Understanding the Pharmacists’ and Pharmacy Technicians’ Order 2007

The Pharmacists and Pharmacy Technicians Order 2007 is a legislation that has fundamentally changed the way the professional activities of pharmacists and registered pharmacy technicians are regulated. Alan Nathan sets out the main innovations brought about by the order.  

From the late 1980s, a number of incidents came to light of poor practice in the NHS that involved harm to patients, with some resulting in deaths. As a result, the self-regulation of health professions was brought into question. The Health Act 1999 was introduced to modernise and strengthen the regulation of the healthcare professions. It took some years to bring this about for pharmacy, but, in February 2007, an Order in Council — the Pharmacists and Pharmacy Technicians Order 2007 (PPTO) — brought in under the Act, came into effect. The Order repealed the Pharmacy Act 1954, under which pharmacists were formerly registered and regulated, and substantially reformed the regulatory functions of the Royal Pharmaceutical Society. The main changes included:

- Statutory registration of pharmacy technicians by the Society
- Regulation of pharmacists and pharmacy technicians under the same system
- Undertaking continuing professional development to become a statutory requirement
- Strengthened fitness-to-practise arrangements
- Reform of the Society’s disciplinary system

As a separate development, the Department of Health has announced that, from 2010, the regulatory functions of the Society will be taken over by a new body, the General Pharmaceutical Council. There are likely to be further regulatory changes once it is established.

Registration

The main change, as far as pharmacists are concerned, is that the Register of Pharmaceutical Chemists has been renamed the Register of Pharmacists and has been divided into practising and non-practising sections. Currently, pharmacists are still registered as members of the Society (MRPharmS) but, from 2010, when the GPhC takes over the regulatory functions, the official registration title may change.

Practising and non-practising

The Register of Pharmacists is divided into two parts to distinguish between practising and non-practising registrants. The Society defines a pharmacist as practising “if he or she undertakes any work in, or gives advice in relation to, the science of medicines or the practice of pharmacy or healthcare”. The requirements apply equally to members and fellows. The Society’s view is that practising encompasses most pharmacists; not only those who dispense, work or provide advice in a clinical context, but also pharmacists working in the pharmaceutical industry, academia and administration, and even to those working in a non-pharmaceutical context if they use their pharmaceutical knowledge or expertise.

Pharmacists who register as practising must sign a declaration stating that they will comply with the Society’s CPD requirements and will be required regularly to demonstrate that they are maintaining CPD, although this will not be a statutory requirement until the GPhC takes over regulation. They must also satisfy the Society’s Registrar that their fitness to practise is not impaired.

Those who register as non-practising must sign a declaration stating that they will not practise. Non-practising pharmacists do not have to maintain their CPD but continue to be subject to the code of ethics. They also continue to have access to resources at the Society, including receiving The Pharmaceutical Journal, branch membership and being entitled to vote in Council elections. They are able to use the restricted title “pharmacist”, but must explain, when using it, that they are not practising.

A non-practising pharmacist may not give professional advice, described by the Society as advice “that would add professional credibility”. From examples given by the Society, any advice that a non-practising pharmacist could give would be no more than a lay member of the public might provide, except in an emergency. The non-practising retention fee is a small fraction of the practising fee (in 2009, £70 compared with £413). The non-practising pharmacist category will cease with the establishment of the GPhC, but former non-practising and retired pharmacists would be able to stay in touch with the profession through membership of any successor body to the Society.

Also, assuming the new professional body retains its existing title, they are likely to be able to retain the post-nominal designation, MR PharmS (or FRPharmS).

It is also possible to resign temporarily from the register. The title “pharmacist” and the designation MR PharmS (or FRPharmS) may no longer be used and all membership benefits are lost, but there is no bar on former pharmacists giving any advice that they wish about health and medicines. Re-registration is possible at any time for a re-registration fee (currently £198) plus the annual retention fee. There is currently no requirement to assure competence to practise before re-registering.

Pharmacy technicians

Under the PPTO, the Society maintains a register of pharmacy technicians, open to those holding a recognised qualification. Currently, the register extends only to England and Wales but it is proposed to extend it to Scotland. There is a practising and non-practising section as for pharmacists, and the conditions of registration are the same. Registered technicians are

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Evidence of previous or existing actual harm to patients or the public
Failure to comply with drug/treatment regimen
Failure to comply with conditions imposed by current medical supervision or treatment
Failure of supervision or control
Subject of harm is a vulnerable patient or person

Personal health
Risk of self harm
Recurrent or episodic conditions
Sustained ill health
Current medical supervision or treatment
Current addictive behaviour
Relapses into addictive behaviour
Underlying condition suffered by registrant which, although in remission, is capable of causing impairment of fitness to practise if it recurs
Failure to comply with drug/treatment regimen or medical supervision
Failure to comply with medical assessment
Failure to comply with undertakings

Personal behaviour
Dishonesty
Sexual misconduct

Panel 1: Criteria used for making referrals by the Investigating Committee

Harm
■ Evidence of previous or existing actual harm to patients or the public
■ Evidence of previous or existing potential harm to patients or the public
■ Realistic risk of future harm to patients or the public
■ Subject of harm is a vulnerable patient or person

