

THE BENEFITS OF PDA MEMBERSHIP

Last autumn the Pharmacists Defence Association was launched in a blaze of publicity becoming the first nation-wide organisation to champion the cause of employed and self-employed pharmacists.

Many pharmacists may have been confused when a membership pack landed on their doorstep in October inviting them to become members of the PDA, at no extra cost, and the only qualification for membership is that they are insured through PIA.

Indemnity and Legal Defence Costs Insurance is reasonably well understood by the thousands of pharmacists that have taken out such cover with the PIA. The concept of a defence association, however, is new to pharmacists, though not to other health professionals who all align themselves to such a body from their student days. The difference between merely being part of an insurance scheme and a member of a defence association is fundamental.

Insurance premiums have paid for action taken by 'panel' lawyers when legal intervention was required, which some times proved to be too late. These practitioners were very effective in their field and looked after the best interests of insured members. Significantly, however they were not pharmacists.

The PIA has now convinced underwriters that by allowing experienced PDA (pharmacist) staff to become involved

right from the start and throughout a potential action or claim against a pharmacist, they can add value by preventing an incident from escalating. As a consequence, members can rest assured that someone is looking after their reputation right from the outset.

Since its launch in September, the PDA has dealt with well over one hundred cases, a third of which are employment disputes and an equal number of malpractice inci-

The significance of the PDA to pharmacists insured by PIA is that, the unique combination of a Defence Association backed by solid insurance protection

dents which could have escalated to a claim. In this publication, articles explain how the PDA has handled situations, which could have otherwise taken a different course of events and exposed the 'individual' to major problems with either their employer or the Society.

The PDA does not exclusively deal with the day-to-day incidents. The Association has a broader role to play on the national stage. It is the only voice that will articulate the views of the individual in a profession that is dominated by employer influence. Work has already begun in challenging employers who provide a working environment that can put patient safety at risk and tarnish the reputation of the pharmacist.

Watch this space!

Our insurance is provided by:



working for pharmacy

inside this issue of **INSIGHT**

PAGE 2

| News |

PAGE 3

| Repeat prescribing risks |

PAGE 4

| pda case studies |

PAGE 6

| Mistaken dose of OTC medicines |

PAGE 7

| Can I be sued? |

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PROBLEMS WITH GETTING YOUR LOCUM FEES PAID?

In recent months, PDA has been approached by several self – employed locums about a wide range of disputes that have emerged between them and their employers. Some of these involve the non-payment of locum fees, or arguments over apparently arbitrary deductions made by some employers after the completion of the locum duty. Other issues are more complex for example notice periods that should be given by either side to cancel a booking and what happens if a locum arrives at a pharmacy to find that there are not enough staff members.

Recently the PDA learned of a case where a locum gave a proprietor one months notice to cancel their placement and yet the proprietor was not prepared to

appropriate support from the start.

As of April 2004, PDA is to offer a contract disputes service for self-employed members. Designed primarily for self-employed locums and primary care pharmacists, the new service from PDA will provide support and advice in situations where there is a dispute over the payment of the members fee, or other contractual type issues. Such support may involve the simple provision of advice, mediation with the other side or it may even involve instituting legal action for non payment of fees or legal support in appropriate situations.

JOHN MURPHY, GENERAL MANAGER OF PDA SAYS...

“From our experience, we can see that problems over non-payment of fees and similar contractual issues do cause big concerns for self-employed pharmacists. Self-employed individuals can be vulnerable, particularly if they have to challenge an employer who has considerably more resources at his disposal. We have spoken to some pharmacists who feel that sometimes it is just not worth the hassle of pursuing an issue.

We believe that this new service will be highly beneficial as, with the weight of the PDA behind them, self-employed pharmacists will have a far greater chance of seeing that justice can be done and that their rights can be protected.”

This new service will be provided to PDA members as an automatic membership benefit.

