

15 December 2009

FILE REF: 15419

PRIMARY CARE TRUST: MILTON KEYNES

PHARMACIST: JARDINES (UK) LTD

PREMISES: Jardines Pharmacy
32 Benbow Court
Shenley Church End
Milton Keynes
MK4 6JG

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

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

SATURDAY, 26 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 week commencing 21 December 2009. It would appear that the pharmacist seeks to reduce the total number of opening hours while remaining open for at least 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.

Jardines (UK) Ltd 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).
- 2.9 For the week commencing 21 December 2009, the pharmacy wishes to:
- (a) Provide services during core hours of 10am to 1pm on Saturday 26 December 2009 instead of 9.00am to 11.30am, as this will "provide a more convenient service to customers" and that this is a "longer period than current core hours".
- 2.10 I presume that the pharmacist has applied for the changes to the 'core' opening hours, but I have not been provided with a copy of this application form.
- 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 pharmacist to provide core hours for an extra half an hour on Saturday 26 December but provide those hours later in the day.
- 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 the letter of appeal:
- (a) In order to provide a more convenient service to customers.
 - (b) The intention is to provide services for a longer period than the current core hours.
- 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) I note that while members of the population who would usually work on a Saturday might seek to take annual leave on this day, this Saturday is, in nature, no different from any other Saturday – I have seen no evidence which indicates a change of attitude towards this particular Saturday or which indicates an expectation either way as to whether or not this pharmacy would change its hours of opening.
 - (b) I note that the provision of core hours will be for longer than that currently being provided as core hours, but that it will be for a later period in the day. It's unfortunate though that the applicant has not provided me with any information to demonstrate that there are expected to be any changes in the pharmaceutical needs of patients in the neighbourhood.
 - (c) in light of my assessment above I see no reason to conclude that the expectation and demand of those served by the pharmacy would be different on this Saturday 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 none have been demonstrated to me to suggest that there has which might result in the need for the opening of the pharmacy over a three hour period, thus providing an extra half hour, but later in the day. 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 demonstrated change to the needs of the people in the neighbourhood, or other likely users of the pharmacy, for pharmaceutical services for Saturday 26 December. The application must therefore be refused and the appeal dismissed.

Lisa Hughes
Appeals Manager

