

## **PHARMACISTS' DUTY TO WARN**

### *Lawsuits Claiming That Pharmacies Must Warn Customers About Dangers Associated With Prescription Drugs*

#### **INTRODUCTION**

Patients injured by prescription drugs sometimes claim that their pharmacists had a duty to warn them about potential side effects and other dangers associated with prescription drugs. This memorandum provides citations to court decisions from across the country that address the issue of whether and when pharmacists have a duty to warn.

Most courts have ruled that pharmacists do not have a general duty to warn patients about their prescribed drugs. Instead, the general rule is that drug manufacturers have a duty to provide general warnings to physicians, and then physicians have a duty to warn their patients about the drugs they prescribe. Most courts impose this duty to warn on physicians, rather than pharmacists, because physicians decide which drugs to prescribe. Physicians know which warnings are appropriate for a particular patient because they have access to the patient's complete medical history. This "learned intermediary doctrine" is the traditional rationale for rejecting claims that pharmacists have a duty to warn.

A few state courts have rejected the learned intermediary doctrine, and have instead decided that pharmacists do have a general duty to warn patients. Although most courts that have considered the issue reject the notion that state counseling laws create a duty to warn, a minority of courts have pointed to counseling laws as evidence that pharmacists have a duty to warn.

Other courts have held that pharmacists have a duty to warn only in certain circumstances. For example, some courts have ruled that pharmacists have a duty to warn about known contraindications, or clear errors on the face of a prescription (e.g., excessive dosages). Other courts reject the notion of a general duty to warn, but hold that a pharmacy can voluntarily assume a duty to warn. For example, a pharmacy that advertises its drug utilization review and computer warning systems may have assumed a duty to warn about dangerous side effects.

#### **ALABAMA**

*Nail v. Publix Super Markets, Inc.*, 72 So.3d 608 (AL 2011)

(rejecting a motion to dismiss a duty to warn case against a pharmacy based on the learned intermediary doctrine where plaintiff claimed that the pharmacist had a duty to warn her of the increased drug dosage (which she alleged caused her injury) versus a duty to warn of drug side effects, which may impact the doctor/patient relationship).

*Springhill Hosps., Inc. v. Larrimore*, 5 So.3d 513 (AL 2008) (relying on *Walls*, Court concludes that learned intermediary doctrine prevents pharmacist liability even if pharmacist provided

doctor of deceased patient with dosing information; doctor was responsible party; “voluntary undertaking” exception does not apply between pharmacist and doctor (versus patient)).

*Walls v. Alparma USPD, Inc.*, 887 So. 2d 881 (Ala. 2004) (learned intermediary doctrine foreclosed any duty on the part of pharmacists to warn customers regarding risks or potential side effects of prescription drugs).

*Stafford v. Nipp*, 502 So.2d 702 (Ala. 1987) (pharmacist is not necessarily shielded from liability because of manufacturer’s warnings which accompany the drug).

## **ARIZONA**

*Watts v. Medicis*, --- P.3d ---, 2015 WL 375985, January 29, 2015 (Ariz.App. Div. 1,2015) (finding that manufacturers’ learned intermediary doctrine defense against product liability claims has been superseded by the state’s adoption of Uniform Contribution Among Tortfeasor’s Act and that plaintiff stated such a claim against defendant manufacturer, where she alleged that she saw and relied on information produced and distributed by manufacturer, including a savings program card and prescription insert, and such materials indicated that safety of using drug for more than twelve weeks was unknown, while information given to prescribing physicians warned of harm plaintiff suffered).

*Warren v. Walgreen*, 2007 WL 4293465 (Ariz. Super. Ct., Oct. 11, 2007) (pharmacist found negligent where he failed to warn deceased patient about possible drug interactions when filling two prescriptions over two days and where pharmacist increased dosage of second drug without consulting physician).

*Lasley v. Shrake's Country Club Pharmacy, Inc.*, 880 P.2d 1129 (Ariz. Ct. App. 1994) (where pharmacy mailed highly addictive drugs at excessive levels to an out-of-state customer for ten years, the court refused to hold as a matter of law that a duty to warn can never exist; the court held that pharmacists owe a duty of reasonable care).

