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NEGLIGENCE

[Washington Superior Court grants summary judgment to pharmacy defendant in case alleging failure to counsel by pharmacy](#)

The plaintiffs in this case sued an emergency room physician, the hospital, the patient's dentist, and Rite Aid when she acquired diarrhea associated with *Clostridium difficile* after completing a course of clindamycin therapy prescribed by the emergency room to treat an abscessed tooth. The 10-day course of clindamycin was completed about January 10, 2012, and the patient began to experience diarrhea about 1 week later. The patient self-treated with Imodium-AD without resolution of her diarrhea and finally sought medical care after 10 days of self-treatment. She underwent surgery that involved an ileostomy and consequently must wear an ostomy appliance.

In their complaint, plaintiffs alleged that Rite Aid "did not follow the accepted standard of care required to be exercised and proximately caused the injuries of [the plaintiff]. Furthermore, Rite Aid acted negligently by failing to exercise reasonable care to adopt policies and procedures related to dispensing Clindamycin [sic] prescribed to its customers." They further alleged that "Rite Aid failed to obtain the informed consent of [patient] before dispensing her Clindamycin and Clindamycin proximately caused the injuries of [the patient]."

The patient's husband testified at deposition that the prescription was presented to Rite Aid at their drive-in window and that he received no counseling about the prescription when he picked up his wife's medication. The plaintiffs allege that they did not receive the customary patient information leaflet along with the prescription. They also alleged that when they received the prescription container it did not contain any auxiliary warning labels. Plaintiffs' cited Washington Pharmacy Commission rules, WAC 246-863-095 and WAC 246-869-220 as establishing duties under the circumstances. The first rule, in part, requires the pharmacist to carry out the duties of the latter. The second rule is Washington's rule entitled "Patient counseling required."

Patient counseling required.

The purpose of this counseling requirement is to educate the public in the use of drugs and devices dispensed upon a prescription.

(1) The pharmacist shall directly counsel the patient or patient's agent on the use of drugs or devices.

(2) For prescriptions delivered outside the confines of the pharmacy, the pharmacist shall offer in writing, to provide direct counseling and information about the drug, including information on how to contact the pharmacist.

(3) For each patient, the pharmacist shall determine the amount of counseling that is reasonable and necessary under the circumstance to promote safe and

effective administration and to facilitate an appropriate therapeutic outcome for that patient from the prescription.

(4) This rule applies to all prescriptions except where a medication is to be administered by a licensed health professional authorized to administer medications.

The dispensing pharmacist testified at deposition that it was the standard of practice to counsel patients on new prescriptions and that it was his personal practice to do so, even if the patient had indicated to a technician or cashier that he or she had no questions. He did not recall the patient encounter, but stated he would have advised the patient's husband about the need to complete the entire course of therapy, about the possibility of diarrhea and the need to seek treatment for diarrhea, and the need to consume the capsule with a full glass of water and remain upright for 30 minutes after taking. Rite Aid also produced a signature log for the prescription showing that the patient's husband picked up the prescription at the pharmacy counter, not at the drive-up window. Rite Aid produced a copy of the patient information leaflet which also contained warnings about diarrhea and other notices that are generally recognized as proper for clindamycin, as well as testimony that the pharmacy always includes the PIL in the bag with the prescription.

Plaintiffs did not depose Rite Aid's pharmacy expert, who had submitted a report opining that the counseling content recited by the dispensing pharmacy would comply with the standard of care in Washington under the circumstances, and that the standard of practice for the profession of pharmacy does not include a duty to obtain informed consent for therapy when the pharmacist is acting solely in a dispensing role.

The case was set for trial on October 9, 2017, and on September 15 the Court held a hearing on Rite Aid's motion for summary judgment. The Court agreed with Rite Aid's pleading that under well-settled Washington jurisprudence (*McKee v. American Home Products*, 113 Wash. 2d 701, 782 P.2d 1045 (1989)), Rite Aid owed no duty to the plaintiff to warn her of the risks of clindamycin therapy or to obtain her informed consent to treatment; the Court further found that the administrative rule cited did not create such a duty. [Long et al. v. Karch et al., No. 15-2-31353-3 SEA, Wash. Super. Ct., King Co., September 15, 2017]