

15 December 2009

FILE REF: 15407
PRIMARY CARE TRUST: MILTON KEYNES
PHARMACIST: Lloyds Pharmacy Ltd
PREMISES: 2 Kingfisher Centre,
Elthorne Way,
Newport Pagnell, MK16 0JR

THE NATIONAL HEALTH SERVICE (PHARMACEUTICAL SERVICES) REGULATIONS
2005 (as amended)

SCHEDULE 1 [Terms of Service of Pharmacists]
PART 3 [Hours of Opening]

THURSDAY 24 and 31 DECEMBER 2009

1 Introduction

- 1.1 The above pharmacist has applied to the above Primary Care Trust ("the PCT") to change the days and times at which it is obliged to provide pharmaceutical services at the above premises in the weeks commencing 21 December 2009 and 28 December 2009. It would appear that the pharmacist seeks to reduce the total number of opening hours while remaining open for 40 hours as it is currently obliged to do.
- 1.2 The local PCT has refused the application. The pharmacist seeks to appeal to this Authority.

2 Consideration

Rights of appeal

- 2.1 Where a PCT has determined an application under paragraph 25 of the Regulations and has granted it in part only or has refused it, Regulation 25(9) provides a right of appeal to the Secretary of State.
- 2.2 The Secretary of State for Health has directed the NHS Litigation Authority to determine such appeals. As an authorised officer of the NHS Litigation Authority, I have considered the appeal and have determined it, in accordance with my delegated powers.

Opening hours

- 2.3 A pharmacy's opening hours may be categorised as:
- 'core' opening hours (days on and times at which the pharmacy is *obliged* to be open);
 - 'directed' opening hours (days on and times at which the pharmacy is *obliged* to be open in addition to the 'core' opening hours); or

- "supplementary opening hours" (other days on and times at which the pharmacy undertakes to provide pharmaceutical services, as notified to the PCT).

Alteration of 'core' or 'directed' opening hours

- 2.4 In accordance with paragraph 3 of Schedule 4 to the Regulations, the pharmacy must provide, as part of an application for entry in the pharmaceutical list, details of the days on and times at which it will be obliged to provide pharmaceutical services under paragraph 22(1)(a) of Schedule 1 to the Regulations. To these may be added 'directed' opening hours under paragraph 22(1)(e) if the PCT so directs. These then form part of the entry in the pharmaceutical list.
- 2.5 These days and times may only be altered on application under paragraph 25(1).

Alteration of supplementary opening hours

- 2.6 Other days or times at which services are to be provided (as set out in the original application for entry in the pharmaceutical list) may be altered by giving notice to the PCT, in accordance with paragraph 22(5)(a) of Schedule 1 to the Regulations without the need to make an application.
- 2.7 Notices under paragraph 22(5)(a) are not subject to review by this Authority.

Lloyds Pharmacy proposals

- 2.8 I understand that the pharmacy is obliged to open for 40 hours per week, by virtue of being included in the pharmaceutical list under Regulation 22(1)(a) and has undertaken to open for a further 17.5 hours per week.
- 2.9 For the weeks commencing 21 and 28 December 2009, the pharmacy wishes to:
- (a) close early on Thursday 24 and 31 December by treating its opening hours on these days as 8:30am to 4:30pm as 'core' hours rather than the usual 'core' hours of 9:00am to 5:00pm and not opening the 'supplementary' hours on these days of 8:30am to 9:00am and 5:00pm to 7:00pm.
- 2.10 The pharmacist has applied for the changes to the 'core' opening hours in an application form and notified the PCT of changes to the supplementary opening hours in a notification form. Each form is dated 3 July 2009.
- 2.11 In light of the Regulations, a change to the days on or times at which the pharmacy's 'core' opening hours would be provided would require an application. In this case, the 'core' opening hours which would normally be provided on Thursday 24 and 31 December are still being provided on those days.
- 2.12 There is no indication in this case that any direction currently exists or that the PCT has issued such a direction.

Assessment

- 2.13 Applications for the alteration of 'core' opening hours should be considered in light of paragraph 25(2) of Schedule 1 to the Regulations and 'pharmaceutical need'. (Paragraph 25(2) provides that a pharmacist may be required by the

PCT to provide information on "any changes to the needs of the people in the neighbourhood, or other likely users of the pharmacy, for pharmaceutical services" which are material to the application.)

2.14 In this case, the applicant pharmacist provided the following information in his application (expanded upon in part in his letters to this Authority dated 8 October 2009 and 28 October 2009):

(a) The GP Surgery next door (Kingfisher) is closing at 4pm on these days. Other pharmacies in the area are open.

2.15 The PCT was entitled, but not obliged, to request relevant further information. In this case, it chose not to do so and I make no criticism of them for that.

2.16 In considering the question of pharmaceutical need, I have proceeded on the following basis:

(a) The surgery is still open on Thursday 24 and 31 December and while it may be closing early, the population may still need to access pharmaceutical services after visiting the surgery. Although the pharmacist has advised that 'historically [the GP practice] always close on or around 4.30pm on Christmas Eve and New Years Eve which critically and directly affects our trading significantly' the pharmacist has not provided any information in support of this;

(b) in light of my assessment in paragraph (a) above, I see no reason to conclude that the expectation and demand of those served by the pharmacy would be different on these Thursdays when compared with any other.

2.17 I have considered whether there has been a change to the needs of the people in the neighbourhood, or other likely users of the pharmacy, for pharmaceutical services and have determined that there is not. In those circumstances, the application for a change to 'core' opening hours must be refused.

3 Determination

3.1 Notices for the change of 'supplementary' hours under paragraph 22(5)(a) of Schedule 1 to the Regulations are not subject to review by this Authority.

3.2 There is no change to the needs of the people in the neighbourhood, or other likely users of the pharmacy, for pharmaceutical services for Thursday 24 or 31 December. The application must therefore be refused and the appeal dismissed.

Lisa Hughes
Appeals Manager