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## NO PHARMACIST DUTY TO MONITOR PATIENT PRESCRIPTION HISTORY

BY COURTNEY POSNIK

In a December 28, 2015 decision, the Illinois Appellate Court, First District, declined to hold that under the Illinois Controlled Substances Act, 720 ILCS 570/100, *et seq.*, pharmacists have a duty to “(1) monitor the patient’s prescription history, (2) determine whether prescriptions were ‘excessive’; or (3) warn the prescribing physician or the patient of that determination. *Hernandez v. Walgreen Co.*, 2015 IL App (1st) 142990.

In *Hernandez*, the special administrator of the Estate of Gilbert Hernandez (“Hernandez”) sued the prescribing physician and pharmacies operated by Walgreen Company (“Walgreen”) and Osco Drug (“Osco”) that filled Hernandez’s prescriptions for methadone. Hernandez suffered from chronic back pain and allegedly died from methadone intoxication.

The circuit court of Cook County granted the pharmacies’ motion for summary judgment dismissing the plaintiff’s claims against them based upon the lack of a recognized duty owed by the pharmacies. Plaintiff appealed, arguing that the pharmacies breached a duty of good faith in failing to monitor the frequency of Hernandez’s methadone prescriptions. Plaintiff relied on the Illinois Controlled

Substances Act, which provides that pharmacists may access prescription history “solely for a medical purpose.” 720 ILCS 570/318(j)(2). Plaintiff’s claims against the prescribing physician were not at issue in the appeal.

The appellate court affirmed the circuit court’s dismissal of the pharmacies from the lawsuit, holding that under the Illinois Controlled Substances Act, a pharmacist is not required to make use of the prescription-monitoring program, and accordingly, no duty attaches to a pharmacist to actively monitor a patient’s history to detect excessive prescriptions.

The appellate court also held that imposing such a duty would run contrary to Illinois precedent, which has recognized a pharmacist’s narrow duty to warn of a contraindication where “a pharmacy has



Clark Hill attorney **Courtney R. Posnik**

patient-specific information about drug allergies, and knows that the drug being prescribed is contraindicated for the individual patient.” Otherwise, Illinois precedent cautions “against requiring a pharmacy to monitor a patient, make medical judgments, or otherwise interject itself in the physician-patient relationship.”

**Courtney R. Posnik** is an Associate with the Health Care Practice Group in Clark Hill’s Chicago office. She concentrates her practice on corporate health care transactional and regulatory matters for a variety of health care professionals and entities. She has experience drafting employment agreements, forming for-profit and not-for-profit corporations and drafting associated governing documents and policies, and advising on various health care regulations, corporate practice of medicine and fee-splitting prohibitions, Medicare and Medicaid billing and reimbursement regulations, and licensure and certification requirements. Courtney has also counseled providers on issues related to state and federal fraud and abuse. **Contact her via phone: 312.985.5535 or email: [cposnik@clarkhill.com](mailto:cposnik@clarkhill.com).**

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