

10 December 2009

FILE REF: 15364

PRIMARY CARE TRUST: OXFORDSHIRE

PHARMACIST: LPC (Pharmaceuticals) Limited

PREMISES: Smiths Chemist,  
172 Kennington Road  
Kennington, Oxfordshire, OX1 5PG,

**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 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.

*Smiths Chemist 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 6.5 hours per week.
- 2.9 For the week commencing 21 December 2009, the pharmacy wishes to:
- (a) open on Wednesday afternoon 2.00pm to 6.30pm and treat this as core hours (4.5 'core' hours); and
  - (b) close on Saturday 26 December 2009, rather than open as usual between 9.00am and 1.00pm (4 'core' opening hours) and 1.00pm to 5.30pm (4.5 'supplementary' hours).
- 2.10 The pharmacist has applied for the changes to the 'core' opening hours in an application form which is dated 29 June 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 Saturday 26 December being provided on Wednesday afternoon when the pharmacy is normally closed.
- 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 September 2009 and 21 September 2009):

- (a) The pharmacy wishes to close on what would have been a bank holiday had the 26<sup>th</sup> fallen on a weekday. The pharmacy will be open for the whole day (9-1, 2-6.30) on Wednesday 23 December to maintain the required minimum 40 hours per week.
- (b) There are three pharmacies within 10-15 minutes drive open on the day concerned
- (c) The Health Centre in Kennington will be closed from 12pm on 24 December 2009
- (d) Smiths Chemist is not a swine flu anti-viral collection point.
- (e) A customer notice will be displayed
- (f) The pharmacy will remain open until 6:30pm on Wednesday 23 December.

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 I note that the intended 'core' hours appear to be greater than 40. I have proceeded to consider this application as if any change would still equate to core hours of 40.

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

- (a) 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;
- (b) that while the Health Centre in Kennington may be closed from 12pm on 24 December 2009, which has not been disputed by the PCT, it is recognised that this may result in some change in pharmaceutical needs, in that patients may not be leaving the Health Centre in Kennington with the need to have a prescription dispensed. However other people in the neighbourhood may reasonably expect to continue to receive pharmaceutical services on 26 December 2009 and the applicant has not provided any information with regards to the usual opening hours of the Health Centre in Kennington on a weekend and therefore has not demonstrated a change in pharmaceutical needs;
- (c) 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 this Saturday when compared with any other;

(d) in light of my assessment in paragraph (a) above, the opening of other pharmacies in Abingdon on 26 December, is not relevant to the issue of pharmaceutical need;

2.18 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 Saturday 26 December. The application must therefore be refused and the appeal dismissed.

**Lisa Hughes**  
**Appeals Manager**