



# Royal Pharmaceutical Society Of Great Britain

## Legal and Ethical Advisory Service Fact Sheet: Five

### The Use of Unlicensed Medicines in Pharmacy

---

#### Introduction

This is an information sheet designed to be of assistance to pharmacists. The contents have not been issued as Council policy, but are intended as a resource which pharmacists may use to review their practices or policies. It is not intended to interpret the law, the Code of ethics or Council policy, but offers common sense guidance on issues of topical interest.

If any queries arise from this document, please do not hesitate to contact the Legal and Ethical Advisory Service on 020 7572 2308 for further clarification. Emails may be sent to [leadvice@rpsgb.org](mailto:leadvice@rpsgb.org)

**The Fitness to Practise and Legal Affairs Directorate gives permission for copies to be made of this guidance, provided that the entire guidance is copied with no amendments to the text provided by the Royal Pharmaceutical Society of Great Britain. The RPSGB must be acknowledged as the source of this guidance and is © RPSGB (2007). Copies must state that they have been reproduced with the kind permission of the RPSGB. Guidance may be subject to change and up to date guidance must be used at all times. The most up to date guidance should be obtained either by downloading it from the RPSGB website at [www.rpsgb.org](http://www.rpsgb.org) or by post from the RPSGB on receipt of a stamped addressed envelope. This guidance is intended for use by members of the RPSGB, the RPSGB will accept no liability for any circumstances arising as a result of any third party following the advice and guidance therein.**

## The Legislation

The underlying principle of the medicines legislation is that, subject to specified exemptions, no medicinal product may be placed on the market for sale, supply or offer for sale without an appropriate marketing authorisation. The existence of such a marketing authorisation assures the quality, safety and efficacy of medicinal products and to a certain extent places liability on the marketing authorisation holder for adverse effects arising from the use of their product. The European Community Authorisation system consists of a centralised system and a decentralised or 'mutual recognition' system. The centralised licensing is administered by the European Medicines Agency (EMA) and enables the granting of marketing approval in all EU member states. Under the decentralised system, one EU Member State would assess the application (this would be the Medicines and Healthcare products Regulatory Agency (MHRA) in the UK). If they recommend that the medicine should be authorised, the other Member States can then either agree with or object to this. If all Member States agree, the medicine is given marketing approval. However, if a Member State disagrees, the Committee for Medicinal Products for Human Use (part of the EMA) would intervene, make a decision and advise the EU Commission on whether to authorise the drug or not. Should a company wish solely to have a medicine authorised in the UK, they would only be required to apply to the MHRA for approval.

The exemptions from licensing which apply to pharmacists are contained in Section 10 of the Medicines Act 1968, as amended. It is proposed to mention only three here. Subject to the work being carried out by or under the supervision of a pharmacist, no marketing authorisation is required for the following activities carried out in a registered pharmacy:

- 1) Preparing or dispensing a medicinal product in accordance with a prescription given by a practitioner, or preparing a stock of medicinal products for this purpose (this exemption also applies to anything done in a hospital or health centre);
- 2) Preparing or dispensing of a medicinal product by or under the supervision of a pharmacist in accordance with a specification furnished by the person to whom the product is to be sold, where the product is prepared or dispensed for administration to that person or to a person under his care;
- 3) Preparing or dispensing a medicinal product for administration to a person when the pharmacist is requested by or on behalf of that person to do so in accordance with the pharmacist's own judgment as to the treatment required and, and that person is present in the pharmacy at the time of the request.

Point 1) above allows a pharmacist to prepare or dispense a medicinal product in accordance with a prescription given by a practitioner. Section 9 of the Act provides for a practitioner to order a product without a marketing authorisation for the purpose of selling, supplying or administering the product to a patient of his.

The law allows a pharmacist to prepare or dispense a product which does not have a marketing authorisation or indeed to dispense a medicinal product outside the terms of its marketing authorisation, in response to a prescription from a medical practitioner.

Pharmacists are able to prepare a stock of medicinal products with a view to dispensing them as mentioned in point 1) or point (2) above or in point 3) provided that such stock is prepared with a view to retail sale or to supply in circumstances corresponding to retail sale and the preparation is done with a view to such sale or supply either at that registered pharmacy or at any other registered pharmacy forming part of the same retail pharmacy business. It therefore

follows that such preparations can be moved between registered pharmacies within the same company. For further information on the labelling of such preparations, please see later.