“the PDA will provide support in situations where there is a dispute over the payment of the locum fee or other contractual type issues”

accept this. Subsequently he took the locum to court and won the case not because of the strong merits of his case, but because he had considerable legal support and the locum did not. The proprietor in question has now referred the case to the Infringements Committee of the Society. It is felt that none of this would have happened had the locum had access to

HOW NOT TO DEFEND YOUR REPUTATION...

A feature from PDA Advisory Board member Pharmacist and Barrister Graham Southall – Edwards has just been posted to the PDA website. He describes how PDA experiences thus far have shown that pharmacists who may be completely innocent, when faced with a serious allegation by a security officer, or some other form of investigator in the workplace, will sometimes go into a form of shock or mental malaise and because of this, they will then often make fundamental errors when offering explanations as to what happened.

Pharmacists who generally do not know their rights, in an attempt to nip matters in the bud, will talk away and will inadvertently even make damning admissions to offences that they have not committed. The advice is: learn your rights, always ensure that your lawyer is present or adjourn the meeting until you can get expert help. Furthermore, though it may sound far fetched – if you want to learn what your rights are why not try watching the occasional episode of THE BILL!

This article is provided free to all pharmacists on the PDA website home page at www.the-pda.org

PDA PROVIDES REGULAR UPDATES FOR MEMBERS VIA ‘E-NEWSLETTER’

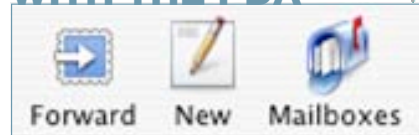
Issues important to the agenda of the individual pharmacist can emerge without warning. Furthermore the work of the PDA, in influencing the employment and professional agenda, highlights important issues and developments concerning the individual pharmacist. When this occurs, the PDA will always attempt to keep members up to date. The easiest way in which this can be done is by producing an electronic newsletter and indeed, in the last four months, two such newsletters have been emailed to PDA members.



Problems occur however, when some PDA members change their email address and do not inform PDA of the changes. Indeed, the last e – newsletter was returned from more than 800 email addresses due to changes. In addition to this, some members have not yet provided their email address to the PDA.

Finally, we are also aware that some PDA members do not have an email address and in this case, we have attempted to mail the e newsletter as hard copy.

KEEP UP-TO-DATE WITH THE PDA



If you have not received the PDA newsletter by email, it may be that we do not have an email address, or are using an incorrect address for you.

We therefore appeal to all PDA members to provide us with an up to date e-mail address, this will enable us to keep all members up to date with the latest developments.

BEWARE!:

THE RISKS OF REPEAT DISPENSING

By Mark Koziol

M.R.Pharm.S., Director, The PDA.



The vast majority of prescriptions issued in community pharmacy are repeats. Many of the elderly population are on long term medication for chronic conditions and most are able to obtain repeat prescriptions from their GP without seeing the prescriber. **Mark Koziol discusses the issues...**

The new community pharmacy contracts, which will be introduced across the UK over the next few years, will contain services which allow patients to obtain repeat medication directly from pharmacies, rather than having to obtain a prescription from the surgery first.

The whole repeat prescription service appears to have ROUTINE stamped all over it and it is easy to understand why occasionally, all of the healthcare practitioners involved in the process may subconsciously fall into a routine mode where just occasionally, the levels of care and attention employed may suffer.

On the face of it, one would imagine that the chances of errors being made would be reduced in a repeat situation. After all, the surgery should just be able to 'press the button' and get the doctor to sign the script; no need for a fresh diagnosis. In the pharmacy there is a PMR record in place. This assists the pharmacy staff in the generation of labels. The patient too is familiar with the medicine and should therefore be aware of any untoward occurrences.

It may be surprising to learn however that a large proportion of dispensing errors do occur in this repeat category and it is often difficult to work out why this is the case. Certainly, this is one area where PDA will be looking to research and hopefully will be able to provide some explanations in due course.