## **ARKANSAS**

*Kowalski v. Rose Drugs of Dodanelle, et al.*, 378 S.W.3d 109 (AR 2011) (February 9, 2011) (in a case where a pharmacy filled multiple prescriptions with negative interactions and patient died, state supreme court upheld dismissal of negligence claim by estate against pharmacy finding no general duty to warn and extending the learned intermediary doctrine to pharmacies).

*Kohl v. Am. Home Prods. Corp.*, 78 F. Supp.2d 885 (W.D. Ark. 1999) (pharmacists have a duty to exercise due care and diligence, but there is no “general duty to warn customers of potential drug side effects or to give advice on the efficacy of the drug absent the presence of some contraindication”).

## **CALIFORNIA**

*Wittemore v. Owens Healthcare-Retail Pharmacy, Inc.*, Case No. CO60873 (Cal. App.06-22-2010) (concluding that when a pharmacist steals from its employing pharmacy and sells the stolen drugs, the person purchasing the drugs cannot seek damages from the pharmacy under the

state's Drug Dealer Liability Act as the pharmacy was not profiting from the sale of its stolen drugs and it had no scienter.).

*Russo v. Safeway, Inc. et al*, No. VG05212054 (Cal. Super Ct., Alameda Cty., Jan. 3, 2006) (finding generally that pharmacists have no duty to warn of possible side effects of prescription drugs under either state common law or statute).

*Hooper v. Capoblanco*, No. 99AS01792 (Cal. Super. Ct. Nov. 15, 2000) (absent special circumstances, pharmacists are not required to warn of potential side effects of drugs), *aff'd*, No. C037465 (Cal. Court of App. Dec. 17, 2002).

## **CONNECTICUT**

*Plante v. Lomibiao*, 2005 WL 1090180 (Conn. Super. March 31, 2005) (drug addict sues pharmacist for injuries resulting from scripts filled; court dismisses claim under extended learned intermediary theory, finding pharmacist owed no duty to warn patient of dangers of prescribed drugs).

*Deed v. Walgreen Co.*, 2004 WL 2943271 (Conn. Super. Ct. Nov. 15, 2004) (no general duty to warn is recognized; pharmacists only have a duty to warn customers based on the presence of certain factors, such as known contraindications, that would alert a reasonably prudent pharmacist to a potential problem).

*Nobels V. Astrazeneca Pharmaceuticals*, 832 A.2d 1241 (Conn. Super. Ct. 2003) (summary judgment for pharmacy that had no duty to warn).

*Carafeno v. Gordon*, No. 34-36-87, 1993 WL 170215 (Conn. Super. Ct. May 5, 1993) (holding that the pharmacy, absent special circumstances, has no duty to warn).

## **DISTRICT OF COLUMBIA**

*Ealy v. Richardson-Merrell, Inc.*, Prod. Liab. Rep. (CCH) ¶11,236, No. 83-3504, 1987 WL 159970 (D.D.C. Jan. 12, 1987) (pharmacist who accurately filled prescription did not have a duty to warn customer of any alleged adverse effects, and pharmacists are not strictly liable for defects in a prescribed drug under a product liability theory).

*Richardson v. Richardson-Merrell, Inc.*, No. 83-3505 (D.D.C. June 9, 1986) (refusing to impose a duty to warn upon pharmacies).

*Raynor v. Richardson-Merrell, Inc.*, 643 F.Supp. 238 (D.D.C. 1986) (pharmacies do not have a duty to warn customers of the adverse affects of a drug, even assuming that pharmacist is aware of such affects).

## **FLORIDA**

*Oleckna v. Daytona Discount Pharmacy et al.*, 2015 WL 477841 (FL App. 5 Dist., February 6, 2015) (relying on *Thobani*, the appellate court reinstated dismissed claims against defendant pharmacist, sued for filling too many prescriptions for decedent in too short of a timeframe,

because the court “refuse[d] to interpret a pharmacist’s duty to use ‘due and proper care in filling a prescription’ as being satisfied by ‘robotic compliance’ with instructions of the prescribing physician.”).

