

Presented by  
HPSO and CNA

## Pharmacists Medical Malpractice Case Study with Risk Management Strategies

**Case Study:** Improper prescription dispensed, failure to provide appropriate safe medication dispensing education to non-clinical staff, failure to advise patient of potential side effects and/or adverse effects that may occur while taking medication

**Indemnity Payment:** Greater than \$300,000

**Legal Expenses:** Greater than \$100,000

### Summary

(Monetary amounts represent the payments made on behalf of the individually insured consulting pharmacist and pharmacist-owner.)

A patient (plaintiff), following an early morning emergency department (ED) visit for pneumonia, arrived at our insured's pharmacy (defendant) to pick up his prescription for antibiotics. His medication had been forwarded electronically to the pharmacy by the ED physician. The cashier at the pharmacy gave the patient four medications (diazepam 10mg, gabapentin 300mg, cyclobenzaprine 10mg, and diclofenac 50mg), which was prescribed for another patient. The mistake was made in handing the patient the wrong bag of medication which was clearly marked with another patient's name.

No one at the pharmacy realized the dispensing error and both patients left with medications that were not prescribed for them. The cashier testified that she called out the patients' name, but could not recall if she verified addresses or any other secondary identification prior to giving them the bags of medications.

A few hours later and before the error was discovered, the patient returned to pharmacy claiming to have ingested one of each of the four prescriptions. He consulted with an employed pharmacist (defendant) and she instructed him that he may experience a little dizziness from the medication, but he just needed to go home and rest. The pharmacist did not instruct him to avoid driving or drinking alcohol.

After leaving the pharmacy, the patient became drowsy and fell asleep while driving resulting in a one car accident when his vehicle left the road and struck a tree. He contends he injured his back, neck, shoulder and knees resulting in partial permanent disability. Three months following the accident, the patient filed a lawsuit against the pharmacy, the pharmacy-owner, the consulting pharmacist and the cashier.

### Resolution

The pharmacy owner was considered the "pharmacist-in-charge" and under that particular State law, is liable for actions of his employees for failing to deliver the correct medication to the correct patient. While the pharmacy-owner did not have any independent negligence in this matter, he was responsible as the

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 an employed pharmacist working in an independently owned pharmacy franchise.



"pharmacist-in-charge" for the clear negligence of the cashier and if any negligence is found on behalf of the consulting pharmacist.

The consulting pharmacist counted the medication that was returned and verified that there was one missing pill from each bottle. She instructed the patient to go home and rest, but failed to instruct him on all the side effects of the medication he ingested or provide him with written information about the incorrect medications.

The pharmacy owner and consulting pharmacist were both insured under separate professional liability insurance policies. During the discovery phase of the claim, both insureds requested the claim be settled as soon as possible in order to avoid a jury trial.

### Risk Management Comments

The defense pharmacy expert stated that there was a clear violation in the standard of care for all individuals involved at the pharmacy. While reviewing the pharmacy's documents the expert noticed that the pharmacy had not reviewed or updated any policies or procedures in the past five years and many did not reflect current practice.

Experts assessed the potential exposure/claim value of the case for all defendants (including statutory prejudgment interest) as being between \$350,000 and \$400,000.

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The defense counsel determined that the case would be difficult to defend and reported a less than 10 percent chance to prevail at trial. Mediation was attempted several different times and the claim took over a year to settle.

## ➤ Risk Management Recommendations

### Consulting pharmacist:

- **Annually review the state scope of practice, state pharmacy practice act, and workplace policies and procedures, and modify workplace policies, procedures, protocols and/or one's own actions accordingly.** Practice only within these parameters, keeping in mind that the most stringent of the regulations, standards or policies must be followed.
- **Notify employers or partners of any improper or outdated policies and protocols,** and work only within the legal scope of practice and the standard of care.
- **Evaluate whether workplace practices or conditions represent an unacceptable risk for dispensing errors,** and take appropriate corrective actions.
- **Advise the patient of potential side effects and/or adverse effects that may occur and what actions should be taken in the event of a reaction.** Provide written patient instructions they can understand and read. The information provided should detail the medication prescribed, potential side effects, adverse reactions and what to do if an accidental overdose occurs.
- **Ensure that prescription bottles or other containers include all relevant information,** especially any warnings or special patient instructions.

### Pharmacy owner:

- **Ensure that pharmacy policies, procedures and protocols are consistent with current practice, state scope of practice and standard of care,** reviewing and revising them at least annually and after any unusual event, identified error or "near miss."
- **Evaluate whether workplace practices or conditions represent an unacceptable risk for dispensing errors,** and take appropriate corrective action.
- **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.
- **Assure non-clinical staff are trained on policies and procedures that pertain to their jobs.** Provide non-clinical staff with the reasoning behind patient safety checks.
- **Reassign or dismiss any staff person that continues to disobey or refuses to comply with approved pharmacy policies and procedures.**

## 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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