The purpose of this article is to warn pharmacists that ironically, the repeat dispensing process is in some ways fraught with even more risks for pharmacists than when dispensing in a non repeat situation and extra responsibility will fall on the shoulders of the pharmacist when the new repeat dispensing arrangements are introduced across the UK. The basis of this assertion is that if an error is made with a freshly issued

one-off prescription what then follows will be an investigation to establish what the liabilities for the pharmacist are likely to be. From a civil claim liability point of view an

conversation with the patient took place, to ensure that the patient knew how to take the medicines in a safe and effective manner. All of these procedures could act as a useful

“ The Society will probably want to establish whether the error occurred through a simple human error, or whether the error occurred due to a blatant lapse in professional standards ”

error is an error, and if a patient is harmed then they are entitled to compensation. Where the situation becomes more complex, is when the RPSGB gets involved and tries to establish whether professional misconduct has occurred. In this case, the facts of the matter are scrutinised very carefully. The Society will probably want to establish whether the error occurred through a simple human error, or whether the error occurred due to a blatant lapse in professional standards of the pharmacist involved, or whether it occurred as a result of a system error. Clearly it will be important for the pharmacist to be able to demonstrate that this was an error of a human nature and not due to the non existence of a professional framework.

In a fresh first time item situation, it may well be possible to show that professional procedures were in place by demonstrating that the pharmacist undertook an assessment of the script, checked for any interactions or wrong doses, made any additional queries where necessary, either with the patient or with the prescriber. Finally, it may be possible to show that a brief con-

defence in an RPSGB investigation and could go a long way in persuading the Society to deal leniently with the situation.

There is evidence from practice that in a repeat dispensing situation many of these professional measures usually adopted are less likely to occur because of familiarity and routine. On the face of it, it can be argued that this work has already been done before and needs not to be repeated and there is a degree of logic in this approach. However, paradoxically, the more the process becomes automated, the fewer arguments for the defence of the pharmacist will exist in the event that an error occurs and the pharmacist comes to face a professional investigation. As a natural consequence to this, it is apparent that repeat prescriptions can represent even greater professional liability risks for pharmacists than first time prescriptions.

Over the coming year, PDA will be undertaking an extensive research programme in this area and will be releasing its findings when completed.

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PDA CASE STUDIES

As a Defence Association, the PDA will deal with many incidents involving pharmacists who require their reputation to be defended. In this article, we examine three recent cases which describe how problems can occur and suggest learning points that emerge.

1. WHAT TO DO IF YOU ARE REPORTED TO THE RPSGB AS A RESULT OF LOSING A CONTRACT DISPUTE?

A locum, accepted a booking but realised that on two days of the two weeks he was contracted to, he would be unable to get to the pharmacy because of a planned train strike, without incurring considerable expense.

The proprietor refused to meet these expenses and would not accept the locum's right to find a replacement for those two days. The pharmacist informed the proprietor, through his agency, that he was therefore unwilling to continue the contract with TWENTY-EIGHT DAYS notice.

The proprietor sued the locum for cancelling. The locum did not initially consult the PDA, but used the services of a high street solicitor. The proprietor won the case and some damages primarily because the locum's lawyer put up a poor defence, the proprietor then reported the pharmacist to the RPSGB.

The locum finally contacted the PDA for support when an RPSGB inspector came to interview him – the proprietor had now reported him to the Society claiming unprofessional conduct.

It was our Counsel's view that the reason that he lost the action was because the solicitor did not understand the nuances of pharmacy related practices, and consequently could not mount a credible defence. He was ordered to pay a proportion of the extra locum expenditure that the proprietor incurred because he was [held on the facts] to be in breach of contract, but the proprietor was not awarded costs because he did insufficient to mitigate his losses, using an emergency locum when this was unnecessary.

The PDA supported him in his submissions to the Society on the following grounds.

The Judgement in a small claims hearing can be very variable. Accordingly, the Judgement should not necessarily be relied upon by the RPSGB as anything more than one District Judge's view of the facts/documents which were before him on the day. The RPSGB should not therefore take this as proof of professional misconduct.

A number of very important points were not taken at the hearing, because they were either missed or unknown to the lawyer at the time of the hearing:

1. It is a well established locum practice that the locum may sub-contract services to another; this is reinforced by the existence of such a clause in the NPA locum agreement. The proprietor unreasonably refused to allow this, thereby, breaching the contract.

