"Pill Mill" v. Pharmacy: Know Your Standards of Care or Face Defamation Allegations
Target Audience: Pharmacists
ACPE#: 0202-0000-18-014-L03-P
Activity Type: Knowledge-Based
Disclosures

Kelly Hassenfelt, Arthur Laplante and Martin Stem declare that we currently have an affiliation or financial arrangement with Walgreens which may have a direct interest in the subject matter of this presentation.

The American Pharmacists Association is accredited by the Accreditation Council for Pharmacy Education as a provider of continuing pharmacy education.
1. Describe the elements of an action for defamation and tortious interference.

2. Identify qualified privilege existing between pharmacists and their customers pursuant to the landmark holding in LeFrock v. Walgreens.

3. Define the extent of privilege and ramifications as it relates to consultation between pharmacist and customer in refusal to fill a prescription.

4. Discuss standard of care as it relates to consultation between pharmacists and customers regarding refusal to fill with real case examples of statements protected and nonprotected.
1. Assessment Question

1. What obvious remarks make up defamation per se?
   A. A statement of criminal offense amounting to a felony.
   B. A statement referencing a loathsome communicable disease.
   C. A derogatory statement of conduct, characteristic or condition incompatible with the proper exercise of a lawful business, profession, or office.
   D. A statement as relates to a woman related to acts of unchastity.
2. Assessment Question

1. The pharmacist is protected by a qualified privilege when:
   A. The pharmacist acts in good faith in making the statement to the patient.
   B. The statement by the pharmacist is made with legitimate interest for the patient.
   C. The statement is made in the process of filling the prescription.
   D. The statement is made privately between the pharmacist and patient.
3. Assessment Question

1. Protection to the pharmacist from allegations of defamation or tortious interference are protected by the qualified privilege so that:
   A. A claimant prescriber must show maliciousness.
   B. A plaintiff prescriber must demonstrate a reckless intentional disregard to do harm.
   C. As a matter of law the action may be dismissed.
   D. Open communication regarding prescription consultation can occur.
4. Assessment Question

1. The statements made are not protected by the privilege and expose the pharmacist to a claim of defamation if:
   A. The pharmacist states that the prescriber does not have proper credentials and should be arrested.
   B. The pharmacist makes statements of the prescriber in front of a group of customers as opposed to privately with the patient.
   C. The prescriber is under criminal investigation when the pharmacist does not know that to be true.
   D. The pharmacist makes a statement in a group that the prescriber is a pill pusher and runs a pill mill.
Element of a Defamation Claim

1. A false and defamatory statement concerning the physician or his/her practice;
2. The statement was not privileged;
3. The statement was made to a third party (Customer);
4. Without reasonable care as to the truth or falsity of the statement;
5. Resulting in damages.
Defamation Per Se

1. Defamation Per Se means that the statement is obviously defamatory.

2. The court does not have to interpret or study the defamatory statement to know that it harmed the plaintiff.
Defamation Per Se

1. Defamation Per Se imputes the following to another person:

1. A criminal offense amounting to a felony; or

2. A presently existing venereal or other loathsome and communicable disease; or

3. Conduct, characteristics, or a condition incompatible with the proper exercise of his lawful business, trade, profession, or office, or;

4. The other being a woman, acts of unchastity.
Defamation Damages

1. Defamation per se assumes at least nominal damages;
2. Injury to physician's reputation in the community;
3. Injury to business' reputation in the community;
4. Financial loss to physician and practice;
5. Loss of provider and health insurance agreements;
6. Punitive damages.
Defamation Defenses

1. The statement was **true**.

2. The statement was a **pure opinion**.
   - Pure opinion is protected by the First Amendment.

3. The statement was **not defamatory**.

4. The statement was protected by a **Qualified Privilege**.
   - There was not malicious intent.
Qualified Privilege

1. Some states recognize a qualified privilege for statements that meet the following requirements:

   1. good faith;
   2. an interest in the subject by the speaker or subject in which the speaker has a duty to speak;
   3. a corresponding interest or duty in the listener or reader;
   4. a proper occasion; and
   5. publication in a proper manner.
LeFrock v. Walgreens

1. Landmark decision.

2. Pharmacist's statements to a customer are protected by a Qualified Privilege.

3. If the statement is found to be privileged as a matter of law, plaintiff must prove express malice to proceed with his claim.

