

11 November 2022

REF: SHA/25779

**APPEAL AGAINST SOUTH EAST (HAMPSHIRE ET AL)
AREA TEAM, NHS ENGLAND DECISION TO GRANT
301PHARMASERVICES LTD APPLICATION FOR A
CHANGE OF OWNERSHIP FROM PYRAMID PHARMA
PHARMACEUTICALS LTD T/A PYRAMID PHARMACY,
FARNHAM ROAD SURGERY, 301 FARNHAM ROAD,
SLOUGH, BERKSHIRE, SL2 1HD**

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1 Outcome

1.1 In accordance with paragraph 2 of Schedule 3 the Committee dismisses the appeal.

A copy of this decision is being sent to:

301Pharmaservices Ltd (represented by Mr Kevin Harrall, Pharmacy Sales and Consulting),
Crystal Pharmacy,
PCSE on behalf of NHS England

Advise / Resolve / Learn

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SLOUGH, BERKSHIRE, SL2 1HD**

1 The Decision

NHS England considered and decided to grant the application. The decision letter dated 23 September 2022 stated:

- 1.1 NHS England has considered the above application and [I] am writing to confirm that it has been granted. Please see the enclosed report for the full reasoning.
- 1.2 [You] have a right of appeal to the Secretary of State against NHS England's decision. Should you choose to appeal then either complete the online form available on the NHS Resolution website or send a concise and reasoned statement of the grounds for your appeal within 30 days of this letter.

NHS England decision report

- 1.3 From: Pyramid Pharma Pharmaceuticals Ltd t/a Pyramid Pharmacy, Farnham Road Surgery, 301 Farnham Road, Slough, SL2 1HG
- 1.4 To: 301Pharmaservices Ltd

Regulation 26 states:

- 1.5 *(1) Section 129(2A) of the 2006 Act(1) (regulations as to pharmaceutical services) does not apply to an application from a person who is not included in a pharmaceutical list for inclusion in the list, or from a person included in a pharmaceutical list for inclusion in that list also in respect of other premises than those already listed in relation to that person, if—*

(a) the applicant (X) is undertaking to provide pharmaceutical services at premises—

(i) that are already listed chemist premises, and

(ii) at which another person (Y) is providing pharmaceutical services;

(b) X is proposing to carry on at the listed chemist premises, in place of Y, the business in the course of which Y is providing pharmaceutical services at those premises;

(c) X is undertaking to provide the same pharmaceutical services as those that Y is providing; and

(d) the provision of pharmaceutical services at the premises will not be interrupted (except for such period as the NHSCB may for good cause allow).

(2) Section 129(2A) of the 2006 Act does not apply to an application from a person who is not included in a pharmaceutical list for the area of a HWB (HWB1) for inclusion in that list, or from a person included in a pharmaceutical list for inclusion in that list also in respect of other premises than those already listed in relation to that person, if—

(a) the applicant (X) is undertaking to provide the pharmaceutical services that another person (Y)—

(i) is providing at listed chemist premises (“Y’s premises”), whether in the area of HWB1 or a neighbouring HWB, or

(ii) has provided at Y’s premises but Y is no longer able to provide pharmaceutical services at those premises for reasons that the NHSCB accepts are good cause;

(b) X is proposing to carry on, in place of Y, the business in the course of which Y is providing, or has provided, pharmaceutical services at Y’s premises;

(c) X is undertaking to provide the same pharmaceutical services as Y is providing or has provided at Y’s premises, but at different premises (“X’s premises”);

(d) if Y had applied to move to X’s premises, that application would have been granted under regulation 24; and

(e) if pharmaceutical services—

(i) are being provided at Y’s premises, the provision of pharmaceutical services will not be interrupted (except for such period as the NHSCB may for good cause allow) by the move of the business from Y’s premises to X’s premises,

or

(ii) are not being provided at Y’s premises, the provision of pharmaceutical services will commence at X’s premises within the period that the NHSCB considers is an acceptable period for the interruption of the provision of pharmaceutical services by the business that X is taking over.

Consideration by the Pharmacy Contract Manager

1.6 Regulation 26(1)(a) to (d) are met.

1.7 Regulation 26(2)(a) to (e) do not apply.

Fitness to Practice

1.8 Fitness to practice for 301Pharmaservices Ltd was approved by NHS England South East on 24th August 2022.

Decision

1.9 As the application was completed satisfactorily, fitness to practice completed and relevant regulations met, the Pharmacy Contract Manager approved the application on 21st September 2022.

