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June 21, 2013

Shri Dhan Raj Sharma  
Addl. Labour Commissioner (IR)  
Government of Rajasthan  
Opp. NBC Factory  
Shanti Nagar, Hasanpura  
Jaipur 302 006. Rajasthan.

Dear Sir,

Ref: **Letter no. 8578-79 dated 26th April, 2013**

Subject: **The Representation of Rajasthan Medical and Sales Representations Union**

We thank you very much for having given an opportunity to present our viewpoint before your goodselves. Fixed working timings for Medical Representatives (MRs) if considered, will have a cascading effect on the growth of the Pharmaceutical Industry in the State, and the industry will be hostilely discriminated and crippled. Further, if this representation is considered, it will not only affect the Doctors but also the needy patients, who are the ultimate end users of the medicines, whom the entire pharma industry is committed to serve by ensuring "Health For All".

In this regard, we humbly wish to submit before your goodselves that the Rajasthan Government has not extended any opportunity to hear the Employers' side while bringing the MRs in the ambit of Scheduled Employment under Minimum Wages Act. Moreover, it is submitted that most of the companies who employed their MRs in Rajasthan are situated outside the State of Rajasthan.

We place on record our detailed viewpoint on the subject matter for your kind perusal. We trust and believe that the same would be given due consideration by the Labour Department, Government of Rajasthan before coming to any sort of conclusion in the said matter.

As you will be aware, the Indian Drug Manufacturers' Association (IDMA) has been, since its inception in 1961, leading the Indian Pharmaceutical Industry to greater heights and glory and ensuring near self-sufficiency and access of affordable safe and efficacious medicines to our people. IDMA, you will be pleased to know, is the only Association comprising of small, medium and large scale pharmaceutical manufacturers situated throughout the length and breadth of our country.

As you may also be aware, the Organisation of Pharmaceutical Producers of India (OPPI) established in 1965 is a premier association of research and innovation driven pharmaceutical companies in India and is also a scientific and professional body, facilitating greater access to quality healthcare solutions.

Pharmaceutical Industry in India is recognized by our Government as a knowledge-based industry, with a turnover of over Rs. 1,20,000 crores growing at about 15%. It is one of the most developed industries in the developing world and has the potential to become globally dominant with active support from the Government. The Industry employs over 30 lakhs employees (direct 10 lakhs and indirect 20 lakhs). It has contributed significantly in improving the health indicators, such as life expectancy, infant mortality, birth rate etc by making available high quality affordable medicines. The key factor for this achievement has been the availability of many alternatives and choices to the doctors and hospital administrators in making informed decisions for prescribing the correct medicines.

Before going into the details, it is necessary to understand the exact job profile of a MR. The MRs, professionally the backbone of any company, are the first link in scientifically informing and clinically updating the medical profession about the latest advances and the breakthroughs on a variety of drugs and medicines at affordable cost which are promoted by their company. They disseminate knowledge about the drug and the drug delivery system, the indications and contra-indications. Hence the job of a MR is to effectively provide scientific information about the company's products to the doctors and medical fraternity and to generate the prescriptions for the brands of his company, thereby achieving the business objectives set for the territory assigned to him by the company. For this purpose, the MRs are required to call on various doctors, nursing homes and hospitals as per their customer selection list in their assigned territory. Accordingly, the MRs have to call on approximately about 150-250 (this number would vary from company to company) doctors every month as per their customer list in the assigned territory. The visit frequencies to a doctor may vary from 1 to 3 visits in a month depending upon the prescribing potential of the doctors. Apart from this, MRs are required to call on retail chemists and stockists in the assigned territory to ensure their brands' availability to cater to the prescriptions generated by them from the doctors and also to understand the prescription trend vis-a-vis competitor brands. They also book personal orders for their company brands from the doctors, nursing homes, hospitals and retail chemists & ensure timely supply of their company brands through their stockists appointed in the assigned territory.

MRs are also responsible for developing the distribution chain by identifying / recommending stockiest, retailers etc in their designated territory to ensure continued availability of their medicines. They are required to ensure that expired products are removed from the stocks and do not inadvertently go to consumers via the retailers. MRs also play a lead role in conducting Doctor and Retail Meetings, Medical Conferences, developing key opinion leaders in their territory. MRs also analyze market conditions and are also responsible in conveying through Adverse Event Reporting if any drugs are counter indicative to patients.

