

Med-Mal Matters: The Right Dose

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Chicago Lawyer

March 1, 2020

Slipping pharmacy standards may lead to negligence claims

In our last column, we explored how money may have contributed to the dilution of professional standards over time to allow certain cardiac procedures to be performed in facilities that do not have the capability to treat a known and deadly complication of those procedures. New reporting by The New York Times suggests the same malign influence in chain pharmacies is also putting patient safety at risk.

According to reporting by the Times in the Jan. 31 article “How Chaos at Chain Pharmacies is Putting Patients at Risk,” the number of patient-safety complaints to state pharmacy boards has recently spiked. The head of the Florida Pharmacy Association describes the number of complaints from its members relating to staffing cuts and other patient safety issues as “overwhelming.”

The Times reviewed letters to state regulatory boards and interviewed pharmacists at for-profit chains such as [Walgreens](#), [CVS](#) and Rite Aid and discovered “understaffed and chaotic workplaces” in which pharmacists have difficulty performing their jobs safely “... putting the public at risk of medication errors.” One Texas pharmacist put it bluntly: “I am a danger to the public working at CVS.”

The report notes the last comprehensive study of medication errors was conducted in 2006 by the Institute of Medicine. The study estimated that pharmacy errors harmed at least 1.5 million Americans each year. The precise number and severity of the errors is unknown, however, because most state pharmacy boards do not require pharmacies to report medication errors or even to conduct a meaningful investigation when they occur.

According to the Times, retail pharmacists are increasingly harried as they struggle to fill prescriptions, answer the phone, counsel patients, give vaccinations, work the drive-through, handle the register and call-in patients, physicians and insurance companies. These pharmacists are often faced with corporate performance metrics the Times describe as unreasonable and unsafe.

Since the Institute of Medicine report, the industry has been buffeted by declining drug reimbursement rates and cost-cutting pressures from governmental and private administrators of prescription plans. In response, the industry cut costs and instituted measures to maximize revenue.

CVS is the largest of the major players with almost 10,000 pharmacies nationwide and, according to the Times, has been the most aggressive in instituting performance metrics. At CVS and Walgreens, a pharmacist’s bonus depends on meeting these targets.

The Times also reports that almost every activity is tracked and evaluated, including phone calls to patients, the number of shots administered, the number of patients who agree to sign up for a 90-day supply of medicine and prescription fill times.

In a survey of Missouri pharmacists on this issue, one pharmacist reported performance standards put inappropriate pressure on staff to fill prescriptions as quickly as possible, leading to errors. Indeed, 60% of the respondents reported feeling pressured or intimidated to meet performance standards that can interfere with patient safety.

These metrics are not limited, however, to incentivizing faster work performance. According to internal CVS documents obtained by the Times, CVS employees were required to “persuade” 65% of patients picking up a prescription to sign up for automatic refills, 75% to authorize the pharmacy to call their doctor for a “proactive refill request” for expiring prescriptions or ones specifically written with no refills and 55% to switch from 30-day to 90-day supplies of medications.

The [American Psychiatric Association](#) is particularly concerned about the latter “metric.” Mental health professionals routinely prescribe potentially dangerous medication, such as lithium, to patients at risk of abusing it or overdosing on it.

Many psychiatrists start patients on low doses and limit the amount of medication dispensed at one time because limiting the amount of medication available to a potentially suicidal patient is a proven method to lower the risk of suicide.

According to the psychiatric association, CVS is a particular offender, routinely ignoring doctors’ explicit instructions and dispensing 90-day supplies regardless of whether the patient even requests it.

For lawyers who try pharmacy negligence cases, these revelations can provide the context into which a specific act of carelessness fits and provides an explanation as to why the individual pharmacist made a mistake. But it can also provide the underpinnings of an institutional negligence claim and replace or supplant an otherwise sympathetic individual defendant who made a simple mistake with a huge corporation that made the mistake inevitable through its relentless quest for profits.

Big verdicts are often driven by the defendant’s demonstrated greed. Good lawyers will always follow the money.

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