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## Technician Error and Pharmacist Liability for Patient Death



TECHNICIAN ERROR AND  
PHARMACIST LIABILITY FOR PATIENT DEATH

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### Faculty

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It is the pharmacist's responsibility to review the order processing accuracy of pharmacy technicians prior to the release of a medication to a patient. This webinar recognizes that for pharmacy systems to work well, pharmacy technicians must be properly trained and supervised, and pharmacists must be particularly attentive to the possibility that an order processing error has occurred. The case study method is used to review a malpractice case in which a pharmacy was alleged to have caused a patient's death due to system failures.

### Learning Objectives

#### Pharmacist

- 1 List the responsibilities of a pharmacy technician
- 2 Recognize the causal factors in a scenario where an order processing error occurred and the supervising pharmacist is failed to detect the error
- 3 Identify appropriate procedures to assure that pharmacy technicians are appropriately trained, supervising pharmacists are given realistic expectations for technician oversight, and steps are taken to remedy existing problems when an order processing error occurs.

#### Pharmacy Technician

- 1 List the responsibilities of a pharmacy technician
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#### Nurse

- 1 List the responsibilities of a pharmacy technician
- 2 Recognize the causal factors in a scenario where an order processing error occurred and the supervising pharmacist is failed to detect the error
- 3 Identify appropriate procedures to assure that pharmacy technicians are appropriately trained, supervising pharmacists are given realistic expectations for technician oversight, and steps are taken to remedy existing problems when an order processing error occurs.

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## Target Audience

Pharmacists, Pharmacy Technicians, Nurses

## Universal Activity Number

**Pharmacist**

0798-0000-19-154-L03-P

**Pharmacy Technician**

0798-0000-19-154-L03-T

**Nurse**

0798-0000-19-154-L03-P

## Credit Hours

1.0 Hour

## Activity Type

Knowledge-Based

## CE Broker Tracking Number

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## ACPE Expiration Date

October 23, 2022

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 | **LEARNING OBJECTIVES**

1. List the responsibilities of a pharmacy technician.
2. Recognize the causal factors in a scenario where an order processing error occurred, and the supervising pharmacist is failed to detect the error.
3. Identify appropriate procedures to assure that pharmacy technicians are appropriately trained, supervising pharmacists are given realistic expectations for technician oversight, and steps are taken to remedy existing problems when an order processing error occurs.

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## OUTLINE

- The Pharmacy Technician Role
- The Process of Legal Case Analysis
- Background of a Legal Case That Has Much to Teach Us
- Analysis of the Case
- The Basis of Punitive Damages Awards
- Factors of the Case that Support Punitive Damages
- Learning Points of the Case

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## PHARMACY TECHNICIAN CONSIDERATIONS

- **Technician Training/Education**
  - How Much?
  - By Whom?
- **Levels of Pharmacist Supervision**
  - Technician to Pharmacist Ratios
  - Constant Availability of Pharmacist for Questions
- **Final Check of Order Processing Accuracy**
  - *Who is liable when a technician makes a mistake that a pharmacist does not intercept?*

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**Pharmacy Technician**

**APPLY TODAY**

City mayor announces

**Market Review**  
steady amid geopolitical old futures Asian stocks ent two-year Tuesday and indexes 7 to increased stment funds m U.S. stocks on to Europe. rom crude oil res dropping

**Hurricane climbs**  
Hurricane at least United weekend. the Car Southeast landfall to 2004. Eva heavy traf Irma's pea 185 mph strongest

**City mayor announces**  
City mayor announces

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## DELEGABLE TASKS (EXAMPLES)

*Data entry;*

*Labeling of preparations and prescriptions;*

*Retrieval of prescription files, patient files and profiles, and other similar records pertaining to the practice of pharmacy;*

*The counting, weighing, measuring, and pouring of prescription medication or stock legend drugs and controlled substances, including the filling of an automated medication system;*

*The initiation of communication to confirm the patient's name, medication, strength, quantity, directions, number of refills, and date of last refill;*