Most importantly, the MRs cannot afford to miss any customer in their territory due to the possibility of brand conversion by the competitors which would affect the sales performance of the assigned territory. By achieving the sales objectives set in their assigned territory, the MRs are paid lucrative performance linked incentives, besides their salary & allowances. Precisely, their job is totally customer focused and in order to achieve the best results, the MRs have to call on the customers of the assigned territory at a time convenient to the customers and not of the MRs and as such no fixed timing could be related to their profession unlike an office job or a shift job. They are also expected to adhere to the work norms of their respective organizations as per the terms of their appointment by meeting the stipulated number of doctors and chemists in a day during their field work.

With this back drop, we submit the following to your kind perusal:

1. Since the MRs are working in the field, their working time is wholly dependent on the availability and the convenience of their customers like doctors, nursing homes, hospitals, pharmacy, medical stores and chemist counters etc. Accordingly, their working pattern has to be necessarily in tune with the trade practices prevailing in

their respective working areas. This would mean that the MRs are at liberty to adopt variable work timing according to their work requirements in a day. There is no fixed working hours which can be attributed to their day to day work unlike those who are working in offices or shifts.

2. Traditionally, right from the inception of the Pharmaceutical Industry, which is one of the oldest in our country, the MRs are required to call on a stipulated number of customers per day in accordance with their service conditions. Their day to day work is based on the number of customers whom they are supposed to meet in a day as per their terms of appointment and certainly not based on timing unlike other regular office or shift jobs.
3. Key function of a MR is calling on his customers regularly to update and to promote their company brands to them for getting their prescriptions. Generally, doctors meet the MRs after attending their ailing patients. It is in practice that the MRs are usually being given appointments as per the convenience of the doctors which are, largely dependent on their practicing time. Therefore, it is imperative on the part of the MRs to maintain variable and the best suited timing to call on their customers to derive the maximum advantage, which however can not be restricted to any fixed hours. Thus, their working pattern has to be based on the customers they have planned to call on in a particular day.
4. The MRs, thus have flexible working time / hours in line with the trade practices prevailing in their respective working areas and the same is in practice and followed in the Pharmaceutical Industry for over several decades. Hence, there can be no fixed working time / hours for the MRs.
5. It may also be noted that since the MRs are required to work in the field, there is hardly any day to day supervision or control on their working timings by the company. The MRs do not have to mark their attendance in the muster roll before commencing their work like any other employee stationed in an office or shift.
6. It is not true that MRs are working for 12-14 hours a day. No MR is required to meet more than 8–12 doctors and about 4–6 chemists in a day depending upon the therapy segment they are into and since there is almost no supervision they submit a daily call report. Hence no MR is required to work more than 9 hours (approx) in a day inclusive of rest intervals as the case may be. The contention of working for 12-14 hours in a day is totally unwarranted. As already stated that MRs are working in the field and there is hardly any control on their day to day working by the company, the notified hours of work shall not be feasible both for the industry and its MRs. In fact, by and large no MR is working in the field for more than 4-5 hours in any day. The question of overtime in the field by the MRs is totally an exaggeration by the Union just to mislead the Labour Ministry with ulterior motives.
7. The Sales Promotion Employees (Conditions of Service) Act, 1976, was enacted by the Parliament with a view to have a Special legislation for regulating the services of the Sales Promotion Employees. The legislators were fully aware of the fact that the MRs will have to visit the stipulated no. of customers, viz. doctors, chemists, stockists etc. at a time when it is convenient for the customers to meet them. Keeping in view the nature of work of the MRs, the Authorities while promulgating the said Act have not prescribed working timings for the Sales Promotion Employees in the legislation which is specially enacted for regulating their services. When the legislators have consciously chosen not to specify the working timings for Sales Promotion Employees, any step in this direction is not only arbitrary and also lack logics and is against the growth of Pharma Industry in the State.

