



THE INDEPENDENT PHARMACIST'S DUTY TO WARN

Amanda Gohlke Fields, Gen. Counsel for American Pharmacies (APRx)

© American Pharmacies 2011

Introduction

Pharmacists continue to evolve from dispensers of pharmaceutical products to health-care providers who are an integral part of the medical circle, frequently providing patient counseling services and medical advice. As the pharmacist's role has expanded, so has his/her accountability, particularly in regard to the pharmacist's Duty to Warn.

Medicare Part D Audits

Under the Duty to Warn (DTW) theory of liability in medical malpractice lawsuits, patients injured by prescription drugs claim that the pharmacist has a DTW about the potential adverse effects and dangers associated with the drugs.

The leading case in Texas on this issue is that of *Morgan v. Wal-Mart*, which held that there is a DTW under specific circumstances or if a reasonable pharmacist would warn. In this particular case, the parents of a deceased child alleged that the pharmacy had DTW of adverse reactions and that the federal regulations contained in OBRA '90 require a duty to counsel. The court held that pharmacists do not have a general DTW patients of potential adverse reactions, absent evidence of any special circumstances or neglect in the face of information in which a reasonable person would have acted, and that the counseling laws under federal regulations such as OBRA '90 cannot be held as a general DTW. The court went on to say that special circumstances *could* create a duty for pharmacists, as their duty has dramatically changed over the years. Pharmacists should consider the following guidance to avoid the application of the DTW standard:

1. When a potential contraindication or adverse reaction is foreseeable, the pharmacist may be found negligent if he/she fails to take proper action.
2. If a pharmacist advertises or voluntarily undertakes a duty to check for drug interactions, the pharmacist may be liable if he/she fails to perform this service.
3. Pharmacists should always counsel patients and answer all their questions.
4. Pharmacists should always provide patients with available or regulated written drug information. However, simply providing patient information sheets will not shield a pharmacist from liability.
5. When a question arises, the pharmacist should always consult the patient's physician. Though some courts have held that this interferes with the physician-patient relationship, failure to do so could result in liability for patient harm.

As the pharmacy profession continues to expand its culpability by taking on further accountability for patient care, American Pharmacies' members can expect to be held to an even higher legal standard—in Texas, one that will likely eventually include an *absolute* duty to warn (higher than the current standard of simply a DTW under specific circumstances or if a reasonable person would warn). American Pharmacies' members should undertake every endeavor to maintain the highest level of professional Standards — to better serve the patient and, in turn, avoid any liability.

Questions? Please contact Amanda Gohlke Fields at afields@aprx.org

© The preceding material is the sole intellectual property of American Pharmacies (APRx) and may not be distributed or reproduced without our express consent.