

Presented by  
HPSO and CNA

## Pharmacists Medical Malpractice Case Study with Risk Management Strategies

**Case Study:** Failure to check for over-utilization of narcotics from prescribing health care provider, failure to monitor control substance inventory, failing to engage in professional communications with the prescribing health care providers, failing to take proper care in filling the prescriptions

**Indemnity Payment:** \$0.00

**Legal Expenses:** Greater than \$150,000

### Summary

This case involves our insured pharmacist employed by small local pharmacy that shared building space with an urgent care/walk-in physician clinic. The pharmacist filled the following prescriptions on October 5 for a 32 year-old female:

- Oxycodone 30 milligrams, as needed for pain, take every eight hours for 30 days (90 pills)
- Alprazolam 0.5 milligrams, as needed for anxiety, take twice a day for 30 days (60 pills)
- Methadone 40 milligrams, as needed for pain, take twice a day for 30 days (60 pills)

The prescriptions were signed by a practitioner working in the clinic. It was later alleged that the practitioner did not physically examine the patient and therefore, the prescriptions were not written for a legitimate medical purpose. According to the available clinic records, the patient was new to the clinic and claimed chronic pain from a failed hip and back surgery.

On the morning of October 7, the patient's boyfriend called 911 because she was non-responsive. The ambulance arrived and she was pronounced dead at the hospital. Given her young age (32 years-old), an autopsy was ordered. The autopsy report stated cause of death was "Acute cardiorespiratory arrest, secondary to methadone abuse. She also showed high levels of cannabinoids and opiates in her system". The blood laboratory results show that the methadone concentration was not as high as is typically seen in drug overdose cases, so it was possible that the use of marijuana increased the likelihood of respiratory depression. The manner of death was classified as an accident.

Due to the unclear circumstances that the body was found, police investigated the death. The police found prescription drug bottles, drug paraphernalia as well as marijuana present in the house. Witnesses were interviewed and the patient's father (plaintiff) stated that he was not surprised to learn of his daughter's death as he knew she had a drug problem.

Medical malpractice claims can be asserted against any healthcare provider, including pharmacists. In fact, over \$16 million was paid for malpractice claims and expenses involving pharmacists, according to the CNA HealthPro 10-year study.\*

This claim involves an insured licensed pharmacist working in a privately owned pharmacy.



The police noted that several pills were missing from the prescription bottles. According to the police report several pills were missing from the recently filled prescription which included:

- Seven oxycodone
- Ten alprazolam
- Six and a half methadone

Her blood levels on the toxicology screen do not support her having taken such high doses, so the possibility of her selling or sharing medications was considered.

Three months after the patient's death, the father filed a lawsuit against many healthcare providers including our insured pharmacist.

### Risk Management Comments

The plaintiff claims that these prescriptions were filled without any investigation by the pharmacist and in excessive and deadly doses that lead to the patient's death.

Later that same year, the police received complaints of

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improprieties at the urgent/walk-in clinic. As part of the investigation, detectives posed as patients and received prescriptions for narcotics. Members of the clinic staff were found to be practicing outside of their professional expertise. Several weeks later government agencies made several arrests of the owner, staff and two patients.

The investigation also showed that prescribing practitioners routinely pre-signed prescription pads for use by the clinic staff and as a result, the medical provider's medical license was suspended.

Our pharmacy expert opined that the patient's prescriptions were valid as written. They stated that there were not any obvious discrepancies or omissions that would require the pharmacist to question them. It was the expert's opinion that under these circumstances, all that the pharmacist was required to do was to make certain the patient was familiar with the drug and knew how to take it.

Our pharmacist didn't have an independent recollection of the patient, but in reviewing his pharmacy documentation, he indicated that he questioned the patient as to the dosing, drug to drug interactions, allergies, side effects and narcotic management.

## Resolution

A motion for final summary judgment was filed with the court. Pending the court's hearing of the motion, the claimant's attorney requested a settlement offer. The pharmacist and his attorney declined to offer a settlement and the decision was made to await the results of the motion.

The plaintiff's attorney subsequently filed a Notice of Voluntary Dismissal without Prejudice for the pharmacist and no indemnity was paid. Expenses were in the \$150,000 range, representing a successful outcome for the pharmacist even though the claim took seven years to successfully defend.

## Risk Management Recommendations

- **Counsel each patient regarding his/her medication** and document the process, including patient refusals of counseling.
- **Encourage patients to ask questions regarding their medications.** Respond to all such questions until they are able to correctly repeat back the information, and document this in their pharmacy record.
- **Document all discussions with the patient, family members, the prescribing practitioner and appropriate healthcare personnel.**
- **Evaluate whether workplace practices or conditions represents an unacceptable risk for patient safety or liability events.** Take appropriate corrective actions, up to and including seeking alternative employment/partnership.
- **Contacts the prescribing practitioners for questions related to a prescription and speak directly to the prescribing practitioner.** Relying on acceptance from the electronic pharmacy practice system and/or approval from the patient's health insurance is not a safe practice.

## Guide to Sample Risk Management Plan

Risk Management is an integral part of a healthcare professional's standard business practice. Risk Management activities include identifying and evaluating risks, followed by implementing the most advantageous methods of reducing or eliminating these risks – a good Risk Management Plan will help you perform these steps quickly and easily!

Visit [www.hpso.com/risktemplate](http://www.hpso.com/risktemplate) to access the Risk Management plan created by HPSO and CNA. We encourage you to use this as a guide to develop your own risk management plan to meet the specific needs of your healthcare practice.



\*CNA HealthPro 2013 Pharmacist Liability, CNA Insurance Company, March 2013. To read the complete study along with risk management recommendations, visit [www.hpso.com/pharmclaimreport2013](http://www.hpso.com/pharmclaimreport2013).

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