8. The above practice is in vogue for several decades which have crystallized into their service conditions. We, therefore, request you to take impartial and unambiguous views to safeguard the interest of the industry and the employees which has a peculiar and typical working pattern. This being evidently clear, any intervention from the Government Machinery by arbitrarily fixing the working hours would be totally unjustified and would seriously affect the growth of the Pharma Industry as a whole.
9. While promulgating The Sales Promotion Employees (Conditions of Service) Act, 1976, the legislators have specifically excluded the Medical Representatives from the purview of the Shops and Establishments Act and the Factories Act though the said Acts were already in existence at the time of promulgating the Sales Promotion Employees Act. The specific exclusion from the application of the Shops & Establishment Act, the Factories Act & the Standing Order Act has been intentional & the legislators have excluded these Acts as they (these Acts) can not be made applicable to the Sales Promotion Employees, i.e. Medical Representatives.
10. It appears that Section (13) of the Minimum Wages Act, 1948 is being invoked to fix the hours of work for the Medical Representatives by notifying the working hours. In this context, we submit that the objective of the Minimum Wages Act, 1948 is to provide for fixing the minimum wages in respect of the scheduled employment covered under the said Act and not specifically the schedule of work. The Sales Promotion Employees (Conditions of Service) Act, 1976 or the provisions of certain other Acts which may apply to the Sales Promotion Employees as they apply to, or in relation to employees within the meaning of the respective Acts does not specify the working timings for the Sales Promotion Employees.
11. Though the appropriate Government can fix the number of hours of work under Section 13 (1) of the Minimum Wages Act, 1948 in regard to any scheduled employment in respect of which minimum rates of wages have been fixed that the appropriate Government may fix hours of work to constitute a normal working day including intervals, but it has no power to fix the periods of work. It is needless to state that in any employment, fixation of the periods of work is the prerogative of the employer and even the statutory authorities will have no role to play so long as the hours of work are in conformity with the statutory hours of work.
12. Section 13 (2) of the Minimum Wages Act, 1948 which provides that the hours of work fixed under Section 13 (1) of Minimum Wages Act, 1948 shall apply to certain classes of employees for instance the employees whose employment / work is essentially intermittent in nature or whose work is in the nature of preparatory or complementary work, which must necessarily be carried on outside the limits laid down for the general working in the employment concerned, only to such extent and subject to such conditions. Hence the Section 13 (1) of the Minimum Wages Act is not applicable to the MRs.
13. The Sales Promotion Employees (Conditions of Service) Act, 1976 is a Special Act and enacted almost 28 years later in time as far as the Minimum Wages Act, 1948 is concerned. As such, the Special Act i.e. the Sales Promotion Employees (Conditions of Service) Act, 1976 will prevail upon the Minimum Wages Act, 1948. Under the circumstances, the working hours of the Medical Representatives who are Sales Promotion Employees under the Sales Promotion Employees (Conditions of Service) Act, 1976 cannot be fixed under the provisions of the Minimum Wages Act, 1948 which is a General Act.
14. The fact remains that The Sales Promotion Employees (Conditions of Service) Act, 1976 does not specify the working hours of work for the Sales Promotion Employees and even the Central Government has not made any rules pertaining to hours of work. The SPE Act and Rules obviously considering the nature of the work of the Sales Promotion Employees has consciously chosen not to prescribe any working

hours like an office, desk or shift job. This is so because the Sales Promotion Employees are supposed to be in the field to canvass the sale of their products and in the process they meet medical professionals, retail chemists and stockists. Obviously, there can be no particular fixed time in a given day. Consequently, the Sales Promotion Employees will have to synchronize their working pattern according to the availability and the convenience of their customers.

