

11 December 2020

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FILE REF: SHA/24423

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DECISION MAKING BODY: NHS COMMISSIONING BOARD
(LONDON REGION AREA TEAM)
("NHS ENGLAND")

PHARMACIST: T JAMES CHEMIST

PREMISES: 385 DURNSFORD ROAD
WIMBLEDON PARK
LONDON
SW19 8EF

Outcome

- 1.1 In light of the proposed changes and the lack of information available to me, I am not satisfied that pharmaceutical services provision that would result from the Applicant's proposed hours would meet the needs of people in the NHS England area or other likely users of the pharmacy for pharmaceutical services on 26 December 2020.
- 1.2 The action taken by NHS England to refuse the application is confirmed.

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THE NATIONAL HEALTH SERVICE (PHARMACEUTICAL AND LOCAL PHARMACEUTICAL SERVICES) REGULATIONS 2013 ["THE REGULATIONS"]

**SCHEDULE 4 [Terms of Service of NHS Pharmacists]
PART 3 [Hours of Opening]**

REDUCTION OF CORE OPENING HOURS

1 Introduction

- 1.1 The Applicant has applied to NHS England to change the days and times at which it is obliged to provide pharmaceutical services at the above premises in the week commencing 21 December 2020.
- 1.2 NHS England has refused the application. The Applicant seeks to appeal to NHS Resolution.

2. Consideration

Rights of appeal

- 2.1 Where NHS England has determined an application under paragraph 26 of Schedule 4 of the Regulations and has granted it in part only or has taken an action that has the effect of refusing it, paragraph 26(9) provides a right of appeal to the Secretary of State for Health and Social Care ("the Secretary of State").
- 2.2 The Secretary of State has directed NHS Resolution to determine such appeals. As an authorised officer of NHS Resolution, I have considered the appeal and have determined it, in accordance with my delegated powers.

Opening hours

- 2.3 A pharmacy's opening hours may be categorised as:

- 2.3.1 “core opening hours” (at the hours during which the pharmacy must be open by virtue of paragraph 23(1) of Schedule 4 of the Regulations), which may incorporate a direction of NHS England requiring fewer or greater than 40 hours and at set times and days; or
- 2.3.2 “supplementary” opening hours (other hours during which the pharmacy premises are open which are in addition to the core hours), pursuant to paragraph 23(3) of Schedule 4 of the Regulations.

Alteration of core opening hours

- 2.4 In accordance with paragraphs 1(7)(c) and 1(7)(d) of Schedule 2 of the Regulations, the pharmacy must provide, as part of an application for entry in the pharmaceutical list:
 - 2.4.1 the proposed core opening hours in respect of the premises; and
 - 2.4.2 the total proposed opening hours for the premises (having regard to both the proposed core opening hours and any supplementary opening hours).
- 2.5 NHS England maintains pharmaceutical lists that include the days on which and times at which, at those premises, the listed person is to provide those services during the core opening hours and any supplementary opening hours of the premises.
- 2.6 The days on which or times at which a pharmacy is obliged to provide pharmaceutical services at the premises may only be altered by the pharmacy on application under paragraph 26(1) of Schedule 4 of the Regulations, so long as the effect of that application is to reduce the total number of hours for which a pharmacy is obliged to provide, or keep the total number of hours the same.

Alteration of supplementary opening hours

- 2.7 Supplementary opening hours may be altered by the pharmacy giving notice to NHS England, in accordance with paragraph 23(6)(a) of Schedule 4 of the Regulations, without the need to make an application to NHS England.
- 2.8 There is no specific appeal right to NHS Resolution in respect of notices given under paragraph 23(6)(a).

TJ Chemist proposals

- 2.9 The Applicant in its application form, indicates that it currently has core opening hours totalling 40 hours per week.
- 2.10 For the week commencing 21 December 2020, the Applicant wishes to:
 - 2.10.1 Close on Saturday 26 December 2020 instead of opening from 9:30am to 12 noon.

Assessment

- 2.11 In this case, the Applicant provided the following information in its application dated 2 June 2020:
 - 2.11.1 “This is an application to make a one off change.

Current core opening hours for these premises:

Monday	9.30am – 5pm
Tuesday	9.30am – 5pm
Wednesday	9.30am – 5pm
Thursday	9.30am – 5pm
Friday	9.30am – 5pm
Saturday	9.30am – 12pm
Sunday	

Proposed core opening hours for these premises:

Monday	9.30am – 5pm
Tuesday	9.30am – 5pm
Wednesday	9.30am – 5pm
Thursday	9.30am – 5pm
Friday	9.30am – 5pm
Saturday	Closed
Sunday	

2.11.2 This is a one off change for 26 December 2020 – closed.

2.11.3 There are many other pharmacies which will be open in both Merton and Wandsworth which will sign post our patients on the proposed day. There will also be a rota of local pharmacies open displayed in our window.”

2.12 I note that in a letter to the Applicant dated 5 November 2020 NHS England stated:

2.12.1 “I am writing in regard to your request to amend your core hours on:

26 December to be closed

2.12.2 Your application to change core hours has been presented to the London Pharmaceutical Services Regulations Committee, who have considered your application.

2.12.3 The London Region PSRC considered any information that you have provided in your application.

2.12.4 Our records show that the pharmacy has:

26 December

Core opening hours between 9:30am & 12pm

Supplementary opening hours between 12pm & 6pm.