*Dent v. Dennis Pharmacy*, 924 So.2d 927 (Fla 3<sup>rd</sup> DCA 2006) (upholding dismissal of claim against pharmacy for negligence where plaintiff was hit by a patient of the pharmacy taking a prescription that made her fall asleep at the wheel; court found that pharmacy had no direct duty to plaintiff and that there was no *voluntary* undertaking putting third parties at risk when pharmacy counseled patient pursuant to Board regulations).

*Powers v. Thobani, et al.*, 903 So.2d 275 (Fl. Ct. App. 2005) (finding that a pharmacist had a duty to warn “customers of the risks inherent in filling repeated and unreasonable prescriptions with potentially fatal consequences” in a case where pharmacist repeatedly filled multiple prescriptions for narcotics for customer prior to previous prescription being completed and where customer died of overdose).

*Estate of Sharp v. Omnicare*, 879 So. 2d 34, 35 (Fla. 5th DCA 2004) (recognizing Florida has sharply limited the duties owed by a pharmacist to a customer while affirming the dismissal of the negligence complaint because the court could not “discern in the complaint a duty” owed by the pharmacy to the patient. Reaffirmed that a pharmacist’s duties in Florida are sharply limited by the holding in *McLeod*, *see below*).

*Dee v. Wal-Mart Stores, Inc.*, 878 So. 2d 426 (Fla. 1st DCA 2004) (reaffirming the holding in *McLeod*, the court reversed the dismissal of a negligence claim against the pharmacy, which alleged that a pharmacy filled a prescription that was four months old and did not contain any time limit for filling or using the prescription. Held: Pharmacy must use due and proper care in filling a prescription. Where prescription for opioids is unreasonable on its face because four months old, even though lawful as written, filling prescription may be breach of duty).

*Sanderson v. Eckerd Corp.*, 780 So.2d 930 (Fla. Dist. Ct. App. 2001) (pharmacy that “advertised promise that its computer system would detect and warn customers of adverse drug reactions and interactions” voluntarily assumed a duty to warn, the scope of which measured by the “level of care and skill which, in light of all relevant circumstances, is recognized as acceptable and appropriate to other reasonably prudent pharmacists.”)

*Johnson v. Walgreen Co.*, 675 So.2d 1036 (Fla. Dist. Ct. App. 1996) (pharmacist had no duty to warn customer or physician of potentially adverse drug interactions when pharmacist accurately filled two prescriptions which can be harmful if used in combination; legislature did not intend to create a private cause of action when it enacted statute requiring pharmacists to check for harmful reactions and interactions and to counsel customers).

*Pysz v. Henry's Drug Store*, 457 So.2d 561 (Fla. Dist. Ct. App. 1984) (finding no duty to warn, but acknowledging that circumstances might arise that would support a negligence action against a pharmacist who lawfully filled a prescription).

*McLeod v. W.S. Merrell Co.*, 174 So. 2d 736, 739 (Fla. 1965) (In a breach of warranty case, the court held that pharmacist's only duties when filling prescription are to compound drug prescribed, use due and proper care in filling prescription, use proper compounding methods, and ensure that prescription has not been adulterated).

## **GEORGIA**

*Chamblin v. K-Mart Corp.*, 612 S.E.2d 25 (Ga. Ct. App. 2005) (pharmacists do not have a duty to warn customers of every potential side effect of a prescription drug).

*Presto v. Sandoz Pharms. Corp.*, 487 S.E.2d 70 (Ga. Ct. App. 1997) (prior to implementation of Board of Pharmacy regulations requiring pharmacists to counsel patients, pharmacist had no duty to warn about side effects associated with discontinued use of a prescription drug).

*Walker v. Jack Eckerd Corp.*, 434 S.E.2d 63 (Ga. Ct. App. 1993) (holding that pharmacists did not have a duty to warn customers or notify physicians of prescriptions exceeding recommended amounts, of over-medication, or of potentially adverse drug reactions and interactions, but warning that the case cannot serve as precedent for cases arising after Jan. 1, 1993 when the Board of Pharmacy issued regulations requiring pharmacists to counsel patients).

