Response to the General Pharmaceutical Council consultation on religion, personal values and beliefs

March 2017

1. Introduction

1.1 The Professional Standards Authority for Health and Social Care promotes the health, safety and wellbeing of patients, service users and the public by raising standards of regulation and voluntary registration of people working in health and care. We are an independent body, accountable to the UK Parliament. More information about our work and the approach we take is available at www.professionalstandards.org.uk.

1.2 As part of our work we:

- Oversee nine health and care professional regulators and report annually to Parliament on their performance
- Conduct research and advise the four UK governments on improvements in regulation
- Promote right-touch regulation and publish papers on regulatory policy and practice.

1.3 We welcome the opportunity to respond to the General Pharmaceutical Council's (GPhC) consultation about religion, personal values and beliefs.

2. Our position

2.1 The Professional Standards Authority performs the statutory function of "[promoting] the interests of users of health care" in relation to the performance of the regulators it oversees.[1] In the exercise of this function, we have an over-arching objective to "protect, promote and maintain the health, safety and well-being of the public". [2] When assessing the proposed changes to guidance on professionals' beliefs, our comments stems from this perspective.

2.2 We recognise that in revising its guidance (from the previous consultation), the GPhC is attempting to strengthen its position to favour the rights of the patient – and we fully support this shift. However, in our view, the re-drafted example and accompanying guidance are still too focused on the rights of the professional.

2.3 The consultation document attempts to reconcile the opposing demands of professionals who do not wish to dispense medicines with those of patients who

[1] Section 25(2) of the National Health Service Reform and Health Care Professions Act 2002. Available at: http://www.legislation.gov.uk/ukpga/2002/17/contents

[2] Section 25(2A) and (2B) of the National Health Service Reform and Health Care Professions Act 2002, as amended by the Health and Social Care (Safety and Quality) Act 2015. Available at: http://www.legislation.gov.uk/ukpga/2015/28/section/5/enacted

require the product. The primary duty of healthcare professionals is to meet the health and care needs of patients, to the best of their ability. The consultation document implies that professionals will be given a licence by their regulator not always to act in the best interests of the patient as there may be certain scenarios when the professional's own beliefs come first. We disagree with this alignment of priorities and note that depending on treatment, some patients will be put first before a professional's beliefs, whilst other patients will be placed second.

2.4 We believe that there are insufficient legal reasons for pharmacy professionals – part of the NHS workforce - to withhold providing legal, NHS-approved treatments to patients, unless their right to do so is set out in legislation. Patients and the wider public can expect to receive treatment without delay or hindrance. This is enshrined in the NHS constitution where it is stated that: 'The NHS provides a comprehensive service, available to all irrespective of gender, race, disability, age, sexual orientation, religion, belief, gender reassignment, pregnancy and maternity or marital or civil partnership status'.[3] Relatedly, the 1998 Human Rights Act prohibits discrimination based 'on any ground such as sex, race, colour…'.[4]

2.5 In addition, it is our view that the GPhC's position could be made clearer in the guidance as the current draft has the potential to create ambiguity for registrants, patients and employers.

3. Specific comments

The example

3.1 We argue that the redrafted example does not set out in clear enough terms the responsibility of the pharmacy professional to ensure as far as possible that patients receive the care and treatment they want when and where they want it, regardless of the professional's own views. 'Take responsibility for ensuring that person-centred care is not compromised because of personal values' (pg. 11 of the consultation document) contains much ambiguity, not least in the terms 'responsibility', 'ensuring', 'person-centred care', and 'compromised'. A stronger statement would provide clarity for professionals, patients, and employers.

The guidance

3.2 While the GPhC cannot be expected to provide legal advice on this complex issue, the guidance should set out more explicitly the parameters determined by existing legislation. The references on page 15 to the Equality Act 2010 are insufficient: they explain only that religion and belief (of the professional) are a protected characteristic, however they do not explain what would constitute discrimination by the professional against a patient who presents a protected characteristic – despite this being described on page 18 as something

[3] UK Government, 2012, NHS Constitution for England, pg.3. Available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/480482/NHS_Constitution_WEB.pdf

[4] UK Government, Human Rights Act 1998, pg.25. Available at: http://www.legislation.gov.uk/ukpga/1998/42/data.pdf

pharmacy professionals should not do. As a result, the guidance does not tackle, or even refer to the potential conflict between the rights of professionals and the rights of patients under equality law, which it seems to us is at the crux of the issue.

