



# Royal Pharmaceutical Society of Great Britain

Helping pharmacists achieve excellence

PRACTICE AND QUALITY IMPROVEMENT  
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Dear Sir/Madam

**RE: Consultation on Code of Practice for promotion of NHS services**

Please find attached the Royal Pharmaceutical Society of Great Britain (RPSGB) response to the above consultation.

The RPSGB is the professional and regulatory body for pharmacists in England, Scotland and Wales. It also regulates pharmacy technicians on a voluntary basis, a role that is expected to become statutory under new legislation soon. The primary objectives of the RPSGB are to lead, regulate, develop and represent the profession of pharmacy.

Should you require further clarification on any of the points raised in this response please do not hesitate to contact me.

Yours sincerely

Lynsey Balmer

Head of Professional Ethics

## **Code of Practice for Promotion of NHS Services- RPSGB Response**

### **Introduction**

The Royal Pharmaceutical Society of Great Britain (RPSGB) is the professional and regulatory body for pharmacists in England, Scotland and Wales. It also regulates pharmacy technicians on a voluntary basis, a role that is expected to become statutory under new legislation soon. The primary objectives of the RPSGB are to lead, regulate, develop and represent the profession of pharmacy.

The RPSGB believes it is of paramount importance that patients do not receive misleading or inaccurate information about health services and welcomes the opportunity to respond to this consultation. The RPSGB's current Code of Ethics and Standards details the professional requirements that pharmacists must adhere to when promoting or providing information about pharmacy services (Appendix 1). Pharmacists are required to ensure that any information or publicity for their goods and services is legal, decent and truthful and that it is not presented or distributed in a way that may abuse the trust of, or exploit the lack of knowledge of, the public. It is important that the provisions of a Code of Practice for the promotion of NHS services are consistent with the existing requirements placed on healthcare professionals by their professional codes and associated guidance.

The RPSGB fully supports the need to ensure safeguards are in place for the promotion of NHS services for the reasons highlighted in the consultation document. However, we also believe that there is a need to introduce equally robust safeguards for promotional activities in the private healthcare sector. The promotion of elective cosmetic surgery is just one example of a private healthcare service that requires appropriate regulation in order to ensure that the public are not misled, or put at risk. Any promotional material for health services, NHS or private, should put the needs of the patient at the centre of the reasons for it. The potential difficulties for the public in clearly distinguishing between promotional activity which is aimed at NHS and non-NHS patients (particularly where an organisation provides both NHS and private healthcare services) further supports the case for equivalent regulation. However, we do believe that further consideration needs to be given to the appropriateness and feasibility of some of the proposals for other areas of health service provision.

The RPSGB notes that the proposed Code of Practice will apply to England only. We believe that it is important that consistent safeguards for the promotion of health services are applied throughout the UK. EU regulatory data may also be of relevance and should also be taken into consideration.

### **1. Governance, Monitoring and Enforcement**

*Which organisation should the secretariat be sited in?*

The RPSGB propose that the secretariat for the self-regulatory scheme should be sited within the Healthcare Commission. The Healthcare Commission has established systems and procedures and its role in monitoring both NHS and independent healthcare organisations means that it is ideally placed to deal with issues or concerns where an organisation provides both NHS and non-NHS services.

The proposed governance and monitoring arrangements should be piloted to assess the practical implications of operating the self-regulatory scheme, and periodic review should be built in to the system which is adopted to ensure it continues to work on a larger scale. A model similar to that used by the Advertising Standards Authority could be considered.

*Do you have any views on the make up of the Expert Panel?*

The RPSGB welcomes proposals that the Expert Panel will include representatives of patients, providers, clinicians and industry. Specialist advisors and expert witnesses should be available to advise the Panel as and when required. We note that it is intended that the chair will be independent and will have a legal background. An alternative model may be to have a lay chair sitting with a legal advisor.

*Should parties be allowed to be represented by lawyers?*

The process for making rulings needs to be consistent and transparent. The RPSGB believes that the parties involved in the complaint should be allowed to be represented by lawyers and be able to make detailed written submissions.

The RPSGB note that each organisation that signs up to the Code of Practice will have to nominate a named individual to deal with complaints and that it is not envisaged that these complaints will be dealt with through the patient complaints process. Steps will need to be taken to ensure that there is no confusion between the two complaint schemes and both the complainant and the respondent will need to be clear about how the complaint will be handled. Healthcare Commission involvement in the complaints procedure may assist this process. Consideration will also need to be given to how complaints can be reported in the first place, for example, will there be an open system like the broadcasting complaints system with a publicly accessible telephone line? The RPSGB operates a similar system.

*Do you have any views on the suggested sanctions?*

Sanctions should be sufficiently punitive to ensure the Code of Practice is observed, but the overriding aim of the Code should be to promote and put in place systems of good practice. The RPSGB support the suggested sanctions detailed in the consultation document and propose that the following sanctions should be added to the existing list:

- Undertakings
- Fines
- Cost retrieval
- Referral to the appropriate regulatory body
- Immediate revocation order

The administrative fee that the secretariat will charge to organisations against which complaints are upheld will need to cover costs incurred. However, exacting fines against the NHS could result in a re-direction of public money away from healthcare.