Pharmacists are reminded that it is a professional requirement that where a product is ordered on a prescription, a pharmacist must supply a product with a marketing authorisation, where such a product exists and is available, in preference to an unlicensed medicine or food supplement.

An exception to these requirements, to permit the extemporaneous preparation of methadone mixture in circumstances where a licensed product is available, will be granted provided the following requirements are adhered to:

(a) If a licensed product is available, methadone mixture may only be prepared extemporaneously if the quantity of methadone dispensed on a regular basis is large enough to preclude storage of sufficient quantities of the licensed product within the pharmacy, in accordance with the safe custody requirements of the Misuse of Drugs legislation.

(b) In addition to the standard operating procedures (SOPs) required for dispensing, a SOP must be in place for the extemporaneous preparation of methadone. The SOP must ensure safe systems and provide a verifiable audit trail. Adherence to the SOP must be ensured.

(c) Extemporaneous preparation must only be carried out by persons who are appropriately trained and competent to do so.

(d) All quantities of methadone powder and diluent, and any colourings, flavourings and stabilisers, must be accurately measured. (Pharmacists must not rely on the accuracy of the quantities of powder, diluent etc stated on the manufacturers packs.)

(e) The equipment used to measure and prepare extemporaneous methadone products must be appropriate and be maintained in good order to ensure that performance is unimpaired.

(f) Equipment must be properly cleaned between each batch of extemporaneously prepared product to ensure that no residue from previous batches remains.

(g) Visual checks must be made to ensure the methadone powder has fully dissolved in the diluent.

(h) Stock bottles must not be reused.

(i) The product must be labelled with the necessary particulars, including:

- The name and strength of the product
- The quantity of medicinal product in the container
- Any special handling and storage requirements (eg, store in safe custody)
- The batch expiry date
- A batch reference number

(j) For each batch of extemporaneous methadone mixture prepared a record must be maintained for a minimum of two years but, if possible, for five years of:

- The formula

- The ingredients and quantities used
- The source, batch number and expiry date of the ingredients
- The batch number and expiry date of the extemporaneously prepared mixture
- The persons involved in preparing the product, including the identity of the pharmacist assuming overall responsibility

(k) Extemporaneously prepared methadone mixture must be stored in a cabinet, cupboard or room that meets the requirements of the Misuse of Drugs (Safe Custody) Regulations 1973.

(l) Extemporaneous preparation of methadone mixture, when a licensed product is available, carries increased liability and must be covered by indemnity insurance arrangements.

(m) Running balances of methadone powder and the resulting extemporaneously prepared methadone mixture should be maintained.

(n) The prescriber and the patient should be informed that the methadone product being supplied does not have a marketing authorisation.

(o) Wherever possible all measurements should be checked by a second person.

The public is entitled to expect that products prepared extemporaneously in a pharmacy will be prepared accurately, suitable for use and of high quality.

Pharmacists wishing to be involved in extemporaneous preparation must ensure that they, and any other staff involved, are competent to undertake the tasks to be performed and that the requisite facilities and equipment are available.

## Other Considerations

### The Terms of Service

If the prescription is issued under the National Health Service, then the Terms of Service must be considered. The Terms of Service state that medicines must be supplied, so ordered, by the pharmacist with reasonable promptness and do not allow for the situation where the contractor refuses to supply in the best interests of the patient. Every pharmacist before taking a step of this nature must ensure that they have very good justification for breaching their Terms of Service.

### Civil Law

Every pharmacist, when making a supply of any medicinal product, assumes a duty of care to the patient. If a product without a marketing authorisation is supplied or a product is supplied outside its marketing authorisation indications and an adverse reaction is suffered, the supplying pharmacist may assume some liability with the doctor who prescribed it.

The extent of this liability depends on the facts of every case. The law expects a pharmacist to take the steps that a reasonably competent pharmacist would take judged in accordance with the accepted standards of his profession regardless of his or her relative experience. The pharmacist must ensure that the supply is made in the best interests of the patient and the potential risk to the patient of making the supply has to be weighed against the detriment to the patient of not making the supply.

### Off-label use

Reasonable steps should be taken to ensure that the prescribing doctor knows that he has prescribed a product for use outside its marketing authorisation and the possible consequences of this. Pharmacists should liaise with the prescriber and in the light of the available data make a decision as to whether or not to make a supply. Data on the use of the product for the particular indication may be available from the manufacturer, drug information services and possibly the Information Pharmacists at the Royal Pharmaceutical Society. It may be that the prescriber has had substantial experience of using this product in this way.