3.3 We were also surprised to note that there is no mention of human rights legislation, which has been used for example in the European Court of Human Rights to defend the rights of patients to access healthcare services.[5] A number of articles may be engaged here, relating to inhuman or degrading treatment (3), respect for private and family life (8), discrimination (14), and of course freedom of thought, conscience and religion (9).[6] The rights of patients are emphasised elsewhere in case law. For instance, the Supreme Court ruling of Montgomery v Lanarkshire Health Board represents a shift in the balance on consent, from the paternalism of professionals to self-determination by patients. It establishes that the values of patients should take precedence over those of health and care professionals.[7]

3.4 Furthermore, the guidance overlooks the fact that rights to object to certain treatments may be set out in other parts of UK law – for example in England, Wales and Scotland the right to refuse to participate in terminations of pregnancy (other than where the termination is necessary to save the life of, or prevent grave injury to, the pregnant woman) – is protected by law under section 4(1) of the Abortion Act 1967.

3.5 Instead, in providing the list of examples on page 16 of the consultation document, the guidance suggests a wide range of services to which a pharmacy professional might object. It is unclear what this list is based on and whether it is meant as an endorsement of a professional's right to object to providing these services. Many of the people receiving the services listed will have protected characteristics under Equality Act 2010. For instance, the characteristic of pregnancy and maternity would be applicable to people seeking fertility medicines; similarly people with the characteristic of gender reassignment would be likely to seek hormonal therapies. It would be discriminatory to restrict access to services for people holding protected characteristics. This is acknowledged in the NHS Constitution where NHS staff have the responsibility 'not to discriminate against patients or staff and to adhere to equal opportunities and equality and human rights legislation'.[8] We would have expected to see an assessment of the equality impact published alongside this consultation.

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[5] For example, see the case of RR vs Poland - 27617/04 [2011] ECHR 828 (26 May 2011). Judgment at: http://www.bailii.org/eu/cases/ECHR/2011/828.html. Summary at: https://strasbourgobservers.com/2011/05/31/r-r-v-poland-of-reproductive-health-abortion-and-degrading-treatment/.

[6] Schedule 1 of the Human Rights Act 1998. Available at: http://www.legislation.gov.uk/ukpga/1998/42/schedule/1

[7] Supreme Court, Montgomery v Lanarkshire Health Board. Available at: https://www.supremecourt.uk/decided-cases/docs/UKSC_2013_0136_Judgment.pdf

[8] UK Government, 2012, NHS Constitution for England, pg.14. Available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/480482/NHS_Constitution_WEB.pdf

3.6 We further note that people in need of such treatments are likely to be vulnerable, and possibly sensitive about (or as a result of) their condition. The guidance does little to highlight the impact that refusal of services might have on such groups, despite acknowledging on page 12 that "*referring people to other providers creates an extra barrier to people being able to access pharmacy services when they need them*."

3.7 These findings may indicate the need for a firmer statement from the GPhC, for example to the effect that in certain circumstances, it is unlikely to be acceptable to refer a patient to other premises for the treatment or medicines they seek, unless the professional has a legal right to do so. The GPhC should examine in more detail the likelihood and consequences of patients not seeking treatment when they are referred elsewhere, which, for example in cases of substance misuse or mental health problems, could be extremely serious.

3.8 Whilst there are safeguards suggested in the guidance to mitigate effects on patients, the sentence 'a pharmacy professional should not *knowingly*[9] put themselves in a position where a person is unable to receive the care or advice they need' is a further admission that withholding services from a patient increases the risk of a negative outcome for patients. The only way to be sure that there will be no negative consequences for a patient is not to withhold the service from a patient. We also note that the use of the term 'knowingly' gives professionals a level of protection, when patients are unable to find an alternative – this bias in favour of the professionals would seem to absolve them of their duty of care towards patients.