2. His terms and conditions with the agency clearly implied that either party may cancel the contract up to three days before commencement.

3. The agency's terms and conditions would have provided for a locum to receive all expenses; such expenses would reasonably have extended to costs in the event of a rail strike. The proprietor's

refusal to meet these costs actually meant that the proprietor had breached the contract and not the locum.

4. It is a term established by 'custom' in the locum industry, that locum commitments might be cancelled upon giving reasonable notice.

If the above points had been put forward at first instance, the outcome of the case would very probably have been dismissal of the action against the locum and a finding in his favour. Therefore no inferences should be drawn from the Judgement, for the purposes of an enquiry into matters of professional conduct.

The PDA's Counsel believed him to have very strong grounds for appeal, however we advised him that, owing to the high costs already expended by both parties (nearly five times the damages awarded), an appeal should only be brought if it were essential in order to protect his registration or professional livelihood. The additional costs of an appeal would not otherwise be justified, but the PDA's Counsel believed that it would be very likely to succeed.

5. Even if the PDA's Counsel was wrong on the law, this is a contract dispute and would only be a matter of professional misconduct if the cancellation was at very short notice indeed and led either to:

- a. A break in service to the public,
- b. Lack of qualified pharmacist cover for a time,
- c. The temporary closure of the pharmacy, or
- d. Loss of some or all of the proprietor's holiday.

None of these occurred so the conclusion could only be that the motive of the complainant was malice, not the benefit of the pharmaceutical profession or for the improvement in the standards of behaviour of its members.

WHAT CAN BE LEARNED FROM THIS CASE? 📌

If this pharmacist had contacted the PDA as soon as he knew of an action he would have had the benefit of lawyers who are experienced in pharmacy matters and who would have provided him with sound advice.

Because of this, and similar cases, PDA has now launched an extension to its legal support service (page 2) to provide advice to self-employed pharmacists facing contractual disputes with their employer.

2. MAKING A DECISION ON WHETHER OR NOT TO CHALLENGE A CIVIL CLAIM

A pharmacist dispensed an anti-depressant, at a lower unit-dose strength to that requested by the GP...

a month later, the patient insisted that the employer compensate her. A claim was passed on to their insurers who informed the PDA; *'your insured was on duty on this occasion and we look forward to hearing from you to the effect that you will be handling the claim on his behalf'*

The patient was acting on her own with no solicitors involved. It would have been normal procedure to obtain a medical report, initially, from her GP, and if there was a disagreement between the insurers and the claimant regarding how much the harm was 'worth', then further expert advice would be sought.

In many such circumstances the insurer decides to 'make an acceptable offer' on the grounds that if lawyers are involved then costs will escalate and further repercussions could follow.

However, there were suspicions surrounding this case;

1. The patient was very articulate and worked in the surgery from which her prescriptions were issued.
2. She had been on this medication for some time, and the colour of the item given differed from her normal prescription.
3. The symptoms described in her claim were suspicious; she outlined every possible withdrawal symptom of the medication, almost in the exact sequence that they appear in the BNF.
4. Furthermore, it became apparent that she may well have presented a replacement prescription for the correct medication at a nearby pharmacy the day after she had had the incorrect medication dispensed by our member. This would prove difficult to substantiate unless the patient authorised us to see her medical records, which she would not.

It was decided to take the pragmatic option and initially the PDA decided to offer a small sum in settlement, without admitting liability, the intention was to have closed the case quickly and therefore stop the case escalating.

This sum was rejected and, as a result, the claimant decided to seek the advice of a solicitor who purported to be an expert in gaining compensation from medical malpractice. These 'no-win, no-fee' lawyers make their money out of driving up costs, and expecting the insurer to pay up as part of any settlement. In this instance they were surprised to learn that the PDA viewed this case as a matter of principle on behalf of pharmacists who are sometimes exposed to what could well have been fraudulent action by a member of the public.