The right of appeal should be available to both the complainant and the organisation, or individual complained about.

## **2. Scope**

*In line with the approach to health reform, should the code initially apply to secondary care providers, particularly in elective care?*

The RPSGB believe that while many of the provisions of the Code will be relevant to all promotion of NHS services, it should be rolled out to secondary care providers to begin with. A staged approach will enable the Code to be targeted to the sector where it is initially most applicable, and will also allow an assessment to be made of how easily the requirements of the Code, and the governance arrangements for secondary care, could be transferred to other areas of healthcare provision.

The RPSGB note that the Code is not intended to apply to public health campaigns and would be interested in the reasoning for this. We propose that consideration should be given to extending the principles of the Code to cover public health campaigns, but would suggest that the situation is reviewed at an appropriate time after implementation (e.g. 12 months) to ensure that there have not been any adverse effects on awareness levels of public health campaigns.

*Should the Code be rolled out to other areas of healthcare provision?*

The same governance principles should ultimately be applied irrespective of the sector of practice. Therefore, the RPSGB agree that, in time, the Code should be rolled out to other areas of healthcare provision. Failure to have consistent standards for the promotion of NHS services across all areas of healthcare risks confusion and could result in differences in requirements being subject to legal challenge. In order to make competition fair, there need to be consistent requirements placed on all healthcare providers, with all providers having the opportunity to promote equally.

However, some of the current provisions of the Code and the planned governance arrangements for it may not be automatically transferable. Further thought will need to be given to how the proposed structure and governance of the self-regulatory system will operate in other areas of healthcare provision. While the planned governance arrangements are likely to be workable in secondary care, there could be difficulties in transferring these arrangements to primary care. For example, difficulties may occur in ensuring the principles are observed by independent contractors. There will also be cost and resource implications associated with being part of the self-regulatory scheme. A full regulatory impact assessment should be conducted to establish the implications of wider roll-out, especially for small independent contractors.

*Should this include GPs, dentists, pharmacists etc?*

In principle, the RPSGB supports wider roll-out to all areas of healthcare provision, including those who are contracted to provide NHS services. However, further detailed consideration needs to be given to how the governance arrangements will work in primary care and a full regulatory impact assessment needs to be undertaken before wider roll-out begins. Due consideration will need to be given to the competitive aspects of the arrangement. The RPSGB can foresee difficulties arising from the fact that GPs, dentists and pharmacists provide a mixture of NHS and private healthcare services. This is a particular consideration for community pharmacies which provide a range of NHS pharmaceutical services (for example, dispensing services, medication use reviews, smoking cessation services) alongside non-NHS services such as over-the-counter sale of medicines and prescription collection and delivery services, etc. Therefore, the scope of the provisions of the Code will need to be made clear to both the service providers and the public. There will also be a need to ensure that the Code of Practice is consistent with existing professional obligations placed on doctors, dentists, pharmacists, etc, by their individual professional codes and associated guidance.

*Should the Code apply to all promotion activity by providers that undertake both NHS and non-NHS work?*

In terms of the aim of ensuring that patients do not receive misleading, inaccurate, unfair or offensive information about healthcare services, the RPSGB believes that the promotion of both NHS and private healthcare services should have similar safeguards and standards. There can be difficulties in identifying whether promotional activity is ethically valid. The need for comparable standards across the private and public sectors is further emphasised by the difficulties that the public may have in clearly distinguishing between promotional activity aimed at NHS patients and that aimed at non-NHS patients, particularly where a provider undertakes both NHS and private work.

However, not all of the provisions of the proposed Code of Practice could necessarily be applied to non-NHS services. For example, limits on promotional expenditure are proposed. While there is clearly a need to ensure that there is not excessive expenditure of public money on NHS promotional activity, it would be difficult to impose limitations on private sector promotional expenditure. Furthermore, the requirements of the Code could only be applied to the public or private health services that a particular organisation provides and not the non-healthcare related services or goods the same healthcare provider also offers (Some of the large organisations that provide community pharmacy services also provide a range of other services and goods). There would need to be careful consideration of any aspects of the Code that would not be appropriate for private healthcare services; the parameters and scope of the Code would need to be clearly identified.

*Is it possible to distinguish between promotion aimed at NHS and non-NHS patients?*

The RPSGB is of the opinion that it can be difficult for patients to distinguish between promotions aimed at NHS and non-NHS patients and that the boundaries are likely to become more blurred in the future, especially as a number of providers offer both public and private healthcare services.

### **Provisions of the Code of Practice**

*Do you have any comments on the general principles?*

The RPSGB believe that the general principles of the Code are reasonable. We particularly welcome reference to the need to comply with applicable laws, industry codes of practice and professional codes of conduct. In terms of additions to the general principles, consideration could be given to including a requirement to present information and promotional material in a manner that allows the recipient to decide independently whether or not to use a service.

