Protect Your License, Your Livelihood, and Your Assets!

MPA Continuing Education Symposium
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Learning Objectives

- List the leading allegations against pharmacy professionals in malpractice lawsuits
- Define the average cost to defend and indemnify for pharmacy professionals in malpractice lawsuits
- Identify key risk management tools that a pharmacy professional can incorporate into their practice
- Identify three criteria that creates liability

Why is this important?

- Litigious society
  - Why can people sue? Why do they sue? Who do they sue?
- Legal defense
- Chilling thought??
Why is this important?

True or False-
Pharmacy professionals rarely get sued.

True or False-
My employer’s liability policy is all the protection I need. It’s sufficient.

What about Professional Liability?

- Legal standard for professionals?
- Defined
  - Specialized Knowledge
  - Used on behalf of others
  - Place others needs above own
- Sound familiar?

The Reality is....Mistakes Happen!
What is the cost?

$14,503 average cost to defend a medical malpractice lawsuit*

$91,034 average settlement payment if you lose lawsuit*

* 2013 Pharmacists Liability: A Ten Year Analysis HPSO/CNA

More statistical claims data

Healthcare Provider Service Organization (HPSO) has a program with CNA Insurance. They did a study of a five year period (2011-2015) on claims over $10,000 that were filed and closed.

- 74% of closed claims were claims against individual professionals
- Total Indemnity paid $7,118,875
- Total expense paid $1,511,600
- Average paid indemnity $88,985
- Average paid expense $18,895
- Total average incurred $107,880

What is Malpractice?

Professional negligence
Mistake

Largest percentages of malpractice allegations against pharmacy professionals
- Wrong Dose (43.8%)
- Wrong Drug (31.5%)

Accidental misdiagnosis due to time constraints, illegible scripts, staffing issues, wrong time, wrong directions...etc

Someone will be held accountable
What is Malpractice?

Although people can and do sue for just about anything, there are three factors generally considered in proving negligence.

- Duty owed/level or care
- Breach of duty
- Harm or damages

Without these things, negligence cannot be proven. Still have to defend

How mistakes happen...

- Multi tasking
- Wrong bag
- Did not verify patient info
- Poor handwriting
- Poor communication
- Similar sounding drugs
- Others?

Costly mistakes

- Cost in human lives and conditions
- More problems then when they walked in

Financial cost as well these numbers do not included defense costs

- Diabinese dispensed instead of Diamox-resulted in permanent vision loss $275,000 paid
- Filled wrong fertility drug-Clomiphene $680,000 paid
- Theophyline instead of Tegretol-resulted in Grand Mal seizures $200,000 paid

No one goes to work intending to harm
Oregon pharmacy board survey 1,300 pharmacists

- Large number of scripts to fill
- Long, intense work hours
- Few breaks
- 52% felt their work environment was not conducive to providing safe efficient patient care

Case Study

- Involves pharmacist employed by small local pharmacy with walk-in/urgent care clinic attached.
- Patient is 32 year old female came in October 5
- Oxycodone 30mg, as needed for pain, every 8 hours for 30 days (90 pills)
- Alprazolam 0.5mg, as needed for anxiety, twice a day for 30 days (60 pills)
- Methadone 40mg, as needed for pain, twice a day for 30 days (60 pills)

Case Study

- Signed off by practitioner at clinic
- Alleged the practitioner did not exam patient, so no real medical purpose
- New to clinic claiming chronic pain from failed hip and back surgery
- October 7, patient found unresponsive by her boyfriend
- Pronounced dead at the hospital
- Autopsy results “Acute cardiorespiratory arrest, secondary to methadone abuse. She also had high levels of cannabinoids and opiates in her system”. Methadone levels themselves not high enough to overdose, so it is believed the marijuana increased likelihood of problems. Ruled accidental death
Case study

- Police investigation found many drug bottles and paraphernalia including marijuana
- Patients father stated he was not surprised to learn of daughters death as he knew she had a drug problem
- Several pills missing from recently filled prescriptions
  - Seven oxycodone
  - Ten alprazolam
  - Six and a half methadone
- Autopsy did not show her toxicology supported her use of the missing drugs—widely believed she shared or sold
- Three months later father filed suit against many healthcare providers including the pharmacist.

Allegation against Pharmacist

- Failure to check for over-utilization of narcotics from provider
- Failure to monitor control substance inventory
- Failure to engage in professional communication with provider
- Failure to take proper care in filling prescriptions

What's is your opinion? Was the pharmacist negligent?

