

## When a Pharmacist Refuses To Fill a Prescription

In several highly publicized incidents in Texas and Wisconsin, pharmacists refused to fill prescriptions for the “morning-after” pill based on religious or ethical beliefs. The Texas pharmacists lost their jobs, and the Wisconsin pharmacist was sued. Though such severe consequences are rare, these cases have generated a lot of controversy, and state and federal legislation.

Four states—Arkansas, Georgia, Mississippi and South Dakota—have passed laws allowing pharmacists to “opt out” of filling prescriptions they find morally objectionable, and at least 13 others are considering doing so.<sup>1</sup> The governor of Illinois, on the other hand, introduced legislation to compel pharmacies that carry contraceptives to fill all prescriptions for birth control. At least four other states are considering legislation that would require pharmacists to fill all prescriptions presented to them.

Arguing that no one has a right to come between doctors and their patients, Sen. Frank Lautenberg (D-NJ) introduced in April 2005 the Access to Legal Pharmaceuticals Act. The legislation would ensure that retail pharmacies fill all prescriptions. If an individual pharmacist refuses, the prescription would be given to another practitioner in the pharmacy. Also, at the patient's request, a pharmacy would be required to order prescription birth control not usually stocked if it stocks other prescription contraception. Delays in providing the requested contraception could result in a fine.

### Where the medical community stands

The debate has sparked interest throughout the healthcare community as well. In a Medscape survey conducted in July 2005, 77% of the healthcare respondents said pharmacists should not refuse to fill prescriptions that conflict with their

personal beliefs. Because of how respondents were classified, it is not clear how many pharmacists responded to the survey. **(To take the HPSO Web survey on this issue, go to [www.hpso.com/rxsurvey](http://www.hpso.com/rxsurvey).)**

The current controversy centers largely on the morning-after pill and oral contraceptives. But a pharmacist could object to filling other types of prescriptions for many reasons. A pharmacist who opposes assisted suicide, for example, may not want to fill a morphine prescription for a patient who has a painful terminal illness and has expressed a wish to end his life.



The American Pharmacists Association (APhA) is inclined to recognize pharmacists' right not to fill a prescription as long as the patient's needs can be met by others, according to Susan Winckler, RPh, JD, vice president of policy and communications and staff counsel. The APhA suggests that in addition to referring patients to another pharmacist or drugstore, concerned pharmacists also consider practice settings where this issue is less likely to arise, or working with physicians or other pharmacists to establish alternative dispensing methods. A pharmacist in a rural community, for example, might let physicians know what prescriptions he will not fill and suggest that they dispense the drugs themselves, if their state allows it. Or, he could refer patients to another pharmacist.

The APhA, the Academy of Managed

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Care Pharmacy, the American College of Clinical Pharmacy and the American Society of Health-System Pharmacists noted in a letter in the *Legal Times* that “pharmacists, like physicians and nurses, should not be required to engage in an activity to which they object.” That said, Winckler emphasized that the APhA opposes obstruction: “A pharmacist may step away from a prescription but shouldn't step in the way.”

Francis Manion, JD, of the American Center for Law and Justice, believes that pharmacists with ethical objections to filling certain prescriptions have some legal protections and defenses but that the courts are unlikely to rule on this issue any time soon. In the meantime, Manion says, “Pharmacists need to be proactive” and let their employers know from the outset where they stand so accommodations can be made. It's important, too, that each pharmacist knows the law on refusing to fill a prescription on moral grounds in the state where he or she practices.

You and your employer need to be aware of the “refusal issue” and be prepared to handle it properly so as to avoid a lawsuit.

### REFERENCE

1. Pharmacist Conscience Clauses: Laws and Legislation. Updated June 2005. [www.ncsl.org/programs/health/conscienceclauses.htm](http://www.ncsl.org/programs/health/conscienceclauses.htm). (Oct. 7, 2005).

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## ... that you should call HPSO

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immediately if you are deposed?

In almost all cases, there will be court proceedings prior to the actual malpractice trial. A deposition, which can be part of "the discovery phase," is a court sanctioned hearing in which all parties participate in a formal question and answer session to find out information relevant to the lawsuit. Whether you have been called to testify at a deposition or are named in a covered lawsuit as a defendant, CNA, the underwriter of the HPSO program, will ensure that you are prepared for the discovery phase of the suit by assigning a claim consultant and an attorney, when necessary, to represent you at the deposition.

It is important to be properly prepared even if you are deposed for a suit against your employer or a co-worker. Without proper guidance, you run the risk of incriminating yourself and being named in a lawsuit as well.

