

Pharmacists and medical malpractice: A case study

In this case, the patient (plaintiff) was a 23-year-old female who was 23 weeks pregnant and had been experiencing slight vaginal bleeding with a suspected inadequate cervix. She was admitted to the inpatient obstetrical unit for observation and bed rest. Her physician ordered a progesterone suppository to stop the bleeding...*To read the full case with risk management recommendations, go to www.hpso.com/case-studies/casestudy-article/381.jsp.*

Healthcare Providers Service Organization Risk Advisor for Pharmacists

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How did I make that mistake?

A pharmacist enters a prescription into the pharmacy computer for a daily dose of methotrexate. A dose error warning appears on the screen, but the pharmacist reads the warning, bypasses it, and dispenses the medication as ordered. The patient receives an overdose and dies.

A likely contributing factor to this error was “inattentive blindness,” which refers to the failure to see something that is unexpected. In this example, the pharmacist wasn’t expecting the dose to be wrong so didn’t “see” it.

It’s challenging to reduce the risk of inattentive blindness because it tends to be involuntary, but knowing what it is and addressing factors that contribute to it could keep you from making an error that results in your being sued and, more important, avoid patient harm.

The “invisible gorilla”

In a classic 1999 experiment of inattentive blindness, researchers asked students to watch a video of two teams passing basketballs. The students had to silently count the number of passes made by team members in white shirts and ignore the number of passes made by those in black shirts. Halfway through the video, a student wearing a gorilla suit walks into the scene, stops, faces the camera, and thumps her chest before walking off. Amazingly, about half of the students failed to see the gorilla. They were concentrating on their task and missed the unexpected appearance of a gorilla. (To see the invisible gorilla video, go to www.theinvisiblegorilla.com/videos.html.)

Think of inattentive blindness another way: We see what we expect to see. We look at an order on a computer screen and mentally fill in the missing dose of a drug because we know what’s typically ordered.

Awareness of what factors contribute to inattentive blindness is a first step toward reducing the chance of an error. Researchers point to several factors: capac-

ity, expectation, and mental workload.

Capacity. Drugs, alcohol, fatigue, stress, and age can affect your capacity to pay attention and notice important events. In a healthcare system where sleep deprivation is common, fatigue is a particularly important consideration.

Expectation. Our expertise can sometimes work against us when it comes to expectations. For example, a pharmacist may be highly accomplished at working with a drug-counting device. When a new type appears, the pharmacist might inadvertently miss a counting error because the device is slightly different than the previous one.

Confirmation bias is one aspect of expectations. We are drawn to evidence that supports a belief or expectation and tend to ignore or dismiss one that doesn’t. If you have checked the labels on six different I.V. bags that one of your best pharmacy technicians has prepared, you could easily fail to notice that it’s wrong on the seventh I.V. bag because you expect it to be correct.

Mental workload. You are more vulnerable to inattentive blindness if your attention is diverted. You may be talking to another provider on the phone and grab a drug vial from the drawer where you normally expect to find it, not noticing it is a different drug. Our profession highly values the ability to multitask. Yet studies show you are more effective and efficient if you sequentially focus on one task at a time.

“Invisible gorillas” in healthcare

You can help protect your patients from errors and yourself from litigation by considering factors that contribute to inattentive blindness both at the unit level and healthcare in general. Being aware of this risk can help you minimize errors and increase patient safety.

This article has been edited for space. To read the full article with resources, visit www.hpso.com/newsletter13.

How to prepare for a deposition

Your worst nightmare has come true: You have been subpoenaed to give a deposition as part of a lawsuit. The patient is a 56-year-old man with osteomyelitis who was receiving intravenous vancomycin and gentamicin in a homecare setting. At one point you reviewed the results of laboratory tests ordered by the physician and found that a change in dosage was needed. When you contacted the physician, he adjusted the dosage but chose not to order a creatinine level, which you suggested. Subsequently, the patient developed vestibulopathy and postural instability as a result of long-term effects from the antibiotics. Now the patient says he was never told about the possibility of ototoxicity, and the patient's attorney adds that you should have insisted the medication not be given until a creatinine level was obtained.

You certainly aren't the first pharmacist to experience a lawsuit. A recent HPSO claim study found that more than \$16 million was paid in professional liability judgments, settlements, and expenses on behalf of pharmacists from 2002 through 2011. The most severe allegation, from a financial loss perspective, was giving a patient the wrong drug.

The fact that others have been in your situation is of little comfort to you, however, as you face your first experience in giving a deposition. How can you cope with the knots in your stomach and mental anxiety?

In the same manner as you would prepare for your patients, you need to prepare for a deposition so you can feel confident in your ability to be an effective witness. You can take several steps to prepare yourself, beginning with understanding the nature of a deposition.

What is a deposition?

A deposition is a legal proceeding for gathering information from someone named in a lawsuit or who is a witness in a lawsuit. Depositions occur in the discovery phase of a lawsuit—the investigative process that takes place after the complaint is filed and before the trial.