Principle 1 of the Code of Ethics, "Make the Care of Patients your First Concern", states that: "The care, well-being and safety of patients are at the centre of everyday professional practice. They must be your primary and continuing concern when practicing." You must "consider and act in the best interests of individual patients and the public." Generally speaking it is not appropriate to deviate from a prescriber's directions, but this must be balanced against the pharmacist's professional duty to ensure that every prescription is appropriate for the patient. If the pharmacist feels that a significant risk to the patient's health is likely if the supply is made, then the option of refusing to supply should be given due consideration.

A pharmacist should bring to the attention of the patient that the product does not have a marketing authorisation or is being used outside the terms of its marketing authorisation, as the case may be. As far as possible this should be done without undermining the patient's confidence in either the prescriber or the prescribed medicine.

Pharmacists should not feel that they discharge all their potential liability where the prescriber is prepared to sign a declaration to the effect that he or she is accepting full responsibility for any adverse effects of the prescribed medicine. The potential liability would be shared with the prescriber in any event.

### Patient Information Leaflets

The Medicines for Human Use (Marketing Authorisations Etc) Regulations 1994, as amended, place various obligations on the holders of marketing authorisations for relevant medicinal products. One obligation is the requirement for a patient information leaflet (PIL) which complies with the specifications laid down in the Regulations and the European Directive 2001/83/EC, as amended.

Schedule 3 paragraph 12 to The Regulations states the following:

*'Where in relation to a relevant medicinal product*

*a) the labelling of the product, or any package leaflet accompanying the product, does not comply with; or*

*b) the product is not accompanied by a package leaflet required to be provided by virtue of, the applicable requirements of Council Directive 92/27 EEC or Schedule 5, any person, other than the holder of the marketing authorisation for that product, who in the course of a business carried on by him, sells or supplies or procures the sale or supply of that product knowing, or having reasonable cause to believe that the labelling does not so comply or, as the case may be, that the product is not so accompanied, shall be guilty of an offence.'*

Each time a pharmacist makes a supply of or sells a relevant medicinal product, be this in the community, to hospital outpatients, hospital inpatients or to discharge patients then this section applies.

Therefore, as an extemporaneously dispensed preparation is an unlicensed medicine which is not covered by a marketing authorisation and thus not a 'relevant medicinal product', the above Directive would not apply and such a preparation **would not be required to be dispensed with a PIL.**

### **Veterinary prescriptions**

If there is no authorised Veterinary Medicinal Product (VMP) in the UK for a condition, the veterinary surgeon responsible for the animal may, in particular to avoid unacceptable suffering, treat the animals concerned with the following ("the cascade"), cascaded in the following order:

- a) a VMP authorised in the UK for use with another animal species, or for another condition in the same species
- b) if, and only if, there is no such suitable product, either:
  - i. A medicinal product authorised in the UK for human use,
  - ii. A VMP not authorised in the UK but authorised in another Member State for use with any animal species
- c) **if, and only if, there is no such suitable product, a VMP prepared extemporaneously by a pharmacist**, a veterinary surgeon or a person holding a manufacturers authorisation, authorising the manufacture of that type of product.

A VMP for use under the cascade must be prescribed by a veterinary surgeon and can only be supplied by a veterinary surgeon or pharmacist. A pharmacist faced with a prescription that contains a VMP prescribed under the cascade, must make sufficient checks to ensure that the veterinary surgeon has prescribed such a product under the cascade e.g. by contacting the veterinary surgeon directly.

If the animal being treated is a food producing species then only products for food producing animals or products where the active has an entry in one of the Annexes 1-3 of Council Regulation 2377/90 can be used.

### **Over the Counter sales of unlicensed medicines**

The MHRA has confirmed that unlicensed relevant medicinal products for human use within the UK must be supplied in accordance with Schedule 1 of the Medicines for Human Use (Marketing Authorisations Etc.) Regulations 1994 as amended.

### **Wholesale dealing**

The Medicines for Human Use (Marketing Authorisations Etc.) Regulations 1994, as amended implemented into national law a number of European Council Regulations and Directives relating to medicinal products in the European Community. The underlying principle of these Regulations is laid down in Regulation 3. Regulation 3 states that, subject to a limited number of exemptions, except where a marketing authorisation has been granted in accordance with the relevant Community provisions by the licensing authority no relevant medicinal product shall be placed on the market or distributed by way of wholesale dealing.

