

Patient makes claim for compensation against pharmacist for negligence

↓ THE CASE

A pharmacist dispensed an incorrect medication for the treatment of epilepsy. The patient complained to the PCT. The PCT protocol for handling complaints from patients involved inviting the pharmacist to submit a written report of what had occurred. The pharmacist provided the PCT with not only a report of what had occurred, but also a fulsome apology in which an admission of negligence was made. Furthermore,

the pharmacist then went on to state that this negligence was directly linked to the harm caused to the patient. The PCT sent a copy of the Pharmacist's Report to the patient as laid down in their protocols.

On receipt of the letter, the patient handed it to his solicitor who immediately issued civil claim proceedings against the pharmacist.

↓ FACTS AFFECTING THE CASE

The patient's actions in taking this matter further had been affected by the fact that the pharmacist had made a previous dispensing error involving the same patient. By writing to the PCT, the pharmacist's

comprehensive statement became unnecessarily self-incriminatory and damaging, making the probability of successful civil action very high and ensuring that negotiations for any settlement would be difficult.

→ Learning points:

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01. The majority of patients who are involved in an error episode initially want just two things a) a genuine apology b) an assurance that future performance will be improved. If you can handle this stage of an error report adeptly, then it is unusual for the matter to go further.
02. Consequently, you should always ensure that you verbally apologise to patients if something goes wrong. Furthermore, the Code of Ethics places a duty of candour on pharmacists in the event of an error, which means that they need to be honest and frank with patients. **Making such a verbal apology, even if this involves an admission that a mistake has been made will not invalidate your personal insurance.** However, if a complainant becomes a claimant – and this is characterised by talk of 'taking the matter further' or 'going to a solicitors', then you would need to take great care if you are making a written report to them or to any third party. Importantly, if you reach this stage then you will need to contact the PDA for guidance as you will need help to write a letter which avoids unnecessarily damaging statements admitting negligence and liability.
03. Remember, written evidence may well be handed to a solicitor in the future.
04. Additionally, the patient needs to be given an assurance that processes will now be reviewed to ensure that such an error would not happen again. Most importantly, this review must actually be undertaken. In the event that it is not, and a further similar error occurs, then the consequences (mainly civil and professional, but in some cases employment and possibly even criminal) will be far more serious for the pharmacist.
05. If you are writing to the PCT, ascertain what will happen to the letter. Ask to see a copy of their complaint handling procedures.
06. For a comprehensive guide as to what to do in the event of an error go to the PDA website www.the-pda.org enter the Archives section, click Risk Management then Handling incidents and choose the article entitled "How does a complaint turn into a liability claim?"

Mother claims for personal injury on behalf of her child, allegedly caused by the use of a faulty CRC.

↓ THE CASE

A mother of a 3 year old child placed her antidepressant tablets, recently acquired from her local pharmacy, in her shopping bag. On returning home, she left the bag on the kitchen floor. With help from the child, the bag toppled over and the medicines fell out. The child managed to obtain and open a bottle of his mother's tablets and ingested two, resulting in hospitalisation in excess of twenty-four hours.

The child's mother alleged that the cap was faulty, and instructed

solicitors on behalf of her child to sue for personal injury. The child therefore became the claimant and as a minor, had access to Legal Aid, a factor that usually means that the claimant will take the case all the way, with no apparent personal penalty for failure.

The pharmacist who dispensed the medication stated that she "always used CRCs and always tested them before handing out any medication as a matter of routine."

↓ FACTS AFFECTING THE CASE

A parent can sue on behalf of a minor. The minor sues through the parent, as his "next friend." Having made a claim through a solicitor that the pharmacist had been negligent in providing a faulty CRC, it transpired that the child's mother admitted that she had taken one tablet between the pharmacy and home – she had to give the hospital accurate information in order that they could treat the child effectively.

There was sufficient doubt as to how the cap was replaced, or whether or not the mother (having taken some of the medication) tampered with it. The PDA's legal team concluded that should the mother wish to pursue the case, she should be 'joined-in' as Part 20 Defendant (previously called a 'third party' Defendant) as a result of her act ('novus actus interveniens'), which could itself have constituted an act of negligence and broken the original 'chain of causation' of any damage which might

have originated from the original negligence by the pharmacist (if any).

In other words, by leaving the tablets within reach of her child she may in fact have been responsible for the actual act of negligence which caused the harm, especially as the pharmacist applied the warning 'keep out of the reach of children', which she failed to heed. There was also a strong possibility that she may not have replaced the top properly, making her wholly responsible for the consequences that followed.

The claimant, the child, withdrew his claim. As there was no long-term damage done to the child it is unlikely that any further action will ensue and the case is considered closed. However at the age of majority in fifteen years time, he will still have the right to sue if in the unlikely event he can prove that the pharmacist caused the harm.

→ LEARNING POINTS:

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01. The law of 'tort' enables individuals to sue for loss, damage and personal injury, which arise as a result of the negligent act of another, for up to six years (loss and damage) or up to three years (personal injury) from the point at which it has become apparent that harm has been caused. Minors can sue for up to three years after they reach the age of 18.
02. If a third party is either partially or totally responsible for the negligent act which caused the loss or damage complained of, they may be 'joined-in' by the original Defendant as a 'Part 20' Defendant (previously termed a 'Third Party Defendant') and either a full (indemnity) or a partial contribution is sought from them.
03. Always use CRC's and make it a routine to check their effectiveness, and ensure that a 'keep out of the reach of children' label is applied.
04. In the event that a patient requests that you do not dispense the medication in CRC's, annotate your prescription; if possible obtain written confirmation by way of an initialled note. Even if you obtain such confirmation, you may not be able to avoid liability for any consequential loss or damage that follows from the lack of the child-safety closure!
05. **Contact the PDA in the event a patient makes a similar claim.**