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HPSO and CNA

## Pharmacists Medical Malpractice Case Study with Risk Management Strategies

**Case Study:** Failure to refer patient to a physician, failure to counsel patient on medication uses and expectations, inflating a patient's expectations through false advertising, publishing false marketing material

**Indemnity Payment:** Greater than \$120,000

**Legal Expenses:** Greater than \$160,000

### Summary

Note: Monetary amounts represent only the payments made on behalf of the pharmacist and his pharmacy practice. 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 defendants; the pharmacist and his pharmacy practice.

A 42 year-old male patient (plaintiff) went to the defendant pharmacist's pharmacy for what seemed to be a bite or sore on the back of his leg. The area of concern was hard, blackish, painful in the center and had different shades of red around it. The patient advised the defendant pharmacist that he first noticed the area the prior evening when it was only a small red spot. Upon the defendant pharmacist's inspection of the patient's leg, the patient alleges that the pharmacist assessed the area as a brown recluse spider bite and stated "he had just the thing". After prescribing and dispensing two topical medications (Erythromycin Topical Solution USP 2 percent and Clotrimazole 1 percent with Hydrocortisone Cream 1 percent) to the patient, the defendant pharmacist instructed the patient to use the medications in its entirety and left the patient with a confident feeling that he knew the cause of the spot on his leg. The patient claims he was never told or given written communication by the defendant pharmacist to follow-up with a physician or emergency department if the area did not improve and/or became worse.

The patient used the medications assuming he would be better after a few applications of the topical medications. However, his condition continued to worsen over the next two days and he was compelled to go to the emergency department. After his wife transported him to local emergency department, the patient was told by emergency department physician that he should have seen by a physician for his leg and that one of the topical medications "had made matters worse". The patient was admitted in the hospital for 28 days with a diagnosis of community-acquired necrotizing Methicillin Resistant Staphylococcus Aureus (MRSA), which included multiple debridement surgeries, intravenous

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 licensed pharmacist and his business of a privately owned pharmacy. The pharmacist advertised his pharmacy as a prescribing pharmacy.



antibiotics and skin graft surgeries. The patient has been left with permanent scarring and permanent disability of his leg.

The patient was uninsured during his hospitalization and subsequent treatments. He alleged that he was forced to sell his house and 95 percent of his possessions to pay for his medical bills. The patient asserted a claim for lost wages, outstanding medical bills and credit card debt during his 16 month treatment in the amount of \$180,000.

### Resolution

The patient's experts were critical of the defendant pharmacist's failure to refer the patient to a physician or emergency department. The standard of care is not to prescribe two medications, but direct the patient to immediately see a doctor or go to the emergency department. Criticism was also given to the pharmacist advertising as an "expert in prescribing pharmaceuticals" and to his pharmacy as "promising to provide the highest quality of patient care with 100 percent satisfaction".

The possibility of a defense verdict was deemed to be less than 30 percent.

*continued...*

## ▶ Risk Management Comments

Experts assessed the potential exposure/claim value of the case for all defendants (including statutory prejudgment interest) as being between \$150,000 and \$300,000.

## Risk Management Recommendations

### The prescribing pharmacist must:

- **Develop maintain and practice professional written and spoken communication skills.** Consider what information is essential to share, when to share it, how to share it (i.e., in writing, face to face or by telephone).
- **Comply with pharmacy and regulatory requirements, document all discussions with patients** and ensure that this documentation is included in both the patient and pharmacy records.
- **Know competencies-including experiences, training, education and skills** are consistent with the scope of work requested by my pharmacy and/or clinical setting.

### The pharmacy owner must:

- **Prohibit messages that exaggerate benefits and minimize risks**, or that may encourage prospective patients to expect care beyond the organizational capabilities.
- **Choose terminology with care**, avoiding superlative words and phrases such as “best care,” “highest quality,” “state of the art,” which may result in allegations of breach of an express or implied warranty.
- **Regularly review advertising material and remove any out dated information.**
- **Educate staff about marketing-related rules and polices**, as well as risks associated with exaggerated treatment claims and implicit guarantees.

## 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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