

Presented by
HPSO and CNA

Pharmacists Medical Malpractice Case Study with Risk Management Strategies

Case Study: Alleged wrongful death resulting from the failure to counsel the decedent on the dangers of concurrently taking Flomax, Diltiazem and Lexapro

Indemnity Payment: \$0

Legal Expenses: In excess of \$25,000

Summary

Note: There were multiple co-defendants in this claim who are not discussed in this scenario. Monetary amounts represent only the payments made on behalf of the pharmacist. Any amounts paid on behalf of the co-defendants are not available. While there may have been errors/negligent acts on the part of other defendants, the case, comments, and recommendations are limited to the actions of the defendant; the pharmacist.

The decedent patient (plaintiff) was a 48 year-old male who was well known to the defendant pharmacist as a multiyear customer of his pharmacy business. The patient had a history of diabetes, obesity, and hypertension and was a smoker. He was taking Diltiazem for hypertension, and Lexapro for anxiety and depression. He was presented with a prescription for Flomax to treat newly diagnosed urinary symptoms related to prostate enlargement.

The defendant pharmacist entered the patient's Flomax prescription into the computerized system and identified no interactions among the patient's drugs and no contraindications to dispensing the Flomax as ordered. He provided the patient with printed information regarding the medication, including any warnings or potential side effects. The patient indicated he had no questions regarding his medications when offered additional discussion and explanation by the defendant pharmacist.

One week after starting the Flomax medication, the patient suffered a myocardial infarction and emergency medical services personnel's efforts to revive him were unsuccessful. The patient's wife, as the representative of his estate, filed suit against the pharmacy and the defendant pharmacist alleging the patient's wrongful death, pain and suffering, loss of consortium, medical and funeral expenses, and loss of earnings. The claimant's counsel offered an expert opinion that the drugs dispensed by the defendant pharmacist represented a risk of adverse enzymatic interaction and that the defendant pharmacist should have warned the patient of an increased risk of cardiac injury.

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 case study involves a pharmacist who was also the owner of the pharmacy where he practiced.



Resolution

A pharmacology expert was retained and stated there was no credible evidence of any interaction among the drugs already being taken and the addition of Flomax. The enzymatic reaction cited by the plaintiff's expert could occur but if it did, it would not cause adverse interactions among the medications the patient was taking. The determination was that the defendant pharmacist had acted fully within the standard of care.

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 offer was declined by the defense, 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 both the defendant pharmacist and the pharmacy. This was a very successful result for the pharmacist.

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▶ Risk Management Comments

The defendant pharmacist had practiced within the standard of care and documentation supported his actions. The defense expert effectively contradicted the opinion offered by the plaintiff's expert.

Managing and dispensing drugs has inherent risks that can be life changing as in this example. The need for systems, processes, and protocols that minimize the possibility of human error are crucial, but they do not replace the consistent adherence to the standard of care by a trained and experienced pharmacist. Additionally, documentation that supports the standard of care is often the basis for a successful defense.

▶ Risk Management Recommendations

- **Maintain and consistently adhere to appropriate policies, protocols, and systems to identify potential drug interactions or known contraindications** among a newly prescribed drug and other drugs and non-prescription remedies also used by the patient.
- **Maintain current patient history and drug information** and update the information at each encounter.
- **If electronic systems are used to identify potential interactions, ensure all drugs are entered, medical information is up to date, new drug information is regularly installed,** and properly address any system warning.
- **If no electronic tracking system is used, ensure that the pharmacist has immediate access to computerized resources such as the United States Pharmacopeia,** the American Hospital Formulary Service, or other reputable sources of current drug information.
- **Ensure that prescription bottles include all relevant information,** including any warnings or patient special instructions.
- **Provide written patient instructions,** counseling regarding medication regimen and the opportunity for the patient to ask any questions.
- **Offer each patient the opportunity to ask questions,** concurrent with counseling and document the patient's response.
- **Document all written drug information,** instructions and information provided to the patient.

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 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.

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