Professional practice
■ Registration status
■ Serious departure from accepted professional standards and guidelines
■ Breach of the Society’s code of ethics or guidance
■ Failure of supervision or control
■ Abuse of professional position
■ Exceeding appropriate professional boundaries
■ Disregard or breach of Inspectorate advice
■ Failure to maintain indemnity insurance
■ Excessive or irresponsible supply of medicines with potential for abuse
■ Failure to work effectively or co-operate with other healthcare professionals
■ Lack of professional competence or judgment
■ Placing commercial interests above those of patients or public
■ Serious breach of Controlled Drugs legislation
■ Failure to comply with conditions imposed by the Health or Disciplinary Committees
■ Failure to comply with undertakings
■ Refusal to provide an undertaking not to practise
■ Failure to respond to correspondence from the Society
■ Failure to take action in the public interest

Pharmacy profession
■ Bringing the profession into disrepute
■ Undermining public confidence in the profession
■ Deliberate disregard for the system of registration
■ Failure to co-operate with the Society or other investigations
■ Failure to comply with personal performance assessment
■ Registration status

Current allegation
■ Attempt to cover up facts
■ Attempt to impede/obstruct investigation

Prior allegations
■ Prosecutions, previous warnings, reprimands, sanctions, advice on same or similar matter in previous five years
■ Disregard or breach of advice given in relation to previous allegations
■ Failure to comply with undertakings in relation to prior allegations

Subject to the same code of ethics and disciplinary arrangements as pharmacists.

Fitness to practise
A professional’s fitness to practise comprises his or her competence to do his or her job, achieved through initial education, training and CPD; his or her physical and mental well-being; and his or her honesty, integrity and maintenance of acceptable standards of professional conduct.

Impaired fitness to practise
In the terms of the PPTO, fitness to practise can be impaired by any of the following:

■ Professional misconduct
■ Deficient professional performance (which includes competence)
■ A diverse physical or mental health, including as a result of addiction to or dependence on drugs or alcohol
■ Failure to comply with a reasonable requirement imposed by an individual assessor or an assessment team in connection with carrying out a professional performance assessment
■ A conviction in the U K for a criminal offence or a conviction or equivalent outside the U K (and, in Scotland, an admonition and absolute discharge or acceptance of a conditional offer under the Criminal Procedure (Scotland) Act 1995)
■ Having agreed to pay a penalty under section 115A of the Social Security Administration Act 1992 (as alternative to prosecution)
■ A police caution in the U K
■ A determination made by the Society or any health profession regulatory body in the U K or elsewhere that a pharmacist’s (or registered pharmacy technician’s) fitness to practise is impaired
■ A demonstration towards a patient or customer (or a prospective patient or customer) of attitudes or behaviour that can be construed as professional misconduct

Under the PPTO, any pharmacist, registered pharmacy technician or any other person in Britain can be required to supply any information or produce to the Society any document that may be relevant to an investigation into a pharmacist’s or registered pharmacy technician’s fitness to practise. If a person fails to do so within 14 days of a request, the Society can obtain a court order to oblige them to. If it believes that it is in the public interest to do so, the Society can publish or inform any persons or bodies about a pharmacist’s or registered pharmacy technician’s fitness to practise.

Investigating Committee
Investigation of allegations of impaired fitness to practise are undertaken by the Investigating Committee (IC), which has replaced the Infringements Committee that operated under the Society’s disciplinary system before the enactment of the PPTO. Essentially, the IC is a screening committee. It has 10 members, including the chairman (who is a lawyer), three pharmacists, two pharmacy technicians and four lay members. The committee is required to consider all cases referred to it and to decide whether or not to refer the case to the Disciplinary Committee or the Health Committee, or whether the Society should bring a criminal prosecution (for offences under the Medicines Act 1968 or the Poisons Act 1972).

When deciding to refer a case, the IC may recommend that it should be fast-tracked or put before the relevant committee (Disciplinary or Health) for urgent consideration of whether or not to impose an interim order. Before making its decision, the committee may order further inquiries to be made, including obtaining medical reports. Where the allegation is admitted, the IC may decide, instead of referring a case, to accept written undertaking from a registrant or to issue a warning. It also has the power to give advice.

The IC may decide to take no further action, but the registrant will be informed that, should any further allegation be received by the Society within five years, the original allegation may be reconsidered. The committee may also reconsider its decision at any time within five years if it receives new evidence or information. It sits in private and does not hear oral evidence. The Committee can receive any documentary evidence, subject only to the requirements of relevance and fairness. In referring cases to the Health or Disciplinary Committees, it uses a “real
Panel 2: Sanctions available to the Disciplinary Committee

**Individual practitioners** Where the Disciplinary Committee has made a finding that a practitioner’s fitness to practise is impaired, the committee may:

- Issue a warning to the practitioner and direct that details of the warning should be recorded in the practitioner’s entry in the Register of Pharmacists or Pharmacy Technicians
- Impose conditions on the practitioner for a period not exceeding three years
- Suspend the practitioner from the Register of Pharmacists or Pharmacy Technicians for a period not exceeding 12 months
- Remove the practitioner’s name from the Register of Pharmacists or Pharmacy Technicians

