

## **Illinois Appellate Court Confirms Pharmacies Owe No Duty to Monitor Customers' Prescription Drug Histories**

**By: Brian J. Hunt**  
**The Hunt Law Group, LLC**

The Illinois Appellate Court recently confirmed in *Hernandez v. Walgreen Co.*, 2015 IL App (1st) 142990 (released 2/25/16), that there is no recognized duty of care under Illinois tort law requiring that a pharmacy monitor a customer's prescription drug history for excessive or abnormal prescriptions or communicate a corresponding warning to the customer or prescribing physician before dispensing medication. The Court's decision is helpful to retail pharmacies, which routinely fill prescriptions ordered by a physician without performing a detailed evaluation of patient histories.

The Court's ruling affirmed a grant of summary judgment in favor of the defendants, Walgreens and Jewel-Osco. The case arose out of the death of Gilbert C. Hernandez ("decedent"), who allegedly died from an overdose of methadone purchased from pharmacies at Walgreens and Jewel-Osco with prescriptions from a physician, Dr. Rebecca C. Preston ("Dr. Preston"). Dr. Preston was treating the decedent for chronic back pain. The plaintiff-appellant Anthony Hernandez, individually and as special administrator of the decedent's estate ("plaintiff"), brought wrongful death claims against the defendants, alleging that they had breached their duty of care by dispensing methadone to the decedent "in quantities and time frames that were not appropriate." The plaintiff also brought a medical malpractice claim against Dr. Preston, which was not at issue in the instant appeal.

The complaint alleged that the defendant pharmacies breached a duty of care by failing to evaluate the dispensation of the decedent's medication in a manner so as to prevent increased risk of injury and death from methadone intoxication, when they knew or should have known the manner of their dispensation would cause injury. The plaintiff also claimed that the defendants breached their duty of care by failing to warn either the decedent or Dr. Preston of the excessive doses.

After the parties completed discovery, the defendants filed separate motions for summary judgment, in which they each argued that they were not in breach of any legally recognized duty. The defendants argued that, under Illinois law, they had no duty to monitor a customer's prescription history to determine whether a given prescription was for the proper dosage and no duty to warn a customer about risks due to excessive quantities of medication and that any such monitoring or warnings would interfere with the relationship between the patient and prescribing physician. Both defendants also argued that there was no evidence that they failed to fill the prescriptions as written and intended by Dr. Preston. In short, the defendants argued that Illinois courts have "declined to create a duty when a pharmacist does nothing more than fill prescriptions as ordered by a physician."

The trial court granted both motions for summary judgment, finding that the defendants owed no legally recognized duty to the plaintiff.

Upon review, the appellate court noted that the plaintiff failed to "identify any Illinois case law imposing a duty by a pharmacist to monitor a patient's prescription drug history for excessive or abnormal quantities of prescriptions, or to warn a physician or patient of such excessive prescription drug use."

The Court began its analysis by reviewing well-established Illinois case law, which holds that pharmacists have no duty to monitor patients, make medical decisions, or warn a physician or patient of excessive prescribed doses. The Court cited with approval other authority holding that imposing such duties would compel pharmacists to second-guess every prescription ordered by a doctor in order to escape potential liability and would interject the pharmacist into the physician-patient relationship. The Court found that imposing a duty on pharmacists to warn their customers of excessive dosages would place the pharmacist in the middle of the doctor-patient relationship without the physician's detailed knowledge of the patient.

Next, the Court distinguished a case, relied upon by the plaintiff, which recognized a pharmacist's limited duty to warn. The Court noted that the decision recognized only a narrow duty to warn where a pharmacy has objective, patient-specific information about drug allergies, and knows that the drug being prescribed is contraindicated for the individual patient. In so distinguishing, the Court rejected the plaintiff's attempt to liken the duty to warn based on the pharmacist's knowledge of the plaintiff's allergies to a duty to warn based on a pharmacist's ability to access a patient's prescription drug history. The Court reasoned that the case relied upon by the plaintiff recognized its narrow duty in part because it did *not* require the pharmacy to monitor a patient or otherwise exercise medical judgment.

The Court then rejected the plaintiff's statutory argument that access to a central pharmacy database imposed a duty upon the defendants, noting that, under the Act, pharmacists may, but are not required to, access the information regarding a customer's prescription history. The Court quoted the language of the statute, which explicitly states that "nothing in this act or Illinois law shall be construed to require a prescriber or dispenser to make use of this inquiry system." Thus, the Court found the plaintiff's argument that courts should impose a duty on pharmacists based upon their access to the database to be unsupported by the very statute which the plaintiff argued gave rise to the duty he sought to impose.

Based on its analysis of the applicable Illinois precedent and the applicable statute, the Court resoundingly held that the fact that the defendants had access to the prescription history of the decedent was not sufficient to impose duties to monitor the decedent's methadone prescription history, attempt to determine whether such use was "excessive," or to communicate a corresponding warning to Dr. Preston or the decedent.

This decision portends good news for retail pharmacists in Illinois moving forward. Because of the Court's decision, pharmacists can be assured that they have no duty to monitor a customer's prescription history for excessive or abnormal prescriptions

or communicate any such warning when merely filling prescriptions ordered by physicians.