4. Express malice has been defined by Florida courts as "ill will, hostility, and an evil intention to defame and injure."
LeFrock Court Order
Granting Summary Judgment

1. The Walgreens pharmacists acted in good faith and were upholding a legitimate interest since the statements were made while the pharmacists were filling prescriptions and giving general advice as they have a duty to do.
LeFrock Court Order
Granting Summary Judgment

2. This Court has previously held that pharmacists have a duty to provide competent advice to customers and this duty is not satisfied by “a robotic compliance with the instructions of the prescribing physician.”

3. Since the pharmacist has a duty beyond merely following the doctor’s instructions robotically, Walgreens’ pharmacists exercised their due diligence by informing the customers, as necessary, of any relevant information regarding the prescribing physician.
LeFrock Court Order
Granting Summary Judgment

4. The pharmacists made the statements in the proper location and manner since they rendered the advice to the customers while the customers were seeking advice regarding treatments and seeking to fill prescriptions.

5. Also, the statements were made in the proper manner since the statements were limited in scope to the specific prescriptions being filled and were not mere generalizations.
LeFrock v. Walgreens

1. Indiana District Court decision.

2. Pharmacy technicians are not expected to "exercise professional judgment in the best interest of the patient's health while engaging in the practice of pharmacy."

3. As such a pharmacy technician does not enjoy a qualified immunity when communicating with customers.
Tortious Interference Claims

1. The existence of a business relationship, not necessarily evidenced by a contract;

2. The pharmacist's knowledge of this relationship;

3. The pharmacist's unjustified interference in the physician's business relationship; and

4. Damages to the physician caused by the interference.
Tortious Interference Damages

1. The physician's economic loss caused by the disruption of his/her relationship with the patient, other physicians or health insurance.
Communications that Create Risk

1. The pharmacist is being bated by the customer;
2. The customer has spoken with the physician who has orchestrated the interaction;
3. The customer may go into withdrawals and is willing to push the pharmacist;
4. The pharmacist cites to pill mill criteria for not filling the script; and
5. The script is out of stock.
Actual Customer Affidavits Against Pharmacists

"I, __________, a patient of Dr. __________ and have been for approximately 2 years. On May 17, 2011 I was turned down by Walgreens on __________ to have my scripts filled. The pharmacist said she didn’t feel comfortable filling Dr. __________ patients' prescriptions. She was very rude and pretentious. I found it embarrassing and demeaning to Dr. __________. He's a great Dr. who goes by the book and genuinely cares for his patients."
Actual Customer Affidavits Against Pharmacists

"Said Dr. __________ was unethical. Did not fill scrips *(sic)* !!!"
Actual Customer Affidavits Against Pharmacists

1. "Said Dr. was **incompetent** – wouldn't fill script."

2. "Wouldn't honor his scripts."

3. "Didn’t have a 'working relationship' in a **nasty** tone."
Actual Customer Affidavits Against Pharmacists

"On June 28th I went to ________ Walgreens with two prescriptions....I was told 'we do not fill for this doctor.' Last year, I also went their (sic) with the same results."
Actual Customer Affidavits Against Pharmacists

"On 5/4/12 took my prescriptions to the Walgreens at ________ and was told by the Pharmacy Manager, __________, that they were not going to fill my prescriptions or anyone elses (sic) prescriptions from Dr. __________. I asked why and was told, 'he is under criminal investigation' and ......."
Actual Customer Affidavits Against Pharmacists

"....told me out loud & in front of several other customers waiting in the area that ________ was a pill pusher (exact words) and they wouldn't fill prescriptions (sic) from his office. She was so unprofessional & completely (sic) defimated (sic) his character w/the slanderous words coming out of her mouth...."
Actual Customer Affidavits Against Pharmacists

"....He's running a pill mill – find another legitimate Dr.... – many out there – not qualified; had no credentials – no business running a PM clinic...."
"...Only when I got to the counter I was given a continuous line of misinformation. I was told my doctor was not a legit doctor because if I was an actually (sic) pain management patient I would be on a long acting and short acting medications...."
Actual Customer Affidavits Against Pharmacists

"The lady pharmacist refused to fill his prescriptions. She told pt that she knew Dr. _________ personally and he should have been in the ground 10 years ago. She continued to say that Dr. _________ is running a 'pill mill' and _________ should find a legitimate doctor although there are not many qualified doctors out there. Said Dr. _________ does not have proper credentials & has no business running a pain management clinic."
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QUESTIONS?

Thank you.