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## LESSONS

## FROM COURT

### Pharmacy dispenses sound-alike drug

The 42-year-old plaintiff had been taking quinidine sulfate regularly for 23 years, after an episode of paroxysmal atrial fibrillation. When she had the prescription filled, the defendant pharmacy mistakenly dispensed quinine sulfate. The plaintiff suffered various adverse effects from the medication, including bilateral hearing loss, hair loss, skin rashes, and to a lesser degree, peripheral neuropathy.

When the plaintiff returned to refill her prescription, the pharmacy discovered its error. Once the plaintiff stopped taking quinine sulfate, most of her symptoms improved—but the peripheral neuropathy remained.

The defense denied that the peripheral neuropathy was related to quinine sulfate, arguing that the medical literature showed no connection between the drug and the condition. The case went to mandatory arbitration, and the plaintiff was awarded \$120,000.

Staff. (2004). *Medical Malpractice Verdicts, Settlements & Experts*, 20 (12), 38.

### Advice from the expert:

*This case is a classic example of a dispensing error caused by "sound-alike" drugs. To avoid such errors, the pharmacy should have policies and procedures to ensure that the sound-alike (or look-alike) medications are not confused. The pharmacist also should be familiar with sound-alike or look-alike medications and alert to possible mix-ups.*

*One way to avoid this type of dispensing error is to store sound-alike/look-alike medications on separate shelves. Also, verify the drug's generic and brand name in all written and verbal prescriptions. You also may ask the patient why he or she is taking the medication to ensure that the drug you dispense is appropriate for the patient's condition.*

*If you suspect that the prescribing practitioner has confused sound-alike drugs, call the prescriber for clarification.*

*To view a recent table of look-alike/sound-alike drugs, go to [www.jcaho.org](http://www.jcaho.org).*

Mike Alfano, RPh, JD  
Philadelphia, PA

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## Moving into management: Responsibilities and risks

Moving into management is a great way to advance your career, but it's not without risk. If you decide to take the next step in your career, make sure you understand what new responsibilities this will entail. Review the job description and required qualifications for the management position. Determine whether your skills can support these new duties.

Also, make sure your training and education reflect the needs of the job. In-service training may be required, or you may choose to take managerial training courses on your own to fill in your back-



ground. Remember, performing tasks that are beyond your scope of practice or your job responsibilities can pose a liability risk.

If you will be supervising others, become familiar with the competencies and assigned duties of each member of your staff. To help protect everyone from liability, review their job descriptions and what procedures their licenses allow them to perform. Consider making necessary changes to protect you, the staff and the facility from a potential lawsuit.

Both you and your staff also should be familiar with the chain of command and where you fit into it. If problems occur or questions arise, you and those you supervise should know where to turn.

Finally, know your facility's policies and procedures and be aware that violating them can have consequences. Become familiar with employment and practice laws in your state, as well as your employer's policies. If you will have hiring and firing authority, for example, you'll have to under-

stand how to properly maintain employee files and what you can and cannot say when interviewing potential staff or terminating a subordinate.

## If you're asked to be an expert witness

The role of an expert witness is important: He or she helps jurors determine if a defendant maintained the standard of care or acted in the same way a reasonable and prudent healthcare professional with a similar background in similar circumstances would have acted. But before you agree to testify as an expert witness in a malpractice case, make sure you understand what is expected of you.

If you decide that you may want to offer your services, ask yourself these questions: Am I qualified? Do I feel comfortable with the attorney handling the case? Am I sure I have no conflicts of interest—such as having worked previously with the defendant—that would make me a less-than-ideal witness? Am I well versed in my specialty's standards of care?

If you answered “yes” to these questions, you may be well suited to be an expert witness. You will be asked to review copies of medical records and other documents relevant to the case, and provide an opinion about if and how a standard of care was met, as well as other related matters. If your opinion supports the attorney's position, you most likely will be asked to testify as an expert witness in court.

If you do serve as an expert witness, practice your testimony with the attorney before getting on the witness stand. Avoid looking too rehearsed, which could jeopardize your credibility. Answer questions objectively, honestly and succinctly. Do not volunteer information or provide testimony outside your area of expertise. Speak firmly and, whenever possible, try to use language that laypeople in the courtroom will understand and explain any medical terms. Above all, make sure your professional liability insurance includes a consulting services endorsement, which provides protection if your testimony results in a claim being brought against you. If you need to add this endorsement to your policy, call 1-800-982-9491.

## STUDENT ALERT!

## Keep Your Professional Liability Coverage Active After You Graduate

One of the most frequently asked questions HPSO receives is: Why do I need my own professional liability insurance if my employer already covers me?

