

ETHICAL AND LEGAL ISSUES IN HEALTHCARE

Professional judgement



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The question 'May I have something for my allergies please?' becomes a common plea as we enter the autumn allergy season. My recommendation might be as simple as a few days supply of oral decongestant or a complex mix of the said oral decongestant, antihistamines, paracetamol, nasal steroid spray, oils for inhalation and 'wrap around' sunglasses. Patient information leaflets will identify all of the above as being potentially useful. In some cases patients can avoid the trigger and give the allergy time to settle. In others, personal or commercial influences pressurise the patient towards aggressive management of the symptoms so that imminent commitments can be met. Identifying which type of treatment is more appropriate, in the pharmacist's opinion, is part of the communication challenge.

The ideal would be that all such OTC sales are automatically recorded to the patient's profile, thereby both checking for interactions and facilitating an opportunity to record why, in some cases, I recommend a bag-full of product rather than the simpler, and less expensive, single product option. Indeed legal opinion would insist that, in the interests of being able to provide 'proof' of the advice we give, we ought not to interact with patients without recording specific details of the intervention. The reality is that such documentation does not happen – indeed there are times when the identity of the patient is not known, much less the specific reasoning the pharmacist applies to his/her own decision-making process.

Professional judgement is a phrase used so regularly that I expected to have no difficulty finding a definitive summary of its meaning. However the term does not appear in the Pharmacy Act 2007 and does not appear to be defined in current Irish pharmacy legislation. Dictionary definitions of the word 'judgement' include 'the cognitive process of reaching a decision or drawing conclusions'. Words such as discernment, perception, insight, reason and objectivity all feature. Judgement is required when presented with two or more options, each of which is individually convincing, mutually exclusive and jointly demanding. Professionals making judgements are expected not only to have acquired the body of knowledge considered fundamental to the practice of that profession, but also to have committed to a professional code of ethics. Healthcare professions' codes of ethics are founded on the premise of a duty of care to the patient, thus obliging the pharmacist to always make judgements in the patient's best interests.

Hence, professional judgement may be described as the application of expertise acquired in the training for and practice of the profession, which, when applied to situations where there is no clear right or wrong way to proceed, gives a patient a better likelihood of a favourable outcome than if a lay person had made the

decision. Unlike lay judgement, professional judgement ought to be well-informed and reliable. Professor Joy Wingfield summarises the challenge as being that pharmacists "will need to be able to develop an enhanced competence, handle uncertainty and apply sound professional judgement. Rational decision making will be paramount." The inference is, of course, that acting in the patient's best interests is not always easy. There are many potential sources of conflict, both internal and external to pharmacists, which raise the possibility of impairing the decision-making process to the extent that a pharmacist's self-interest may inadvertently override the patient's best interests when giving advice. Professional judgement, and the inherent 'rational decision making' to which Professor Wingfield refers, ought to be the tools that manage such dilemmas.

The best way to avoid self-interest is to separate the person making the decision from anyone with an interest in the outcome. Banks McDowell (1990) suggests that there is a fundamental conflict between the two roles of professional advisor to the client as to whether certain services are necessary, and the provision of the service or product the patient might need. He refers to it as 'service or success', simplistically suggesting that the professional must choose one or other, being unable to act professionally and be successful at one and the same time. Community pharmacists both advise patients on how to deal with symptoms and supply the product recommended. Indeed, if the patient does not make a purchase, the 'retail pharmacy business' does not get any remuneration for the associated time spent with the patient. The dilemma may be perceived to be somewhat constrained in the situation where prescription drugs are supplied because the pharmacists may only legally supply prescription drugs on foot of a doctor's prescriptions, but it is quite evident where the supply of non-prescription medicines is involved.

What must be emphasised, however, is that it is the resolution of dilemmas which may or may not constitute unacceptable behaviour or a breach of the requirement to use professional judgement in decision-making. The dilemmas, of themselves, exist as a result of the way in which pharmacy practice is framed and there can be no charge against a pharmacist for their existence per se.

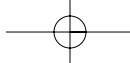
Given the recognition that ethical dilemmas exist, the assumption is that there will be some decision-making done at either end of the 'service or success' continuum, i.e. some pharmacists will believe that they always make decisions in the patient's best interests and others will openly present themselves as having a purely profit focus. Indeed it could be argued that if pharmacists make professional decisions at these absolute extremes, then the professional dilemma doesn't exist for them at all.

It is more likely, however, that practice decisions

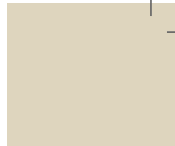
occur along the continuum between these two extremes. McDowell (1990) has a useful means of structuring this concept in that he talks about '4 zones of decision-making' as to whether a client needs services: the first of which zones represents decisions where the provision of unnecessary services would be met with ridicule and contempt by almost all professionals, and the fourth of which represents decisions involving the provision of obviously necessary services. Zone 3 represents decisions where there is reasonable disagreement as to whether the service should have been provided or not. However, in deliberations surrounding 'professional judgement', Zone 2 merits most consideration. It includes decisions regarding the provision of probably unnecessary services when it is difficult but not impossible to defend the provision of the service, but the decision merits consideration rather than derision. Peer review would probably advise against the provision of the service/product but the pharmacist in question might argue the merit of his/her interpretation. OTC medicines of dubious efficacy would fit this category, wherein some professionals would justify their use on the basis of patient confidence in the product, even where peers believe it has no more than a placebo effect. In reality most such cases will come before the law only where harm has been caused and negligence may be proven. It will then be mandatory that the practitioner justify decisions in a manner that is rational to peers and to the judicial system. This is the zone where the ethical dilemma is the most difficult. It is also the zone where it is most likely that the professional's intent is difficult to validate. However, both professional ethics and regulatory bodies give the pharmacist professional discretion, provided it is apparent that the ethical duty to protect the patient's interests is met and that the pharmacist is competent to provide the service being offered to the patient.

Notwithstanding that influences of professional, commercial and personal nature all have the potential to affect decision-making, and therefore merit (separate) specific review in the context of practice today, the core of this particular discussion is that it is in the patient's best interest to encourage pharmacists to reflect on their own application of professional judgement. Laws and professional guidelines may support practice but as "the pharmacist is the person closest to and most aware of the patient situation under question, interpretations by anyone other than the attending pharmacist would therefore not reflect the judgement of the one person who is legally recognized to care for the patient". (OCP, 2008).

Professional judgement is actually an intensely personal matter for practitioners. It seems to me that many practitioners would be their own harshest critics and it would certainly be counter-productive in terms of patient outcomes if a legalistic spotlight on the concept of 'professional judgement' increased a tendency towards



opinion



defensive practice. The first and most important step requires the pharmacist to rationalise the decision-making processes of professional judgement to him/herself. The question I ask myself is if I did have the utopia of being able to document all recommendations 'on-screen', what exactly would I type in the box headed 'reasons for recommending this, rather than an alternative, course of action'?

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