

15 December 2009

FILE REF: 15420

PRIMARY CARE TRUST: MILTON KEYNES PCT

PHARMACIST: JARDINES (UK) LTD

PREMISES: Jardines Pharmacy  
65 High Street  
Newport Pagnell  
Milton Keynes  
MK16 8AB

**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 on 26 December 2009, but does not propose to open at other times during the week 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 make no view on any changes to supplementary hours.

*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) and has undertaken to open for a further 7.5 hours per week.
- 2.9 For the week commencing 21 December 2009, the pharmacy wishes to:
- (a) close on Saturday 26 December 2009, rather than open as usual between 9.00am and 6.00pm (with one hour for lunch between the hours of 1pm and 2pm) – 2.5 'core' opening hours and 5.5 supplementary opening hours).
- 2.10 The pharmacist has applied for the changes to the 'core' opening hours in an application form "to Amend Core Hours" dated 21 September 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 applicant has applied so that the 'core' opening hours which would normally be provided on Saturday 26 December, will not be provided.
- 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) For this Saturday, Jardines are proposing to provide pharmacy services in Milton Keynes in Shenley Church End branch only.
- 2.16 In the letter of appeal to this Authority dated 7 October 2009 the pharmacist stated:
- (a) Pharmaceutical Services will be provided locally in Milton Keynes by Jardines, Shenley Church End for three hours on Saturday 26 December.
- (b) In addition Lloyds Pharmacy in Newport Pagnell will be open on Saturday 26 December, thus providing adequate cover in this area.
- 2.17 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.
- 2.18 I first considered the question of pharmaceutical need.
- 2.19 I note that pharmaceutical services will be available in Shenley Church End and Newport Pagnell. I am of the view that this Saturday is, 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 26 December, is not relevant to the issue 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 provided information with regards to services being provided elsewhere, but that no information had been provided to demonstrate that provision of services by these 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.

### **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.
- 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**