You may already understand that your own policy offers coverage that will protect you against allegations of malpractice while you are working on your degree or certification, but you also want to make certain that you have sufficient protection in the event you are named in a lawsuit or need legal defense to respond to a complaint against you with the licensing board or ethics committee, even after you graduate.

While your employer may provide coverage for you, it may not cover you in all cases. You need to be clear about how your employer's coverage protects you. Often, an employer's policy is designed to protect its interests first. If you have your own policy, you will have the benefit of your own representation that is focused on your interests in the event of a lawsuit.

Some healthcare professionals avoid purchasing or continuing their own policy because they may have been told, “having your own insurance will make you a more likely target for a lawsuit.” This couldn't be further from the truth. A person can sue you anytime, for any reason. If a patient or client perceives he or she has been injured and perceives that this injury is the result of your providing, or failing to provide, adequate professional services, that patient could sue. This doesn't mean that you have been negligent. It means that the patient or client perceives negligence. Also, no one can know whether you have your own policy, unless you tell someone. In fact, if you are involved in a lawsuit, this information typically won't be uncovered until the “discovery phase.” At that point, you will already have been named in the suit.

By continuing your coverage as a professional, you can feel comfortable knowing that if something happens on or off the job, 24/7, you can rely on your own policy to protect you against allegations of professional malpractice.

# Meeting the Needs of the

## Barriers, compliance and more.

“Education is an essential aspect of caregiving for all elderly patients, but make sure you tailor the message to meet individual needs.”

**T**hroughout most of the 20th century, elderly Americans were the fastest growing segment of the population. As you care for these sometimes frail and medically needy individuals, you must pay special attention to their needs—and your own liability risks. Many of the youngest elderly (age 65 - 75) are healthy and hearty, not fully retired, and enjoying a busy and active “early” old age, though they may have chronic illnesses such as arthritis and diabetes.

Those in the intermediate group (75 - 85) are more likely to have several chronic illnesses and may need to depend on others for at least some of their care. Individuals in the eldest group (over 85) are more often frail and in poor health, and may no longer be able to live independently.

Despite their differences, most elderly patients have a common need for assistance in one or more of the following areas: accessing care, comprehending patient education materials, complying with complex medical regimens, receiving appropriate screening, following good health practices, and steering clear of the potential perils of polypharmacy.

### Common barriers to care

Limited finances are a significant barrier to care for many elderly patients. According to a 1995 Medicare benefits survey, elderly Americans spent 19% of their income on out-of-pocket healthcare expenses. Additional barriers may include lack of transportation, especially since some elderly no longer drive or have access to public transportation. Many elderly patients don't know how to tap into the healthcare system or negotiate the complicated process of applying for benefits like the new Medicare Part D (Rx) program. Elderly patients facing such difficulties may skip appointments, cut back on medications, or go without expensive devices not covered by insurance, such as hearing aids or eyeglasses. Healthcare providers can play a crucial role in helping patients access the services they need.

### Patient education is a must

Education is an essential aspect of caregiving for all elderly

patients, but make sure you tailor the message to meet individual needs. Counselors assisting younger, generally healthy clients, for example, may need to offer information on planning for and



adjusting to retirement or staying vigorous by adhering to appropriate diet and exercise routines.<sup>1</sup> Getting health messages across to someone older than 75 often presents special difficulties because this population generally knows less about staying healthy than younger, Internet-savvy individuals. In addition, language barriers, poor eyesight or hearing, and cognitive impairments may diminish understanding.

Surmount such limitations by asking the patient's caregiver to attend appointments so she can reinforce your message at home. Use foreign-language interpreters as needed, speak slowly, avoid professional jargon, and provide large-type educational materials. Be sensitive to cultural and generational differences.

### Fostering compliance

Elderly patients often need to follow complex medical regimens in managing chronic conditions or are

# Elderly—and Avoiding Risk

engaged in long recovery programs—from a stroke or broken hip—making compliance a significant concern.

A variety of tactics can ease these difficulties. Telephone reminders cut down on missed appointments, for instance; so does enlisting the cooperation of a family mem-



ber or friend. PTs, for example, working with patients who aren't following exercise regimens might devise solutions that better meet their preferences: encouraging exercising during commercial breaks in TV programs, for example, or varying routines. Similarly, the healthcare team can collaborate to help patients manage complicated medication regimens, with pharmacists following drug utilization review or disease management protocols, tracking compliance with asthma or diabetes regimens and informing the prescriber.<sup>2</sup>

## Screening—protection for you and your patient

Screening for conditions that are prevalent among the elderly is crucial to protect your patient from harm and to protect you from liability. Check vital signs before, midway and after a therapy session in frail patients and in those with heart disease or chronic obstructive pulmonary disease. Therapists who treat patients at home should check for hazards like throw rugs, wobbly banis-

ters or slippery surfaces.

