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NEGLIGENCE

Missouri state court jury awards \$2 million against Hy-Vee in wrongful death suit

On February 25, a state court jury in St. Joseph, MO, delivered an award of \$2 million against Hy-Vee in a negligence lawsuit arising out of the death of a patient who was dispensed methotrexate instead of metolazone, according to a report in the *St. Joseph News Press*. The decedent had been discharged from a local hospital with changes in her medications, and a total of 11 discharge medications were telephoned to the pharmacy by a nurse at the hospital. Under Missouri pharmacy rules, certified pharmacy technicians may be permitted under specific rules adopted by a pharmacy to take oral prescriptions over the phone, a practice followed by the defendant pharmacy, and plaintiffs alleged that the technician erred in transcribing a prescription for metolazone 2.5 mg daily as methotrexate 2.5 mg daily.

Attorneys for the plaintiffs presented testimony that methotrexate is a high-alert medication for which specific plans and precautions should be taken, including segregation of the drug from the normal stock-supply in the pharmacy, mandatory patient counseling, and use of a hard stop in dispensing software to prevent a "one-tablet daily" dosage instruction in the label, and averred that Hy-Vee had determined to take none of these precautions. The plaintiffs' pharmacy expert also opined that the technician in this case was poorly trained and unprepared to take oral prescriptions, and that the Hy-Vee pharmacy's own policies did not comport with Missouri pharmacy requirements.

The plaintiffs sought to have the jury consider aggravating circumstances, but the Court entered a directed verdict for the defendants on the issue. According to the news report, 11 of 12 jurors found for the plaintiffs and awarded \$1.4 million for past non-economic damages and \$600,000 for future non-economic damages. Missouri tort reform statutes place a \$350,000 cap on non-economic damages, and a previous settlement for \$225,000 with another defendant will reduce the initial award owed by Hy-Vee to \$125,000. However, the Missouri Supreme Court has previously ruled that the cap on non-economic damages is unconstitutional in non-death cases, and this case presents a possible appeal in death cases that has yet to be decided. [White M. Hy-Vee loses wrongful death lawsuit. *St. Joseph News Press*, 2016 Feb 26; <http://bit.ly/1UuVKW6>; Oylar v. Hy-Vee, Inc., No. 14BU-CV03734, Cir. Ct. Buchanan Co., Mo., Div. 2, February 25, 2016]