Cicely Roche has worked in community pharmacy in Canada and Ireland since graduating from Trinity College Dublin in 1983. She holds an MSC in Community Pharmacy from Queen’s University Belfast (2001) and an MSc in Healthcare Ethics and Law from RCSI (2007).

The question ‘May I have something for my allergies please?’ becomes a common plea as we enter the autumn allergy season. My recommendation might be as simple as a few days supply of oral decongestant or a complex mix of the said oral decongestant, antihistamines, paracetamol, nasal steroid spray, oils for inhalation and wrap around sunglasses. Patient information leaflets will identify all of the above as being potentially useful. In some cases patients can avoid the trigger and give the allergy time to settle. In others, the personal influence on the patient towards management of the symptoms so that imminent commitments can be met. Identifying which type of treatment is more appropriate, in the pharmacist’s opinion, is part of the communication challenge.

The ideal would be that all such OTC sales are automatically recorded to the patient’s profile, thereby both checking for interactions and facilitating an opportunity to re-examine. In some cases, I recommend a bag-full of product rather than the simpler, and less expensive, single product option. Indeed legal opinion would insist that, in the interests of being able to provide ‘proof’ of sale, the pharmacist ought not to interact with patients without recording specific details of the intervention. The reality is that such documentation does not happen – indeed there are times when the identity of the patient is not known, much less the specific reasoning the pharmacist applies to his/her own decision-making process.

Professional judgement is a phrase used so regularly that I expected to have no difficulty finding a definitive summary of its meaning. However the term does not appear in the Pharmacy Act 2007 and does not appear to be defined in current Irish pharmacy legislation. Dictionary definitions of the word ‘judgement’ include ‘the cognitive process of reaching a decision or drawing conclusions’. Words such as discernment, perception, insight, reason and objectivity all feature. Judgement is required when presented with two or more options, each of which is individually convincing, mutually exclusive and jointly demanding. Professionals making judgements are expected not only to have acquired the body of knowledge considered fundamental to the practice of that profession, but also to have committed to a professional code of ethics. Healthcare professionals’ codes of ethics are founded on the premise of a duty of care to the patient, thus obliging the pharmacist to always make judgements in the patient’s best interests.

Hence, professional judgement may be described as the application of expertise acquired in the training for and practice of the profession, which, when applied to situations where there is no clear right or wrong way to proceed, gives a patient a better likelihood of a favourable outcome than if a lay person had made the decision. Unlike lay judgement, professional judgement ought to be well-informed and reliable. Professor Joy Wingfield summarises the challenge as being that pharmacists ‘will need to be able to develop an enhanced competence, handle uncertainty and apply sound professional judgement and critical thinking.’ The inference is, of course, that acting in the patient’s best interests is not always easy. There are many potential sources of conflict, both internal and external to pharmacists, which raise the question of the decision-making process. Such interaction raising the possibility of impairing the decision-making process may in turn pressurise the patient towards management of the symptoms so that imminent commitments can be met. Identifying which type of treatment is more appropriate, in the pharmacist’s opinion, is part of the communication challenge.

Birds McDowell (1990) suggests that there is a fundamental conflict between the two roles of professional advisor to the client as to whether certain services are necessary, and the provision of the service or product the patient might need. He refers to it as ‘service or success’, simplistically suggesting that the pharmacist must choose one or other, being unable to act professionally and be successful at one and the same time. Community pharmacists may both advise patients on how to deal with symptoms and supply the product recommended. Indeed, if the patient does not make a purchase, the retail pharmacy business does not get any remuneration for the refreshment time spent with the patient. The dilemma may be perceived to be somewhat constrained in the situation where prescription drugs are supplied because the pharmacists may only legally supply prescription drugs on foot of a doctor’s prescription, but it is quite evident where the supply of non-prescription medicines is involved.

What must be emphasised, however, is that it is the resolution of dilemmas which may or may not constitute unacceptable behaviour or a breach of the requirement to use professional judgement in decision-making. The dilemmas, of themselves, exist as a result of the way in which pharmacy practice is framed and there can be no charge against a pharmacist for their existence per se.