Because elderly patients typically take multiple medications, conduct a thorough drug review, with an eye toward adverse drug interactions and serious adverse effects. Find out, too, if your patient has had the immunizations recommended for the elderly, such as a yearly flu shot and the pneumococcal vaccine; if not, direct him to a primary care practitioner or ensure that the vaccines are given before the patient leaves the facility.

Counselors—indeed, all providers—“should be alert for signs of depression and suicidal ideation in elderly clients, the age group with the highest rate of completed suicide in the population,” said Marie Bracki, public policy chair for the Association for Adult Development and Aging, a division of the American Counseling Association. The PROSPECT (Prevention of Suicide in Primary Care Elderly: Collaborative Trial) study, she noted, found that suicide rates were substantially lower in primary care practices that used nurses, social workers or master's-prepared psychologists to screen for and treat depression.

Every practitioner should screen for and report elder abuse, as well. In fact, most providers in almost every state have a mandate to do so. The standard for reporting is simply a reasonable suspicion that the individual has been abused; it is not necessary to be able to prove that the abuse occurred. The vast majority of states grant immunity from liability to clinicians who act on such a belief. But in a questionable situation, it may be wise to consult an attorney.

When screening for abuse, be on the lookout for physical signs, such as untreated pressure sores, urine burns and bruises or broken bones not likely to have been caused by falls. Counselors are especially likely to detect signs of emotional or financial abuse or neglect, which has the same reporting requirements as physical abuse.

## Be alert to legal pitfalls

To work successfully with elderly patients, many of whom are lonely and emotionally needy, it is crucial to develop warm relationships. But this presents a danger—the temptation to become involved with the individual in ways that cross professional boundaries. This so-called dual relationship opens the door to accusations of harming or exploiting the patient, raising the prospect of a lawsuit or discipline by your state licensing board or professional organization. According to Paul Nelson, executive director of the American Counseling Association Insurance Trust, dual relationships are the number one issue in risk management. “There is a thin line between helpfulness and involvement in a personal relationship....too many practitioners give in to temptations or good intentions and find they have crossed over that thin line,” he said.

As a healthcare professional, you understand that every elderly patient has unique needs. In trying to meet those needs, keeping patients safe must be your top priority, but avoiding legal risk should remain a concern as well.

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2. Monane M, Cataldi LA. Safe Prescribing: Interdisciplinary Solutions. *Geriatric Times* 2000. [www.geriatrictimes.com/g000632.html](http://www.geriatrictimes.com/g000632.html). (Oct. 1, 2005).

To read about polypharmacy in the elderly, see the Web Flash in the newsletter section of [www.hpso.com](http://www.hpso.com)



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## Occurrence and claims-made: What are the differences?

In the world of professional liability insurance, there are two types of policies, occurrence and claims-made. It's important to understand the difference between the two coverages.

An occurrence policy, like the one currently offered by Healthcare Providers Service Organization (HPSO), covers you for any incident that occurs during the policy term, regardless of when the claim is filed. As long as the incident occurred during the term that the policy was active, regardless of when you were named in a lawsuit, you are covered.

A claims-made policy also provides coverage for an incident that occurs during an active policy period, but only if the claim is also filed during that active policy period. In other words, if you are named in a lawsuit, the lawsuit must be filed during the policy period when the incident occurred or the policy will not protect you.

What's key with a claims-made policy is that you run the risk of not being covered for a claim discovered after the policy has expired. Therefore, if you decide to terminate a claims-made policy, you will need to purchase tail coverage to continue to protect yourself. This will extend the time that a claim can be reported, but the incident still needs to occur while the policy was active, or you won't be covered.

Also, a claims-made policy can typically cost less than an occurrence policy for the first three to six years (the premium can increase up to 30% a year). It may seem that there is a big difference in price; however, by purchasing a claims-made policy and tail coverage, you can end up spending as much as or possibly a little more than by purchasing an occurrence policy.

The bottom line is, learn the details of your coverage so you are not caught unawares. You may be shocked how policies differ from one another.

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## Coping with Short-Staffing

Staffing shortages are becoming more common in all clinical specialties, making it increasingly likely that you'll be asked to take on more patients or clients than usual, or to assume the duties of an absent coworker. Either situation can hinder your ability to care for patients or clients properly, increasing your risk of a malpractice lawsuit. The key to protecting yourself is to know what to do when you feel overwhelmed.

