to patients and to reduce the pharmacists personal liabilities when delegating any part of the supply process to others." He made it clear to the conference what was obvious from the presentations was that the way things stand, the pharmacist in charge will be held to account by the relevant authorities for any civil claim, criminal prosecution or professional disciplinary action associated with a dispensing error whether an ACT has been involved or not. The PDA will protect it's members in all these stiuations.

A picture paints a **thousand words**

The PDA deals with many queries from members each week. Our legal and professional team routinely assist pharmacists who find themselves in difficult or dangerous situations. It takes a lot to surprise us, but some images sent to us recently by one of our members were shocking. These photographs were taken as an example of some the poor working environments that pharmacists can encounter, particularly when working as a locum.

The two pictures were taken in pharmacies owned by well-known chains and involve more than one company. These images and others have been forwarded by the pharmacist concerned to the Fitness to Practise Directorate for further investigation. The PDA Union is aware of the issues that locums can face and is already looking at ways to tackle poor working environments through Health and Safety legislation. If you know of any further examples of poor working conditions, please email **enquiries@the-pda.org** with the details. All information received will be treated in the strictest confidence.

MUR Misery

Commercial targets dominate many retail pharmacists' working lives and in some companies there can be significant pressure to deliver a set number of medicine use reviews each day or week. The penalty for not delivering company targets can take the form of disciplinary action or even dismissal. Reproduced here are some of the types of coercive emails that our members receive from their companies:

> ***I have now heard every excuse available from those under performing (and interestingly it is only those that are under-performing that use these excuses!) and all I would like to say is you would never tell a patient coming into your pharmacy for advice that you were too busy/short staffed/ too many Deliveries etc to talk to them or offer advice so please stop using these excuses. They are no longer acceptable and I will be performance managing any pharmacist who is not consistently achieving targets every week.***

> **If for some reason you cannot achieve your weekly minimum MUR target and cannot incorporate this into the cluster target then I will require you to call me personally on Thursday afternoon between 3pm and 6pm to discuss reasons why and what actions you have taken to remedy going forward. If you do not call it is expected that you will deliver your minimum target without fail.**

> ***I will performance manage failure to deliver MUR budget in the same way I would performance manage any other area of the business in which we fail to deliver.***

> **Managers are not in a position to agree or disagree with the way the MUR process works. We have a framework to work within and as long as we do that, MURs are not about personal feelings on how they think MURs should be done or are done.**

> ***"I know you have heard it a 101 times already but "non compliance in 2008 just isn't an option.***

CONCERNS

Clearly these emails are threatening in their nature and place considerable pressure on pharmacists to meet MUR targets regardless of their personal professional judgement. They also appear to be contrary to at least one of the professional standards for pharmacists and pharmacy technicians in positions of authority, namely:

4.2 financial or other targets do not compromise the professional services you and your staff provide.

The PDA is keen to hear from members if they have been disciplined for MUR performance or if they have other examples of this type of email. This will enable it to build a picture of how widespread the problem is.

All information will be treated in the strictest confidence and should be sent to enquiries@the-pda.org

Working with the **pharmaceutical industry**

By Heather Simmonds, Director of the Prescription Medicines Code of Practice Authority (PMCPA).

Heather Simmonds, Director of the PMCPA.

With increased scrutiny and regulatory controls it is now more difficult to accept support from pharmaceutical companies. Because of this, Primary Care Pharmacists and other healthcare professionals may be wary and unsure of what can be gained from working with industry.

However, with increasing pressure to meet targets, pharmaceutical companies and their representatives may be able to support you in a number of ways. It is important however, that we understand what is appropriate and permissible.

The rules of engagement

Two sets of rules govern these relationships – the Association of the British Pharmaceutical Industry's (ABPI) Code of Practice for the Pharmaceutical Industry and the RPSGB's Code of Ethics. Most pharmaceutical companies operating in the UK have agreed to comply with the ABPI Code and of course pharmacists must abide by the RPSGB's code.

The RPSGB Code states that pharmacists must ensure their professional judgement is nor impaired by personal or commercial interests, incentives, targets or similar measures. It also includes a number of requirements about conflicts of interest and prohibits pharmacists from asking for or accepting gifts that could affect, or be seen to affect, personal judgement.

