

How regulation, retention fees and the EU may combine to destroy the Society

By Graham Southall-Edwards, pharmacist and barrister at law, and member of the advisory board of the Pharmacists' Defence Association

Last year, I wrote in *The Pharmaceutical Journal* warning of the rise of the regulatory machine (*PJ*, 13 May 2006, p564). The Royal Pharmaceutical Society's director of fitness to practise and legal affairs thought that I was being "alarmist" (*ibid*, p565). Yet it seems I did not ring the alarm bells loudly enough or for long enough, as the Pharmacists and Pharmacy Technicians Order 2007 later came into force almost unopposed and at the stroke of a minister's pen.

As 1 April 2007 came and went and "Section 60" came into operation, the Society was not slow to act. In the past three months, dozens of pharmacists have had large bundles of papers (often numbering well over 100 pages) dropping unexpectedly on their doormats with their post in the morning. These have mostly been received with the shock to be expected of a Crown Court criminal indictment (and almost perceived as such by the recipient pharmacists), as against an inquiry that has been referred to the new Statutory Committees Secretariat. Even the words used cannot have been chosen for greater and more shocking effect, as many pharmacists naturally associate them with the old Statutory Committee, and feel fear. They have suddenly found themselves embroiled in a complex legal process, the like of which they have never seen before (or ever dreamt of in their worst nightmares) and which they certainly fail to understand. This process invariably gives them 14 days to acknowledge receipt of the documents, state whether or not they will admit or defend the allegations, provide details of their employment or other arrangements to provide pharmaceutical services, (or face allegations of "misconduct" or applications to a county court for orders to be made against them for disclosure and costs) and not much more than three weeks to instruct a lawyer (recommended) to draft and file any defence they may have to the "charges".

Almost to a man (or woman), the pharmacists involved have been totally unaware of the new powers that the Society has recently acquired; only when they have become sub-

ject to them have they expressed amazement and incredulity at the harshness of the regime and bitterly questioned its purpose. Knowledge of the Order and the new powers available to the Society is largely not a subject on which practising or other pharmacists seem to "score well". I say this because, as I travel around Britain, every time I see a pharmacy I go in and ask the pharmacist what he or she knows about the "Section 60" Order (which, if necessary, I explain is the Pharmacists and Pharmacy Technicians Order 2007). Out of over 60 pharmacists I have asked since January this year, not one has been able to state with any accuracy or confidence what it is all about. The best response that I have had was: "Oh, isn't that something about replacing the old Pharmacy Act with a more modern version?" As always, it seems, rank and file pharmacists, for whom the new legislation is crucially important, have been asleep at the wheel as the vehicle of legislation has careered on relentlessly. One by one, however, they are slowly waking up as they become the subject of it and the awakening has up to now always been a rude one.

I was most interested to read recently, therefore, that the Society's retention fees are likely to be substantially increased in 2008 (*PJ*, 4 August, p129), largely it seems to pay for the cost of the new (and in my opinion largely unnecessary and decidedly confrontational) "regulatory machine" and its army of freshly recruited non-pharmacist lawyers, who seem to have replaced many of the previous pharmacist employees of the Society. However I am, readers may be surprised to know, all in favour of the largest increase in fees that the Society can seek or impose; it simply cannot be enough for me. Why? Not because I want to see pharmacists paying through the nose for this unnecessary bureaucratic machine, but because in my experience it is only when it hits their pockets that they will learn all about it. Then (although it may be too late) pharmacists may sit up, take notice and seek seriously to question and change the powers that now exist and which are, in my opinion, working very much to

their detriment and (often) also to their extreme distress.

I was also interested to read (*PJ*, 11 August, p145) that the Society is expressing concerns at EU Directive 2005/36/EC and the fact that this would permit other (non-UK) EU pharmacists to provide "temporary services" to UK health care recipients, without their being subject to the same regulation as UK pharmacists.

Many of my EU mainland-based colleagues cannot understand what on earth is presently going on in the UK, when they compare the recent powers of regulation acquired by the Society, with the systems in operation in their own countries. They point to the fact that such regulation is unknown to them and that they cannot see that pharmacists can present (or have ever presented) such a danger to the public that such a harsh and costly regime can possibly be warranted. They also point to the high esteem in which they are held in their respective countries and to the confidence that their patients and customers have in them. One French pharmacist I was recently talking to about the Order asked: "Has everyone in health and pharmacy regulation in the UK gone absolutely mad?". To this I wanted to respond with the well-known phrase "you may very well think that, but I could not possibly comment". Unfortunately when translated into French or any other non-English language, Francis Urquhart's famous words lose most if not all of their flavour.

But maybe the huge rise in fees and the forthcoming inequality of regulation (I hope) that looks likely to result in the UK between UK pharmacists and other EU pharmacist providers of "temporary services" will work to bring to the fore the ridiculous, disproportionately costly (in relation to the perceived risk and benefit) and unnecessary regime under which Pharmacists in the UK now have to practise.

Something has to happen, because if it does not and present experiences of pharmacists continue (as they otherwise surely will), then who soon will want to be in a profession (or to enter into a profession) where they can be barred from practice, have their reputation destroyed and see their income disappear almost overnight and all for a measly £30,000 to £40,000 per year?

These new regulations, if not substantially amended, will I believe, in fact destroy and be the demise of the profession that (the Society will presumably say) they were designed to enhance and promote.

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