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Section 60 response

— from the Guild of Healthcare Pharmacists

By Anthony Oxley, MRPharmS

The draft Pharmacists and Pharmacy Technicians Order 2006, made under Section 60 of the Health Act 1999 is, by any definition, an important piece of legislation for all practitioners working within the pharmacy field. As such, the Guild of Healthcare Pharmacists' council organised a meeting to discuss our response to the Department of Health's consultation.

During this debate we tried wherever possible to follow certain principles, the first of which is that all registered professionals should be regulated by a body that embodies the principles set out in the Kennedy report. For pharmacists, we believe that this should continue to be the Royal Pharmaceutical Society.

However, with respect to the issue of separating regulation from representation, we remain unconvinced that there are strong public safety reasons for insisting that these two functions must be connected through one body. Any employer seeking to take on a pharmacist should check the current Register and, if the person has been removed from it, or has never been on it, they will not be employed by any competent employer, whether or not the person is a member of a representative body. They will also be committing an offence if they pass themselves off as a pharmacist.

At the present time, the Society appears to be in the best position to represent the profession of pharmacy, although many pharmacists,

including those in the managed sector, may have their doubts about how well this duty is currently being carried out for them. However, regardless of current performance, the Society may not be the best option for managed sector representation in perpetuity. Therefore, to require this link to be set out in any legislation is inappropriate.

For pharmacy technicians (whom we do not represent) our fundamental principle that they should be regulated by a Kennedy-compliant regulator remains valid. Whether or not this is the Society is not for us to say, although clearly there would be advantages for employers if all registered technicians were on the same Register. With the Scottish situation this may not be possible, but whatever arrangements are put in place must allow for free movement of technicians across national boundaries within the UK.

We also feel strongly about issues surrounding professional indemnity arrangements and the registering body. The only interest of such a body should be whether or not there are adequate arrangements in place to recompense patients should something go wrong. For staff working within the NHS this is clearly covered by vicarious liability and would also be covered by pharmacists working for other organisations where that organisation has its own indemnity arrangements. Whether or not a pharmacist has financial support to be represented in various hearings looking at allegations of misconduct is not for the registrar to specify but it is for the individual pharmacist to determine. Thus, the Guild's council is adamant that all references to such areas in the

draft Order should stipulate "professional indemnity arrangements" and not "insurance". Once clear in the Order, we hope that the distinction will be picked up by the pharmacy press.

During our debate we did not generate much clarity on why people would wish to be on the non-practising Register. It must be clear to registrants what the advantages and disadvantages are to entry on specific sections of the register and how to go about moving from one section to another. We would also want to see clear examples of what constitutes non-practising status for those more borderline cases, for example, where a pharmacist continues to work in a hospital environment but outside of the pharmacy structure but may come across issues relating to medicines in their new role.

— Fitness to practise

In general we support the principle that the regulator should be able to share with others, including employers, concerns regarding the registrant's fitness to practise when it is in the public interest to do so. We do, however, raise two caveats to this. First of all (and another principle which runs throughout our response), there should be clear criteria to allow these judgments to be made. Equity is paramount in these situations and we cannot allow pharmacists with the same fundamental issue to be treated differently. Secondly, any communication with outside bodies before the completion of the fitness-to-practise process must be couched in terms of innocent until proven guilty. We do not want a rash of contacts with employers leading to suspensions when subsequently

the case is dismissed. Any professional person is dependent on preserving a high professional reputation, and this should not be put at risk unless essential in the public interest.

Many pharmacists in the managed sector have been concerned with the steep rises in registration fees over the past few years. Overlying our whole response is the consideration that the changes proposed in the regulatory framework must not be allowed to become the justification for another rise in fees and that the changes should be introduced on a cost-neutral basis to registrants. There is an argument that, even if representation and registration are both carried out by the same body, the fee structure should clearly indicate what proportion is allocated to each function.

We also believe strongly that, throughout all the proposed fitness-to-practise machinery, committees are required to seek advice and input from appropriate people. For example, any managed sector pharmacist should expect to see a managed sector pharmacist on the committee considering a case. This principle should also apply to pharmacists from Wales and Scotland as health care systems diverge as devolution progresses.

— Conclusion

We have submitted our response to the Department of Health and it is now available to members on our website. We look forward to seeing our suggestions in the finalised Order. In the meantime, any members who would like to feed into our views in these areas can do so via the discussion forum on the website.

Anthony Oxley is president of the Guild of Healthcare Pharmacists and chair of the National Professional Committee