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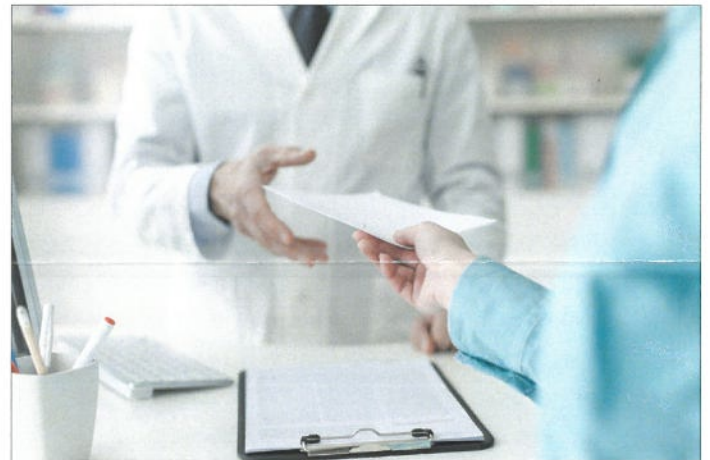
Legal Matters®

Developments in pharmacist liability

When we go to a pharmacy to get a prescription filled, we expect it to be filled correctly, with the proper medication at the proper dosage, and with the proper instructions. However, sometimes mistakes occur, and in certain instances these mistakes can result in very severe harm or even death. In some situations, this may be due to an error by the doctor, nurse practitioner or physician's assistant who wrote the prescription. But in other instances, it could be due to an error at the pharmacy. If that's the case, and it turns out the error was a result of pharmacy employees being *negligent* (in other words, exercising less care than a reasonably competent pharmacist in the same situation would have shown), you may be able to hold the pharmacy accountable.

This type of pharmacy liability can arise in a variety of contexts. For example, in a recent case in North Carolina, 74-year-old Bertha Small died as a result of a pill mix-up.

Small typically received her prescriptions from a mail-order pharmacy. In 2013, she received six medications in a package that looked just like the ones that always arrived. But she had received prescriptions meant for a patient in California. Each bottle had the name of the person in California, the name of that person's doctor and the name of the medication. But Small, who could barely read, did not read the prescription labels. She took some of the pills, then suffered hallucinations and confusion and broke her leg in a fall. She died several months later. Her son filed suit against the company that filled and shipped the medication and the company



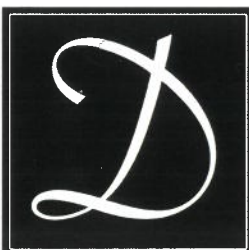
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that paid it to do so.

A federal judge threw out the case, finding that Small was "contributorily negligent." In plain English, that meant Small's own carelessness outweighed that of the companies. But the 4th U.S. Circuit Court of Appeals reversed, pointing out that the issue of Small's contributory negligence should have been left for a jury to decide. The family will now have that opportunity.

Another recent case, in South Carolina, showed that pharmacies may be considered responsible for harm that results if they continue to refill prescriptions under suspicious circumstances. In that case, a 62-year-old woman died of an irregular heartbeat and enlarged heart

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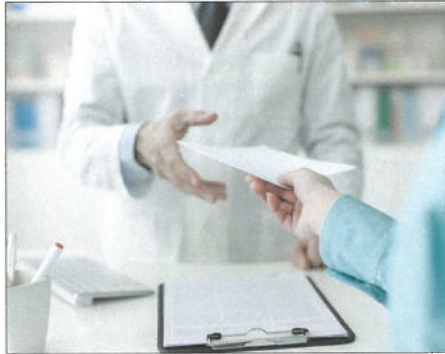
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Developments in pharmacist liability

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due to her frequent use of Bontril, a weight-loss drug that acts as an appetite suppressant by increasing the patient's heart rate and blood pressure.



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Long-term use of the drug is known to cause cardiovascular problems. Despite these known risks, a retail pharmacy apparently filled the woman's prescription more than 75 times over a nine-year period, when she shouldn't have been taking it for more than a few months. The woman's family sought to hold the pharmacy responsible, arguing that the pharmacists should have recognized she was overusing the drug and either called the doctor prescribing it

or refused to fill it. The case never made it to a jury. The pharmacy settled out of court for a significant sum, indicating the family might have prevailed in court had it gone that far.

Meanwhile, a case in Kentucky illustrates how a pharmacy could, under certain conditions, be held responsible for a caregiver's failure to administer a prescription properly. That case involved 68-year-old Dan Schneider, a retired judge who was hospitalized with an infection. Schneider received antibiotics for two weeks, then was transferred to a nursing home, where he was to receive another four weeks of antibiotics. Once he got to the new location, however, he allegedly never received a single

dose, even though staff documented that he had received the medication as scheduled.

Schneider ultimately died from a recurrence of the infection. His family filed suit against the nursing home for negligence in Schneider's care and sued the pharmacy for failing to follow up and verify that he received the antibiotics. The case ended up settling, with the nursing home taking most of the blame and paying most of the settle-

If turns out the error was a result of pharmacy employees being negligent, you may be able to hold the pharmacy accountable.

ment. But the pharmacy ended up agreeing to pay a significant amount as well, perhaps fearing what might happen in court.

