

PHARMACY

Risk Management

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Pharmacy and the law: the price of professionalism

by Ken Baker, R.Ph., J.D. Vice President, General Counsel, Pharmacists Mutual Insurance Company

The changes taking place in the profession of pharmacy are best illustrated by the changes in state laws redefining the practice of pharmacy. An example is the amended statute in the state of Minnesota, redefining the "Practice of Pharmacy" in Minnesota. The law authorizes the new duties and expanded roles of pharmacists.

Among the newer pharmacist duties in Minnesota, the law now provides that the practice of pharmacy may include. . .

- (3) the participation in clinical interpretations and monitoring of drug therapy for assurance of safe and effective use of drugs.
- (4) . . . drug administration for first dosage and medical emergencies;
- (5) participation in the practice of managing drug therapy and modifying drug therapy . . . on a case-by-case basis according to a written protocol between the specific pharmacist and the individual dentist, optometrist, physician, podiatrist, or veterinarian . . . ;"

An interesting factor in the changes in Minnesota, and similar changes that are taking place in many states, is that the changes are being initiated and "pushed through" the legislatures by pharmacists. Pharmacists are not only accepting new duties and new responsibilities, they are insisting on them.

Many pharmacists are now looking at these changes and asking, "Does this mean I will have more liability? Will I be open to new lawsuits on new theories of pharmacist duties and negligence?" The answer to both questions is, "Yes." For each advance we as pharmacists make, we pay a price. The price, however, is a bargain. **Increased liability is the price of professionalism.**

The law of negligence is exacting in its requirements. In order to prove a person is negligent, the plaintiff (patient) must show:

1. that the defendant (pharmacist) had a duty to the specific plaintiff (patient); and
2. that the defendant failed in performing that duty; and
3. that the plaintiff was injured; and
4. that the plaintiff's injuries were proximately caused by the defendant's failure of duty (negligence).

If pharmacists have more duties, they have more responsibilities. A part of responsibilities are legal responsibilities. Legal responsibilities are enforced through the courts by way of the law of negligence. Expansion of duties causes expansion of liability.

While no professional welcomes new liabilities and more areas of potential lawsuits, neither do professionals shirk the responsibilities to their patients that may naturally flow from their knowledge and expertise. Patients need pharmacists to take on additional jobs. Pharmacists need to apply the knowledge learned in their five to six years of professional education. Pharmacy laws are expanding, not just because pharmacists want them to expand, but because the need exists.

Untold millions of dollars, hours of suffering, and years of added productive lives can be saved by pharmacists performing these new duties. Legislatures across the country are handing pharmacists the legal tools they need to benefit patients. It is now up to pharmacists to seize these new opportunities, not only to benefit patients, but also to benefit themselves as professionals.

Pharmacists are becoming increasingly frustrated by the workload thrust upon them by increased numbers of prescriptions that need to be dispensed. This is a necessary part of serving patients. Just as lawyers learned to use paralegals, pharmacists and pharmacy managers need to find new ways to delegate many of the dispensing functions to trained pharmacy technicians in order to free pharmacists to explore the economic and professional possibilities allowed by these new laws.

Pharmacists will continue to be responsible for correct dispensing. Because pharmacists have, and should have, final check authority for any prescription, they cannot completely relinquish this important function. **New duties, however, are the future of pharmacy.** If pharmacists are not willing to accept these new duties and resultant responsibilities, others will, and pharmacists' futures will be jeopardized.

Duty and liability are a part of the price of professionalism. As pharmacists, we should not retreat from these areas, we should embrace them.

This article discusses general principals of law and risk management. It is not intended as legal advice. The pharmacist should consult his/her own attorney and insurance company for specific advice. The pharmacist should be familiar with his/her employer's and insurance company's policies and procedures and act accordingly.

TEN WINTER DRIVING TIPS

These winter driving tips are passed along from the National Safety Council publication, *Family Safety and Health*. They are nothing more than common sense ideas, but even the best drivers need a reminder now and then.

1. **Respect the winter weather.** A trip that might take 30 minutes in May, could take 45 minutes or an hour in the winter.
2. **Wear your safety belts.** You need the protection in all seasons, probably more so in winter. Make it a rule – the vehicle doesn't move until everyone is buckled up.
3. **Don't drink and drive.** You need your best reactions in winter, not your worst.
4. **Winterize your vehicle's safety kit.** Add a blanket, a small shovel, a bucket of sand for traction, some lock deicer, an ice scraper/brush to your kit that should always include a first aid kit, flashlight, jumper cables, basic hand tools, etc.
5. **Conduct a pre-trip inspection.** Check the tires, gas, wipers, and windshield washer fluid.
6. **Be ready for changing conditions.** Are your tires right for conditions? All season tires may not be adequate for your vehicle or climate.
7. **Don't get SUV overconfidence!** SUVs can get through some tough conditions, BUT, being generally larger vehicles, they're harder to stop. They also tend to roll more easily during sharp turns.
8. **Know how to react to trouble.** Know how to use your anti-lock brakes. Depress them as hard as you can and let the technology work for you. If you go into a skid, steer in the direction you want the front of the car to go, and be prepared to counter-steer 2 or 3 times.
9. **Leave some space.** You should be a full three seconds behind the vehicle in front of you. Allow another second for each driving condition (snow, ice, sleet, etc.) as it deteriorates.
10. **Defuse road rage!** Leave more room between you and other drivers, stay out of the left lane when going slowly, don't play "games" on the road, and don't react violently to another driver's mistake.

