

Presented by
HPSO and CNA

Pharmacists Medical Malpractice Case Study with Risk Management Strategies

Case Study: Failure to appropriately store medication in pharmacy, failure to supervise staff while dispensing medications, failure to assure that dispensed medication is in proper container, failure to identify drug expiration prior to dispensing medication

Indemnity Payment: Greater than \$80,000

Legal Expenses: Greater than \$35,000

Summary

(Monetary amounts represent the payments made on behalf of the pharmacist-owner.)

This claim involves a two-year old child with a one-year history of epilepsy and seizure disorder. The patient was prescribed oxcarbazepine 300 milligrams/5 milliliters, to take 180 milligrams twice-a-day for seizures, which controlled her seizures for the first six months she was prescribed the medication. After the initial six months of being on the medication, the parents' health insurance changed. This change made it difficult for the family to afford the patient's medication at the current pharmacy, so the mother took the remaining prescription to an insurance-preferred pharmacy.

The second pharmacy (defendant) received the medication as a seven-week supply, but due to the patient's insurance requirements, could only dispense a 30-day amount of the medication. The pharmacy technician dispensed the medication under the guidance of two pharmacists (also defendants) and noted the directions to dispense the medicine in an amber colored bottle.

The mother refilled the medication for five months, but she noticed that at the end of each month the child's seizure activity would increase. The seizure activity led to two hospitalizations and a delay in the child's fine and gross motor skills. The family sought a second opinion from a pediatric neurologist several hundred miles away and while at visit the patient's mother provided the physician with all of the child's medications. When the physician reviewed the medication bottles he noticed that the oxcarbazepine was not in a glass bottle, but instead was in a plastic liquid medication bottle. On examination, the liquid medication appeared hardened and the mother stated that this had happened one other time and she would simply add water to break-up the medication.

The physician instructed the mother to discard the oxcarbazepine and gave her a new prescription. He requested the medication be filled at a different pharmacy as he felt that this may be the cause of the child's increased seizure activity. At the patient's follow-up appointment six-weeks later, the patient's mother stated that the child's seizure activity had improved and her child appeared more alert.

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 scenario involves a pharmacist-owner and pharmacists working in a community-based pharmacy.



One year after the child's second opinion, the patient experienced very few seizures and the pediatric neurologist stated that she was progressing appropriately for a 3½-year old. Eighteen months after the insured pharmacy filled the patient's first medication, the pharmacists as well as the pharmacist-owner received a notice from the parents' intent to sue. The claim was that the oxcarbazepine was dispensed incorrectly and this dispensing error decreased the efficacy of the medication contributing to the child's increase in seizures. This decrease in seizure control caused the child to suffer inattention, poor focus issues and a delay in her fine motor skills. The child currently attends occupational and physical therapy to help her with normal activity.

Resolution

Our experts were not able to defend the claim against the pharmacy or pharmacists. In fact they stated that the medication should have been dispensed to the patient in the original medication glass bottle, despite the patient's insurance requirements of refilling medications every 30-day. The patient was the only person getting this prescription at the pharmacy, so there was not any reason why the patient could not have received the entire bottle.

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The possibility of a defense verdict was deemed to be less than 10 percent.

➤ Risk Management Comments

After the intent to sue was received, the pharmacist-owner verified the procedures for dispensing oxcarbazepine. The dispensing directions were very specific regarding the medication being dispensed in an amber colored bottle, but directions were not clear that the medication needed to be in the original glass bottle. The pharmacists and pharmacy technicians that dispensed the medication agreed that the medication's original bottle was amber colored, but thought the directions should have specified an amber colored **glass** bottle.

Experts assessed the potential exposure/claim value of the case for all defendants (including statutory prejudgment interest) as being between \$150,000 and \$200,000.

➤ Risk Management Recommendations

Prescribing pharmacist:

- **Do not dispense any unfamiliar drug without performing appropriate research** regarding its uses, contraindications and hazards.
- **Ensure that prescription bottles or other containers include all relevant information**, especially any warnings or special patient instructions.

- **Evaluate whether workplace practices or conditions represent an unacceptable risk for dispensing errors**, and take appropriate corrective actions.

Pharmacy owner:

- **If electronic applications are used to identify dispensing requirements, interactions or contraindications**, ensure that all drugs are entered and medical information is regularly updated, and also warning systems conspicuously address hazardous situations.
- **If an electronic tracking system is not used, ensure that the pharmacist has immediate access to computerized resources**, including the United States Pharmacopeia, the American Hospital Formulary Services and other reputable sources of current drug information.
- **Periodically require dispensing staff to dispense medications without utilizing the electronic system**. Monitor their actions to protect against over-reliance on electronic decision-making algorithms and to ensure that staff maintains high-level dispensing documentation skills in the event electronic systems are interrupted or inaccessible for any reason.

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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