Additional Considerations

- Plaintiff claims pharmacist filled prescriptions without properly investigating background and in excessive doses
- Some members of the clinic were arrested later that year for practicing outside the scope of their practice. Police acted on information that the clinic was improperly writing prescriptions for narcotics
- Clinic practitioners pre-signed prescription pads for use by staff and thus had medical license suspended
- Pharmacist felt that prescription was valid as written. Expert witness felt the only obligation the pharmacist had was to advise the patient on the proper use of drug.
- In reviewing notes about patient, pharmacist was able to verify that he questioned patient as to dosing, interactions, side effects, and proper narcotic management.
Resolution

- Defending pharmacist declined settlement offer
- Later received Notice of Voluntary Dismissal without Prejudice
- No indemnity paid
- Expenses were in $150,000
- Took 7 years to defend

Risk control recommendations

- Counsel each patient regarding medications and document the process, including refusals for counseling
- Encourage patients to ask questions to make sure they got it
- Document all discussions with the patient, their family, and appropriate medical healthcare personnel.
- Evaluate workplace practices and conditions to make note of any risk for patient safety.
- Question prescribing practitioners when you have questions.

Risk Control Recommendations for Abuse Potential

- Red flags may include:
  - Pattern prescribing
  - “Cocktails” prescribed of frequently abused controlled substances
  - Geographic anomalies
  - Paying in cash
  - Shared address with customers presenting on same day
  - Doctors prescribing outside of specialty
  - Fraudulent prescriptions
Case Study

- Patient visited ER for pneumonia, arrived to pick up antibiotics
- Cashier gave patient 4 medications (diazepam 10mg, gabapentin 300mg, cyclobenzaprine 10mg, and diclofenac 50mg) that should have gone to different patient
- Error occurred when bag was given that clearly marked for other patient
- Cashier does not recall verifying patient information prior to giving them the medications
- Patient returned a few hours later and indicated they had taken each of the medications
- Pharmacist advised to go home and rest, that they may experience some dizziness.
- Did not instruct him to avoid driving or alcohol

Case Study

- Upon leaving, patient became drowsy and fell asleep while driving and struck a tree
- Sustained back, neck, shoulder, and knee injuries resulting in permanent partial disability
- Three months later, lawsuit filed against the pharmacy, the pharmacy owner, the consulting pharmacist, and the cashier.

- Allegations were:
  - Improper prescription dispensed
  - Failure to educate non-clinical staff on proper medication dispensing
  - Failure to advise patient of potential adverse side effects

Additional Considerations

- Owner was “pharmacist-in-charge” and liable for actions for employees negligence
- Consulting pharmacist counted pills and noted one was missing. Gave instruction to go rest but didn’t provide any written information about incorrect medications or possible side effects.
- Pharmacy had not reviewed or updated procedures in last five years.
Resolution

- Indemnity paid: $300,000
- Expensed: exceeded $100,000

Risk Control Recommendations for Wrong Patient

- Verify all patient information
- Verify two identifiers to verify medications are being dispensed to proper patient
- Open container to verify proper medication is being dispensed
- Include purpose of medication on label if it is on prescription
- Look at how you separate patient orders
- One drug at a time and affix labels to the container before working on the next prescription
- One patient at a time.
- Clear prescription bags

Risk Recommendations for Training and Policies

- All new staff trained and monitored before working independently
- All staff educated and verified as proficient in use of all pharmacy equipment (barcode scanner, automated dispensing) and know guidelines
- Policies and procedures readily available, updated on regular basis, and followed by all staff
- Many other things can improve daily business
- End goal-Patient safety
Claim Examples of Wrong Drugs

- Prescribed Valium – Dispensed Zantac
  - Paid $50,000 due to Grand Mal seizure resulting in injury
- Prescribed Klonapin and Tinazidine- Dispensed two prescriptions for Klonapin no Tinazidine
  - Paid $135,000 due to confusion resulting in fall and permanent injuries requiring multiple surgeries
- Prescribed Micoripil- Dispensed Methrexate
  - Paid $1,000,000 due to multi organ failure resulting in permanent total disability

Risk Control Recommendations for Wrong Drug

- Enhanced shelf tags for drugs with problematic names, packages, or labels
- Look alike drugs with similar names and packaging not stored near each other
- Look alike drug names do not appear on same computer screen or differentiate by using TALL MAN LETTERS
- Use barcode scanning to verify drug selection
- Final screen check to verify proper selection

Claims examples of Wrong Dose

- Synthroid 75mcg prescribed
  - Dispensed 175 mcg
  - Paid $47,500 due to hospitalization for thyrotoxicity
- Methotrexate 15mg once a week prescribed
  - Dispensed 15mg every day
  - Paid $50,000 due to death from complications of toxicity
- Morphine 20mg/5ml with 5mg every 4 hours prescribed
  - Dispensed 20mg/5ml with 5ml every 4 hours
  - Paid $175,000 due to resulting death
Risk Self Assessment Checklist

• Found at www.hpso.com

• To be attached

Protect Yourself

❖ Analyze procedures-make adjustments as necessary
❖ Implement risk control procedures
❖ Document, Document, Document
❖ Look at insurance coverage
   - Employer provided insurance
   - Individual insurance coverage

THANK YOU!