I'm going to take the liberty of adding another tip; **listen to the local weather / highway conditions and be prepared, if possible, to stay off, or get off, the roads.**

Each year insurance companies pay out over \$450 million in claims for damages caused by **freezing and ruptured plumbing**. The problem is not limited to the northern climates. Southern builders and homeowners forget about protecting water pipes from freezing temperatures. The Property Loss Research Bureau (PLRB), an insurance industry funded initiative, has the following tips for all property owners regardless of locale:

- ◆ Protect pipes in attics and crawl spaces with fiberglass insulation or foam sleeves.
- ◆ Use heating cables and tapes for freeze protection. Choose a cable with the Underwriters Laboratory label and a built-in thermostat that turns the heat on only when needed.
- ◆ Exterior pipes should be drained OR enclosed in 2-inch fiberglass insulation sleeves.
- ◆ Pipes leading to the exterior of the building should be shut off and drained in the late fall; if these lines don't have an interior shut-off valve, have a plumber install one.

The PLRB also recommends caulking all openings where cold air can get at unprotected pipes, and, if all else fails, let the water drip slowly to keep water flowing through any unprotected pipes.

The Umbrella Policy – Can You NOT Afford It?

Have you ever considered the Umbrella policy only to decide "I can't afford it.?"

I challenge you by asking, "How can you NOT afford it?" Allow me to share a story to illustrate my point.

A young woman and her passenger are involved in a serious multi-car accident on the interstate. Miraculously, both escape physical harm and the vehicle screeches to a halt. The passenger, in haste to exit the car, thrusts open the car door — into a motorcyclist. The cyclist, in his forties and father of three, suffers debilitating injuries. The driver's insurance responds but medical expenses skyrocket and the auto policy limits are exhausted.

Could it happen? Absolutely. Did it happen? One of you knows it to be true.

The Pharmacists Mutual Companies offer both the Personal and Commercial Umbrella. These policies provide \$1,000,000 (to \$10,000,000) EXCESS LIABILITY over and above the primary, underlying policies. This includes excess Individual Professional Liability, an option not available from many other companies. The MINIMUM \$1,000,000 Commercial Umbrella premium is \$350.00 per year - only \$29.00 per month. The MINIMUM \$1,000,000 Personal Umbrella premium is \$85 to \$95 – a mere \$7 to \$8 per month.

You hope you never need it. But, if you do – isn't the premium a small investment to assure your financial security? Consider the Umbrella – an affordable addition to your insurance portfolio.

For further information or a no obligation quote, please call 800-247-5930 and follow the operator's prompts for new policy quotations to reach your region's marketing associates.

Pharmacists Mutual Launches PMC Quality Commitment, Inc.

Pharmacists Mutual Insurance Company has a new subsidiary, PMC Quality Commitment, Inc. that was formed to market risk management services to all pharmacies throughout the country. While current policyholders will still enjoy the availability of the risk management services they have in the past, this new venture will offer more in-depth consulting services which can be purchased separately.

Pharmacy Quality Commitment is the initial service available and is **dedicated to developing quality improvement systems to address errors in pharmacy**. Pharmacy Quality Commitment, based on a system designed by David Brushwood and Ken Baker, will offer services that proactively organize pharmacy practices to improve quality by learning from the past

and improving in the future. No program can promise zero errors, but the new Pharmacy Quality Commitment program provides pharmacies with validated standards for quality, specific techniques, forms, and training tools to detect quality related events in the system, correct them and incorporate the changes to improve the system. Consistent with the principles described on the Institute of Medicine Report, "To Err is Human: Building a Safer Health System," Pharmacy Quality Commitment puts theory into practice to improve outcomes for patients by redesigning pharmacy systems for safety. Currently being tested in select markets, the Pharmacy Quality Commitment product will soon be available nationwide.

Subsequent to the concentration on development of the pharmacy practice area, PMC Quality Commitment, Inc. will follow up by offering **a full range of risk management services; property inspection, worker's safety, general liability**, etc. to businesses connected to pharmacy.