Following a lengthy negotiation, the original small settlement was accepted. This was as a result of a robust defence in the face of a solicitor making consecutive diminishing claims from their original claim

Following a lengthy negotiation, the original small settlement offer was accepted. This was as a result of a robust defence in the face of a solicitor making consecutive diminishing claims from their original claim, which was, of course, substantially higher than had been offered. It is usual that solicitors will refuse to settle unless their costs are met.

PDA refused to pay the claimants solicitors costs on the grounds that it was the claimants decision to instruct them and it was they who had driven up costs unnecessarily.

WHAT CAN BE LEARNED FROM THIS CASE?

There is a growing trend for employers to pass on claims to pharmacists when faced with a civil claim and ask for their insurance details.

There are people out there who are prepared to go to any lengths to claim compensation, even to the extent of possibly opening themselves up to charges of fraud.

3. SACKED FOR THEFT?

The pharmacist received a signed order from a registered practitioner...

for a specials item and could only secure this item from a specials manufacturer. The Manufacturer was concerned about the length of time it would take to be paid by the employer and suggested that the pharmacist pays directly, with her credit card.

On receipt of the goods, she supplied the 'Signed Order', believing that, as she had paid for the goods she should keep the payment, and that there could be no pecuniary advantage to herself, she would supply them immediately without processing it through the company's system and then make records later.

A disciplinary hearing was conducted by non-pharmacists who had no knowledge of Pharmacy law and the pharmacist was intimidated into signing a document, agreeing that she had been dismissed for theft.

There was no doubt that the pharmacist had made mistakes, and had probably breached company procedure, but the finding of 'theft' was not credible or legally valid.

The employer summarily dismissed the pharmacist for allegedly supplying medication without a prescription, keeping the money, breaching company rules and theft. The employer also submitted a complaint to the RPSGB for professional misconduct.

The PDA took issue with the charges, the punishment and the way in which the disciplinary processes were conducted.

Following the intervention of the PDA, she submitted an appeal that legally the charge of theft could not stand because the 'signed order' was properly supplied (the dismissing non-pharmacist manager did not understand this), the property probably belonged to the pharmacist not the company, but even if it did belong to the company, all the facts served to prove that she had never "appropriated the property of another with the dishonest intention of permanent deprivation" – the essential ingredients of any act of theft.

As so often happens in these cases, the relationship between the employer and employee had been irreconcilably damaged. The employer did not want to back down and the employee wanted justice but did not wish to work for the employer again. The compromise accepted was that the employer did dismiss her (not summarily) for breach of Company procedures (not breach of trust or theft), paid an agreed amount of salary in lieu of notice, including a sizeable contribution to her legal costs and dropped their complaint to the Society.

WHAT CAN BE LEARNED FROM THIS CASE?

If you are summoned to an interview at short notice, and it is obvious that there is an intent to intimidate you, demand that the interview is stopped and seek advice. If a charge of a criminal nature is mentioned seek advice, and certainly DO NOT ADMIT ANYTHING at that stage and NEVER SIGN ANYTHING even if you are told that you must do.

Be aware of the Company's security rules, if you need to do anything slightly out of the ordinary, because you are trying to help a patient, then discuss it with your line manager first.



A MISTAKEN SUPPLY OF AN O.T.C. MEDICINE...

By Gordon Applebe

BSc, LLB, PhD, FRPharmS,



Pharmacists are required by law to take personal responsibility for the actions of staff in the pharmacy, but what should they do if a staff member makes a mistake? **Gordon Applebe explains...**

An Assistant Makes a Mistaken Supply of a requested an OTC Medicine:

PROBLEM

You are working as a pharmacist in the dispensary on a busy Saturday and have two trained counter assistants working on the medicines counter and one helping you in the dispensary. During the afternoon you receive a complaint over the telephone from a lady who said the young assistant on the counter – Miss X- had sold her the wrong mixtures earlier that day. She said she had asked for Calpol and some ibuprofen for her three-year-old son but had been given a bottle of Calpol and a bottle of Medinol paediatric and had given her son 10ml of each before she realised the mistake.