Determining the best action to take depends on the circumstances. If the short-staffing results in mandatory overtime, evaluate whether you feel able to provide safe patient or client care. If not, you can refuse the assignment. Notify your supervisor and draft a memo documenting the specific reasons. Keep a copy of the memo for your records.

During a department shortage, you may also be reassigned without warning and/or given duties you do not normally perform. If, for example, you are an occupational

therapist assistant and are asked to support an OT you don't typically work with, you may want to prepare yourself for the assignment by questioning the OT about any special patient needs. Don't hesitate to ask for help, or even direct supervision, if you are asked to perform a task with which you have limited experience.

Whatever the circumstances, your primary concern must be patient or client safety. If you feel you cannot provide adequate care, notify your supervisor at once. If nothing is done to remedy the situation, document the specific problems in an internal memo—not in the medical record. Include the date and time, number of staff and patients or clients on the unit, the circumstances surrounding each patient involved,



whom you notified and any action that was taken. Keep a copy of the memo for your records.

If short-staffing is a chronic problem at your facility and you are considering finding a better-

staffed position, be sure to follow your facility's procedures for resigning. No matter how frustrated you feel, never leave in the middle of a shift, which could result in a charge of patient abandonment.

It can be exasperating when you're faced with a staff shortage. Sometimes it's necessary to elevate the issue so management takes notice. Taking action can be intimidating, but keeping quiet belies your position as a patient advocate and can leave you open to a malpractice charge.

# The Risks of Drug Importation

As the cost of prescription drugs escalates, interest in buying cheaper medicines from other countries—such as Canada or Mexico—has risen. This practice, known as drug importation, is illegal under federal law. Though the number of Americans who import medication for personal use cannot be accurately determined, a few states—mostly along U.S. borders—are making it easier for residents to import drugs through state laws that, for example, allow citizens who visit Canada to bring back drugs. And, federal lawmakers are considering legislation to legalize drug importation. The American Pharmacists Association (APhA) and other medical groups are concerned about this activity.

Ensuring the safety of imported drugs and preventing counterfeit

drugs from entering the country are the APhA's primary concerns. An imported drug may not meet FDA specifications for manufacturing, proper drug strength, labeling and storage, and shipping conditions necessary for the drug's integrity—or may not be the drug the physician prescribed. These circumstances make it impossible for pharmacists to fill a professional obligation to counsel patients about all their medications.

Even worse, patients often do not tell their primary care practitioners or pharmacists about medications they are getting outside the U.S. The pharmacist then cannot identify potential drug interactions or maintain a complete patient profile, putting the patient's health at risk and placing the pharmacist at legal risk for not pro-

viding appropriate counseling.

Therefore, it is important to educate your patients about the dangers of drug importation and, according to the APhA, encourage them to use a single reputable local pharmacy to fill their prescriptions. You also should ask whether the patient has obtained any drugs from outside of the country. Explaining that this knowledge helps you to identify potential drug interactions and complications is one way to elicit a truthful answer.

Advise patients about the potential risks of imported drugs to safeguard their health while protecting yourself from potential liability. Documenting all discussions with patients about imported drugs also is vital, especially as a reference in the event of a lawsuit.

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## Q&As

### Addressing your concerns about Professional Liability

Q.

As a retail pharmacist, how can I minimize the risks of dispensing narcotics to patients?

– A.K., Minnesota

A.

Dispensing controlled substances can be tricky. On one hand, a patient may require the narcotic for his medical condition and refusing to fill it could put your license and his health at risk. On the other hand, he or she may be an addict and filling the prescription could put your license in jeopardy.

To reduce your risk, make sure a provider with a valid DEA license prescribed the drug for a valid medical condition. Search for information about the patient's health in the pharmacy's records and, if necessary, contact the prescriber.

Be alert to signs and symptoms of abuse. If a patient has a 30-day supply of Percocet and tries to refill it within a week, for example, be suspicious. Don't fill the prescription if you are not confident that it is for a valid medical condition. Document the reasons for your refusal.

Q.

I am the owner of a pharmacy, but I also work there. Would HPSO's professional liability insurance cover me? – L.P., Florida.

A.

Yes, if you are a pharmacist. HPSO's professional liability policy covers you, the owner, as well as any partner, manager or employee but only for those services provided in the capacity of a pharmacist on behalf of your pharmacy. Business owners often have other coverage needs for their retail business, which a professional liability policy from HPSO typically would not provide. If you would like more information about coverage for you or your pharmacy, call HPSO at 1-800-982-9491 or e-mail [service@hpso.com](mailto:service@hpso.com).