Given the recognition that ethical dilemmas exist, the assumption is that there will be some decision-making done at either end of the ‘service or success’ continuum, i.e. some pharmacists will believe that they always make decisions in the patient’s best interests and others will openly present themselves as having a purely profit focus. Indeed it could be argued that if pharmacists make professional decisions at these absolute extremities, then the professional dilemma doesn’t exist for them at all.

It is more likely, however, that practice decisions occur along the continuum between these two extremes. Indeed it could be argued that the challenge as being that pharmacists ‘will need to be able to develop an enhanced competence, handle uncertainty and apply sound professional judgement and critical thinking.’ The inference is, of course, that acting in the patient’s best interests is not always easy. There are many potential sources of conflict, both internal and external to pharmacists, which raise the question of the decision-making process. Such interaction raising the possibility of impairing the decision-making process may in turn pressurise the patient towards management of the symptoms so that imminent commitments can be met. Identifying which type of treatment is more appropriate, in the pharmacist’s opinion, is part of the communication challenge.

The best way to avoid self-interest is to separate the person making the decision from anyone with an interest in the outcome. Birds McDowell (1990) suggests that there is a fundamental conflict between the two roles of professional advisor to the client as to whether certain services are necessary, and the provision of the service or product the patient might need. He refers to it as ‘service or success’, simplistically suggesting that the pharmacist must choose one or other, being unable to act professionally and be successful at one and the same time. Community pharmacists may both advise patients on how to deal with symptoms and supply the product recommended. Indeed, if the patient does not make a purchase, the retail pharmacy business does not get any remuneration for the refreshment time spent with the patient. The dilemma may be perceived to be somewhat constrained in the situation where prescription drugs are supplied because the pharmacists may only legally supply prescription drugs on foot of a doctor’s prescription, but it is quite evident where the supply of non-prescription medicines is involved.

What must be emphasised, however, is that it is the resolution of dilemmas which may or may not constitute unacceptable behaviour or a breach of the requirement to use professional judgement in decision-making. The dilemmas, of themselves, exist as a result of the way in which pharmacy practice is framed and there can be no charge against a pharmacist for their existence per se.

Given the recognition that ethical dilemmas exist, the assumption is that there will be some decision-making done at either end of the ‘service or success’ continuum, i.e. some pharmacists will believe that they always make decisions in the patient’s best interests and others will openly present themselves as having a purely profit focus. Indeed it could be argued that if pharmacists make professional decisions at these absolute extremities, then the professional dilemma doesn’t exist for them at all.

It is more likely, however, that practice decisions occur along the continuum between these two extremes. Indeed it could be argued that the
defensive practice. The first and most important step requires the pharmacist to rationalise the decision-making processes of professional judgement to himself. The question I ask myself if I did have the utopia of being able to document all recommendations ‘on-screen’, what exactly would I type in the box headed ‘reasons for recommending this, rather than an alternative, course of action’?

cicelyroche@eircom.net

References –

The Community Pharmacy Contractor Agreement for provision of services under the Health Act 1970,” Clause 9 (undefined reference to professional judgement).


This issue concludes a three-part series of articles by John Hogan from Leman Solicitors, which examines some employment law issues as they may pertain to community pharmacy. In this series, entitled ‘The Good, the Bad and the Ugly’, John Hogan offers his professional advice on how to approach some of the more common problems experienced by employers.

Employment Law: ‘The Good, the Bad and the Ugly’

The Ugly ~ How to deal with staff theft

John Hogan is a partner with Leman solicitors and advises a large number of pharmacy and retail clients on employment law and procedures

As we know from the daily news, theft and attacks are an increasing problem in retail businesses, including pharmacies. Security systems, panic alarms and CCTV installations will go a long way towards protecting your business from attacks from the outside, but how do you handle it when theft is an “inside job”?

