



Updated Claims Study on the Web

The Pharmacists Mutual Claims Study was initiated by former General Counsel Ken Baker in 1989. **Incoming claims were categorized by the type of allegations made by the claimant.** The Claims Study has been used since then to educate pharmacists and students about the types of mistakes that occur in pharmacy practice. The 2007 version of the Claims Study is now available on the Pharmacists Mutual website (<http://www.phmic.com/web.nsf/pages/StoryBehindClaimStudy.html>). It includes claims through 2006. Let's take a look at the latest study to see what we can learn.

One of the results that remains the same is that **the vast majority of the claims reported to us are mechanical errors**, that is; wrong drug, wrong strength or wrong directions. These three categories account for 87% of claims reported. Except for the wrong directions category, there are two ways for mechanical errors to occur. One is at the data entry step of the prescription dispensing process. Data shows that more of these mechanical errors occur as the prescriptions are entered into the pharmacy computer system. The good news is that the majority of these errors are detected before they are dispensed to the patient. The second step where errors occur is when the prescription is actually filled. While fewer errors occur here, there are a higher percentage of them that go undetected. One additional point that our data shows is that the prescriber's handwriting is seldom an issue with mechanical claims. In cases of illegible prescriptions, the pharmacist has called to clarify the prescription prior to the errors occurring.

The next largest portion of claims reported to Pharmacists Mutual is those involving OBRA duties. **Drug review and counseling claims** make up 9.3% of the claims in the study. Drug review is the more common of the two, at 7.5%, and is almost as frequent as wrong

direction claims. These types of claims can occur if the duties are not performed or if they are performed inadequately. Drug review claims consist of missed allergies, missed interactions, and over- or under-dosage situations. Sometimes the pharmacy staff can be lulled into complacency by the frequency of warnings given by their operating systems. But the size of this category reinforces the importance of reviewing every warning with a critical eye.


Counseling alone is not a very large category, but it is disturbing because **most claims in this category involve allegations that no counseling was given to the patient.** Counseling is a crucial service because it educates patients on the proper use of their medications. Sending patients home with inhalers that they don't know how to properly use is like giving a car to a person who doesn't know how to drive. In addition, counseling serves another purpose. Interactive counseling could also detect a number of the mechanical errors before the patient ingests the medication. So it has the potential to not only lower the frequency of its own category, but also possibly lower the frequency of the three largest categories.

A category that has been shrinking is claims involving the use of child-resistant caps. There was a three year period recently where there were no claims reported in this category. Knowing the legal requirements for use of child-resistant caps and following them is an easy risk management tool. In contrast, there is a category that is growing; that is claims involving compounding. There has been a resurgence in compounding in the last few years, so it is not surprising that an increase in claims would follow.

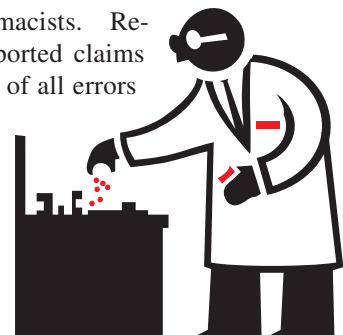
... there is a category that is growing; that is claims involving compounding.

These fall into two broad types of claims. The first are those that involve a calculation error when preparing the compounding formula. The second type are those claims where there is some sort of preparation error. For example; ingredients are mis-weighed, ingredients left out, or steps in the process are left out.

Another portion of the study was started in 1996. The data was examined to see **which drugs were delivered to the patient in mechanical errors.** Drugs included on this portion of the study make the list because they are widely prescribed, they may have look-alike, sound-alike names, and/or they have an extremely effective mechanism of action. The top eleven drug categories account for 44.5% of the mechanical error claims. Obviously, these drugs create an effective target for a risk management program. **Warfarin** is the largest of these, accounting for 7.9% of the mechanical errors alone. Warfarin has been on top of this list for a number of years, but otherwise, there has been quite a bit of change with the order and make up of this list. This has occurred because of changes in prescribing habits and/or withdrawal of some drugs from the market.

