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Section: News

Negligence - Pharmacy - Authorization - Notice

Tom Egan

Where a patient with epilepsy died of a seizure after the defendant pharmacy refused to provide prescribed medication because of a lack of a "prior authorization" form from the plaintiff's physician, which was required by the patient's health insurer, the pharmacy had a limited duty to take steps to notify both the patient and her prescribing physician of the need for prior authorization."In this case, we address the novel issue whether a pharmacy has a legal duty to notify a prescribing physician when a patient's health insurer informs the pharmacy that it requires a 'prior authorization' form from the physician. Health insurers often require prescribing physicians to submit prior authorization forms to establish that prescriptions for particular medications are medically necessary and cost-effective. Since it is the pharmacy that submits the claim for reimbursement, however, only the pharmacy, and not the physician or the patient, is notified when a prescribing physician must complete a prior authorization form and submit it to the insurer."Prior authorization was necessary in order for Yarushka Rivera to obtain insurance coverage for Topamax, a medication she needed to control life-threatening seizures. Rivera was diagnosed with seizure disorder, which is also known as epilepsy, a few months before her nineteenth birthday. Rivera's insurer, MassHealth, twice paid for her Topamax prescription without issue. Once Rivera reached her nineteenth birthday, however, the insurer refused to pay for the prescription because it had not received the prior authorization form required for Topamax patients over the age of eighteen. Her family then made numerous attempts to obtain the prescribed medication from her pharmacy, Walgreen Eastern Co., Inc. (Walgreens), to no avail. Rivera was unable to afford the medication without insurance, and thus could not take her medication in the months before she suffered a fatal seizure at the age of nineteen."Carmen Correa, Rivera's mother, subsequently brought this action for wrongful death and punitive damages against Walgreens; Rivera's neurologist, Dr. Andreas P. Schoeck (Schoeck); and Schoeck's office, New England Neurological Associates, P.C. (NENA). Correa maintains that Walgreens repeatedly told Rivera and members of her family that Walgreens would notify Schoeck of the need for prior authorization, but Schoeck and NENA deny ever receiving notice. A Superior Court judge allowed Walgreens's motion for summary judgment, on the ground that Walgreens owed no legal duty to Rivera to notify Schoeck and NENA of the need for prior authorization. The judge entered final judgment against Walgreens and stayed the claims against Schoeck and NENA so that Correa could expedite her appeal. He also stayed the accrual of prejudgment interest as to Schoeck and NENA pending resolution of the appeal."Because we conclude that Walgreens had a limited duty to take reasonable steps to notify both the patient and her prescribing physician of the need for prior authorization each time Rivera tried to fill her prescription, we reverse the allowance of summary judgment for Walgreens. Walgreens's duty extends no further, however the pharmacy was not required to follow up on its own or ensure that the prescribing physician in fact received the notice or completed the prior authorization form. We conclude also that the judge erred in staying the accrual of prejudgment interest. "The skill and knowledge of pharmacists today involve more than the dispensing of pills. A pharmacist exercising the skill and knowledge normally possessed by members of the professional community ordinarily would notify a patient and the prescribing physician that prior authorization is needed." Dissenting opinion