*While under the direct supervision of the pharmacist, performance of any other mechanical, technical or administrative tasks which do not themselves constitute practice of the profession of pharmacy.*

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## NON-DELEGABLE TASKS (EXAMPLES)

*Receive new non written prescriptions or receive any change in the medication, strength, or directions of an existing prescription;*

*Interpret a prescription or medication order for therapeutic acceptability and appropriateness;*

*Conduct final verification of dosage and directions;*

*Engage in prospective drug review;*

*Monitor prescription usage;*

*Override clinical alerts without first notifying the pharmacist;*

*Engage in patient counseling;*

*Engage in any other act that requires the exercise of a pharmacist's professional judgment.*

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## RELEVANT PRINCIPLES OF LAW

- The “tort” of Negligence
  - Duty Owed
  - Breach of Duty
  - Causation
  - Damages
    - Compensatory
    - Punitive
- Related Issues
  - Respondeat Superior (Let the Master Answer)
  - Mutual Blame by Defendants
  - Institutional Controls
  - Remediation Following an Error



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## THE PROCESS OF LEGAL CASE STUDY

- Identify the Parties
- Identify the Issues
- Review the Case Record
- Determine the Facts (or Allegations if Preliminary)
- Evaluate the Arguments
- Determine the Result
- Examine the Rationale
- Ask How This Case Can Be Used To Improve Going Forward

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## A NOTE OF CAUTION WITH LEGAL CASE STUDIES

- This is a real case with identities redacted.
- Language in quotes is taken directly from the court's official opinion in the case.
- There is no intent to entertain with this case; it is provided for educational purposes.
- The review of this case should not be interpreted as a negative reflection on any individual or business; the situation described here could happen to anyone.
- The goal is to learn from this case and to improve pharmacy practice based on what we learn.

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## BACKGROUND OF THE CASE

- The survivors of a patient are suing the pharmacy for "wrongful death" of the patient.
- In addition to seeking compensatory damages, the plaintiffs also sought punitive damages for "aggravating circumstances."
- The jury returned a verdict in the plaintiff's favor for \$2 million in compensatory damages, reduced to \$125,000 based on a statutory cap.
- The judge disallowed punitive damages. The plaintiffs are appealing the disallowance of punitive damages.

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## BASIC FACTS FROM THE COURT

- Patient was released from hospital after treatment for fluid buildup in lungs; multiple Rxs were phoned to defendant's pharmacy.
- Pharmacy technician took phone Rx.

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## PHARMACY TECHNICIAN BACKGROUND

- Technician "had no formal pharmacy training or education." She had "worked in the floral department before moving to the pharmacy."
- Technician made "numerous errors" with Rxs. Spelling errors, incorrect birth date, 10x overdose of albuterol inhaler. Once daily metolazone was recorded as once daily methotrexate.

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## ANALYSIS OF FACTS

- Expert witness testified that technician would select drug from drop-down menu, and “if a person was looking for something that started with the three letters m-e-t and had a 2.5 mg strength, it’s a very common mistake to pick the first one that meets those two criteria and pick methotrexate rather than metolazone.”

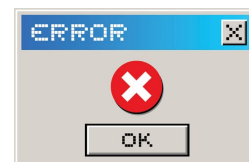


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## ANALYSIS OF FACTS

- Reviewing pharmacist missed the error: “For some reason I didn’t recognize the weekly versus the daily. It didn’t click in my mind.”
- Expert witness was critical of computer system that did not have a hard-stop to identify once daily methotrexate, although this was “done widely across the country.”



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## OUTCOME FOR PATIENT

- Patient's husband picked up Rxs.
- Pharmacy employee asked husband if he had any questions; he did not; no counseling or warnings were provided.
- P&P Manual at pharmacy "strongly recommends that all patients receiving new Rxs receive counseling." Expert testified that counseling is necessary for "high alert" drugs like methotrexate.
- Patient took drugs as instructed on label and died less than a month later from side effects of methotrexate.