Appeal Rights

- 1.10 3rd party rights of appeal were awarded to:
- 1.10.1 AJ Campbell, 133 Bath Road, Slough, Berkshire, SL1 3UR;
 - 1.10.2 B & P Pharmacy, 6 Stoneymeade, Cippenham, Slough, SL1 2YL;
 - 1.10.3 Boots, Unit 731B, 298 Bath Road, Slough, SL1 4DX;
 - 1.10.4 Crystal Pharmacy, 239 Farnham Road, Slough, Berkshire, SL2 1DE;
 - 1.10.5 H A McParland Ltd, 266 Farnham Road, Slough, SL1 4XE;
 - 1.10.6 Harrison's Pharmacy, U7, Britwell Local Centre, Long Furlong Drive, Slough, SL2 2LX;
 - 1.10.7 K Pharmacy, 400 Farnham Road, Slough, SL2 1JD;
 - 1.10.8 Kamal Enterprises Ltd, 14 Woodland Avenue, Slough, SL1 3BU;
 - 1.10.9 Khatkar Dispensing Chemist, 9 Villiers Road, Slough, SL2 1NW;
 - 1.10.10 Moonlight Pharmacy, Moonlight Dental Surgery, Wentworth Avenue, Slough, SL2 2DG;
 - 1.10.11 Pyramid Pharmacy, Farnham Road Surgery, 301 Farnham Road, Slough, SL2 1HD;
 - 1.10.12 Superdrug Pharmacy, 292 Farnham Road, Slough, Berkshire, SL1 4XL;
 - 1.10.13 The Martin Pharmacy, 6 Baylis Parade, Oatlands Drive, Slough, SL1 3LF;
 - 1.10.14 Totally Pharmacy, 920 Yeovil Road, Slough, Berkshire, SL1 4JG.

2 The Appeal

In a letter dated 17 October 2022 addressed to NHS Resolution, Crystal Pharmacy ("the Appellant") appealed against the decision of NHS England. The grounds of appeal are:

- 2.1 The Appellant has a reason to believe the owners of the surgery where the Applicant is located have applied for the change in ownership which constitutes a major conflict of interest.
- 2.2 A pharmacist partner and the managing director of Farnham Road surgery are buying Pyramid Pharmacy under the name of "301Pharmaservices Ltd".
- 2.3 This change of ownership is clearly a conflict of interest as the surgery would [sic] be biased in sending prescriptions to its own pharmacy, disregarding patient choice. The reason the Appellant is bringing this up is as there have been several instances in the past when Doctors of Farnham Road surgery who had a stake in Pyramid Pharmacy (previous owners) have sent prescriptions to that pharmacy without giving patients a choice. This has resulted in Pyramid Pharmacy not releasing prescriptions when asked for by the patient themselves. This change of ownership will only exacerbate this issue.

further as the same doctors will be more inclined to prescribe only to their own pharmacy as they will be the ones benefitting financially from this.

- 2.4 Furthermore, there seems to be a high risk of overprescribing, as there is financial gain to be made (more items = more money) which will lead to lack in patient safety.
- 2.5 The lack of independence between Farnham Road surgery and now their own pharmacy leads to a clear risk to patient care.
- 2.6 This can also lead to favoured direction of services e.g. CPCS minor illness (GP referrals). As there is a financial incentive for the pharmacy to receive these referrals, there is a risk that because the owners of the surgery have a stake in the pharmacy, they can train their surgery staff to direct referrals only to that pharmacy rather than giving patients their own choice (which they have currently). This also applies to the hypertension case finding service and other services provided by the NHS.
- 2.7 All of the above is likely to happen as there is mutual financial benefit in doing so, which is a clear conflict of interest with patient care.

3 Consideration

3.1 Up to 30 June 2022, NHS England was responsible for commissioning pharmaceutical services and made the decision which is the subject of this appeal. Since 1 July 2022, it has been possible for Integrated Care Boards to take on delegated responsibility for the commissioning of pharmaceutical services, NHS Resolution will issue this decision to NHS England and it is for NHS England to inform the relevant Integrated Care Board if commissioning of NHS pharmaceutical services has already been delegated to the Integrated Care Board in the area relevant to this appeal.

