

17 December 2009

FILE REF: 15414
PRIMARY CARE TRUST: BERKSHIRE EAST
PHARMACIST: Lloyds Pharmacy Ltd
PREMISES: Lloydspharmacy
Waitrose Store
Yorktown Road
Sandhurst
Berkshire
GU47 0HL

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 weeks commencing 21 and 28 December 2009. It would appear that the pharmacist seeks to reduce the total number of opening hours on 26th December 2009 and 2nd January 2010, but does not propose to open at other times during those weeks resulting in an application to open for less than the 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 and therefore I take no view on any changes to supplementary hours.

Lloyds Pharmacy 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) and has undertaken to open for a further 6 hours per week.

2.9 For the weeks commencing 21 and 28 December 2009, the pharmacy wishes to:

- close on Saturday 26 December 2009, rather than open as usual between 9.00am and 3.00pm (5 'core' opening hours and 1 supplementary opening hour).
- close on Saturday 2 January 2010, rather than open as usual between 9.00am and 3.00pm (5 'core' opening hours and 1 supplementary opening hour).

2.10 The pharmacist has applied for the changes to the 'core' opening hours in a letter to the PCT dated 6th August 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, some of the 'core' opening hours which would normally be provided on Saturday 26 December 2009 and Saturday 2 January 2010 being provided over the course of the preceding 5 weekdays in each case.

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 Applications for the alteration of ‘core’ opening hours that result in hours of less than 40 per week should be considered in line with 23(2) which states that “The PCT may only direct that a pharmacist may provide pharmaceutical services at premises for less than 40 hours in any week if it is satisfied that the provision of pharmaceutical services in the neighbourhood is likely to be adequate to meet the need for such services at times when the pharmacist is not providing pharmaceutical services”.
- 2.15 In this case, the applicant pharmacist provided the following information in his application:
- (a) The pharmacy is situated inside a Waitrose supermarket and therefore the supermarket opening hours dictate access to the pharmacy. The supermarket will be closed on 26th December 2009 and 2nd January 2010.
- 2.16 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.
- 2.17 I first considered the question of pharmaceutical need.
- 2.18 I note that pharmaceutical services will be available in Sandhurst and Camberley. I am of the view that these Saturdays are, in nature, no different from any other Saturday and I have not been provided with any information to suggest changes to the needs of people in the neighbourhood for pharmaceutical services. I am of the view that the opening of other pharmacies on 26th December and 2nd January is not relevant to the issue of pharmaceutical need.
- 2.19 I am of the view that the opening hours of the Waitrose supermarket are not relevant to the question of pharmaceutical need.
- 2.20 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.
- 2.21 Given this is an application to reduce core hours to less than 40 per week I next considered whether the provision of pharmaceutical services in the neighbourhood is likely to be adequate to meet the need for such services at times when the pharmacist is not providing pharmaceutical services. I note that the pharmacist had not provided information to demonstrate that provision of services by other contractors would be adequate for the needs of the neighbourhood. As such I determine that the pharmacist has not demonstrated that pharmaceutical services in the neighbourhood are likely to be adequate during the hours that the pharmacist is proposing to not be available.
- 2.22 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.

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 2009 or Saturday 2 January 2010.

- 3.3 I have not been provided with any information to demonstrate that services will be adequate to meet the need for such services at times when the pharmacist is not providing pharmaceutical services.
- 3.4 The application must therefore be refused and the appeal dismissed.

Lisa Hughes
Appeals Manager