Learn from others

Put yourself in the shoes of a small retailer in Donegal who became suspicious when stocktaking showed up some problems. Having been away from the store for a day, the owner checked his security cameras when he returned and caught one of his staff pocketing cash from a friend who came in and “bought” sunglasses. A couple more incidents followed and the employee was fired for gross misconduct. Fast-forward two years to the Employment Appeals Tribunal (EAT) and the employee succeeds in his claim for unfair dismissal. While the theft was proven in the EAT, the employer still lost the case.

How did it happen? In one word: procedures. The EAT found that although the employee had stolen the goods, the employer had not followed fair procedures in investigating the case and disciplining the employee. All too often employers can find themselves in this situation.

What can employers do to protect themselves?

Prevention is always better than cure. Take a look at your security procedures and your staff handbook. Are there any gaps? It might seem “over the top” for some retailers but it is perfectly legitimate to bring in a search policy for staff entering and leaving the shop. In White v– Cadbury (Ireland) Ltd an employee was dismissed for refusing to submit to a search. The EAT found the search procedures were fine but the employee should have been given the opportunity to make his case prior to dismissal. He was successful in his claim but his compensation was nil.

Big Brother – watching your staff

Using CCTV to catch thieves is nothing new. Using it to watch your staff is not as straightforward. Whilst you can legitimately install CCTV to monitor staff, they must be informed about it. You should also make sure that you have registered with the Data Protection Commissioner if you are going to use CCTV to watch staff.

The use of hidden cameras to watch staff is only permitted in very limited cases, where the data is being used for the purpose of preventing, detecting or investigating offences, or apprehending or prosecuting offenders. This means the Gardaí must be involved (or you must intend to involve them). Any such use should be checked in advance with your solicitor and can only be for a short period. If no evidence emerges it must be stopped.

Caught red-handed – what happens next?

There will generally be a sense of relief and sometimes excitement if you manage to catch a staff member stealing from you. It can often be the most trusted members of staff who you would never suspect, so catching up with them can lead to mixed emotions – relief, elation, disappointment, frustration and anger. In the heat of the moment, mistakes can be made and many employers have rushed to judgement, only to find themselves (as happened Donegal Sports and Golf Centre Ltd) at the wrong end of an Unfair Dismissal Claim. Pointing the employee to the door is not the way to go.

If you have uncovered evidence of theft you need to consider (a) your discipline procedures in your staff handbook and (b) whether you need to involve the Gardaí.

Get your procedures straight

Most staff handbooks will provide for an investigation procedure with suspension (on full pay). It is not unusual for employees to fail to co-operate with the investigation. Once it has been completed there should be a disciplinary hearing, with all evidence being provided in advance to the employee. That hearing should be independent of the investigation and there should also be an opportunity to appeal the result. In many smaller businesses there may not be a number of management levels or staff to allow for this. If that is the case, you should tailor the process to suit your business. The key element is that the employee is given a fair opportunity to review the evidence and make his or her case – fair procedures are vital.

Can I call the police?

Involving the Gardaí whilst you are disciplining an employee can cause difficulties. If the Gardaí have been involved, the employee can refuse to answer questions in an investigation, for fear of self-incrimination. The courts have also allowed a discipline procedure to be put “on ice” whilst criminal proceedings are underway. The timing is critical as a result. The sad fact is also that the Gardaí may not have the resources to prosecute in a case where the evidence is relatively thin.

So what are the key issues?

• Review your discipline procedures and make sure they deal with theft/gross misconduct clearly and concisely;
• Don’t spy on your staff with hidden cameras (unless you are involving the Gardaí);
• Tighten up on your policy for staff searches;
• Communicate your policies to the staff – from the top down;
• Always follow fair procedures and your own handbook when it comes to the crunch – rash decisions will lead you to the EAT.

The bottom line

If you don’t have a staff handbook with well prepared disciplinary procedures, get working on it and take legal advice. Without established procedures you are exposed to potential claims even after the employee has left your employment.

jhogan@lemansolicitors.com