RESPONSIBILITY

As the pharmacist you are the pharmacist in personal control of the pharmacy, are responsible for the health and welfare of customers entering the pharmacy and for the control and supervision of staff. You personally owe a duty of care to the patient. You are also responsible to ensure that the legal and ethical requirements are complied with including the supervision of the sale of pharmacy only medicines.

ACTION TO BE TAKEN

Firstly ascertain whether the child has been given and taken the medicine, whether the child had suffered any adverse reactions or not or was comatose. If the child has in effect taken the dose suggested then impress on the mother that she should take the child as a precaution to the accident and emergency department of the local hospital. Contact the relevant general medical practitioner and draw his attention to the incident involved.

Ascertain the facts from Miss X. If she claims that she followed the series of ques-

tions – WHAM questions – when selling the products concerned why did she sell these two to the same customer. Did she know that both products contained paracetamol? If so why did she sell the two products and if not, why didn't she know when she was supposed to be a trained medicines counter assistant. Ask Miss X to write a short statement as to what took place when the customer asked for Calpol and ibuprofen. Did the mother query the supply at the time? What conversation transpired

“ Report the incident to the duty manager and also report the facts to the owner of the business or, in the case of a company - the superintendent pharmacist ”

between the mother and Miss X? In any event suggest that Miss X works in an area away from the medicines counter as a precaution until further inquiries can be made. Make a set of notes yourself containing details of the incident. Did you supervise the sale? If not why not.

Report the incident to the duty manager (if there is one) and also report the facts to the owner of the business or, in the case of a company, to the superintendent pharmacist. Provide a report for the owner/ area manager and leave the decision as to what action to take against Miss X to the owner or superintendent pharmacist.

LIABILITY

Should any action for negligence be pursued by the patients representative i.e. the mother then it would normally be taken against the person making the prime error i.e. Miss X, plus the supervising pharmacist,

and the owner of the business. All three in law owe a duty of care to the patient. To succeed in an action for negligence the patient would have to show there was a duty of care, that duty was broken, and the patient suffered damage.

PRECAUTIONS IN FUTURE

Before you commence duties in any pharmacy you should ideally have a contract in writing, this also applies if you are a locum, particularly so if you are carrying out locum duties for the same owner on a regular basis. The contract should contain the normal conditions such as salary, hours of work, holiday entitlement, sickness allowance, your general duties and responsibilities and details for termination of contract. In addition it is advisable to have knowledge as to the number of staff, their qualifications, knowledge, standards and responsibilities, and what action should be taken against them if they breach the law or are considered incompetent, and by whom.

Information should also be obtained as to what areas in the pharmacy staff should be assigned to and any training requirements to keep them up to date. Finally as the pharmacist in personal control you should ensure that the law is complied with by all staff, including yourself, and establish the number and nature of standard operating procedures in force throughout the pharmacy. Remember that at the end of the day as you are the pharmacist in personal control in the pharmacy, the buck stops with you.

advisory_boardmember ▼

Gordon Applebe is a member of the PDA Advisory Board and a specialist in pharmacy law and ethics, RPSGB regulatory and inspectorate matters.

CAN I BE SUED?

By JoyWingfield

FRPharmF, LLM, MPhil, FCPP



These days, far more pharmacists are beginning to think about the consequences to them if an error occurs which leads to the harm of a patient. One of the most common questions is whether they are at risk of legal action if things go wrong. **Professor Joy Wingfield explores...**

Pharmacists know that a breach of the Medicines Act or the Misuse of Drugs Act could lead to a fine or imprisonment. Criminal law embodies the contract that the state has with its citizens by setting out what conduct is considered reprehensible and therefore likely to attract penalties. Because criminal proceedings may deprive a citizen their liberty, the standard of proof is high: it has to be proved "beyond reasonable doubt". We may be less familiar with civil law, which embodies ancient common law concepts about the duties one citizen owes to another. Trespass, assault, battery and negligence are civil offences, as are defamation and breach of confidence. Citizens have certain expectations in their transactions with each other and in some circumstances, if injury or damage results from a transaction, then a civil claim or "suit" for compensation may result.