## **IDAHO**

*Schaerrer v. Stewart's Plaza Pharmacy Inc.*, 79 P.3d 922 (Utah 2003) (establishing that a "pharmacist has a generally recognized duty to possess and exercise the reasonable degree of skill, care, and knowledge that would be exercised by a reasonably prudent pharmacist in the same situation.").

*Whiting ex rel. Estate of Theron Denaile Witing v. Rite Aid Corp.*, No. 2:12-cv-288 DN (D. Utah June 24, 2014) (finding that defendant pharmacist may be liable for giving advice on OTCs and is not otherwise protected by the learned intermediary doctrine when providing advice on OTCs).

## **ILLINOIS**

*DiGiovanni v. Albertson's Inc.*, 940 N.E.2d 73 (Ill. App. 2010) (relying on the learned intermediary doctrine to affirm that pharmacist, who warned doctor, had no duty to warn the patient who died from a drug interaction).

*Stephens v. Hook-SupeRx et. al.*, 359 Fed.Appx. 648 (7<sup>th</sup> Cir. 2009) (affirming a lower court's granting of summary judgment in favor of a pharmacy and doctor sued for negligence based, in part, on the learned intermediary doctrine).

*Happel v. Wal-Mart Stores, Inc.*, 766 N.E.2d 1118 (Ill. 2002) (where pharmacy had knowledge of patient's allergy and drug contraindication, the pharmacy had a duty to either notify the physician or warn the patient of the potential danger).

*Kasin v. Osco Drug, Inc.*, 728 N.E.2d 77 (Ill. App. Ct. 2000) (pharmacy did not undertake a duty to list all possible side effects when it listed some potential side effects; voluntary undertaking theory of liability is limited to the extent of the under taking).

*Fakhouri v. Taylor*, 618 N.E.2d 518 (Ill. App. Ct. 1993) (pharmacist who filled prescription as ordered by a physician had no duty to warn customer that the prescribed dosages were in excess of manufacturer's recommended limits).

*Frye v. Medicare-Glaser Corp.*, 605 N.E.2d 557 (Ill. 1992) (pharmacist did not voluntarily undertake a duty to warn customer of every potential adverse side effect by affixing a specific warning sticker to prescription drug container upon delivery; the scope of the duty is limited by the extent of the undertaking).

*Leesley v. West*, 518 N.E.2d 758 (Ill. App. Ct. 1988) (pharmacist did not have a duty to warn patient where pharmacist lacked medical information about patient; requiring pharmacists to provide cautionary information directly to consumers would impose too great a burden).

*Kirk v. Michael Reese Hosp. & Med. Ctr.*, 513 N.E.2d 387 (Ill. 1987) (hospital that dispensed drugs did not have a duty to warn patient of adverse effects; that duty is owed by physician).

*Eldridge v. Eli Lilly & Co.*, 485 N.E.2d 551 (Ill. App. Ct. 1985) (pharmacists do not have a statutory or common law duty to either refuse to fill prescription or notify customer's physician when the prescription is for quantity that exceeds manufacturer's recommended dosages).

*Jones v. Irvin*, 602 F. Supp. 399, 402-03 (S.D. Ill. 1985) (holding that, where a pharmacist correctly fills a valid prescription, pharmacist has "no duty to warn the customer or notify the physician that the drug is being prescribed in dangerous amounts, that the customer is being over medicated, or that the various drugs in their prescribed quantities could cause adverse reactions to the customer."; also recognizing that an "overwhelming majority of recent state cases stand for the proposition that the pharmacist has no duty to warn").

## INDIANA

*Kolozsvari et al. v. Doe et al.*, 943 N.E.2d 823 (Ind. App. 2011) (reversing dismissal of case against pharmacy and finding that the pharmacy had a duty to warn a patient of kidney damage risk where patient had complained about unusual symptoms from the drug and computer twice warned pharmacy of drug dangers when filling the prescription, but pharmacist ignored warnings).