The Pharmacists Mutual Claims Study provides an opportunity to see what types of claims are reported by pharmacists. Remember that reported claims are just a subset of all errors and quality-related events that occur in a pharmacy. You can learn from others' mistakes. 

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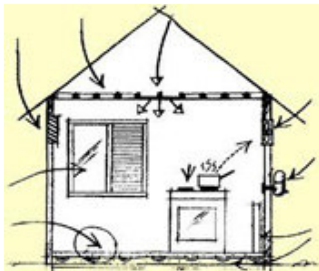
15 ways to improve safety in your home

By Catherine Jones

Rather than approaching your home renovation projects from solely an aesthetic perspective, set aside at least one weekend this spring to give your house a clean sweep for safety. Here are 15 suggestions:

1. Install security alarms.
2. Install smoke and carbon monoxide detectors.
3. Repair worn carpets.
4. Install fire escape ladders on high windows.
5. Install window guards on high windows.
6. Install grab-bars in the bathroom.

7. Test Ground Fault Circuit Interrupters (GFCIs) in the bathroom and kitchen.
8. Check for mold or condensation in the bathroom and windows throughout the house.
9. Look for water seepage in the bath-



- room and kitchen.
10. Upgrade ventilation in the kitchen and bathroom.
11. Repair or replace water-damaged walls and floors.
12. Tighten handrails on the stairway.
13. Reduce concrete floor dust with water-based wax sealer in the basement.
14. Install night lights in the hallway.
15. Check heating, cooling and hot water equipment for electrical or fire hazards. 📄

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Our newest Pharmacist-Attorney Kathleen Davoren, J.D., R.Ph., CPCU

Pharmacists Mutual is pleased to welcome Kathleen (Kathy) Davoren to our staff of pharmacist-attorneys. Kathy graduated from Drake University College of Pharmacy in Des Moines, Iowa, with her Bachelor of Science Degree. She went on to receive her law degree from the Drake University College of Law. Prior to joining Pharmacists Mutual as Attorney, Professional Liability Claims, Kathy worked as a retail pharmacist for Walgreens, practiced law as a defense attorney and most recently handled Claim Litigation for Allied Insurance. 📄

Protective device(s) or service

If you have the BP 0331 Protective Devices form attached to your Business Owners Policy, your protective device or system must be in good working order for there to be coverage in case of fire or theft loss.

Basically, what the language of the form says is that – we do not pay for loss or damage by fire (or theft) if, before the fire (or theft) you had knowledge of an interruption in service of the device(s)

or service listed on the schedule, or you failed to maintain in complete working order the device(s) or service listed on the schedule of the form.

It is your responsibility to have the system inspected regularly and repaired as needed. Keep those inspection / repair reports on file in case you need to verify the system integrity during a claim settlement. 📄



REMINDER – the Pharmacists Mutual produced driver's training program, *On the Job: On the Road*, is available to commercial auto policyholders. Call, write, or e-mail the Pharmacists Mutual Risk Management Department, or contact your field representative for a copy of the video and/or CD-ROM program. 📄

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Do you have a home alarm system?

Put your car keys beside your bed at night. If you hear a noise outside your home or someone trying to get in your house, just press the panic button for your car. The alarm will be set off, and the horn will continue to sound until either you turn it off or the car battery dies. This tip came from a neighborhood watch coordinator.

Next time you come home for the night and you start to put your keys away, think of this: **It's a security alarm system that you probably already have and requires no installation.** Test it. It will go off from most everywhere inside

your house. It works if you park in your driveway or garage.

If your car alarm goes off when someone is trying to break in your house, odds are the burglar or rapist won't stick around. . . after a few seconds all the neighbors will be looking out their windows to see who is out there and sure enough the criminal won't want that.

