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[Nevada Federal District Court finds a duty on the part of pharmacies to preserve misfilled prescriptions returned by consumers](#)

The plaintiff in this case was dispensed a mix of Diovan® (valsartan) and lithium carbonate capsules and tablets, which resulted in injuries. The pharmacy defendant admits to the misfilling and its own pharmacists apparently provided information that lithium was included in the bottle to both the plaintiff and his doctors. The present order relates to a discovery dispute in which the plaintiff sought to have the bottle's contents analyzed, and the pharmacy reported that the bottle and its contents were routinely destroyed after the plaintiff returned the drugs to the pharmacy. The plaintiff seeks sanctions for spoliation.

The Court found that the pharmacy did have a policy of temporarily quarantining returned medications and transfer to a "return center" where they are then routinely destroyed. However, it agreed with the plaintiff that under the circumstances, the pharmacy should have been aware of the duty to retain the bottle and its contents as soon as it filed its notice of a possible claim with its insurer, citing *Aiello v. Kroger*, 2010 U.S. Dist. LEXIS 97927 (D. Nev. 2010). As such, it obtained a duty to preserve the bottle and its contents. However, because its failure to preserve the evidence did not work any disadvantage to the plaintiff, the Court declined to impose sanctions for willful spoliation of relevant evidence. [Burton v. Walgreen Co., et al., No. 2:14-CV-84 JCM (VCF), D. Nev., 2015 U.S. Dist. LEXIS 90581, July 10, 2015]