Therefore, an unlicensed medicine cannot be distributed by way of wholesale dealing, unless the manufacturer/wholesaler holds the appropriate licence to do so.

## 'Specials'

Pharmacists requiring further information on the purchase and supply of 'specials' are advised to consult MHRA Guidance Note No.14 entitled 'The supply of unlicensed relevant medicinal products for individual patients'. This Guidance Note provides advice on the manufacture, importation, distribution and supply of unlicensed relevant medicinal products for human use which have been specially prepared or imported to the order of a doctor, dentist or supplementary prescriber for individual patients. This information is available from the Guidance Notes section on the MHRA website (see Appendix).

## Other exemptions from licensing

Returning to the other exemptions from the formal requirements laid down in Section 10 of the Act mentioned earlier in this fact sheet, point 3) addresses the issue of a pharmacist preparing a product in accordance with his own judgment as to the treatment required. These products are those which are prepared for the purpose of over the counter sale. Pharmacists should remember that these products are again not covered by a marketing authorisation and the ultimate responsibility for any adverse reaction rests with the supplying pharmacist. In accordance with professional requirements, these products should not be prepared where such a product with a marketing authorisation is available.

Pharmacists are reminded that an extemporaneously prepared medicine containing a Schedule 5 Controlled Drug (e.g. pholcodeine) is classed as a prescription-only medicine and therefore cannot be sold over the counter. Similarly, pharmacists may not repackage Schedule 5 Controlled Drugs from dispensing packs into smaller quantities for over-the-counter sale.

The Act also allows for a pharmacist to prepare a medicinal product or a stock of medicinal products, not to the order of another person, but with a view to retail sale or supply provided that the sale or supply is made from the registered pharmacy where it was prepared and the product has not been the subject of an advertisement. Such products are familiarly known as chemist's nostrums and the label of the container of such a medicinal product and any package immediately enclosing it must show the following standard labelling particulars:

1. the name of the product;
2. pharmaceutical form;
3. appropriate quantitative particulars;
4. quantity;
5. directions for use;
6. handling and storage requirements (if any);
7. expiry date;
8. the words *Keep out of the reach of children* or words of a similar meaning\*;
9. where appropriate, the words '*Warning. Do not exceed the stated dose*' in a rectangle in which there is no other matter (this would be necessary where one or more of the ingredients are prescription only medicines, incorporated in such a way as to exempt it from prescription control)

10. the name and address of the seller;

11. the letter "P" contained within a rectangle.

\* The Society would strongly advise that pharmacists place the phrase 'Keep out of the reach **and sight** of children' on dispensing labels as good practice to be in line with the requirements placed on manufacturers. This would therefore equally apply where a dispensing label is used when supplying a product for over the counter sale. This is a good practice requirement and is not mandatory.

Again it should be remembered that these products are being supplied without a marketing authorisation and that there are increased risks associated with such supplies. The pharmacist will potentially accept liability for adverse reactions caused by the product formulation or dosage.

The Act provides these exemptions to be utilised where no alternative product for which a marketing authorisation exists, is available. It should be noted that due to a European Directive on Patient Information Leaflets and labelling, a pharmacist packing down a relevant medicinal product for sale over the counter would find it difficult to provide a patient information leaflet or indeed label in accordance with all the requirements of the Directive. It is for this reason that pharmacists are advised against packing down relevant medicinal products from bulk into smaller containers for over-the-counter sale. A commercially available pack with a marketing authorisation should be used instead.

### Records

Pharmacists must ensure that the following details are recorded when supplying an extemporaneous preparation:

- the formula
- the ingredients
- the quantities used
- the source of the ingredients
- the batch number
- the expiry date
- the personnel involved
- the pharmacist taking overall responsibility

Where dispensed against a prescription the following must also be recorded:

- the patient's details
- the prescription details
- the date of dispensing

The record must be retained for a minimum of two years but if possible for five years.

## APPENDIX

### **The Medicines and Healthcare products Regulatory Agency**

Tel: 020 7084 2000

Website: [www.mhra.gov.uk](http://www.mhra.gov.uk)

Email: [info@mhra.gsi.gov.uk](mailto:info@mhra.gsi.gov.uk)