

# Trends in claims for pharmacists' errors

*Pharmacists are not exempt from the effects of an increasingly litigious society. Claims for compensation are rising and new professional roles mean that pharmacists may be more exposed than ever. Michael Thompson investigates*

IT IS a fact of life that everyone makes mistakes, including the best trained and most scrupulously careful professionals. That is why we take out insurance.

But the number of negligence claims against community pharmacists is on the increase, as is the overall cost of settling them. So are today's pharmacists less careful than their predecessors, are they making more serious mistakes or does this reflect trends in society? The answers are probably no, no and yes.

Glyn Walduck at the National Pharmaceutical Association, which operates the Chemists Defence Association (CDA) for NPA member pharmacies, said that, although the number of claims for 2002 was likely to exceed 2001 by "quite a bit", he does not believe that pharmacists are getting careless. He puts the rise down to increasing workload, and not to a greater error rate. It is also the case that in 2000 the number of claims fell against the trend of year-on-year increases which have occurred since 1989.

"We live in an increasingly litigious society," Mr Walduck said. "But we only see the tip of the iceberg. A lot of errors lead to no harm because they are picked up before they get to the patient."

This, in itself, can mean that the same type of error recurs. The fact that there was no adverse outcome means that it is easy to say "that was lucky" rather than "how did that happen and how can I make sure it doesn't happen again".

In its quarterly report for June 2002, the CDA told the NPA management board that it had received 241 new cases, 197 of which involved dispensing errors or other drug-related incidents (this includes a small number of claims arising from over-the-counter sales or advice).

The most common cause of a claim is dispensing the wrong medicine, closely followed by dispensing the right medicine, but in the wrong strength. After this comes labelling errors and dispensing from out-of-date stock.

Most are clear-cut cases of negligence, according to Mr Walduck. Where there has been a drug error there is a breach of the duty of care. However, the damages payable are often minimal because there is no lasting harm — the patient has suffered a few days of unexpected symptoms which leads to compensation of a few hundred pounds.

So what causes the mistakes?

"There are a lot of selection errors; there is a real issue with packaging," he said. "Particularly with ranges of generic medicines in identical livery, save for the name of the drug on the box."

However, some mistakes have no explicable reason. One example is a pharmacist who forgot to give a bottle of methadone mixture to an addict and then included it in the bag of dispensed medicines given to the next patient.

Claims arising from OTC advice are relatively few, with only 13 in the first half of 2002. One involved a woman who consulted a pharmacist about what she thought was a wart on her knuckle. The pharmacist agreed and supplied Bazuka gel. In fact, the woman had a cyst which subsequently burst and required surgery to repair the joint.

The amounts paid out in damages are quite stable, because there are accepted norms for settlements. However, Mr Walduck added: "We are finding that the total value of claims has shot up because of the costs."

The reason for this is the recent ending of legal aid for personal injury claims and the introduction of conditional fees by solicitors. Conditional fees mean that if a claimant is unsuccessful there are no costs to be paid by the defendant, apart from an insurance premium paid in order to be able to meet the defence costs. But if the claim succeeds, the costs are boosted by a success fee of between 25 and 50 per cent on top of the claimant's lawyers' normal fee plus the insurance premium.

Looking to the future, it is clear that new roles for pharmacists, like supplementary prescribing may lead to greater exposure. What is not clear is what effect this will have on premiums or claims.

"We are trying to assess the effect of the introduction of new roles, but it is difficult. Nobody knows what to expect," said Mr Walduck. "The key to anything new is to look at it carefully, to assess the risk and to have systems and protocols that show that you looked at the risk and worked round it or minimised it."

Mr Walduck said that pharmacists who follow agreed treatment plans drawn up to allow supplementary prescribing are unlikely to be found to have been negligent if something goes wrong. But they would find that they needed their insurance if the treatment plan they had been party to drawing up was defective or if they accidentally stepped outside its provisions.

## Community pharmacy insurers

### Pharmacy Insurance Agency

The Pharmacy Insurance Agency offers personal professional indemnity insurance for community pharmacy locums and hospital pharmacists.

### Chemists Defence Association

Membership of the Chemists Defence Association is an inclusive benefit of membership of the National Pharmaceutical Association. Cover is for community pharmacy work only and extends to all workers at an NPA member pharmacy, including locums.

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