PHARMACISTS’ NEGLIGENCE AND PRINCIPLES OF LIABILITY

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ABSTRACT

In the late of the nineteenth century and the beginning of the twentieth, the scope of doctor duties and responsibilities used to have much smaller range than now. The death of patient in the hands of doctor was a matter of destiny that must be accepted as it is, without any thought of questioning or doubt. Those days and the days of paternalistic medicine are gone. Nowadays there is undeniably a greater awareness among patients of their legal rights and a greater willingness to enforce them. As society started to become more educated and well informed, the skills and honor of doctors that have are increasingly being questioned. At the same time, a higher public expectation in medicine came after a phenomenal advancement in medical science and technology. This advancement produces more complexity and, so, more risky medical treatments to be carried out which were not possible earlier.

Regarding these rapid advances in health care development, the role of the pharmacist has changed affectedly over the last decades. The nature of pharmacy practice has changed from a chemist store-which main task was to hand out prescriptions and to make up preparations- to a modern pharmacy that incorporates pharmaceutical healthcare into direct patient care. As the direct relationship between pharmacists and patients develops, the increased possibility arises of professional negligence in their everyday practice.
The study is aimed to define the concept, history, and required elements to impose liability on physicians. Also, the article is designed to identify the most common types of pharmacist negligence. Furthermore, the article recognizes the main reasons for committing errors by pharmacists and proposes proper solutions for minimizing negligence.

**Keywords:**
Pharmacist, negligence, responsibility
Methodology

The current paper presents a library research like the conventional methods of human sciences. The data collected both electronically (Medline, PubMed, and Google Scholar) and manually (based on different papers, journals, researches and books) using the key words and phrases such as “Medical Malpractice” “Negligence, “Duty of Care” “Standard of Care “and “Pharmacist Liability ” to obtain public policy studies, case analyses, law review articles and healthcare analysis articles.

INTRODUCTION

Malpractice is negligence on the part of professional when an individual is acting in a capacity and is carrying out duties for which certain levels of skills, knowledge and standards are required of anyone who is assuming those duties.1 Malpractice is a failure to act in accordance with accepted standards. And it is the breach of a professional duty to act in good faith and with reasonable care. Medical malpractice begins with an injury or a harmful outcome to a patient occurring during the medical care.

Pharmaceutical malpractice or negligence means that a drug company causes injury to a consumer or results death failing to act within the applicable standard of care. When such incidents occurs a drug company commits malpractice and is negligent when it fails to act reasonably under the given circumstances and the unreasonable conduct causes harm. This could be possible because of a drug that was not designed or tested properly, and the company did not provide effective and appropriate warnings to the doctors who prescribed the drug, and to the consumers who took them.2 Pharmacy malpractice occurs when a prescription is filled incorrectly or...
improperly. Prescription errors take place when a wrong medication or dosage is given to the patient. Clearly when the medication is consumed by the patient, it can have adverse side effects. These side effects can be immediate and life threatening if the error is serious. They can also lead to more chronic conditions that will affect the patient’s tolerance for certain types of medication in the future. Generally the common types of pharmacist negligence include error in compounding (making the wrong product), dispensing error (wrong drug, wrong strength, wrong quantity or wrong label), supplying medication with poor quality (contamination, using expired medications) and failure to warn patients adequately.3

In brief when patient is treated in a manner that is improper or negligent, the pharmacist or pharmacy technical maybe sued for malpractice.4 The pharmaceutical industry has faced a spike in civil litigation over the last twenty years.5 Some customers are asking the judiciary to hold pharmacists accountable for failing to use their position in the healthcare system to protect customers from drug-related injuries.6

A study in the UK has found that one percent of prescriptions dispensed contain errors, of which 0.18 percent are serious errors.7 Another UK study on the incidence, nature and cause of dispensing errors in community pharmacies estimated that on average, for every 10,000 items dispensed there are approximately 22 near misses and 4 dispensing errors.8 It has been estimated that on average, a pharmacist will make a dispensing error every month.9 Studies in the US found that the average prescription errors are about 3 to 5 percent, with about one percent of these being potentially serious errors.10

Increased number of medical malpractices across the world is one of the common causes of death in the world. And induces huge costs to be spent for verifying the complaints and claims made for medical mal-
practices, makes the importance of studying and revising current laws in such countries. This increase in the number of claims must lead to more attention to health care; otherwise we will face increasing complaints against the physician; i.e. what present society of United States and many countries around the world, including the Australia, Canada, and United Kingdom deal with it.