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## COURT REVIEWS PUNITIVE DAMAGES

- Not generally recoverable in negligence cases, because "negligence, a mere omission of the duty to exercise care, is the antithesis of willful or intentional conduct."
- "Punitive damages may be awarded for a negligent act or omission if the jury finds that the conduct of the defendant showed complete indifference to or conscious disregard for the safety of others."
- "The evidence in this case was sufficient to permit the jury to conclude that [the pharmacy] acted with complete indifference to, and conscious disregard for, the safety of others, in circumstances which presented a high probability of injury."

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## FOUR FACTORS IN COURT'S ANALYSIS

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Pharmacist failure to conduct utilization review prior to verification of prescription for patient.

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Allowing pharmacy technician to receive telephone orders for new medications from a prescriber's agent.

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Failure to counsel patient's representative when dispensing new Rx for high-alert drug.

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Lack of meaningful changes to pharmacy procedures following the incident.

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## PHARMACIST FAILURE TO CONDUCT DUR

- Corporate representative testified that "the pharmacist really did not perform a medication review of this drug and of this patient."
- "The evidence indicated that the error in the prescription would have been obvious to a pharmacist (assuming they reviewed the prescription before it was dispensed.)"
- "The jury could have concluded that when he failed to perform a meaningful review of [the patient's] prescriptions, [the pharmacist] knew or should have known that his actions created a high probability of injury, justifying a finding of aggravating circumstances."

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## PHARMACY TECH RECEIVING NEW RX

- State law was apparently ambiguous (?????).
- P&P Manual stated “pharmacists take all new prescriptions that are phoned in from prescribers’ offices.”
- Tech training materials used at the pharmacy said, “Only pharmacists can receive oral prescriptions.”
- “The evidence concerning [the technician’s] lack of pre-employment education and training, and of the number of errors she made in transcribing the prescriptions, would have permitted the jury to conclude that the pharmacists should have been aware of a substantial risk of errors if [the technician’s] work was not subject to meaningful pharmacist review.”

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## COUNSELING ON NEW HIGH-ALERT MED

- Corporate representative “testified that her personal practice was to always place a note with a prescription for methotrexate, requiring that a pharmacist have direct consultation with the patient, because she knows that methotrexate is potentially dangerous on that issue of daily versus weekly administration.”
- The pharmacy “could have required that pharmacists follow the practice of the corporate representative.”
- “The jury could conclude that [the pharmacy’s] decision to leave the decision whether to counsel patients to the discretion of individual pharmacists exhibited conscious indifference to patient safety, when the consequences of prescription errors were potentially lethal.”

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## POST-EVENT REMEDIATION

- Pharmacist testified that following the patient's death, "he was unaware of any specific changes in the policies or procedures."
  - Techs still permitted to receive telephone orders for new Rxs.
  - Patients were "still merely offered counseling" on new Rxs.
- Corporate representative said "pharmacists as a group have had in-depth conversations about being more conscientious than we already were, you know, just trying to be more safe in everything that we do."
- "Failure to take any meaningful corrective action following [patient's] death supports the conclusion that its conduct exhibited complete indifference or conscious disregard."

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## COURT'S RECOMMENDATIONS/CONCLUSIONS

- "Prohibiting pharmacy technicians from taking new telephone prescription orders."
- "Flagging orders for high alert medications for greater scrutiny."
- "Require pharmacist counseling prior to dispensing new prescriptions for high alert medications."
  
- Denial of punitive damages was reversed.
- Case remanded to lower court for new trial on aggravating circumstances.

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## LEARNING POINTS FROM THE CASE

- Pharmacy technicians deserve adequate training prior to employment, and training never ends.
- Technicians must adhere to the limits of their role.
- Computer systems must be updated to support pharmacy personnel with useful alerts.
- Pharmacists, technicians, and corporate management must work together to find ways to comfortably collaborate in the best interests of patient safety.
- Meaningful system changes must be made following careful assessment of a pharmacy error.