In a civil case the standard of proof rests on "the balance of probability". In other words, the judge or jury must believe that it is more likely than not that the actions of the respondent (person being complained about) led to damage to the plaintiff (person making the complaint).

SO CAN I BE SUED?

The simple answer is "YES". All pharmacists, are personally responsible for their actions and could be required to account for their consequences. A more appropriate question would be, "can I be sued successfully?" to which the response is much less likely to be "yes", if you take every opportunity to defend yourself. Primarily you need to be able to show that you are a careful, competent and thoughtful practitioner. However, it is possible to be such a practitioner and to do your best and yet make an error and still be "negligent" in the legal sense.

To understand why, we should first understand what is meant by "an action for negligence". NEGLIGENCE In law, simply

means that three legal tests have been met. There was a duty of care on the part of A towards B - and... There was a failure in that duty of care - and... This breach or failure was the cause of damage or injury to B. So do we always have a duty to care for those with whom we come into contact in daily life? Not usually. If you are walking your dog along the side of a canal and you see a man drowning, the law does not expect you to dive in and save him. However, it would be different if you are the lifeguard on duty at the local Lido. The essential distinction is that in the first situation you are not holding yourself out as having any special skills or responsibilities towards people who chance to fall in the canal. In the second, you have assumed a duty to care about the welfare of people using the pool because you are in an official position. All health professionals, automatically acquire a duty of care towards the recipients of their services simply because they are exercising particular expertise and skills in providing that service. There is always a duty of care between a pharmacist and any patient or customer who is the recipient of professional services.

MORE TESTS

The law recognises that it is not always possible to be aware of the full consequences of one's actions, so in deciding the nature of the duty of care, it must be shown that the risk of injury was "foreseeable" - any competent practitioner should have known it was likely to happen. The duty must be "just and reasonable" - a medicines counter assistant might not be expected to exercise as high a level of care as a pharmacist. There must be a "sufficiently proximate" relationship between pharmacist and patient - a lesser duty might be acceptable if the patient were not in the pharmacy and the pharmacist could only rely on the patient's representative. Although "damage" can include shock, anxiety or distress, a claim

for compensation is unlikely to succeed unless this is severe. If a patient discovered a dispensing error at the time of collection, it would be hard to argue that compensation was warranted. A "goodwill" gesture to recognise the mistake might be appropriate but this does not mean "negligence is admitted".

Finally, it must be proven that the breach of duty of care really did cause injury. "Causation" can be very difficult to prove in medical cases because patients may have more than one disease or disorder and may, in any event, have suffered adverse effects irrespective of any error. The facts of the civil action are subjected to the "but for" test: would the patient have been OK, or no worse, but for the fault being laid at the door of the pharmacist?

WHO CAN BE SUED?

It is a cynical truth that compensation actions are usually aimed at the party who has sufficient money to pay compensation.

An injured party could attempt to sue anyone who is judged to have failed in their duty of care, but would almost certainly be advised to sue the pharmacist (if an owner-proprietor) or the pharmacist's employer.

The employer is liable in law for the actions of negligence of his employees but this protection, known as employer's vicarious liability, is becoming less certain. Moreover, before assuming that every claim for compensation has a chance of success we need to know more about the nature of a pharmacist's duty of care. What standards apply and when a breach or failure in that duty occurred.

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Joy specialises in application of law and ethics to pharmacy practice, particularly community pharmacy. Operation of disciplinary and enforcement processes at RPSGB.

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HAVE YOU TRIED THE PDA WEBSITE YET? WWW.THE-PDA.ORG

During the last three months the PDA website has become a valuable facility for our members. Many have joined on-line and it has received over 4,000 visits so far.

One of the most popular areas of the site is the Advice Centre which contains hundreds of articles, features and questions and answers posed by PDA members.

Members are able to ask questions relating to their particular area of concern and the PDA ensures that they have an answer within one working day. Subsequently, the question and its answer are posted onto the site for the benefit of all members.

We advise you to fully browse the site, which also contains useful tips on risk management, professional queries and employment advice.

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