Problematic widows — supervision and the impact of unintended consequences

This third article on supervisions has been written by Graeme Stafford, member of the Royal Pharmaceutical Society’s English Pharmacy Board to stimulate thinking, as part of the planned process of engagement with pharmacists, to establish a position to inform any future debate on supervision.

As a member of the English Pharmacy Board I am keen to see the profession lead the debate on supervision. I am also keen to move away from sterile arguments about remote supervision.

I believe we need a paradigm shift, a whole new way of looking at supervision using the principles of clinical governance, individual responsibility and quality improvement to guide us. So before we move the debate on, I should like to illustrate the dangers of an uncontrolled, factional and piecemeal approach and point out how unintended consequences can arise from such seemingly simple decisions made by small groups of well meaning professionals.

Widows

Over the years the problem the widows caused the Society has often been mentioned. The widows, I hear you say, what have they got to do with supervision? Well, in the early days of the Pharmaceutical Society the Victorian members of the Council, wanting to preserve their property rights, had inserted into the Pharmacy Act 1868 the fateful “widows” clause. This stated: “…and upon the decease of any Pharmaceutical Chemist or Chemist and Druggist actually in business at the time of his death, it shall be lawful for any executor to continue such business if and so long only as such business shall be bona fide conducted by a duly qualified assistant, and a duly qualified assistant within the meaning of this clause shall be a Pharmaceutical chemist or a qualified assistant within the meaning of this clause to prove their case but the Italians had been clever enough to put sensible exceptions into their clause, which led the court to conclude that the commission tried to use the Italian “widows” clause to prove their case but the Italians had been clever enough to put sensible exceptions into their clause, which led the court to conclude that the commission had not proved its case.

I am sure those Council members did this with the best of intentions at the time but they probably did not think what the unintended consequences of that decision might be. Twelve years later in 1880 the House of Lords gave the final judgment in what was probably the most important legal case in British pharmacy history: The Pharmaceutical Society v The London and Provincial Supply Association. The case revolved around the lack of clarity in the 1868 “widows” clause and the Pharmaceutical Society lost. This opened the door to the company chemists. By 1883 Jesse Boot, a non-pharmacist, had opened 10 shops — and today the Italian non-pharmacist who owns Boots cannot own a single pharmacy in Italy yet owns thousands of pharmacies in the UK. I ask readers to consider if the Victorian Council members might have envisaged this result as a consequence of their possibly self-interested decision-making process?

In other European countries the subject of pharmacy ownership has gone to and fro over the years but in most, over the past century, systems have developed differently from the way they have in the UK, leading up to the historic judgment of 19 May 2009 by the European Court of Justice in which the right of European states to restrict ownership of pharmacies to pharmacists alone was upheld (PJ, 23 May 2009, p604). The European Commission tried to use the Italian “widows” clause to prove their case but the Italians had been clever enough to put sensible exceptions into their clause, which led the court to conclude that the commission had not proved its case.

Challenge

Over the years the Pharmaceutical Society has tried several times to challenge the company chemists and Boots but each time it has lost. I leave readers to speculate why the ECJ found so decisively in support of European pharmaceutical societies and why since 1880 our own Society has unfortunately failed to find that support.

Moving to the present time we have another example of the law of unintended consequences. The responsible pharmacist Regulations in my view have done nothing to improve patient safety or service, have created greater tension between employers, employees and locums, have increased pressure on the workforce and, since there has been no guidance on breaks and the NHS Regulations, have left us in a worse position.

Now vending machine dispensing systems are to be trialled in a number of hospitals in England this autumn and are already on trial by Sainsbury’s in a supermarket. I wonder if those involved in these trials have thought through all the consequences that might result especially any unintended consequences that might knock on into the practice of pharmacy for centuries to come.

Is it a good idea to run even limited trials ahead of the supervision debate? I, for one, do not believe the responsible pharmacist Regulations have set the framework for the quality assurance system underpinning the safe operation of each pharmacy, as was envisaged in the original Department of Health responsible pharmacist consultation.

Think again

Again, have those who are going to be involved in these trials thought through all the consequences, intended and unintended? I appeal to those involved to think again and instead to involve themselves in the forthcoming debates on supervision so that those involved in these trials have thought through all the consequences that might result especially any unintended consequences that might knock on into the practice of pharmacy for centuries to come.

Is this too big a consequence from one small decision? History might indicate otherwise.

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The views expressed in this article are Mr Stafford’s personal views and do not necessarily reflect those of the Royal Pharmaceutical Society or the English Pharmacy Board.