*Pansey and Dennis Bobay v. Walgreen Company*, No. 1:07-CV-119 RM, 2008 U.S. Dist. Ct. LEXIS 59725, N.D. Ind. Ft. Wayne Div., August 5, 2008) (granting Walgreen's summary judgment, based, in part, upon learned intermediary and plaintiffs' failure to prove that state practice Act imposed duty to warn and duty not to dispense certain combination of drugs that allegedly caused injury since plaintiffs failed to provide expert to show pharmacist did not meet standard of care); *motion to reconsider denied June 30, 2009* (held no duty to warn under IN law and only duty not to fill if injury was "reasonably foreseeable", which it wasn't here since pharmacist did not know of other prescription) (N.D. Ind., No. 07-119).

*Shidler v. CVS Pharmacy (mispled – should be Hook-Superx, Inc.)*, 2:05-CV-209 (CAN), Feb. 20, 2007 (N.D. Ind.) (granting defendant's motion for summary judgment because to show pharmacist violated duty of reasonable care, plaintiff needed expert testimony on what a

pharmacist's duty was and plaintiff's general medical expert, with no pharmacy expertise, was inadequate expert).

*Allberry v. Parkmore Drug, Inc.*, 20A03-0503-CV-125, Court of Appeals of Indiana, Sept. 16, 2005 (affirming *Ingram*, finding no pharmacist duty to warn patient of side effects nor a pharmacist duty to give patient the manufacturer's product information, containing warnings, that wasn't included in prescription itself).

*Hook's SuperX, Inc. v. McLaughlin*, 642 N.E.2d 514 (Ind. 1994) (duty to warn patients of adverse effects of drugs lies with physician, but pharmacist does have a duty "to cease refilling prescriptions where the customers are using the drugs much more rapidly than prescribed").

*Peters v. Judd Drugs, Inc.*, 602 N.E.2d 162 (Ind. Ct. App. 1992) (pharmacy that had no direct contact with patient had no duty to warn patient of adverse drug effects)

*Ingram v. Hook's Drugs, Inc.*, 476 N.E.2d 881 (Ind. Ct. App. 1985) (pharmacists do not have a duty to warn customers of every possible adverse effect associated with a prescription drug, just those included in the prescription from the doctor).

## **KANSAS**

*Nichols v. Central Merchandise, Inc.*, 817 P.2d 1131 (Kan. Ct. App. 1991) (absent contraindication or clear error on the face of the prescription, the learned intermediary doctrine dictates that pharmacist has no duty to warn customer of potential adverse drug effects).

*Fuhs v. Barber*, 36 P.2d 962 (Kan. 1934) (pharmacist who encouraged customer to discontinue use of prescribed ointment, and to instead use a compounded concoction, had a duty to warn customer about potential adverse interaction).

## **LOUISIANA**

*Hollier et al. v. Brookshire Grocery Co.*, 48 So.3d 1129 (La. App. 2010) (affirming verdict in case against pharmacist for failure to warn where prescription, as confirmed by doctor's office, exceeded appropriate dosage by two and a half times the dosage reflected in the package insert; pharmacist should have inquired of doctor further).

*Kampmann v. Mason et al.*, 42 So.3d 411 (La. App. 2010) (affirming summary judgment in pharmacist's favor when sued for failure to warn, the court found that physicians have a duty to warn while pharmacists have a duty to fill the prescription accurately or to point out any clear errors, not to warn of side effects).

*Smith v. CVS Pharmacy, Inc.*, 2009 WL 3678256 (W.D. La. November 4, 2009) (denying motion to dismiss because learned intermediary doctrine won't "absolve pharmacist of all duties to patients," such as when the "prescription is facially incorrect or inadequate and creates a substantial risk of harm to the patient," which may be a question of fact to be determined by a jury).

