Legal Matters®

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Developments in pharmacist liability

When we go to a pharmacy to get a prescription filled, we expect it to be filled correctly, with the proper medication at the proper dosage, and with the proper instructions. However, sometimes mistakes occur, and in certain instances these mistakes can result in very severe harm or even death. In some situations, this may be due to an error by the doctor, nurse practitioner or physician's assistant who wrote the prescription. But in other instances, it could be due to an error at the pharmacy. If that's the case, and it turns out the error was a result of pharmacy employees being negligent (in other words, exercising less care than a reasonably competent pharmacist in the same situation would have shown), you may be able to hold the pharmacy accountable.

This type of pharmacy liability can arise in a variety of contexts. For example, in a recent case in North Carolina, 74-year-old Bertha Small died as a result of a pill mix-up.

Small typically received her prescriptions from a mail-order pharmacy. In 2013, she received six medications in a package that looked just like the ones that always arrived. But she had received prescriptions meant for a patient in California. Each bottle had the name of the person in California, the name of that person's doctor and the name of the medication. But Small, who could barely read, did not read the prescription labels. She took some of the pills, then suffered hallucinations and confusion and broke her leg in a fall. She died several months later. Her son filed suit against the company that filled and shipped the medication and the company that paid it to do so.

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A federal judge threw out the case, finding that Small was "contributorily negligent." In plain English, that meant Small's own carelessness outweighed that of the companies. But the 4th U.S. Circuit Court of Appeals reversed, pointing out that the issue of Small's contributory negligence should have been left for a jury to decide. The family will now have that opportunity.

Another recent case, in South Carolina, showed that pharmacies may be considered responsible for harm that results if they continue to refill prescriptions under suspicious circumstances. In that case, a 62-year-old woman died of an irregular heartbeat and enlarged heart due to her

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frequent use of Bontril, a weight-loss drug that acts as an appetite suppressant by increasing the patient's heart rate and blood pressure. Long-term use of the drug is known to cause cardiovascular problems. Despite these known risks, a retail pharmacy apparently filled the woman's prescription more than 75 times over a nine-year period, when she shouldn't have been taking it for more than a few months. The woman's family sought to hold the pharmacy responsible, arguing that the pharmacists should have recognized she was overusing the drug and either called the doctor prescribing it or refused to fill it. The case never made it to a jury. The pharmacy settled out of court for a significant sum, indicating the family might have prevailed in court had it gone that far.

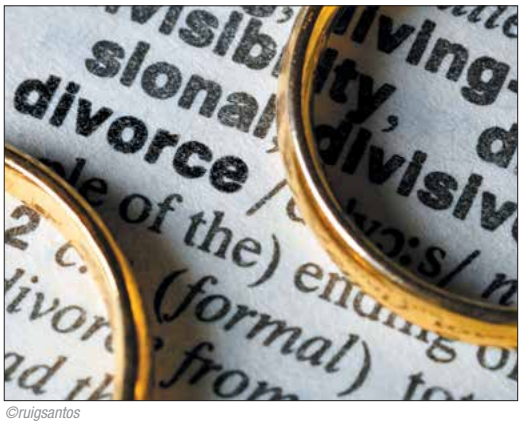
Meanwhile, a case in Kentucky illustrates how a pharmacy could, under certain conditions, be held responsible for a caregiver's failure to administer a prescription properly. That case involved 68-year-old Dan Schneider, a retired judge who was hospitalized with an infection. Schneider received antibiotics for two weeks, then was transferred to a nursing home, where he was to receive another four weeks of antibiotics. Once he got to the new location, however, he allegedly never received a single dose, even though staff documented that he had received the medication as scheduled.

Schneider ultimately died from a recurrence of the infection. His family filed suit against the nursing home for negligence in Schneider's care and sued the pharmacy for failing to follow up and verify that he received the antibiotics. The case ended up settling, with the nursing home taking most of the blame and paying most of the settlement. But the pharmacy ended up agreeing to pay a significant amount as well, perhaps fearing what might happen in court.

If you or a family member suffers harm from medication and you believe pharmacist error may be a factor, talk to an attorney as soon as you can.

These are just a few examples of situations in which a pharmacy might be considered accountable for harm to patients. Whether a case will succeed or not depends on the individual facts and circumstances. If you or a family member suffers harm from medication and you believe pharmacist error may be a factor, talk to an attorney as soon as you can.

'Do it yourself' divorce is full of risk



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"Do-it-yourself" divorce apps and programs for preparing and processing forms have become more popular.

While DIY divorce may turn out fine in some cases, it's full of risk.

If your divorce is simple (because it doesn't involve kids, neither side is seeking alimony or support and you basically agree on how to split property) DIY divorce apps and tools *may* be OK. It's still probably not a great idea, since the products cannot predict problems.

For example, if you and your spouse agree on who gets the marital home, the app is not necessarily going to counsel you on how to refinance the mortgage so that it's in the right person's name. Nor will it determine who handles unpaid property taxes, or ensure the title is transferred properly.

If not handled properly at the time of divorce, matters such as these can cause serious issues down the line. If the title transfer wasn't properly accounted for and years later your ex does not make the monthly mortgage payments, you could be on the hook if your name is still on the title (and on the loan).

