Decriminalising dispensing errors

The campaign to change the unjust law which automatically criminalises any dispensing error is an example of leadership in action, says David Pruce, director of policy and communications at the Royal Pharmaceutical Society, in this fourth article on the new professional body.

The Royal Pharmaceutical Society is working hard to address the issues associated with stress and workplace pressure through its Workplace Pressure Campaign. A part of the cause of the stress in the profession is fear of prosecution for making a mistake. Until recently, this fear had not been a major cause of stress, since most pharmacists believed that the law was unlikely to be used against pharmacists who made genuine errors. However, the Lee case in April 2009 changed this (PJ, 11 April 2009, p401).

This case was different from any that had gone before and shook the profession to the core. The Society reacted quickly and sought a meeting with the minister to discuss the issue. In a statement, President Steve Churton said: "The Society firmly believes such dispensing errors should not be criminal offences and that they should be properly dealt with by the regulator. Previous attempts by the Society to change this position have not brought about the desired effect."

We knew that it was not going to be easy to change the law. If we were to succeed, we would have to persuade Parliament and the public that this issue was important and that there were already other laws to deal with negligent or wilful acts. The profession was behind us but that alone was unlikely to be enough — after all it was obvious that we would not want to face prosecution.

There were a number of arguments why this particular law was unjust. It created an automatic offence such that the mere fact that an error had occurred was sufficient to result in conviction. In most legal cases, the prosecution had to prove both that the act had occurred and that it was either wilful or negligent. However, a conviction under the parts of the Medicines Act which cover dispensing errors can be obtained without any proof of intent or negligence. The other important part of this is that the effect of this provision of the Act is that effectively the whole of the pharmacy profession will have committed a criminal act, since all pharmacists are likely to make a dispensing error at some time in their careers.

However, the counter argument that we anticipated was that prosecutions of pharmacists for dispensing errors occurred rarely — so why were we making such a fuss? The Society undertook some research to determine what effect the Lee case had had on pharmacists’ willingness to record errors. We found that there was a significant shift in willingness to record (and therefore learn from) dispensing errors. We feared that there could be patient safety implications. This was an important piece of our argument that there was an urgent need to change the Medicines Act.

A member (Graeme Stafford) set up an online petition about decriminalising dispensing errors, which the Society publicly supported and urged members to sign. The petition rapidly grew and has about 12,500 signatures on it, thus demonstrating the feeling of the profession about the issue.

We knew that we needed to persuade members of Parliament about the importance of changing the Medicines Act. There are several ways in which issues like this can be brought to the attention of MPs. We lobbied all three main political parties about the issue. We also wrote an Early Day Motion (EDM) calling for an amendment of the legislation and asked three MPs (Howard Stoate, Sandra Gidley and Bob Russell) to lay it before Parliament. An EDM is a sort of parliamentary petition. MPs are asked to sign it if they support it. The more support that it gets, the more effective it is going to be.

Template

The Society produced a template letter for members to use to write to their MPs asking them to sign the EDM and showed them how they could get the details of who their local MP is. Many members used the template to write to their MPs and the number of MPs’ signatures steadily increased. The EDM has been supported by 110 MPs (as of 22 June 2009), making it one of the most successful EDMs this year.

The All-Party Pharmacy Group (APPG) was asked to raise the issue of amending the legislation at its meeting in June. The chairman of the APPG, Howard Stoate, had been one of the signatories of the EDM and readily supported the idea. BBC Radio 4 became aware of the campaign and ran a small piece about it on iPM on Saturday 6 June 2009 and this was followed up by the PM programme on the evening of Tuesday 9 June. The Society took part in the programme and the programme gave a sympathetic hearing to our case.

All of this activity publicly supported our contention that action needed to be taken quickly. The minister asked the chief pharmaceutical officer for England and the medicines and Healthcare products Regulatory Agency (MHRA) to meet with the Society to discuss amending the law. The President put the case for the change in the law and drew on the concerns of the profession and of the patient safety concerns raised by our research. The MHRA agreed to include this in the work that it is undertaking to consolidate and review the Medicines Act. This process could take two years to complete. However, it was also important to ensure that changes would happen in the interim to prevent unnecessary prosecutions before the changes were finalised (see PJ, 20 June 2009, p731). We agreed that urgent discussions will be held with the Crown Prosecution Service to develop interim guidelines for all Crown Prosecution Officers to remove the possibility of inappropriate prosecution for dispensing errors.

The result of this is that we will be working the Department of Health and the MHRA to deliver a workable alternative to the existing law. We will also ensure that discussions with the CPS deliver the reassurance that pharmacists want, namely, that they will not be subject to unnecessary prosecution while we wait for the Medicines Act 1968 to be amended.

It has been exciting to see what has been achieved in such a short period. This shows how an organisation that is in touch with its members and is able to mobilise its members can change Government policy. The membership has shown that it wants a body that is responsive and influential and we are building a professional leadership body which will listen to its members, respond to their concerns and lead on their behalf.