

Effective Control Principles

Version 1.1 (1 October 2024)

This guidance applies to companies applying to hold a licence to operate pharmacy under section 55D(2)(a) of the Medicines Act 1981 (the Act), and is based on the High Court decision in *New Zealand Independent Community Pharmacy v Te Whatu Ora - Health New Zealand and Ors* [2023] NZHC 1486 (CIV-2-22-485-11), reflecting current legal interpretation of the Act.

- The following principles are used to guide assessment of an application, against the effective control aspects of the pharmacy ownership requirements of section 55D(2)(a) of the Act. Applications will be considered by Medsafe on a case-by-case basis.
- In addition to these principles, to determine if the pharmacist(s) holds effective control of the company, Medsafe may consider additional relevant matters relating to pharmacy ownership in a particular case, including for example prescriber interest.
- In relation to pharmacies operating within, for example, an umbrella group owned by pharmacists, or where the shareholding of the company includes other companies, in light of the High Court decision, Medsafe will apply the same test when determining whether the pharmacist(s) in this situation have “effective control” of the pharmacies they manage. As, in the eye of the law the pharmacy company is considered to be a separate legal entity from any associated companies.

Principle 1

Pharmacist(s) must own more than 50% of the share capital of the company.

Guidance

- A pharmacist must be registered with the Pharmacy Council of New Zealand and hold a current valid annual practising certificate (APC) in the pharmacist scope of practice.
- Any additional conditions on a pharmacist’s APC will be taken into consideration on a case-by-case basis.
- Shares in the company must be held by a pharmacist as an individual (e.g. not held in a trust).

Principle 2

Pharmacist(s) must have a majority of the voting rights on the board under the company’s constitution or shareholders’ agreement and must have the decisive casting votes in all board matters.

Guidance

To ensure that this is the case, Medsafe must be in a position to verify this from the latest information from the company’s constitution and shareholders’ agreement to be supplied by the applicant.

In practice, for example, this would mean that the pharmacist(s):

- must be present and form part of the quorum in a board meeting.
- during a board meeting, must have the ability to determine the outcome of all company resolutions.

Principle 3

Pharmacist(s) must at all times make up the majority of the board's directors, and must form the majority of the quorum for a shareholders' meeting.

Guidance

This situation must be demonstrated in the shareholders' agreement and there must be no other agreement in place (verbal or written) which enables this situation to be overridden.

The pharmacist(s) must have the ability to exert control over all resolutions made at a board level.

If a pharmacist cannot form the majority of the board (eg, when there are only two directors and one is not a pharmacist), the pharmacist must still have the ability to exert control over all resolutions made at a board level.

Principle 4

Pharmacist(s) must have the ability to make the final decisive decision on behalf of the company, including casting the decisive vote on applicable matters in shareholder meetings.

Guidance

For example, where the majority shares of the company are held by a large or extensive number of pharmacists, there must be written confirmation from the non-director pharmacist(s) that they are represented by the pharmacist director(s) and the pharmacist director(s) retain the decisive vote at board meetings.

Applicable matters include, for example, pharmacy operational matters and contracting decisions.

Principle 5

Pharmacist(s) must be able to make decisions at the board level that can have an impact on the health and safety of pharmacy patients.

Contact Medsafe

Medicines Control Branch (email medicinescontrol@health.govt.nz).