STATE OF TENNESSEE
OFFICE OF THE ATTORNEY GENERAL

August 23, 2016

Opinion No. 16-32

Liability of Doctors and Pharmacists for Negligently Prescribing to, or Filling Prescriptions for, Patients Who Become Addicted

Question 1

Are doctors or pharmacists held harmless if a patient is addicted or becomes addicted to medication prescribed by a doctor or dispensed by a pharmacist?

Opinion 1

No.

Question 2

Can a doctor or pharmacist be found negligent for enabling a person's addiction by prescribing or dispensing an opioid?

Opinion 2

Yes, but liability would depend on the facts of any given case.

ANALYSIS

Tennessee law is well-settled that doctors and pharmacists may be sued for damages for injury caused by prescribing or dispensing medication. "The law imposes upon all persons the duty to use reasonable care under the circumstances. Physicians are not exempt from this duty . . . ." Pittman v. Upjohn Co., 890 S.W.2d 425, 432 (Tenn. 1994). And "[p]harmacists have a duty to exercise the standard of care required of the pharmacy profession in the same or similar communities." Id. at 434.

Such suits are now generally governed by the Health Care Liability Act. See Tenn. Code Ann. § 29-26-101 et seq. The Act applies to any civil action "alleging that a health care provider or providers have caused an injury related to the provision of, or the failure to provide health care services to a person, regardless of the theory of liability on which the action is based." Tenn. Code Ann. § 29-26-101(a)(1) and (c). "Health care services to persons" includes care by physicians and by pharmacists. Tenn. Code Ann. § 29-26-101(b). Such actions and claims are subject to the Act "regardless of any other claims, causes of action or theories of liability alleged in the complaint." Tenn. Code Ann. § 29-26-101(c).

To be "held harmless" generally means that the person or entity is not liable for damages by operation of an agreement, such as a contract with an indemnity clause, in which one party agrees to hold the other without responsibility for damage or other liability arising out of a particular transaction. *Black's Law Dictionary.* We assume that your question is not whether a doctor or pharmacist would be "held harmless" in the technical, contractual sense, but rather whether the doctor or pharmacist would be exempt from liability by operation of law. We are unaware of any statutory provision or common-law principle in Tennessee under which a doctor or pharmacist would be "held harmless" against a patient's claim of professional negligence related to the prescribing or dispensing of medication.

While doctors and pharmacists may be sued for negligently prescribing or dispensing medication to a patient who is, or becomes, addicted to that medication, the question of actual liability would depend on the specific facts of each case. Thus, whether a doctor or pharmacist can be found negligent for enabling a person's addiction by prescribing an opioid or filling an opioid prescription depends on the specific facts in any given case. Comparative fault, if any, on the part of the patient would be one fact to be considered. *See Mercer v. Vanderbilt Univ. Inc.*, 134 S.W.3d 121, 128-29 (Tenn. 2004).

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