DIY divorce services can't counsel you on handling retirement assets and debt, or on tax implications. DIY apps and programs will not see potential red flags on the forms you submit.

If your divorce is contested, meaning you expect to be battling over custody and property, you *absolutely* should not leave the process to technology tools. Only your own attorney can help you formulate a realistic approach and represent your interests, either in negotiations or in court. A DIY divorce may look cheaper on the surface, but in the end you get what you pay for.

Challenging a quitclaim deed

The next-door neighbors convinced your aunt to sign over the deed to her house. Your stepfather's long-lost son came to visit and walked away with a quitclaim deed to the family cottage. What do you do when you suspect someone did something "fishy" to get his or her name on a deed?

A quitclaim deed is a legal tool that allows one person to release the interest they have in a piece of property. In most states, quitclaim deeds are difficult to overturn. To do so, you need to be able to prove the document was invalid in some way, that the signer was incompetent or that someone exercised undue influence to compel the person to sign.

Notarization: In order to be recorded in the register of deeds, a quitclaim deed must have been executed before a notary public. The notary's job is to ensure the signatures are valid and that the signatory appears to be acting freely and voluntarily.

The notary should not notarize a deed if he or she has "compelling doubt" about the signatory's understanding of the transaction. However, the notary is not responsible for making any judgments about the legality or accuracy of a deed.

If the quitclaim deed hasn't been notarized, then it isn't official and can't be filed with the local recorder's office. Note, however, that once a quitclaim deed is notarized, it is still considered legal even if it isn't filed.

Undue influence: Challenging a deed often involves suspicion of undue influence. That suggests that the signatory to a deed has been improperly coerced. It could be that the beneficiary threatened the signatory or otherwise manipulated them.

Proving undue influence can be a challenge. Cases typically require medical records and experts who can testify as to the victim's mental state. Because family members may not discover the deed transfer right away, it may be necessary to look back at records that are many years old.

Mental capacity: Similarly, transfers can be challenged based on lack of mental capacity. When someone signs a deed, that person must have a minimum knowledge of what they are doing and a capacity to act of their own free will.

Lack of mental capacity can be found in a variety of situations, such as mental deterioration due to age, brain damage caused by illness or accident, mental illness, cognitive disabilities or drug impairment. Notaries are not always able to determine such incapacity, and some people may present as mentally capable for the few minutes it takes to sign a deed. Proving incapacity can be shown with witness testimony or medical records, or both.

Forgery: A forgery occurs when the proper signatory did not actually sign the deed. That means someone else forged the signature on the document and either fooled the notary or arranged for a false notarization. Proving a forgery usually requires a professional handwriting analysis.

When challenging a deed, it's best to have an experienced real estate attorney work with you. The attorney can help determine whether the deed is false and manage any subsequent litigation.

Naming a guardian for your children

Resist the urge to avoid naming a guardian as part of your estate plan simply because it's not easy to imagine someone else raising your children. If you don't, you leave the guardianship of your children up to the courts if you pass away. Think about who, starting with your family members, would be the best choice.

Remember that the guardian you choose doesn't also have to handle money for your children. Assuming you have life insurance and other assets set up to take care of your children, the trustee will be in charge of managing those assets on behalf of your children. The person or people you choose to take care of the child can coordinate with the trustee on matters of money.

If you want to name a couple, think ahead about your intentions should either person die, or if they separate or divorce. You can open up the field of options if you provide more than one possible guardian. That way, if the first person on your list cannot serve, you have approved of other possible options. If the guardian you are naming doesn't live in your state, include the name of someone who can take care of your children until that guardian can take over. Some states have an emergency guardianship proxy, or you can include it in your will.

Consult an estate planning lawyer to help you make this decision and to ensure the documents are in place to match with your wishes.

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‘Long-shift’ workers could recover for unpaid ‘sleep time’


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If you’re an employee who works long shifts (for example, seven days on and seven days off, in which you’re technically always on duty), or if you’re an employer with such workers, it’s important to know that sleep time must be compensated. Federal regulations allow for certain arrangements under which sleep time is unpaid, but the regulations can be complicated, which is why employers need to run their policies by an employment attorney to make sure they’re not wading in dangerous waters.

A recent decision from the 1st U.S. Circuit Court of Appeals makes that clear. In the case, employees of a nonprofit organization that runs group homes for developmentally disabled adults maintained long-term staff to care for its residents. These workers pulled seven-day-on/seven-day-off shifts from Thursday to Thursday. Workers’ shifts included four unpaid four-hour breaks each week, and eight unpaid hours of nightly sleep time.

A group of workers took the employer to court seeking unpaid back wages, arguing that the sleep time should have been compensated under the Federal Labor Standards Act.

The employer argued that a Department of Labor regulation provided that a worker residing on his or her employer’s premises on a permanent basis for an extended period of time can enter into any “reasonable agreement” about payment for sleep time. Under the same set of regulations, the employer argued, an “extended period of time” was defined as living there for at least 120 hours in a workweek.

But a trial judge noted that the employer established a Sunday-to-Sunday work week for payroll purposes while the workers lived there Thursday-to-Thursday. The judge found that this did not comply with the regulations and awarded back pay plus multiple damages. The employer appealed, but the 1st Circuit affirmed.