And remember to carry your keys while walking to your car in a parking lot. The alarm can work the same way there. 📄

Personal auto for business purposes?

We get numerous inquiries from employers about how to insure themselves when they have their **employees drive their personal cars on company business**. Rightly so, it can be a complicated situation, especially if there's an accident claim.

The simplest way to maintain proper coverage is for the business owner / insured to have a Commercial Auto Policy (CAU) written with symbol 9 (Nonowned Autos Only) in the Description of Autos Covered section. An endorsement can be added to the CAU to make the "employees as insureds" relationship more clear. This combination of coverage symbol and endorsement makes the employee's Personal Auto Policy (PAP) the primary coverage, and the CAU is excess coverage - it kicks in after policy limits on the PAP are ex-

hausted. Of course, the employer must set up some kind of checking system to ensure that the employees have certain predetermined levels of coverage on their PAPs in order to maintain the integrity and intent of this coverage method.

It would also be in the employer's best interests to define the **policy for an employee renting a vehicle**. If the policy states that the employee rent the car in his/her own name, the coverage situation is much the same as above, except that the employee's PAP is excess over any other collectible insurance, such as renter's Loss Damage Waiver (LDW) coverage. If the policy states that the employee rent the vehicle in the name of the business, the CAU needs to be written with symbol 8 (Hired Autos Only). The employee meets the defini-

tion of an "insured" under the CAU, so that policy affords coverage. The employee's PAP will also provide coverage for liability only. Physical damage coverage for the hired vehicle is available on the CAU for an additional premium. And, of course, both the CAU and PAP are excess coverage over any other collectible insurance, like the LDW.

This short review of the subject just scratches the surface of what can be a complicated situation. There are other endorsements available. Ask your Pharmacists Mutual Field Rep or underwriter to review your coverages and the driving situations that arise in your operations. He/she can make recommendations for the proper coverage options. 📄

It's all in the details

I trust that most of you have heard the phrase "the devil is in the details." This certainly describes what we see in claims. We live by what information we are able to develop in the investigation or discovery process. More times than not, the factor that tips the scale in favor of us or the plaintiff is documentation, or lack thereof.

It's not our intent to turn people or organizations into record retention specialists. Here are a few examples of what can make a potentially good claim turn bad:

- A home medical equipment company employee provides the customer with the correct information and training on the equipment prescribed. The customer sustains an injury related to the proper use of the equipment. Much of the complaint alleges we did not provide proper information and training. The company's guidelines and procedures are well-written and detailed. However, they are not followed and there is no process to ensure they are followed. The employee doesn't obtain or keep copies of all the records to document what was done.
- A pharmacy receives a script to compound a single dose for a specific patient. An operation was performed.

The compounded product taken. The patient dies. There is allegation that the script was compounded incorrectly. The medical records are not entirely conclusive as to causes or contributive causes. However, the strength of our arguments is diminished as our records and corresponding testimony don't correlate. In addition, one of our employee's personnel records doesn't match given deposition testimony creating credibility issues.

- An employee files a claim indicating he/she was injured at work. A first report of injury is completed and sent to the insurance company. We conduct an investigation to determine if the injury is work-related. After a protracted investigation, we learn that the employee may not have been in the course of employment when injured. The employer/insured doesn't maintain and can't provide records to support the where employee was when the injury occurred.
- A pharmacy sustains significant windstorm damage, closing its operations for a period of time. The pharmacy, in addition to the property damage claim, files a claim with us for loss of income. The pharmacy's records are illegible and don't match the claimed

amount of income loss. We need to undertake hiring a forensic accountant to assist in evaluating the claim.

- A pharmacy sustains a break-in with a lot of prescription drugs stolen. We receive a claim for the inventory loss. The pharmacy's records provided don't match the inventory on hand and the purchase price of the inventory.

We hope you're able to see from these examples that a little detail and documentation can go a long way in timely and fairly resolving claims. If you have any questions on what you can do to improve your documentation processes, feel free to contact us. 📄

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