

## Massachusetts Finds Pharmacists Have a Legal Duty to Notify Prescribing Physicians of Need for Prior Authorization Forms

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Not so long ago, a pharmacist's main role was limited to filling a prescription with the prescribed medication, dose and amount. Today, pharmacists are required to identify and prevent medical risk and offer to counsel patients regarding each medication, and they are subject to countless other regulations and guidelines that serve to help define the standard of care to be applied to the pharmacist-patient relationship. Most recently, the Massachusetts Supreme Judicial Court added to the pharmacist's growing list of responsibility regarding patients.

In [\*Correa v. Schoeck & Others\*](#), Massachusetts Supreme Judicial Ct. No. 12409 slip op. (June 7, 2018), the Court imposed a duty on pharmacists to notify the patient and the prescribing physician when a health insurer informs the pharmacy that a "prior authorization" form is required to be filled out by the physician before the medication can be dispensed to the patient.

### Background

In a wrongful death case based in medical malpractice, the plaintiff appealed the Superior Court's decision granting Summary Judgment to Walgreen Eastern Co., Inc. (Walgreens). A 19-year-old epileptic female died from a seizure on October 29, 2009, after Walgreens refused to fill her Topamax (antiepileptic medication) prescription. The previous June, the patient, then 18, was told by the pharmacist at Walgreens that in order for her insurance company to cover the prescription after she turned 19, her prescribing physician would need to complete a prior authorization form. According to the patient's mother, the pharmacist said that it was Walgreens's policy to notify the prescriber of the need for the prior authorization form. This policy was repeated to the patient's family in July 2009.

Walgreens pharmacists are notified instantly through the computer system when an insurance company denies coverage due to lack of "prior authorization." Following this notification, pharmacists have the option of sending a facsimile message to the prescribing physician requesting prior authorization with the click of a button. There is no evidence that Walgreens ever communicated with the patient's prescribing physician.

The patient returned to Walgreens on September 8, 2009, at which time she was denied coverage for the Topamax due to lack of a prior authorization form. The patient's mother claims that this pharmacist assured the family that Walgreens would contact the prescriber. The patient left without filling the prescription because she could not afford to do so without insurance coverage. The family tried to fill the prescription a few more times following this interaction, and the patient's mother maintains that each time a pharmacist told the family that Walgreens would contact the prescribing physician. The patient ultimately died when she succumbed to a final seizure in late October 2009, having never received the Topamax prescription she tried to get filled in early September.

### Decision

The Court ruled in favor of the plaintiff and overturned the judgment that had been entered in favor of Walgreens.



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The Court held that, because the pharmacist-patient relationship is evolving and the customs of the industry demonstrate the norm of pharmacies handling prior authorization requests, Walgreens owed a limited duty to take reasonable steps to notify both the patient and the prescribing physician of the need for the prior authorization each time the patient attempted to fill her prescription.

A legal duty exists where a “pharmacist failed to act on specific knowledge that he or she possessed regarding danger to a particular customer.” *Cottam v. CVS Pharmacy*, 436 Mass. 316, 322–323. Failure to act with the knowledge that foreseeable harm could result is a breach of the pharmacy’s duty. This duty does not extend beyond taking reasonable steps to inform the patient and prescriber of the need for completion of a form. Pharmacies are not obligated to follow up with the prescriber, but it is important for pharmacies to keep a record that the prescriber was, in fact, notified.

Notably, Justice Lowy, in the dissenting opinion, expresses a concern that the majority opinion does not specifically define what constitutes “reasonable steps” in informing the patient and prescriber of the need for the form. He also states that the majority’s decision goes too far in that it forces a legal duty on an entity that does not have the “control or means to avoid the risk and resulting harm.”

## Takeaway

*Correa* broadens the legal duty affirmed in *Cottam* by applying it to administrative aspects of a pharmacist’s duties. While the Court may not have provided a road map to “reasonableness” in this case, it made clear that, at a minimum, the literal “click of a button” is step one. Future cases may well provide further guidance on this and similar issues and the standard of care for pharmacists likely will continue to mutate.

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