Depositions are key in a jury trial. Jurors in medical malpractice trials want to hear the defendant describe what happened. Furthermore, during the trial you will be held to the facts you gave at your deposition. During a deposition, which usually takes place in the plaintiff attorney's office, you will testify under oath. A court reporter will record your testimony verbatim, and you may be videotaped.

12 tips for giving a deposition

- Listen carefully and think before you speak. Don't be pressured into rushing a reply.
- Speak slowly and clearly and answer courteously.
- If you need to consult the medical record, ask.
- If your attorney objects, stop speaking.
- Don't look at your attorney when a question is asked; this is your testimony.
- If you don't know the answer to a question, say so instead of guessing.
- If you don't remember something, say so.
- If you don't understand a question or word being used, don't answer; ask for clarification or rephrasing.
- Answer only the question asked; don't anticipate further questions.
- Understand the theme of your case: You should know every allegation being made against you and the best responses to be made for the defense.
- Be confident and self-assured. If you need a break or drink of water, ask.
- Tell the truth.

What to do if you are subpoenaed

Be sure to notify your supervisor and HPSO, your professional liability insurance provider, that you have received a subpoena to provide a deposition.

What is the plaintiff attorney's goal?

The plaintiff's attorney will try to restrict you to one version of the incident or facts so your trial testimony is consistent with what you said during the deposition. The plaintiff's attorney may also try to maneuver you into testifying inconsistently by rattling you or undermining your credibility, while assessing your strengths and weaknesses as a witness. You'll learn more about how to conduct yourself at the preparation meeting with your attorney assigned to you by CNA, the insurance underwriting company for the HPSO program.

What should I do before the preparation meeting?

Usually, the preparation meeting is held about a month ahead of the deposition and follows at least

one face-to-face meeting where you learn about the details of the lawsuit, including the specific allegations being made. Before the preparation meeting with your assigned attorney, thoroughly review the medical record. Consider all aspects, including dosages, route of administration, and patient education. It may help to develop a timeline showing the chronology of what occurred. To the best of your recollection, discuss with your attorney what you recall of the incident.

What happens during the preparation meeting?

Your attorney will work with you to create a "theme" for your defense. For example, let's say that your notes about requesting the creatinine test are unclear, but they clearly indicate you instructed the patient to promptly report signs of ototoxicity. In that case, the theme might be that even though the paperwork may have suffered, care did not, as indicated by the patient education you provided. You will want to keep that theme in mind at all times during the deposition so the plaintiff's attorney doesn't pressure you into making statements that do not support your case.

This meeting is also a time when your attorney can help you prepare by discussing questions the plaintiff's attorney will likely ask and your possible responses. Finally, your attorney will review guidelines you should adhere to when you give your deposition (see *12 tips for giving a deposition*). Keep in mind that your role is to only answer the questions you are asked; do not explain or volunteer information.

You will also meet with your attorney the day of the deposition to touch base and discuss any last-minute concerns. Your attorney will be with you through the entire deposition. Remember to dress professionally because first impressions count.

How to prepare your defense before a regulatory board

Another instance where you will need to prepare with an attorney is to defend yourself when someone files a complaint against your license. License defense is needed when someone (patient, patient's family, colleague, or employer) files a complaint with a board of pharmacy against a pharmacist's license. According to a recent HPSO claim study, the average cost to defend such a complaint is \$3,685.

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An action taken against a pharmacist's license differs from a professional liability claim in that it may or may not—as in the case of professional misconduct—involve allegations related to patient care. In addition, payments made as a result of a claim cover defense attorney costs, as opposed to being part of a settlement payment to a plaintiff. License protection ensures you have coverage for legal representation for defending yourself against allegations that could lead to discipline or revocation of your license.

You are an expert

Remember that pharmacists are considered health-care experts. To give a deposition like an expert, you must prepare like an expert. It may help you avoid a trial and give you peace of mind. To help you better understand the deposition process, CNA, the insurance carrier for the HPSO program, has created a video, *Preparing for a Deposition*. For more information, visit www.hpso.com/resources/deposition-preparation-video.jsp.

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Pharmacist malpractice claim report identifies risks, gives prevention strategies

A report from Healthcare Providers Service Organization (HPSO), in collaboration with CNA, found that from 2002 to 2011, More than \$16 million was paid in professional liability judgments, settlements, and expenses on behalf of pharmacists, with an average total incurred of \$101,269 per claim. *2013 Pharmacist Liability: A Ten-year Analysis*, released March 2013, also found that professional liability claims were most likely to involve allegations that the pharmacist dispensed the wrong drug or wrong dose. Overdose was the most common patient injury for pharmacist closed claims.

In addition to the quantitative claims analysis, the report provides selected highlights from HPSO's Qualitative Work Profile Survey, examining the potential relationship between a variety of key demographic and workplace factors and professional liability exposure. Finally, the report includes an analysis of license protection defense claims, risk control recommendations, and a self-assessment checklist.



You can find the entire *2013 Pharmacist Liability* report at www.hpso.com/pharmclaimreport2013.