Presented by HPSO and CNA

Pharmacists Medical Malpractice
Case Study with Risk Management Strategies

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.

Case Study: Failure to evaluate workplace practices, failure to contact the prescribing physician

Indemnity Payment: Greater than $240,000
Legal Expenses: Greater than $150,000

Summary

(Monetary amounts represent the payments made on behalf of the pharmacist working for an independent pharmacy practice and do not include any other settlements made on behalf of other parties.)

The patient (plaintiff) was a 42-year-old male with a 25-year history of chronic debilitating migraines. His medical records indicated that his migraines were due to concussions he received while playing high school and college football. His migraines were also exacerbated by a devastating motorcycle accident he sustained his junior year of college which ended his football career.

The patient was treated with a variety of narcotics through a combination of intramuscular injections (IM) and/or oral medications. He sought treatment for migraine conditions so frequently that one or more of his physicians taught his father and mother to administer injections of narcotics so that the patient would not have to go to the hospital to obtain treatment. Due to his overuse of medications, he underwent narcotic detoxification on three occasions within two years because of a belief that his condition was worsened by his repeated narcotics use. In the last five month of his life, the patient had 44 visits with his primary treating physician, seven visits with various other treating physicians and 44 medication prescriptions, mostly narcotics, and all related to headache complaints.

On his last visit to his primary treating physician, he was seen for complaints of a migraine, nausea, vomiting and a low grade fever. The physician noted that the patient's weight increased from 200 pounds to 228 pounds from the previous visit eight days prior. The physician also noted that his psychological evaluation was good, with no mood swings and his memory and judgment were intact. The physician ordered an intramuscular injection of meperidine 100 mg, promethazine 25 mg and diazepam 10 mg and gave him a prescription of hydromorphone 8 mg (120 tablets, which was a 20-day supply) and diazepam 10 mg (48 tablets, which was an 8-day supply).

Two days after his visit to his primary treating physician, the patient was found dead in his home by his parents. The medical examiner determined that decedent's death was accidental overdose of hydromorphone and diazepam (both medication blood levels were noted to be five times greater than the lethal level for the narcotics) and bronchopneumonia as a contributing factor. Over the next few weeks following the patient's death, multiple recently prescribed medication bottles were found throughout the decedent's home from various treating physicians and traced back to being dispensed by the defendant pharmacist. The majority of the medication bottles were empty and some contained significantly less pills if taken per instructions.

The parents, as administrators of the patient's estate, filed a lawsuit against the patient's primary care physician, the defendant pharmacist's employer, the defendant pharmacist and other pharmacies and pharmacists in the area. Their claim was that all parties involved in their son's care, the physician, pharmacies and pharmacists caused his narcotic addiction that ultimately lead to his death.

The defendant pharmacist customarily opened the pharmacy on a daily basis. Since she was typically the first pharmacist on duty, she would sign into the electronic pharmacy practice system every morning. Since the pharmacy was relatively small, several other pharmacists would use her password and identification to input, fill, check, verify and dispense medications. During her deposition, she testified that she did not dispense all the medications even though her name appeared on the majority of the prescriptions filled at her employer. She was aware that other pharmacists were using her password and identification to fill medications, but due to the limited number of pharmacists working at her employer she did not realize the impact sharing passwords would have until this lawsuit was filed. She testified that on one occasion of dispensing medications to the patient, she questioned the volume of prescriptions prescribed to the patient with her employer, but was instructed that as long as medications past the pharmacy's safety checks it was fine to fill the prescriptions. The defendant pharmacist did not report the prescription volume the patient was receiving to any medical or pharmacy licensing board and kept dispensing prescriptions despite her concerns.

continued...

CNA HPSO

Resolution

The patient was well known in his community due to his successful high school and college football career. His parents were also well known as successful business owners and helped hide their son's narcotic addictions until his death. The patient's death was highly publicized in the local paper for several months and the local pharmacy saw a loss in revenue for over two years due to their role in contributing to the patient's addiction.

The patient's experts claim the defendant pharmacist negligently filled prescriptions that were not medically necessary, were in quantities significantly greater than permitted by the applicable standard of pharmacist care and were dispensed earlier than permitted or duplicated other narcotics.

The defense experts testified that a pharmacist has no duty to determine whether a patient has an addiction and there is no standard that requires the pharmacist to withhold medications and to do so would risk the health of the patient.

The weaknesses of the claim according to the defense included, the death of a well-known man, the number of pills prescribed to the patient and dispensed by the defendant pharmacist's employer, the defendant pharmacist's involvement in dispensing narcotic medication to the patient several times in the last six months of his life despite her concerns, the defendant pharmacist's limited ability to explain her defenses in detail while avoiding the risk of self-incrimination and being dragged into a courtroom with the inherent uncertainties of trial.

The possibility of a defense verdict was deemed to be greater than 70 percent, but due to the lengthy legal process of this claim (five years), the defendant pharmacist pushed for settlement

Risk Management Comments

The primary treating physician's medical license was suspended and was found guilty of 20 counts of aiding and abetting in illegal distribution of drugs by a physician to a patient and four counts of illegal distribution of drugs by a physician to a patient resulting in death.

Experts assessed the potential exposure/claim value of the case for all defendants (including statutory prejudgment interest) as being between $400,000 and $450,000.

Risk Management Recommendations

The prescribing pharmacist must:

- ***Challenge expectations.*** Routine can produce an "automatic pilot" phenomenon, impairing an individual's ability to notice important information.
- ***Evaluate whether workplace practices or conditions represents an unacceptable risk for dispensing errors.*** Take appropriate corrective actions, up to and including seeking alternative employment/partnership.
- ***Contact the prescribing practitioner 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.

The pharmacy owner must:

- ***Implement electronic pharmacy practice systems that support patient safety by documenting prescriptions, dietary supplements, over-the-counter preparations and diagnosis and other relevant patient information in the patient's pharmacy record.*** The following guidelines can enhance system performance:
  - Insist upon ongoing education for pharmacy staff members in the use of all aspects of electronic systems.
  - Periodically require dispensing staff to dispense medications without utilizing the electronic systems. Monitor their actions to protect against over-reliance on electronic decision-making algorithms and to ensure that staff maintain a high-level of dispensing and documentation skills in the event electronic systems are interrupted for any reason.
- ***Perform at least annual performance reviews for each employee, including a review of errors, "near misses," medication safety breaches, document requirements compliance, existing skills and directly observed competencies.*** Provide pharmacy staff with coaching, mentoring, and clinical and system education as needed to ensure that medication safety requirements are satisfied.

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 HPSO®

*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.

X-11451-0715