3.9 It is not made clear in the draft guidance that a professional should explain to a patient their reasons for objecting to providing treatment. If a patient is refused a service which they would ordinarily expect to receive they have a right to know why the professional is withholding treatment. It is generally accepted that patients are entitled to an open culture in healthcare which allows them to be as fully informed as possible about their treatment. When a professional provides a reason, it would need to be done in accordance with the guidance on page 18 of the document: to 'not imply or express disapproval or judgment of the person'.

4. Consultation Response

Q1. Do you agree with the proposed changes?

Answer: **In part.**

4.1 As explained in our opening paragraphs, we agree that the standards and guidance need to be strengthened in favour of patients' rights, but do not feel that the GPhC has gone far enough.

Q1a. Please explain your reasons for this?

4.2 As mentioned in our comments above, the guidance could delay access to care, put patients in distress, and shifts the focus of provision of care away from

[9] Our emphasis.

those it is designed to benefit. In certain circumstances, refusing treatment may be unlawful.

Q2. Does the revised guidance adequately cover the broad range of situations that pharmacy professionals may find themselves in?

Answer: **No answer**

Q3. Is there anything else, not covered in the guidance, that you would find useful? Please give details.

4.3 As mentioned in paragraph 3.9, there should be more guidance on providing a reason to patients when treatment is withheld.

4.4 We would also have expected the guidance to make clear which aspects of care pharmacy professionals can refuse to provide: there is a distinction between giving information and advice about treatment options, and providing the treatment. Withholding both would be arguably more detrimental to the patient than just the latter.

Q4. Will our proposed approach to the standards and guidance have an impact on pharmacy professionals?

Answer: **Yes**

Q5. Will that impact be:

Answer: **Partly negative**

Q6. Please explain and give examples?

4.5 It has the potential to impact professionals in a negative manner as professionals will not conceive of care as entirely based around the patient. Sacrificing what is best for a patient's care in order to appease a professional's own beliefs contradicts the idea of 'patient-centred care'.

4.6 In addition, there is likely to be an impact on colleagues or neighbouring pharmacies if a pharmacy professional refuses to provide certain aspects of care, as they will have to take on the additional responsibility and workload.

4.7 Finally, there is a risk of greater discrimination developing as employers may favour professionals whose beliefs do not impact on their ability to provide all the services expected of them.

Q7. Will our proposed approach to the standards and guidance have an impact on employers?

Answer: **Yes**.

Q7a. Please explain and give examples.

4.8 Linked to the above, pharmacy employers may find it harder to adequately staff pharmacies if there is a significant amount of pharmacy professionals who opt to not dispense medicines to patients as a result of personal values.

4.9 If pharmacies do not have the staff to provide all treatments to patients, they will have to refer patients to other pharmacies. This may not be an option for more isolated pharmacies in rural areas, whilst pharmacies receiving referrals from 'non-dispensing' pharmacies may be inundated with patients and have trouble adequately staffing their premises.

Q8. Will our proposed approach to the standards and guidance have an impact on people using pharmacy services?

Answer: **Yes**.

Q9. Will that impact be:

Answer: **Mostly negative**.

Q9a. Please explain and give examples.

4.10 In outlining our general position and making specific comments we describe in detail the potential negative impact this policy could have.

Q10. Do you have any other comments?

Answer: **No**.

5. Consultation Response Form

Background questions

Are you responding:

Answer: **As an organisation.**

Responding on behalf of an organisation

Name:

Answer: **Michael Warren.**

Job Title:

Answer: **Policy Adviser.**

Organisation:

Answer: **Professional Standards Authority for Health and Social Care.**

Address:

Answer: **Professional Standards Authority for Health and Social Care, 157-197 Buckingham Palace Road, London SW1W 9SP.**

Email:

Answer: **Michael.warren@professionalstandards.org.uk.**

A contact name for queries:

Answer: **Michael Warren.**

Please choose your option below which best describes your organisation:

Answer: **Other: We help to protect the public through our work with organisations that register and regulate people working in health and social care.**

We are independent and we are accountable to the UK Parliament. Our reports help Parliament monitor and improve the protection of the public. The Health Committee use our performance review reports to question the regulators we oversee about their work. We also encourage organisations to improve the way they register and regulate health and care practitioners in the UK.

6. Further information

6.1 Please get in touch if you would like to discuss any aspect of this response in further detail. You can contact us at:

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