These are just a few examples of situations in which a pharmacy might be considered accountable for harm to patients. Whether a case will succeed or not depends on the individual facts and circumstances. If you or a family member suffers harm from medication and you believe pharmacist error may be a factor, talk to an attorney as soon as you can.

Bar agrees to cover harm to patron struck in parking lot

If you're ever struck by a vehicle and injured, don't assume the driver is the only party that can be held responsible. Talk to a lawyer who can further investigate the situation, because others may have played a part.

Take, for example, a case in Massachusetts. A 62-year-old man had just left a bar near the city of Worcester and was walking across the parking lot to meet his ride when he was struck by a rental truck that had just pulled into the lot.

The man suffered brain and head injuries and a neck fracture, and he tore his meniscus, MCL and ACL. His head wound required staples and he needed surgery.

The rental truck had low insurance coverage limits, which wouldn't have covered the harm, so

the driver wasn't the best source of recovery. But there was video of the accident, and a police report described the parking lot as "poorly lit." An engineer gave an expert opinion that the light level was below what was recommended for the area.

The fact that the pedestrian was intoxicated, with a 2.0 blood alcohol level, might not have helped his case, but there was no indication this played a role in him getting struck.

Ultimately the rental truck's insurer paid its policy limits and the man was able to recover a significant amount of his damages in a settlement with the premises owner. Without that level of investigation, he might have been left with just his own insurance, if he had any, to cover his medical bills and other costs.

Epilepsy misdiagnosis results in permanent harm from medication

A Michigan jury recently held a doctor accountable for harm a woman suffered from years of taking epilepsy medication after she was wrongly diagnosed with the condition.

Mariah Martinez was 9 years old when Yasser Awaad, a pediatric neurologist in suburban Detroit, diagnosed her with epilepsy after giving her an EEG test when she saw him for headaches.

For the next four years, Martinez took anti-seizure medicine that caused her to experience severe fatigue. She also allegedly was forced to avoid activities that would elevate her heart rate, and was allegedly teased by classmates because of it. Martinez further claimed she suffered emotional harm from the constant fear of having a seizure at any moment, and that her perception that she was disabled negatively impacted her development.

After Martinez went through four years of treatment, another physician determined she had been misdiagnosed. She and her family sought to hold Awaad responsible, as well as the hospital where he worked for allegedly failing to supervise him properly.



@leungchopan

The jury ruled in Martinez's favor, awarding substantial damages for pain and suffering, emotional distress and humiliation.

Meanwhile, Awaad allegedly misdiagnosed at least 250 other children in a similar manner. He has been accused of doing so intentionally to inflate his earnings through an arrangement under which he received, in addition to his salary, 50 percent of his medical billings above a certain level. The hospital has been accused of looking the other way in light of how much money he was bringing in. Many of the families are expected to bring lawsuits.

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Dash cams can provide helpful evidence after crash

If you're in an accident and you think it was someone else's fault, it's important to contact an attorney as quickly as possible to investigate the circumstances and collect any important evidence. That could make all the difference for recovery, as a North Carolina case shows.

The case involved a truck driver who was fatally struck by a truck after he had pulled to the side of I-485 near Charlotte. The driver had gotten out of his truck to check for engine problems after pulling onto the shoulder. He turned on his rear hazard lights and was standing between the truck and the white line separating the shoulder from the road, leaning in toward the engine to inspect it, when a second truck sideswiped him, propelling him into a grassy area. The driver died about 13 minutes later in an ambulance.

When the victim's family filed suit, the other driver argued "contributory negligence," claiming the victim should have pulled over at a better-lit area that was a safer distance from the road.



@jayznmism

But the victim's family obtained footage from the other driver's dashcam, which had recorded the whole incident. The footage showed that the second driver should have seen the victim's truck. With this evidence in hand, the victim's family was able to convince the second driver and his employer to settle the case for an amount sufficient to support the man's family.

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www.dessausurelaw.com



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Columbia, SC 29201
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2043 West DeKalb Street, Suite 3
Camden, SC 29020
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Injured college players can seek compensation for harm

A liability waiver shouldn't stop two students who were injured trying out for a college football team from suing the school for having unqualified trainers, the Pennsylvania Supreme Court recently decided.

Augustus Feleccia and Justin Resch both signed waivers before trying out for the Lackawanna College football team in the spring of 2010. During a drill, Resch suffered a vertebral fracture while attempting to make a tackle with his head down. Feleccia suffered a "stinger," causing numbness in his right shoulder — also while making a tackle.

Feleccia was allegedly told by a member of the team's medical staff that he was fit to return

to practice. He then suffered a traumatic spine injury. Resch apparently also claimed additional harm from being treated by a different staff member. Both staff members had been hired as athletic trainers, but when the college learned they had failed their certification exams, they were kept on as "first responders," undertaking a trainer's duties. They also apparently were the only members of the medical staff working with the team that day.

The athletes sought to hold the college responsible. A trial court judge threw out their claims, finding that when they signed their waivers, they gave up the right to go to court over any injuries that might occur.

But the supreme court found that while the waiver may have shielded the school from negligence claims, it did *not* shield the school from claims of gross negligence. Now the athletes will have an opportunity to prove to a jury that the school was at fault.



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