*Stanley v. Wyeth*, 2006 WL 2588147 (E.D. La.) (in a decision merely remanding a negligence lawsuit against manufacturer and dispensing pharmacy/pharmacist back to state court, Court states that “fact that the pharmacist [in this case] did not include a patient insert that she was required by [FDA] law to include may indicate a breach of her duties,” but leaves that issue to be resolved in a future case).

*Aucoin v. Vicknair*, 1997 WL 539889, \*3 (E.D. La. 1997) (noting that Louisiana law provides that pharmacist has duty to fill a prescription correctly or warn patient or physician of obvious inadequacies or excessive dosage, but did not mention a general duty to warn of side effects).

*Guillory v. Andrus*, 679 So.2d 1004 (La. Ct. App. 1996) (absent excessive dosage or other obvious error in the prescription, pharmacy did not have a duty to warn customer of potential adverse effects).

*Pilet v. Ciba-Geigy Corp.*, No. 96-021, 1996 WL 89262 (E.D. La. Feb. 29, 1996) (pharmacist, who neither knew nor had any reason to know of defect in prescribed drug, had no duty to warn customer of potential danger).

*Gassen v. East Jefferson General Hospital*, 628 So.2d 256 (La. Ct. App. 1993) (pharmacists do not have a general duty to warn customers of potential adverse effects of prescription drugs, but they do have a duty to ask prescribing physician about clear errors or mistakes in a prescription).

*Kinney v. Hutchinson*, 449 So.2d 696 (La. Ct. App. 1984) (pharmacists do not have a duty to warn customers of adverse effects of prescription drugs).

#### **MARYLAND**

*Podgurski v. U.S. et al.*, 2005 WL 2338851 (D.Md., Sept. 21, 2005) (pharmacist had no duty to warn patient that prescribed drug was contraindicated due to her allergy where pharmacy was not shown to have known or that it should have known of allergy and MD law only imposes a limited duty on pharmacists to stop obviously fatal or unusual dosages).

*Rite Aid Corp. v. Levy-Gray*, 876 A.2d 115 (MD 2005) (Pharmacy’s inclusion of an “advice pamphlet” with a filled prescription constituted an express warranty, the breaching of which created liability for the pharmacy, but no duty to warn was assumed by that pamphlet).

*Moore v. Wyeth-Ayerst Labs.*, 236 F. Supp.2d 509 (D.Md. 2002) (ruling on motion to remand multi-district Fen-Phen case against manufacturer and pharmacy previously removed to federal court, district court concluded that plaintiff’s negligence case against pharmacy likely would not survive dismissal on remand because “pharmacist may not substitute his judgment for that of a physician writing a prescription” under Maryland law (citing *People’s Service Drug Stores* and *Hofherr*, see *infra*); court goes on to say that it is “skeptical the Maryland courts would find a pharmacist can be held liable on a negligence theory simply because he or she filled a prescription which turns out to be the subject of nation-wide products liability litigation.”)

*Hofherr v. Dart Indust., Inc.*, 853 F.2d 259 (4<sup>th</sup> Cir. 1988) (stating in a duty to warn case brought against a manufacturer that “Prescription drugs, of course, are purchased from a pharmacist only on the prescription of a physician . . . A pharmacist or a manufacturer who advised a patient not

to take a drug prescribed by a physician might easily cause death or serious injury, and we think the practice of medicine by pharmacists . . . is not a field in which we should even encourage them to engage, much less require it . . .”).

*Raynor v. Richardson-Merrell, Inc.*, 643 F. Supp. 238, 246 (D.D.C. 1986), *citing Johnson v. Richardson-Merrell, Inc.*, No. B-83-3814, Slip Op. at 5 (D. Md. 1984) (Under common-law or product liability theory, a pharmacy which filled prescription that was valid on its face could not be held liable for failure to warn when pharmacy did not compound or alter the drug or substitute a different brand or generic version).

*Johnson v. Richardson-Merrell*, No. B-83-3814 (D. Md. June 1, 1984) (pharmacists do not have a duty to warn customers about adverse effects of prescription drugs), *cited in Raynor v. Richardson-Merrell*, 643 F. Supp. 238 (D.D.C. 1986) and *Ealy v. Richardson-Merrell, Inc.*, Prod. Liab. Rep. (CCH) ¶11,236, 1987 WL 159970 (D.D.C. 1987).