Lowy, J. "A systemic flaw contributed to the tragic death of a young woman who was deprived of vital medication because her pharmacy was unable to obtain a prior authorization form from her prescribing physician as required by her insurer. In an understandable attempt to address this flaw, the court now imposes a nebulous duty on pharmacies to inform physicians that a prior authorization is required for certain medications in order to secure insurance coverage. This duty requires pharmacies to take 'reasonable steps' to notify both the patient and the prescribing physician that a prior authorization is required each time the patient tries to fill the prescription, with no real guidance concerning what constitutes reasonable steps." I agree with the court that pharmacists have a duty to take reasonable steps to notify patients of the need for prior authorization every time the patient tries to fill a prescription. I disagree, however, with the court's conclusion that pharmacists have a duty to notify the prescribing physician of the need for prior authorization every time the patient attempts to fill a prescription. Imposing such a duty is neither implied by contract, mandated by statute, nor until today recognized by common law." The court's desire to improve patient safety and avoid the tragic results that occurred in this case is beyond question, but I am troubled that imposing a tepid duty on pharmacies that have no ability to control the system while simultaneously dissipating the personal responsibility of health insurers, physicians, and patients within the existing system will have an adverse effect on patient safety." The rule announced today dissipates the legal accountability and personal responsibility of health insurers and physicians and gives patients a false sense of security, all while imposing a legal duty on an entity that may not actually be in the best position to help avoid the harms that occurred in this case."... A system that allows health insurers to detach themselves from both the patient and the provider, while fostering a false sense of security among patients, cannot be salvaged by requiring pharmacists to send a single facsimile message or leave a lone telephone message in potentially unmonitored voicemail at a health care provider's office." Is leaving a voicemail message in the physician's answering service enough? How many telephone calls are enough? Will this duty evolve to require the pharmacy to confirm receipt of the message? Will the pharmacist also have to inform the health insurer that the physician has yet to provide the prior authorization form? What must the pharmacist say to the patient who is without medication and awaiting the prior authorization? Will patients be lulled into a false sense of security and potentially dissuaded from following up with their physician to demand that the prior authorization be completed? Will every pharmacy in the Commonwealth, regardless of the resources available to them, need to create a document retention system to memorialize each attempt to notify a health care provider and to memorialize the nature of the health care provider's office's response? Will independent pharmacies be able to create such systems and remain in business? Will those pharmacies that implement the most thorough process and train their pharmacists to be assiduous and conscientious in seeking to obtain prior authorization expose themselves to enhanced liability when they fail to obtain prior authorization? Will the court's opinion enable physicians and health insurers to delegate a portion of their responsibilities to pharmacies to the detriment of patients? I respectfully dissent." *Correa v. Schoeck, et al.* (Lawyers Weekly No. 10-102-18) (33 pages) (Lenk, J.) (Lowy, J., dissenting) Case heard by Curran, J., on a motion for summary judgment, and entry of separate and final judgment was ordered by him. Thomas M. Greene (Michael Tabb and Simon L. Fischer also present) for the plaintiff; Bruce H. Murray for Walgreen Eastern Co., Inc.; Tory A. Weigand, for Andreas P. Schoeck and another, was present but did not argue. The following submitted briefs for amici curiae: Mary Ellen Kleiman, of the District of Columbia, and John F. Brosnan for National Association of Chain Drug Stores, Inc.; Kathleen L. Nastri, of Connecticut, Jeffrey R. White, of the District of Columbia, and Jonathan A. Karon, Thomas R. Murphy, Kristie A. LaSalle and Kevin J. Powers for American Association of Justice and another; Wells G. Wilkinson and Victoria Pulos for Health Law Advocates, Inc., and others (Docket No. SJC-12409) (June 7, 2018).

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Company: WALGREENS BOOTS ALLIANCE INC; NATIONAL ASSOCIATION OF CHAIN DRUG STORES INC; WALGREEN CO

Industry: (Clinical Outcomes (1CL11); Drugstores (1DR73); Epilepsy & Seizures (1EP44); Healthcare (1HE06); Healthcare Practice Specialties (1HE49); Healthcare Services (1HE13); Internal Medicine (1IN54); Medical Errors & Negligence (1ME81);

Neurology (1NE95); Pharmaceuticals (1PH33); Pharmaceuticals & Biotechnology (1PH13); Pharmaceuticals Cost-Benefits (1PH30); Pharmacy (1PH23))

Region: (Americas (1AM92); North America (1NO39); U.S. New England Region (1NE37); USA (1US73))

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Other Indexing: (Health Law Advocates Inc.; MassHealth; New England Neurological Associates; Walgreen Eastern Co.; national association of chain drug stores, inc.) (Mary Ellen Kleiman; Thomas Greene; Michael Tabb; Jeffrey White; Jeffrey White; Kathleen Natri; Wells Wilkinson; John Brosnan; Victoria Pulos; Simon Fischer; Bruce Murray; Andreas Schoeck; Tory Weigand; Thomas S. Murphy; Tom Murphy; Jonathan Karon; Kristie LaSalle; Andreas Schoeck; Carmen Correa; Kevin Powers)

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