Overview of Physicians Liability
The phenomenon of medical malpractice has affected the doctor-patient relationship considerably during the time. During the old days, doctors used to publicize a high position in the society with peculiar skills they used to hold.

The pattern of doctor-patient relation formerly been characterized as up-down or subject-object relationship. Patient was placed, as the object of the work of medical professional with consequences that patient should accept whatever a doctor did on his body. The death of patient at the hands of doctor was a matter of destiny that should be accepted as it is.\textsuperscript{11} In ancient times, the medical profession was placed on the highest level of society and public had been commanded to awe and respect. Medicine was a matter of mystery as there was no apparent and rational reason why disease struck one person rather than another. The answer had to be found in some kind of supernatural and spiritual powers.\textsuperscript{12} At its inception, the medical profession was belonged to elite group of people. A doctor could be considered to be equal with the priest of an organized religion.

In those days patient was usually humble, undemanding and uninvolved with their treatment. The doctors adopted the authoritarian approach until the middle of the twentieth century.\textsuperscript{13}

This is not saying that during the history a doctor could not be called to account for failing to exercise a reasonable care.\textsuperscript{14} The historical
growth of the action against the doctor shows that in the late nineteenth and early twentieth century it was very unusual for patients to sue doctors. Conventionally suing doctors used to consider an impudent and disrespectful behavior and it was in any event beyond the means of all but a tiny minority. Reporting in 1978, the Pearson commission showed that whereas earlier claims against doctors had been rare during the 50 or 60 years but this had changed since the introduction of the NHS, reaching about 500 claims a year against doctors in the mid-1970s.  

Although physicians have faced medical malpractice liability for more than 200 years but malpractice has become a public policy issue recently. Today one mistakes committed by doctor will distort his image. Patients usually find such mistakes hard to grasp as medicine is to cure and not otherwise. Such errors may transform the doctor from a noble figure to hated one. By paying for their services; patients have certain expectations of what the outcome of treatment should be. They no longer condone mistakes of doctors as misadventures but such mistakes could have been avoided if doctors had taken proper care. Eventually these suffered patients will turn to litigation as a channel to their complaints. Medical negligence litigation reflects all manner of dissatisfaction on the part of the patients with the conduct of the medical staff. Pharmacists as health providers are not exception. With the rapid advances in health care development, the role of the pharmacist has changed dramatically. The nature of pharmacy practice has changed from a chemist store - whose primary function was to dispense prescriptions and to make up preparations - to a modern pharmacy that incorporates pharmaceutical healthcare into direct patient care. The pharmacist is often the first health care professional that the patient consults and the pharmacist may also be the last health care professional the pa-
tient sees before obtaining and consuming their medication. Therefore the pharmacist’s role is vital in supporting the doctor’s advice to the patient and acting to ensure the safety and optimal use of pharmaceuticals. With these responsibilities and roles, pharmacists are also more exposed to increasing legal liability for failure to meet their responsibilities.

**Pharmacist’ Liability**

Like physicians, pharmacists are held to a certain standard of care. Due to their wide education and training, they are considered “specialists” in their field and therefore owe patients a higher duty of care. Pharmacists breach that duties which fail to properly counsel patients or make mistakes regarding the prescription or dose.

In addition to a breach of professional ethics, this violation may also give rise to a claim for negligence. This may occur because the pharmacist is tired or confuses one prescription for another. The employee on duty may forget to warn the patient of certain side effects, or neglect to advise them against taking this new drug with the one they are refilling.

Unfortunately, even innocent mistakes can do for patient in the emergency room which has dire consequences for the family.