*People's Serv. Drug Stores, Inc. v. Somerville*, 158 A. 12 (Md. 1932) (druggist may be required to make an inquiry to prescribing physician if prescription is obviously fatal or if the prescribed doses are so unusual as to be unsafe).

## MASSACHUSETTS

*Jenner v. CVS Pharmacy, Inc.*, D.R.I. No. 1:10-cv-00497-JNL-DLM (3/22/11) (finding that, under *Cottam* (below), a pharmacy assumes a duty to warn if it provides its own warnings and literature in addition to the manufacturer warnings, and then may be liable if those additional warnings are inadequate).

*Brienze v. CVS Pharmacy, Inc.*, 2003 WL 23018810 (Mass. Super. Dec. 19, 2003) (there is no general duty to warn, but pharmacist still had duty to warn customer when filling two prescriptions for customer that were known to adversely interact with each another, and that triggered an alert in the pharmacy's computer system when filled together).

*Cottam v. CVS Pharmacy*, 764 N.E.2d 814 (Mass. 2002) (pharmacists do not have a general duty to warn customers of the adverse effects of prescription drugs, but pharmacists may voluntarily assume such a duty).

## MICHIGAN

*Saukas v. Walker Street Pharmacy*, Case 03-01868-NH, Slip Op. at 2-3 (Mich. Ct. App. Aug. 4, 2005) (finding that pharmacy which correctly filled a valid prescription had no duty to warn of potentially harmful interactions between prescribed medicines).

*Baker v. Arbor Drugs, Inc.*, 544 N.W.2d 727 (Mich. Ct. App. 1996) (pharmacy, which implemented and advertised a computer system designed to detect harmful drug interactions, voluntarily assumed a duty to operate the system with due care).

*Kintigh v. Abbott Pharmacy*, 503 N.W.2d 657 (Mich. Ct. App. 1993) (pharmacy had no duty to identify customer as an addict and refuse sales to customer using Codeine).

*Adkins v. Mong*, 425 N.W.2d 151 (Mich. Ct. App. 1988) (pharmacists do not have a duty to warn customers of potential adverse effects of prescription drugs or to monitor and intervene in customer's use of prescribed drugs).

*Stebbins v. Concord Wrigley Drugs, Inc.*, 416 N.W.2d 381 (Mich. Ct. App. 1987) (“a pharmacist has no duty to warn the patient of possible side effects of a prescribed medication where the prescription is proper on its face and neither the physician nor the manufacturer has required that any warning be given”).

*Lemire v. Garrard Drugs*, 291 N.W.2d 103 (Mich. Ct. App. 1980) (pharmacy cannot be held liable for legally and correctly filling a prescription).

## **MISSISSIPPI**

*Sellars v. Walgreen*, 971 So.2d 1278 (Ct. App. Miss. 2008) (dismissing case because pharmacy does not have an actionable duty or standard of care that they violated in refusing to fill a prescription for deceased patient who couldn't pay).

*In re Diet Drugs Prods. Liab. Litig.*, 2004 WL 966263, \*2 (E.D. Pa. May 4, 2004) (applying Mississippi law) (noting *Moore* holding that the learned intermediary doctrine applies to pharmacists, who thus are under no legal duty to warn).

*Moore v. Memorial Hosp. of Gulfport*, 825 So.2d 658 (Miss. 2002) (unless pharmacist knew about a contraindication or knew that prescriptions were inconsistent with recommended dosage guidelines, pharmacist does not have a general duty to warn).

*In Re Rezulin Prods. Liab. Litig.*, 133 F. Supp. 2d 272, 289 (S.D.N.Y. 2001) (applying Mississippi law) (predicting (accurately) that the MS Supreme Court would likely extend learned intermediary doctrine to pharmacists, and also noting that majority of states confronted with the question have shielded pharmacists from liability from failure to warn, strict liability, and breach of warranty claims).