The ABPI Code has many requirements about the content of promotional material, including the need for all claims to be capable of substantiation. It also places restrictions on the provision of samples, promotional aids, meetings, hospitality etc.

As long as you are aware of what is and isn't permitted and are prepared to play your part in ensuring that these relationships remain above reproach, working with pharmaceutical companies can benefit, and indeed even improve, patient care. So how can you work together?

Meetings and hospitality (Clause 19.1)

Pharmaceutical companies can sponsor meetings such as presentations in GP practices, but their sponsorship must be disclosed in all papers relating to the meeting and any published proceedings.

It must be the scientific or educational content that attracts delegates to a meeting. Lavish or deluxe venues must not be used.

Hospitality can only be provided in association with scientific meetings and similar. Subsistence must be strictly limited to the main purpose of the event and secondary to it. Hospitality cannot be offered to spouses etc unless they qualify as a delegate in their own right.

Gifts (Clause 18)

No gift or benefit in kind should be offered as an inducement to prescribe, supply, administer, recommend, buy or sell any medicine. Items must not be offered for personal benefit. Promotional aids must be inexpensive - the limit is £6, excluding VAT – and must be relevant to the recipient's profession.

Medical and educational goods and services (Clause 18.4)

The provision of medical and educational goods and services which enhance patient care or benefit the NHS while maintaining patient care are permitted, provided they do not constitute an inducement to prescribe, supply, administer, recommend, buy or sell any medicine. Items must not bear a product name, but can bear a company name. Therapy review programmes, which aim to ensure a patient receives optimal treatment following a clinical assessment, are permitted and can be a productive and mutually beneficial way to improve patient care by working with the pharmaceutical industry.

However, it is unacceptable for a company to assist with a switch programme where all patients on medicine A are simply switched to medicine B without any clinical assessment. Companies may promote a switch, but must not assist in carrying it out.

Representatives (Clauses 15 & 16)

Representatives must maintain a high standard of ethical conduct and must be properly trained. All representatives have to pass an ABPI examination.

They can be a very useful source of information on medicines. If you are seeing a representative about products in a disease area that you are interested in, they should be able to provide information on the disease itself as well as medicines for treatment. Some companies may also have patient materials which you may find useful to distribute to patients when talking about their illness.

What to do if you have concerns.

Complaints about breaches of the Code should be made to the PMCPA.

Companies ruled in breach of the Code are subject to a number of sanctions including publication of a detailed case report. Other sanctions exist to include suspension or expulsion from membership of the ABPI.

References

- The ABPI Code of Practice and a guide to the Code for health professionals and information on how to make a complaint can be accessed at www.pmcpa.org.uk. Printed copies are available free of charge by calling 020 7747 8881.
- The RPSGB Code can be downloaded at www.rpsgb.org.uk

Do's and don'ts of working with pharmaceutical companies

Do

- Familiarise yourself with the ABPI Code and keep it in mind when meeting representatives and planning what support you would like.
- Be aware of what the RPSGB Code says about accepting inducements and hospitality.
- Ask representatives for information about medicines and disease areas.

Don't

- Have unrealistic expectations. There are restrictions on these relationships and being clear from the outset will help prevent misunderstandings.
- Accept support from a pharmaceutical company if you would not be comfortable to have the arrangements generally known.

ANOTHER DAY.
ANOTHER RESTRUCTURING OF THE NHS.

WILL MERGING PCO's AFFECT YOU?

In the last year the PDA has supported many Primary Care Pharmacists who are concerned about their employment prospects.

Who's defending your reputation?

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

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

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

We have already provided more than 8,000 of our members with advice and support and now, through union status, we have the legal right to accompany members to certain internal meetings.

In many cases we resolve disputes through mediation, but in others we pursue employers who have treated our members harshly, illegally or unfairly. Already, we have secured more than £450,000 worth of compensation for our members from employers in this way.

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

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

~~12,000~~ now more than 13,000 → have you?

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

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

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the pharmacists' defence association