**Essential Elements to Prove Pharmacist Negligence**

A pharmacist owes a duty of care to the persons receiving his or her prescriptions. This duty requires the pharmacist to act competently and to fill the prescription correctly. It also requires the pharmacist to inform the patient of the medication’s purpose and how it is to be administered. It is also the pharmacist’s responsibility to warn the patient of possible drug interactions. The patient should also be alerted of side effects that they need to monitor. If the pharmacist fails in discharging any of these duties in a competent manner then he or she has breached
the duty of care. When the duty of care has been breached then a case of pharmacy malpractice or pharmacy negligence has occurred.

Once it is proven that the pharmacist has committed pharmacy malpractice or pharmacy negligence and liability is imposed on the pharmacist for the consequences of the error. The pharmacist will be liable to compensate for pain and suffering, medical care and other financial losses and expense caused by his or her negligence.

Generally in a case of alleged malpractice, the plaintiff patient must be able to identify the four elements that, under law, required proving malpractice. In order to find the defendant liable, each of these four elements must usually be proven by the plaintiff. These elements are: 1) Duty, 2) Breach, 3) Damages (Injury), 4) Causation.

To establish the element of duty, a plaintiff must show that the defendant owed to the plaintiff a duty to conform his behaviour “to a standard necessary to avoid an unreasonable risk of harm to others.” For the element of breach, the plaintiff must establish that the defendant’s conduct, by act or failure to act, fell below the applicable standard of care. For causation, it must be demonstrated that the defendant’s breach of duty i.e., the defendant’s failure of act in conformance with the applicable standard of care, caused the plaintiff’s harm or injury.

Duty of Care

In terms of medical malpractice the term ‘duty of care’ has become synonymous with the concept of the ‘undertaking’ towards the patient. Generally, a duty of care arises where one individual or group undertakes an activity, which could reasonably harm another, physically, mentally, or economically.

Generally in medical malpractice lawsuits, the first matter to be proved is that the defendant doctor owed the duty of care to the plaintiff pa...
Duty is legally recognized relationship that has been established between one person and another. If such a duty found to be breached a legal liability is imposed upon the duty-owner, to compensate the victim for any losses they incur.

Pharmacists as the pharmaceutical healthcare professionals owe a duty of care to patients who seek their advice and obtain medications from them. We should concern that, a pharmacist does not discharge the duty of care only by dispensing the prescription in exact accordance with the written prescription. The duty of pharmacist is to inform the patient of the medication’s purpose and how it is to be administered. It is also the pharmacist’s responsibility to warn the patient of possible drug interactions. The patient should also be alerted to side effects that they need to monitor.

Pharmacists also have a duty to prevent or to minimize opportunities for patients to cause harm to them and to refuse to dispense a prescription if it is likely to be subjected to misuse.

**Standard of Care**

The criteria for evaluation the content of specialists duties of care is some standards by which we can judge what should have been done. This criteria are called the standards of care refers to what a responsible one would do in the same circumstances. For the pharmacist, this refers to what other pharmacists would do in the same situation, whether or not it conforms to the standard of practice that is acceptable. The standard of care for pharmacists and the professional standards of pharmacy practice are outlined in the Acts and the Regulations in countries and Territory Laws. For instance, the Pharmacy Board of Victoria has issued Guidelines for Good Pharmaceutical Practice and there are other guidelines by professional bodies such as the Pharmaceutical Society of Australia and the Society of Hos-
hospital Pharmacists of Australia to ensure good pharmaceutical practices by pharmacists.

**Breach of Duty**
The second element that must be proven in a case of malpractice is breach of duty. This element lies at the negligence action. It involves consideration of whether the act or omission of which the claimant complained amounts in law to negligent act. Breach of duty is defined as a failure in the standards of care. The plaintiff must prove that the defendant did not carry out the responsibilities of his or her profession or position in the manner prescribed, expected, and appropriate for the particular time, place, and circumstances.