15. The companies are conducting quarterly meetings, launch meetings on their new products, participating in various scientific medical conferences attended by eminent specialists from the various medical segments all over the world and their MRs are required to participate in such activities for development of their professional skills and endorse their company's products to the concerned medical fraternity.
16. Hours of work for different categories of employees are laid down in the Factories Act and the Shops and Establishment Act. A Sales Promotion Employee is not covered under the definition of worker u/s 2(l) of the Factories Act.
17. We would like to emphasize that the business is achieved through productivity and not working timings. The operations cater to the needs of the customer and there are multiple industries like Insurance, FMCG, etc who meet their customers in the evenings or weekends. They are paid salary for achieving the productivity and not on working hours. Working conditions are defined in the best interest of employees, business and the needs of the customers. It will not always be prudent to bring forth the same parameters at all conditions, which will be detrimental to the business.
18. The hours of work are fixed to meet the convenience of the customers and not of the employees. The customers in this case are the Doctors, whether working in their clinics and the hospitals and the chemists. This arbitrary fixing of working hours will ruin the very purpose of employing the Sales Promotion Employees.
19. For about 4 to 6 days in a month, each MR does joint field work with his superiors. The superiors often come from different places and the said Sales Promotion Employee and the concerned superiors have to arrange their joint field working in such a manner to maximize the quality and quantity of their work. The absolute fixation of working hours for the Sales Promotion Employees will hit at the very root of the purpose of doing joint field work which is intended to guide and help the Sales Promotion Employees to achieve and surpass the business objectives.
20. Many of these MRs work in the therapeutic areas dealing with emergency medicines where making a drug available in ICCU or Cathlab in time makes a difference between life and death. Since these emergencies are unpredictable and can happen at any time, binding these MRs into a fixed hour work frame like a worker could be damaging to the very cause for which the industry stands for i.e., SAVING A LIFE. By arbitrarily fixing the working hours, the MRs will restrict their working as per the working hours and this will dampen the industry growth significantly in the State of Rajasthan. Many Pharma companies would be compelled to draw their curtains, leading to a severe set back to the economic growth in the State.
21. Apart from their salary, MRs are also paid daily working allowance to cover the cost of travel and for reimbursing the expenses that may have been incurred during the course of performance of duties of calling on the doctors / chemists. MRs also receives incentive depending on the sales of the products, which is a substantial and major component of their remuneration. The restrictions due to fixed working timings would be detrimental not only to the MRs, to the companies employing them, but also to the doctors and thus to the patients. This would seriously hamper the growth opportunities for the MRs and also the pharma industry.

22. Post recruitment of MRs the company invests large amount of money in their training and development by updating them regularly on their scientific knowledge, reward them with attractive performance incentives, best career opportunities to grow and support them to lead an enviable professional and personal life. Many who have commenced their profession as MRs have risen to the ultimate top positions in their professional career path including as Managing Directors of the companies.
23. Fact remains that most of the MRs who are interested in their professional and personal growth are willing to continue their flexible working schedules, however are threatened by the so called unions with serious consequences of physical assault, gheroes, collecting arbitrary fines under the guise of different heads, thus spearheading a fear psychosis among the MRs who wanted to work & earn better positions in their life.
24. In other words, the nature of MRs work is such that they plan their own work in such a way so that they can meet their customers at such timings which are mutually convenient and productive.
25. In view of the above, it is evident that the duties and responsibilities of a MR with high level of responsibility and accountability are at par with Managers and bringing the MRs on par with the ordinary workmen who work in fixed shifts is totally illogical and undermines the very nature of the MR's job and the growth of the whole Pharma industry as well. The work restrictions under the guise of fixed hours would seriously cripple the industry and would be detrimental not only to the Pharma companies but also to the entire medical fraternity and the ailing patients as well.
26. While there is no exploitation and the Sales Promotion Employees are not required to work beyond their work norms as per their service conditions, the proposed move to fix the working hours is violative of principle of natural justice because the purported fixation of the hours of work for the MRs is done at the behest of interested quarters who have no concern for the growth of the State of Rajasthan and the Nation. This would seriously hamper the growth opportunities for the MRs and also the pharma industry which is helping our Government to achieve the target of 'Health for All' by providing safe efficacious affordable medicines and ensuring easy access to these medicines for all our people.
27. In view of the above, any move to restrict the work of the MRs to fixed hours in a day like a office / desk job is not feasible and can not be implemented.
28. However, we reiterate that there is no exploitation and the employees are not required to work beyond their work norms.

In view of the above, we respectfully submit that any proposal to fix the working hours for MRs is totally unjustified and unfair. We, therefore, request you not to entertain any such issues raised by the interested quarters who have no concern for the growth of the State of Rajasthan and the Nation in ensuring 'Health for All'.

Thanking you,

Yours sincerely,



**DAARA B. PATEL**  
**SECRETARY GENERAL**  
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