

Are dispensing errors and jail sentences inevitable?

Decriminalisation of dispensing errors could be viewed as reducing the responsibilities of pharmacists to their patients. The priority should be the safety of the dispensing process, says Philip Brown.

As most pharmacists know, in April this year Elizabeth Lee, a former locum pharmacist, was sentenced to a three-month jail sentence, suspended for 18 months, following a dispensing error. While working at a Tesco pharmacy, Mrs Lee supplied 72-year-old Carmel Sheller with propranolol instead of prednisolone. She was charged with supplying a medicinal product with a misleading label on the package — a charge brought under the Medicines Act passed by Parliament over 40 years ago. Not surprisingly, this case has shaken the profession and strenuous efforts are being made by all pharmacy groups to change the law so that pharmacists who make dispensing errors no longer risk being sent to prison.

If the efforts of the profession and its supporters in Parliament are successful, pharmacists who make dispensing errors would no longer fear incarceration. But, prior to the Elizabeth Lee case, were most pharmacists even aware that a dispensing error could be a criminal offence? I suspect that most were blissfully unaware of this risk, which is why the outcome of Elizabeth Lee's case has come as such a shock. A typical response seems to be: "But we all make dispensing errors — they are a fact of life". Now it is clear that the risk of going to jail is also a fact of life.

Since 1968, pharmacists who make dispensing errors can be given a jail sentence, through the 'misleading labelling' provision in the Medicines Act. It has been up to the Crown Prosecution Service to decide whether to bring a case to the courts and prosecute the individual involved. The profession has lived comfortably with this threat for the past 40 years, and the fact that the CPS has not acted before does not mean that the risk was in any way diminished or the power



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of the law in any way lessened. The aim of the reformers is to overturn this provision in the Medicines Act thereby removing the threat of a criminal prosecution completely. If successful, it would be for the new General Pharmaceutical Council to judge such cases and to impose a penalty.

It is only when the CPS decided to prosecute Elizabeth Lee, 40 years after the Medicines Act was passed, that pharmacists have woken up to the seriousness of the risks they face. If a successful mislabelling case had been brought back in the 1970s, I don't think that there would be any chance of a change in the law.

Safer dispensing

While I fully understand the emotions and the fears that Elizabeth Lee's case has generated among pharmacists, I would suggest that simply decriminalising dispensing errors is not the answer to the problem. My concern is that the general

public, and indeed Parliament, could view this as removing an essential element of public protection and lowering safety standards — at a time when trust in the medical professions has been shaken by a succession of scandals, which have prompted Parliament to introduce independent regulators such as the General Pharmaceutical Council.

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I would argue that the priority facing pharmacists today should not be the elimination of the risk of criminal prosecution, but the urgent need to improve the safety of the dispensing process. Dispensing errors should not be 'a fact of life'. It should be remembered that Elizabeth Lee was responsible for dispensing propranolol instead of prednisolone and mislabelling the pack accordingly. Is this a 'simple mistake' as some commentators have stated? If so, then what is a 'complicated mistake'? Does the use of the word 'mistake' somehow diminish the seriousness of the situation? As healthcare professionals, surely pharmacists should be deeply concerned about the incidence of dispensing errors, given the trust that

patients put in them to provide the right medicines.

In a letter published in *The Pharmaceutical Journal* on 16th May, in the aftermath of the Elizabeth Lee case, Professor David Cousins, head of safe medication practice, and Dr Bruce Warner, head of primary care, both at the National Patient Safety Agency, urge pharmacists to address the design of current dispensing systems in pharmacies in the UK. They point out that as recently as 2007 the NPSA issued “Design for patient safety” guidance on the dispensing environment and dispensed medicines, which was sent to all pharmacies and GP dispensing practices in England and Wales. The guidance is still available on the NPSA website, so pharmacists cannot say they have not been put on alert.

The core problem is that pharmacy dispensing has not changed radically in the past 50 years, other than the fact that the number of prescriptions being dispensed has more than tripled. Dispensaries are far busier today than they were 50 years ago, but the actual dispensing process has been simplified by the use of manufacturers’ original packs which simply need to be correctly selected and labelled. What has not happened is an appreciably greater use of automation, to which Professor Cousins and Dr Warner refer in their letter.

We have all seen, and benefitted from, the huge changes in the vending activities of the high street grocery stores. In particular, use of barcodes has revolutionised the checkout process which could now be handled entirely robotically if only the customers would accept the idea: at present they prefer someone to pass their packages under the reader and handle the cash or card transaction.

Pharmacists must now join the automation business wholeheartedly and place ever greater reliance on robotic dispensing. This is already starting to happen with barcode readers and robot dispensers appearing in an increasing number of locations. Robotics has the potential to revolutionise the dispensing business in the same way that electronic control systems have revolutionised the grocery business. In the next 20 years dispensaries will change out of all recognition, driven by safety and efficiency considerations.

While I would be among the first to vote for the decriminalisation of dispensing

errors, I am not so naïve to believe that pharmacists will be held any less responsible for putting their patients at risk through dispensing the wrong medicine. It may be that Parliament decriminalises dispensing errors, but beware the penalties that are put in place for providing the wrong medicines — it will be a case of ‘out of the frying pan into the fire’. Indeed, the threat of a criminal prosecution may well be preferable to the alternative Parliament would want.

In my opinion it is far better to do everything possible to make the dispensing process foolproof than to reduce the responsibilities of the profession towards its patients.

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Beyond the use of robots there are many other ways in which dispensing can be made safer. First, the packaging of medicines could be vastly improved if it was more customer-oriented. Medicine packaging is stuck in a time warp. I would like to see the same approach that food manufacturers use for their products applied to medicines. A wide range of recognition factors could be built in to help the patient know what medicine they are getting and what it is used for. The aim should be to make it obvious to the patient that he or she has been given the right medicine. The patient information leaflet has been a step forward but can still be daunting for elderly patients, for example.

Second, we must standardise tablet and capsule presentations for medicines containing the same ingredient. Branded

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products seldom change their appearance, but generic versions of the same product are seldom identical. This diversity has removed an essential and highly valued safety element for both the patient and the dispensing pharmacist.

Third, pharmacists must ensure that the working environment is conducive to the safe dispensing of medicines. All too often dispensaries are overcrowded, lighting is inadequate and there are constant distractions with noise, telephones and chatter. Storage facilities and practices also leave much to be desired. Eye and ear drops of the same medicinal ingredient are often kept in the same drawer, and similar containers containing quite different medications are collocated. Note that the circular storage carousels now used in dispensaries at Boots were selected because they make the dispenser more aware of the product being sought and hence reduce selection errors.

Finally, safety is much improved if the doctor discusses the treatment with the patient and the pharmacist speaks to the patient when giving it out. The growing trend towards home delivery of medicines is lowering the safety barrier at the pharmacy end of the process, and steps need to be taken to address this issue.

No one wants to go to jail. No one wants a criminal record and pharmacists should not be uniquely at risk of these fates because of errors in dispensing. If a pharmacist risks going to jail because he or she dispenses the wrong medicine, so too should a doctor if he or she prescribes the wrong medicine. The present system is unfair for pharmacists. But pharmacists have been living in a somewhat unreal situation where there are few serious consequences arising from dispensing errors. It could be argued that, had serious penalties been more commonly applied, far more would have already been done to address the problem of dispensing errors, and the dispensing process would be a far more sophisticated and reliable system than it is today.

Just as no pharmacist wants to go to jail, no pharmacist want to put his or her patients at risk through an avoidable error, and that is the bottom line by which we pharmacists should judge ourselves and want to be judged by others.

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