Liability will impose on the pharmacist for breach of duty and consequences of the errors such as:
- Filling a prescription with the wrong medication, and wrong dose,
- Providing someone else’s prescription to the patient,
- Compounding a medication incorrectly or failing to warn the patient about serious drug interactions…

**Injury**
The third required element is injury or damage, which is an actual harm of any kind physical, emotional, or economic that the plaintiff must prove that he or she has suffered. The primary purpose of the law is to provide some form of compensation to the person who has harmed in any way by a wrongful act of someone else. The harm suffered by the plaintiff must be "compensable" it must be a legally recognizable injury. Injury is the key element in proving malpractice. If the plaintiff cannot prove injury, there is nothing compensable. Therefore, there is no malpractice, and there can be no liability on the part of the practitioner even if he or she was negligent.
Unfortunately in medical negligence cases, it is often hard to prove that damage was caused by the negligence of the health professional. The Harvard Medical Practice Study has found that only less than two percent of injuries caused by medical negligence lead to claims. For example, if a pharmacist negligently dispenses the wrong drug, the drug may already have broken down and excreted from the body before any test can be performed to determine the cause of the negligence.

Causation

In order for a plaintiff to prove this fourth element in malpractice, he or she must show that there was a causal connection between the breach of duty that is claimed and the alleged injury. He must demonstrate the principle of cause and effect that states that a given action or combination of actions will produce a given result. In law this is known as the "but for" principle but for the action (or omission) of the defendant, the plaintiff's injury would not have occurred. The plaintiff will be required to establish causation in fact that is, the defendant's act was the proximate and substantial cause of the plaintiff's injury. The plaintiff will emphasize that breach of duty on the part of the defendant is the most likely and probable cause-in-fact of an injury that otherwise would not or could not have occurred. But for test is not an exclusive test and many countries apply a test of "common sense" to determine the causation.

For example Australian courts had rejected 'but for' test specifically and instead of that they started to using common sense test to determine causation issue in their judicial decisions. Australian legal system believes that if the 'common sense' approach is used, questions of fact can be determined by asking whether a particular act or omission... can fairly and properly be considered a cause of the accident. This means that the plaintiff cannot succeed merely because he would not have suf-
ffered the injury but for the defendant’s act. Rather, whether legal responsibility should be attributed to the particular defendant. In other words, common sense approach to questions of causation means taking into account “the purpose for which the question is asked and the rule by which responsibility is being attributed.29

As mentioned before pharmacist owes a duty of care to the persons receiving his or her prescriptions. This duty requires the pharmacist to act competently and accurately according to standards which accepted by law and statutes in each countries. If the pharmacist fails in discharging any of these duties and standards in a competent manner then he or she has breached the duty of care. When the duty of care has been breached then a case of pharmacy malpractice or pharmacy negligence has occurred.

Once it is proven that the pharmacist has committed pharmacy malpractice or pharmacy negligence then liability is imposed on the pharmacist for the consequences of the error. The pharmacist will be liable to compensate for pain and suffering, medical care and other financial losses and expense caused by his or her negligence.

**Types of Pharmacy Errors**

Any instance where a pharmacy patient does not receive precisely the medication and dosage ordered by their doctor should be considered as a potential malpractice case. In fact, prescription errors can come in many forms.

One of the most common misfiling errors involves dispensing medication different from the one ordered by the doctor. This is perhaps the clearest example of pharmacy negligence. At their most fundamental, the pharmacist's duties include inspecting the doctor's prescription, the medication dispensed for it, and the medication label before giving it to the patient.
Pharmacists have a duty to ensure that the drug prescribed is exactly the one dispensed. Two factors that may influence such errors are the growing trend of large pharmacies to place undue influence on sales volume and the fact that many entirely different medications have very similar names. It is easy to see how an environment where pharmacists are sometimes expected to fill upwards of 40 or 50 prescriptions per hour to meet sales expectations can result in cases where incorrect medications with similar sounding names are erroneously dispensed, with disastrous results. I will address the growing emphasis on pharmacy sales and profit below. Another type of misfiling can occur when the correct medication is dispensed in an incorrect dosage. For example, the doctor prescribes 5.0 mg pills, but the pharmacist dispenses 50 mg pills. An over- or under-dosage of the correct medication can cause as much harm as taking the wrong medication.