For more information, visit PMC Quality Commitment's website at www.pmcqc.com or contact Jack Williams at 800-247-5930 extension 229.

OSHA Update

Despite the concerted efforts of business and manufacturing trade groups, the insurance industry, and many members of Congress; it looks like OSHA will implement its proposed ergonomic standard before the end of this year. The problems cited by the dissenters are numerous. The "standard's" definitions are vague and could lead to OSHA inspectors second-guessing employer's safety efforts. The cost savings and costs of compliance have been the subject of lengthy, unsettled debate. The nature of the requirements on mandatory paid recovery time undermines the entire concept of worker's compensation being the exclusive remedy for injured or sick employees and could allegedly lead to situations where an employee could "play" one system against the other. There are also onerous requirements for payments for disabled workers that go way beyond what worker's compensation usually pay. The proposed levels of disability compensation constitute a disincentive to return to work in the eyes of most rehabilitation specialists. And, last but not least, is the issue of OSHA regulations superceding, enlarging, diminishing, or otherwise affecting state worker's comp laws, contrary to Section 4(b)(4) of the OSH Act.

If implemented, and not changed by court challenges, what does the "standard" mean to the average pharmacy insured by Pharmacists Mutual? It means that all employers that have jobs where one of the primary functions of the job is material handling will be required to formulate and implement a six part ergonomic program. This would include DME operations or any chain or group of pharmacies that has a warehouse-type operation. Also included would be any employer, of any size, whether obligated to be covered by worker's compensation insurance or not, that has an employee complain of a covered musculoskeletal disorder (MSD). Those employers will need to implement either the full six part program mentioned earlier or a "quick fix" of the contributory condition within 90 days and be able to verify that the "fix" solved the problem. If another injury occurs in the same job within 36 months of the first, then the employer has no choice but to implement the full-blown program.

Plainly, if OSHA implements this rule in its present form, it has the potential to have a costly effect on even the smallest of employers. We will try to keep you informed of the latest developments in this ongoing battle.

Remodel your insurance after remodeling!

A recent survey commissioned by the Independent Insurance Agents of America reveals that homeowners are busy updating and remodeling their homes, but most are forgetting to make sure they have adequate insurance coverage upon completion of the work. The study asked a sample of 1,324 homeowners if they were planning to, or did recently, make renovations to their homes. One in four had made changes that increased the value of their homes at least 25%. Of those, **60% said they had not updated their insurance coverage.**

With most homeowners insurance policies requiring coverage amounts of at least 80% of the home's replacement cost, these homeowners could be penalized with a partial settlement on any claim made prior to an insurance update. They also put themselves in jeopardy of bankruptcy if they have a total loss, an outstanding mortgage, and a home equity loan.

"While few people would question the need to adjust their auto insurance if they were to trade up from a compact car to a luxury sedan, many fail to see the importance of safeguarding a significant investment in their home," said Madelyn Flanagan, IIAA assistant vice president of research and development, in a statement to the press upon release of the survey.

Maybe people simply aren't aware they should be changing their limits after a remodel, or maybe they are concerned about a dramatic increase in premiums. On average, premiums would increase about 5% for each \$10,000 in added value. That's a small price to pay for peace of mind.

Another interesting fact was revealed during the survey. Of the homeowners hiring a contractor to do the work, more than **two thirds failed to ask the contractor for proof of insurance.** If you are planning a remodel, request proof of insurance; including personal liability, property damage, and workers compensation; of the contractor you choose. If he can't produce the proof, protect yourself from personal liability by moving on to another contractor.

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Travelers safety tips

With the winter vacation season approaching, we thought it might be helpful to provide travelers with some common sense tips to use when staying in public lodging.

- ◆ Don't answer the door of your hotel or motel room without verifying who is knocking. If the person claims to be an employee, call the front desk to inquire about who and why anyone would need access to your room at that time.
- ◆ When returning to the hotel or motel late at night, use the main entrance. Be alert; look around before entering parking lots or unlocking your car to get out.
- ◆ Use all locking devices provided whenever you are in your room.
- ◆ Don't needlessly display guest room keys in public places. Take special care not to leave them in restaurants, swimming pools, or other public areas. If you lose your key or keycard, change rooms or have the card reprogrammed.
- ◆ Don't call attention to yourselves by displaying large amounts of money or expensive jewelry.
- ◆ Don't invite strangers to your room.
- ◆ Use the lodging facility's safe deposit boxes when available. Don't leave valuables in your vehicle.
- ◆ Check to see that sliding glass doors or windows and any connecting room doors are locked and/or barred.
- ◆ Report suspicious activity to the hotel or motel management.

Do you have any questions or requests concerning

✓ The contents of this newsletter?

✓ Safety Consultation Services?

Call 800-247-5930 ext. 229 or E-mail Jack_Williams@phmic.com

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