Where the Disciplinary Committee has previously imposed conditions on a practitioner, it will review the case and may:

- Extend the conditions for a further period, not exceeding three years
- Vary the conditions for a further period, not exceeding three years
- Suspend the practitioner from the Register of Pharmacists or Pharmacy Technicians, for a period not exceeding 12 months
- Remove the practitioner’s name from the Register of Pharmacists or Pharmacy Technicians

Where the Disciplinary Committee has previously suspended a practitioner’s name from the Register of Pharmacists or Pharmacy Technicians, it will review the case and may:

- Impose conditions on the practitioner for a period of up to three years (to come into effect on the expiry of the current period of suspension)
- Extend the suspension for a further period, not exceeding 12 months

Where a practitioner has been suspended for a period of at least two years, to suspend his or her name from the Register of Pharmacists or Pharmacy Technicians indefinitely

- Remove the practitioner’s name from the Register of Pharmacists or Pharmacy Technicians

Where a practitioner’s name is removed from the Register of Pharmacists or Pharmacy Technicians, no application for restoration can be considered by the Disciplinary Committee until the expiry of a period of five years from the date on which his or her name was removed.

**Corporate bodies** The Disciplinary Committee may direct that:

- The corporate body should comply with undertakings given to the Committee
- The corporate body should be issued with a warning or reprimand
- The Registrar should remove from the Register of Premises for a limited period some or all premises entered in that Register as being premises at which the corporate body carries on retail pharmacy
- The Registrar should remove from the Register of Premises some or all premises entered in that Register as being premises at which the corporate body carries on retail pharmacy
- A representative of the corporate body should be disqualified as being a representative for the purposes of Part IV of the Medicines Act 1968
- A corporate body should be disqualified from the Register of Premises

Where a corporate body fails to comply with undertakings given to the Disciplinary Committee, the matter will be brought back to the committee for consideration and it may decide to impose a different sanction.

Disciplinary Committee The Disciplinary Committee (DC) has replaced the Statutory Committee that operated under the Society’s disciplinary system before the enactment of the PPTO. It is made up of a panel of 19 members two chairmen and two vice-chairmen (who are all lawyers), six pharmacists, six pharmacy technicians and six lay members, from which smaller panels are drawn for hearings. No panel may contain a majority of more than one pharmacist or registered pharmacy technician for hearings involving those respective practitioners.

The DC is required to consider all cases referred to it. In disciplinary cases, it is required to determine whether a registrant’s fitness to practise is impaired or a corporate body has committed misconduct and, if so, whether or not to impose a sanction. The committee sits in public, although it may hold part of a hearing in private. It may receive any evidence (including oral evidence) subject only to the requirements of relevance and fairness. Also, it uses the civil standard of proof (ie, the balance of probabilities). The sanctions available to the DC are set out in Panel 2.

The DC has the power to award costs to registrants who have been involved in disciplinary cases unsuccessfully brought against them and, in January 2008, made the first such award: £20,000 against the Society to two pharmacists involved in a case who were ultimately exonerated of any blame. A further award of costs was made in December 2008, when a case brought against a head of a school of pharmacy was withdrawn.

Health Committee The Health Committee (HC) is a committee set up under the PPTO to consider cases of pharmacists and pharmacy technicians whose fitness to practise may be impaired through ill health, most usually as a result of alcohol or drug dependence, or mental health problems.

This committee may, in order to protect the public, suspend such practitioners from practice or impose conditions on their practice with immediate effect. The HC for each hearing is drawn from a panel of 13 members (three pharmacists, three pharmacy technicians and seven lay members, including the chairman and two deputy chairmen). At hearings, it has the assistance of both a legal and a clinical adviser. Also, it has the same range of sanctions available as the DC, except for striking off.

Interim orders In the interests of public safety, public interest or a practitioner’s own interests, an interim order can be made for conditions to be placed on a practitioner’s registration or for interim suspension of his or her name from the register, pending the outcome of an investigation or a full hearing of the case. There is no prescribed period for an order, but the maximum is 18 months, with a cycle of reviews within the first six months, and specified periods of three months thereafter. A further 12 months extension may be granted on application to the High Court.

Registration Appeals Committee Under the PPTO, appeals can be made against: refusals by the Society’s Registrar to register a person, for example, someone about to register for the first time who had committed a criminal or disciplinary offence while a student or preregistration trainee; or decisions by the Registrar to remove a person from the register.

Reasons for these include refusal to complete the necessary declarations on the annual retention form or not having indemnity insurance (the latter awaiting enabling legislation). An appeal is not necessary for restoration to the register after removal for failure to pay the retention fee in time; this is achieved by paying the restoration fee plus the retention fee.

The committee consists of a legally qualified chairman and deputy chairman, three lay members, three pharmacists and two pharmacy technicians, from which smaller panels are drawn for hearings. Appellants can be charged for the Society’s costs if an appeal fails. The committee cannot deal with appeals against the Disciplinary or Health Committee’s decisions, which have to be taken to the High Court.

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