Mislabeling is yet another variety of misfiling. This sort of error involves dispensing the proper medication with a label containing improper use instructions. Another mislabeling error involves inadequate or erroneous warnings. Attorneys presented with a prescription error case should compare the label instructions with the doctor’s written prescription. The prescription itself can be obtained from the pharmacy, which is required to maintain the script as part of its patient medication records. (Cal. Code of Regs. § 1707.1.)

Another type of pharmacy error which may trigger liability involves a pharmacy dispensing a drug contraindicated for a medication the pharmacy knows the patient is concurrently taking, with no physician order approving the simultaneous use of both substances.

In any pharmacy error case, several steps should be taken to secure all the prescriptions, there are several other responsibilities inspired by a broad array of federal and state legislation. All such statutes should be considered when prosecuting a pharmacy malpractice case.
Main Reasons behind Pharmacist Negligence

Well-known local pharmacy chains can fill over one million prescriptions per day. To do these pharmacies must have competent and qualified personnel, such as certified pharmacists and technicians, overseeing quality control behind the counter. Many of these extremely busy pharmacies fail to provide the quality control that their consumers need to rely on for safe and accurate filling of drug prescriptions. The result of these understaffed pharmacies and sometimes unqualified pharmacy employees is that prescriptions may be misfiled with dire consequences. A misfiled prescription to a person with some form of compromised health can often be tragic. Such pharmacy negligence can lead to organ failure, seizures, hospitalization, brain injury or even death.

According to the 1971 study by Wolfert and Stevens, 90 percent of errors made by pharmacists, are due to lack of concentration (51%), similarity in drug names (16%), inexperience or lack of knowledge (10%), interpretation, by misreading medication order (8%) and wrong assumptions by pharmacists not investigating the prescriber’s order (5%).

On the other hand, rushing to get products to market, pharmaceutical companies may fail to disclose certain side effects or health risks. Other times, adequate time is not spent on clinical trials, or researchers may miss important findings that come to light only after products are on the market and harm people. Mistakes can be made in manufacturing, which may result in tainted or defective products.

In order to minimize pharmacists negligence, it is important to follow good dispensing practice every time, as pharmacists are reminded that even dispensing the same prescriptions all the time does not exempt a pharmacist from his duty of care.

Also pharmacists should familiarize themselves with all medications, and continue keeping themselves up to date with the latest advances in
pharmaceutical healthcare.31

**Conclusion**

During the study submitted that, medical malpractice happens when a physician turns away from the accepted standard of care for the medical community. Malpractice is really a kind of medical negligence, means that the physician was responsible (or had a legal duty) to care for a patient, the doctor failed to live up to that responsibility (or breached that duty), and that failure (breach) was the cause of damage or injury to the patient.

Also showed that pharmacists are facing increasing legal liability for negligence their health care role increases. Sometimes the shortage of pharmacists has put more pressure on existing pharmacists, sometimes resulting in tiredness which always increases dispensing errors.

Pharmacists should be aware of the current legal environment in the healthcare sector. They should be cautious and attentive to patients’ pharmaceutical needs and follow to the guidelines for good dispensing to ensure that they provide the best possible standard of care to the public in their everyday pharmacy practice. On the other hand staff meetings to address annual and regular reviews and discussions after errors will be helpful.

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19 Harris, supra note 6 at 234-235. See also Cases and Materials on Torts 143-144 (Richard A Epstein ed., 8th ed, 2004) ("The modern elaboration of the tort of negligence contains four distinct elements: duty, breach, causation, and damage. A plaintiff must overcome all four hurdles to prevail.").


24 See further Hooks SuperX v. McLaughlin, 642 N.E.2d 514 (Ind. 1994); R. Termini, ‘The Pharmacist duty to warn revisited: The changing role of pharmacy in health care and the resultant impact on the ob-


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