

ETHICAL AND LEGAL ISSUES IN HEALTHCARE

'Link Selling' – maintaining professional integrity and meeting patient needs



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You are the supervising pharmacist in a busy pharmacy located in a large rural town, which is one of nine in a pharmacy chain. Amongst a number of new policies being considered at this pharmacy is that of 'link selling'. You know that the recession has raised fears regarding the financial viability of the business and therefore understand that a desire to increase sales may underline this policy. However, you are also concerned that it has the potential to undermine your professional integrity. Is this concern justified?

It is appropriate, firstly, to clarify that the above scenario does not necessarily incorporate pressure on an employee to do anything illegal or suggest that they circumvent basic responsibilities in the supply of goods or services, even in the context of the operation of a retail pharmacy business. The Sale of Goods and Supply of Services Act (1980) clearly recognises that a customer is entitled to expect that a product or service supplied will be 'fit for purpose'. It specifically reinforces that the supplier must have the necessary skill to render the service and must *supply the service with due skill, care and diligence*. The Consumer Protection Act (2007) likewise highlights *professional diligence* and continues by reinforcing that the seller should not do anything that *would be likely to cause appreciative impairment of the average consumer's ability to make an informed choice and influence his/her decision in making a purchase*. The consumer must not be misled. In deciding whether a consumer may have been misled,¹ the European Court of Justice interprets the average consumer as *reasonably well informed and reasonably observant and circumspect*, taking into account social, cultural and linguistic factors, and that if a particular practice is targeted at a certain group (e.g. the elderly), the average member of that group is the benchmark. The fairness of a commercial practice is then assessed against this benchmark. Pharmacy staff may not therefore pressurise or mislead, and must take into account the needs and likely level of understanding of a person when recommending that they purchase a particular product or service. Indeed it seems that, provided the pharmacy is operating within the requirements of the Pharmacy Act 2007 (as amended), including observation of the Code of Conduct for pharmacists and compliance with the requirements in relation to counselling in the supply of non-prescription medicine, and provided the pharmacist has maintained competence to practise, the relevant expectations within consumer protection legislation will be met.

The term 'link selling', according to one of the rare definitions offered, is *the encouragement of the purchase of a complimenting product that fits the product purchased and the customer needs*. It infers that the seller has both an understanding of what the products available can do and an appreciation of the customer's particular needs. The practice should therefore not be incompatible with professional behaviour, as it naturally facilitates the core principle of pharmacy practice – that of using one's expertise to act in the patient's best interests. Indeed there are many examples of situations where link selling is exactly the right thing to do. In my experience, many new parents think that antibiotics have a direct effect of reducing temperature. Hence I will always clarify for parents of small children receiving antibiotics for infections that the medication may take a day or two to work, and that they may need to use a product containing paracetamol at least during the first few days of treatment. I also feel duty bound to insist that trainees under my care learn to recommend this, or a similar, 'linked' product where the supply of antibiotics is associated with increased temperature or pain. Likewise, in the current climate of anticipation of an increased prevalence of 'Swine Flu', pharmacists are being reminded to ensure that patients are encouraged to purchase, in advance of developing symptoms, medicines to relieve the symptoms of H1N1 – such as analgesics, sore throat lozenges, decongestants, cough mixtures and tissues. Link selling is therefore inextricably associated with the practice of pharmacy, as practitioners endeavour to meet their responsibilities to counsel patients.

Yet I find that each time the term arises, particularly in the course of the continuing education sessions on 'Code of Conduct for Pharmacists',² the room falls quiet. There is an instinctive recognition of the tension generated by the perception of a commercial/professional conflict and that 'professionals' should somehow be above commercial influences. It seems to me that this sensitivity stems from the fact that 'encouraging' link selling as a commercial proposition

could represent the prioritisation of commercial motivation in advance of the decision-making process that occurs between a practitioner and a patient during counselling. If a pharmacist is to be truly free from influence, and motivated to act purely in the patient's 'best interests', then the financial outcome of the interaction should not be relevant to the practitioner and any recommendation to the patient should not lead to personal gain for the pharmacist. The reality is that, as articulated by Banks McDowell in 'The Professional Dilemma': Choosing between Service or Success', virtually no-one works in an environment free from commercial influences – regardless of whether the role is that of proprietor, manager or employee and regardless of the area of practice. While the proprietor may have obligations to staff and creditors, and therefore is under pressure to ensure 'successful' financial management of the business in order to meet its liabilities, at least for the proprietor the dilemma is internal and under his/her personal control. For the employee or manager, where *'it is not uncommon for professional pharmacists to experience conflict between their own ethical beliefs and duties and their obligations to the pharmaceutical organisations for which they work'* (Vitell), this lack of control can accentuate a dilemma, especially when review and promotional opportunities within the organisation will direct whether the pharmacist is 'successful' in his/her professional career. In an organisation, attention to that which is highlighted by the leadership as 'important' invariably influences one's chances of reward.

It seems that the key factor requiring review is that of 'motivation'. Only the decision-maker can truly explain the motivation to recommend a particular course of action in the context of a given patient interaction. Professor Muriel Bebeau³ clearly articulates the four components of professional decision-making as incorporating a sensitivity to dilemmas (i.e. that practitioners recognise there is a professional issue to be addressed), judgement skills and the 'back-bone' to act in a manner as expected of a member of a profession. The fourth component is that of moral motivation. Immoral motivations do exist. Commercial influences may range across the continuum of survival to success and professional issues may include the extremes of a valid charge of professional misconduct to that of being seen as an exemplary member of a true profession. Reverting to 'conservative practice' is not to be encouraged either. If pharmacists only ever give the patient the product specifically requested, then they can avoid the risk of being charged with unprofessional 'link selling' although they do not necessarily fulfil other professional obligations by supplying according to patient demand. It seems to me that this would be to miss the point of being a professional – as a dispensing machine in a hole in the wall could provide that function! However, once it is recognised that commercial and professional pressures both have the potential to influence decision-making towards the 'unprofessional', the world of pharmacy may at least seek to manage these pressures, and the associated potential conflicts of interest.

A company policy that focuses on link selling will inevitably put pressure, real or imagined, onto the professional decision-making process. The measure of 'success' of a pharmacist's practice of pharmacy should not relate to the quantity of items supplied. Supervising or superintendent pharmacists operating within such a policy risk further dilemmas if they are responsible for staff, especially if the company's objective measures of 'success' discriminate against those who would rather spend time counselling patients than processing transactions at the cash register. *'Oral counselling is all too often a casualty in the ongoing war between pharmacy ethics and business objectives.'* (Resnik et al). In the practice of pharmacy the 'duty of care', and its implications in the efficiency/effectiveness debate, must be highlighted and debated in such