2.12.5 As regards the supplementary hours period (so as to be closed from 12pm), NHS England notes that the required notice has been given. You may therefore close for your supplementary hours.

2.12.6 As regards the requested changes to core hours your application has been considered by the London Region Pharmaceutical Services Regulations Committee. The Committee has refused your application.

2.12.7 No information has been provided to show that there has been a change in the needs of local people for pharmaceutical services. While there may be other pharmacies nearby which may still be open, that would not help patients who

normally use this pharmacy and whose prescriptions and/or dispensed medications may be in the pharmacy.

- 2.12.8 You have a right of appeal to the Secretary of State against this decision. Should you choose to appeal, you should send a concise statement and reasoned statement of the grounds of your appeal within 30 days of the date of this letter to: Primary Care Appeals, 4th Floor, Arena Point, Merrion Way, LS1 8PA or email appeals@resolution.nhs.uk.”
- 2.13 I note that in an email to NHS Resolution dated 6 November 2020 the Applicant stated:
- 2.13.1 “I have received your notice from that you would like us to remain open as per our core hours on Saturday 26 December [sic]. You have also said we need to remain open at my other pharmacy FJV58.
- 2.13.2 As these pharmacies are less than 10 minutes’ walk away from each other, I am proposing that we only open for our core hours 9am to 2pm at FJV58. We would have signs and an answerphone message at FA400 directing patients to FJV58 instead. We are well known in the local community and I have no doubt that this would still provide an excellent service for the local population.”
- 2.14 I note that in a letter to NHS Resolution dated 23 November 2020 NHS England stated:
- 2.14.1 “The applicant requested to amend their hours, both core and supplementary. In terms of the supplementary hours, as 90 days’ notice was provided, this was noted and the response made clear that the pharmacy could close for their supplementary hours. They also completed the core hour’s form, however the reasons given for the request to amend core hours on a one off, our PSRC felt did not show that there has been a change in needs of the local people for pharmaceutical services, as detailed in the regulations.”
- 2.14.2 On this basis, the application has been refused.”
- 2.15 I note the following:
- 2.15.1 the Applicant’s total core opening hours total 40 hours and for the week commencing 21 December 2020, the Applicant seeks to change the days on which or times at which they are obliged to provide pharmaceutical services at its pharmacy premises in a way that reduces the total number of hours for which the Applicant is obliged to provide pharmaceutical services;
- 2.16 In relation to the week commencing 21 December 2020, the Applicant seeks;
- 2.16.1 To close on Saturday 26 December instead of offering core opening hours of 9:30am to 12pm.
- 2.17 I have first considered paragraph 26(2) of Schedule 4 of the Regulations, which reads as follows:
- “Where P makes an application under sub-paragraph (1), as part of that application P must provide the NHSCB with such information as the NHSCB may reasonably request in respect of any changes to the needs of the people in its area, or other likely users of the pharmacy, for pharmaceutical services that are material to the application.”*
- 2.18 As such, for the purposes of determining an application in accordance with paragraph 26, it is necessary to consider whether there have been (or will be) changes in need which would warrant a change in the days, time and number of hours in respect of which the pharmacy is obliged to provide pharmaceutical services, as proposed by the Applicant in the application.

- 2.19 I note that NHS England has stated that “no information has been provided to show that there has been a change in the needs of local people for pharmaceutical services.”
- 2.20 I note that the Applicant, in their appeal, states that they are proposing to open another of their pharmacies which is less than a 10 minute walk away from this pharmacy. I am of the view that a 10 minute walk to a healthy relatively mobile patient, is not necessarily the same as a 10 minute walk to those who may have mobility issues or otherwise feel generally unwell, and given I have not been provided with information regarding the terrain, routes or other methods of transport then I am unable to make this assessment. I note that the Applicant states that they will also put up signs as well as having an answerphone message and that they are well known in the area. Whilst the Applicant may be well known in the area, I consider that, apart from the hours that the alternate pharmacy is proposing to open (which the Applicant has stated are core hours of 9am to 2pm), the Applicant has not provided me with any other information, for example the location of this pharmacy, to support the contention that patients could reasonably access services at this pharmacy.
- 2.21 I note that the Applicant has provided no information with regard to the general usage of the pharmacy including dispensing figures in relation to the relevant period for which it is proposing to close. I am mindful that as well as dispensing prescriptions, a pharmacy provides other essential services in according with its terms of service such as advice. However I have not been provided with data regarding the demand for other such services or any change in need in relation to those services.
- 2.22 I am of the view that 26 December 2020 is, in relation to pharmaceutical services, no different from any other day. I have seen no information which indicates a change of attitude towards this particular day (from a pharmaceutical perspective) or which indicates an expectation either way as to whether or not the Applicant’s pharmacy would be open.
- 2.23 In the absence of any information to the contrary (either when NHS England considered the matter or on appeal), I have proceeded on the basis that there are no changes in relation to the needs of the people in the area, or other likely users of the pharmacy, for pharmaceutical services.

3. **Determination**

- 3.1 In light of the proposed changes and the lack of information available to me, I am not satisfied that pharmaceutical services provision that would result from the Applicant's proposed hours would meet the needs of people in the NHS England area or other likely users of the pharmacy for pharmaceutical services on 26 December 2020.
- 3.2 The action taken by NHS England to refuse the application is confirmed.

Head of Operations, Primary Care Appeals