With regard to the specific sections of the Code of Practice, the RPSGB has the following comments:

#### *Section D- Information, claims and comparisons*

The RPSGB support the principles regarding information, claims and comparisons outlined in the consultation document, but would suggest that there should also be a requirement not to disparage or improperly damage the reputation of other service providers or individuals.

#### *Section F- Expenditure*

The draft Code states that 'The cost of TV or cinema promotion is very unlikely to be justifiable'. The RPSGB is of the opinion that this statement is open to interpretation and would propose that there is a need to clarify the types of circumstances where TV or cinema promotion is likely to be justified. We would also propose that consideration be given to how this requirement would apply to organisations, such as community pharmacies, which provide both NHS and non-NHS services and currently use TV advertising to inform patients of the range of services they offer.

The RPSGB would propose that expenditure for promotion of NHS services should be limited both through transparent disclosure and a cap determined by the secretariat. The level of the cap should be a percentage of the provider's turnover. As stated earlier, there is clearly a need to ensure that there is not excessive expenditure of public money on NHS promotional activity, but it would not be appropriate to impose limitations on private sector promotional expenditure. Where a provider provides both NHS and private services, it will need to be able to distinguish clearly between its expenditure on promotional activity aimed at NHS and non-NHS patients.

#### *Section H- Inducements to the public*

The draft Code states that 'No financial inducements or benefits for treatment (including by way of sales promotions) shall be offered to the public'. This is another example of a requirement which would not necessarily be transferable to non-NHS services, especially if the Code is widely rolled-out to other areas of healthcare provision. Taking community pharmacy as an example, the NHS Pharmaceutical Services Regulations prohibit pharmacists or their staff from offering inducements to encourage patients to present their NHS prescription at a specific pharmacy. However, since the abolition of resale price maintenance, pharmacists may advertise the prices at which they sell over-the-counter medicines (a non-NHS service), including any discounts they may offer. Pharmacists have a professional responsibility to ensure that such promotions emphasise the special nature of medicines and must not encourage inappropriate or excessive consumption or use of them, but sales promotions of over the counter medicines *per se* are not contrary to the requirements of the current Code of Ethics and Standards or relevant legislation.

#### *Section I- Testimonials and endorsements*

The RPSGB support the proposals that public figures who are likely to be perceived by the general public as experts should not be permitted to be involved in promotion campaigns for health services, or provide testimonials. We also support proposed exclusions relating to testimonials from children and from celebrities and others likely through their position to influence consumers. However, the support of well-known figures in public health campaigns can be beneficial and if the Code of Practice were to cover public health campaigns, the RPSGB would propose that further consideration would need to be given as to whether these campaigns should be exempt from restrictions around the use of public figures.

#### **Useful links and further information**

The RPSGB would like to draw attention to the professional requirements that pharmacists must adhere to when promoting, publicising or providing information contained in the current RPSGB Code of Ethics and Standards. This can be found at [www.rpsgb.org/ethics](http://www.rpsgb.org/ethics).

**RPSGB Code of Ethics and Standards Service Specification 1- Publicity, Promotion and Information (July 2006)**

It is in the public interest for pharmacies to provide information about their opening hours and services available. Any information or publicity material regarding pharmacy services must be accurate and honest. The public and the profession would not expect any products or services advertised or otherwise promoted, to be injurious to health when properly and responsibly used.

- (a) All information and publicity for goods and services must be legal, decent and truthful; be presented and distributed in a manner so as not to bring the profession into disrepute; and not abuse the trust or exploit the lack of knowledge of the public.
- (b) Information and promotional material relating to professional services must be compatible with the role of pharmacists as skilled and informed advisers about medicines, common ailments, general health care and well being. It should be presented so as to allow the recipient to decide independently whether or not to use a service and should not disparage the professional services of other pharmacies or pharmacists.
- (c) Pharmacists must not make any unsolicited approach, for promotional purposes, directly to a member of the public by way of a telephone call, e-mail, or visit made without prior appointment.
- (d) Pharmacists must ensure that promotions (materials and campaigns) for medicines aimed at the public:
  - (i) emphasise the special nature of medicines;
  - (ii) do not make any medicinal claim not capable of substantiation;
  - (iii) are consistent with the summary of product characteristics approved by the Medicines and Healthcare products Regulatory Agency as part of the licensing procedures;
  - (iv) do not promote a medicine by way of endorsement by a pharmacist, or comparison with other products. A pharmacist may recommend a product in response to a request for advice from an individual patient;
  - (v) do not promote inappropriate or excessive consumption or use of medicines or their misuse, injudicious or unsafe use which may be injurious to health.
- (e) Pharmacists may advertise the prices at which they sell medicines and price discounts. Promotions for pharmacy medicines which seek to persuade consumers to obtain medicines that are not wanted or quantities substantially in excess of those wanted are considered to be professionally unacceptable.