3.2 The Pharmacy Appeals Committee ("Committee") had regard to Regulation 26(1) of the NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 ("the Regulations") which states:

(1) Section 129(2A) of the 2006 Act (regulations as to pharmaceutical services) does not apply to an application from a person who is not included in a pharmaceutical list for inclusion in the list, or from a person included in a pharmaceutical list for inclusion in that list also in respect of other premises than those already listed in relation to that person, if-

(a) the applicant (X) is undertaking to provide pharmaceutical services at premises-

(i) that are already listed chemist premises, and

(ii) at which another person (Y) is providing pharmaceutical services;

(b) X is proposing to carry on at the listed chemist premises, in place of Y, the business in the course of which Y is providing pharmaceutical services at those premises;

(c) X is undertaking to provide the same pharmaceutical services as those that Y is providing;

and

(d) the provision of pharmaceutical service at the premises will not be interrupted (except for such period as the NHSCB may for good cause allow).

3.3 The Committee noted that the application had been made under Regulation 26(1) and as such, it is not a notifiable application in accordance with the Regulations. The Committee noted that the decision had been notified to parties under paragraph 28(3)(c) and a right of appeal was given to those parties under paragraph 30 of Schedule 2.

3.4 The Committee noted Schedule 3, Part 1 paragraph 2 states:

Misconceived Appeals

2. If the Secretary of State, after considering a valid notice of appeal under regulation 45, 63 or 77 or paragraph 30, 32(5) of 36 of Schedule 2 against a decision, is of the opinion that the notice –

a) contains no valid grounds of appeal (for example, because it amounts to a challenge to the legality or reasonableness of a HWB's or PCT's pharmaceutical needs assessment, or to the fairness of the process by which the HWB or a PCT undertook that assessment); or

(b) contains no reasonable grounds of appeal (for example, where it is vexatious or frivolous),

the Secretary of State may determine the appeal by dismissing it (without proceeding to notify the appeal under Part 2).

3.5 The Committee considered the appeal in accordance with paragraph 2 of Schedule 3, misconceived appeals, as quoted above.

3.6 The Committee noted that Regulation 26(1) is specific in the criteria an Applicant must satisfy, if the proposed change of ownership is to succeed.

3.7 The Committee noted that NHS England had stated in their decision letter that an appeal should contain "a concise and reasoned statement of the grounds of appeal".

3.8 The Committee noted that the Appellant had stated in their letter of appeal that there would be a conflict of interest between Farnham Road Surgery and the pharmacy if the change of ownership was allowed to go ahead due to the pharmacist partner and managing director of the GP surgery being the owners of 301Pharmaservices Ltd. The Committee was of the view that this was not a matter for them and was not something that could be considered on appeal.

3.9 The Committee noted that the appeal then focused on potential risk of overprescribing and automatic direction of patient prescriptions to the pharmacy due to the potential financial gain which would be afforded to the Applicant. Whilst the Committee noted the Appellant's concerns, it was of the view that this is not relevant to the criteria that the Applicant must satisfy if a change of ownership is to succeed and thus not a matter for the Committee to consider.

3.10 The Committee noted that Regulation 26(1) states that NHS England has to be satisfied that:

3.10.1 the application is in respect of listed chemist premises;

3.10.2 the Applicant is proposing to carry on at the listed premises the business in the course of which the current owner is providing pharmaceutical services at those premises;

3.10.3 the Applicant intends to provide the services as those provided by the existing pharmacy; and

3.10.4 if the change of ownership were to take place there would be no interruption to the provision of pharmaceutical services.

3.11 The Committee noted that the Applicant is proposing to continue to carry out providing pharmaceutical services from the listed premises (Farnham Road Surgery, 301 Farnham Road, Slough, SL2 1HD) and that they intend to provide the services as those provided by the existing pharmacy at that location. Further, the Applicant has confirmed that there would be no interruption to the provision of pharmaceutical services. The Committee is of the view that the decision in this regard is not challenged by the Appellant.

3.12 The Committee noted that the Applicant has applied for a change of ownership of the pharmacy based at the existing location of that pharmacy and has not sought to relocate the pharmacy from where it is currently located.

3.13 The Committee noted that there is no dispute that the premises are already listed and that pharmaceutical services are currently being provided from those premises. The Committee was of the view that there were no grounds in the appeal to lead it to believe that the change of ownership was not in accordance with Regulation 26(1).

3.14 From the information before it, the Committee concluded that the Appellant has not provided grounds of appeal sufficient as to challenge the view that the application should be granted under the provisions of Regulation 26(1).

4 Decision

4.1 In accordance with paragraph 2 of Schedule 3 the Committee dismisses the appeal as it is of the view that it contains no reasonable grounds of appeal.

**Case Manager
Primary Care Appeals**