## **MISSOURI**

*Horner v. Spalitto*, 1 S.W.3d 519 (Mo. Ct. App. 1999) (pharmacists have a duty “exercise the care and prudence which a reasonably careful and prudent pharmacist would exercise. The scope of that duty is to be determined by the fact-finder on a case-by-case-basis), *abrogating*

*Kampe v. Howard Stark Prof'l Pharmacy, Inc.*, 841 S.W.2d 223 (Mo. Ct. App. 1992) (where there is no irregularity on the face of the prescription, pharmacy is under “no duty to monitor, advise and counsel customer regarding medication that his physician had prescribed”).

## **NEVADA**

*Kerns et al. v. Hoppe et al.*, No. 55615, Nev. S. Ct., 2012 (March 21, 2012) (unpublished opinion) (upholding the trial court's dismissal of pharmacy defendants in wrongful death case where plaintiff failed to show dispensed prescription was proximate cause of death and reiterating application of learned intermediary defense for pharmacists).

*Klasch v. Walgreen Co.*, 264 P.3d 1155 (Nev. 2011) (finding that a pharmacist who has knowledge that a patient may be at risk with respect to specific prescription drugs may be liable for failing to warn the patient or prescribing physician).

*Sanchez et al. v. Wal-Mart et al.*, 221 P.3d 1276 (Nev. 2009) (affirming dismissal of case against pharmacies below, finding that plaintiffs failed to state a negligence claim against pharmacists under Nevada law as pharmacies did not owe a duty to unrelated third parties injured by a pharmacy customer who obtained thousands of pills pursuant to legit prescriptions and injured plaintiff while under their influence, even where state had notified pharmacies of purchase practices).

*Heredia v. Johnson*, 827 F.Supp. 1522 (D. Nev. 1993) (pharmacist, while not under a general duty to warn, has a duty to exercise due care in filling the prescriptions properly, in labeling them properly, including the proper warnings and in being alert for plain error).

*Nev. State Bd. of Pharmacy v. Garrigus*, 496 P.2d 748 (Nev. 1972) (it would be unsafe policy to restrict pharmacists from filling a prescription merely because it is unusual; pharmacists should only “second guess a physician . . . in such circumstances that would be obviously fatal”).

## **NEW YORK**

*Brumaghim et al. v. Eckel et al.*, 944 N.Y.S.2d 329 ( N.Y. App. 2012) (granting defendant pharmacy’s motion to dismiss under the learned intermediary doctrine where plaintiff who suffered a stroke sued pharmacy for failure to warn her that her 1mg. dose of coumadin was too low, noting that the prescription had not been previously filled by the pharmacy, nor did pharmacy have knowledge that the prescription was “inadequate for her in particular”).

*Eberle v. Hughes, et al.*, 909 N.Y.S.2d 273 (N.Y. App. 2010) (affirming trial court’s denial of pharmacy defendant’s motion to dismiss because, in this case, there was enough information to allow the trier of fact to determine if pharmacy breached its duty of care when the patient followed instructions on warnings in pamphlet for those who share her medical condition to notify pharmacist before taking meds, and pharmacist told her the warnings were only for those with extreme cases of that condition, so patient should not be paranoid and should take medication).

*Winters v. Alza Corp.*, 2010 WL 446451 (S.D.N.Y., Feb. 9, 2010, *affirmed* 690 F.Supp.2d 350, 2010) (finding no pharmacist liability where pharmacist substituted brand with generic FDA-approved drug patch that plaintiff’s survivors claimed lead to her death due to defect; generic substitution law in NY allows doctors to prescribe for generics without liability, so follows that pharmacies can fill with generics without liability too).

*In re N.Y. County Diet Drug Litig.*, 691 N.Y.S.2d 501 (N.Y. App. Div. 1999) (pharmacists have no duty to warn customers absent knowledge of customer’s condition that makes the prescription drug contraindicated).

*Negrin v. Alza Corp.*, No. 98-CIV-4772, 1999 WL 144507 (S.D.N.Y. March 17, 1999) (pharmacist is under no duty to warn absent additional knowledge of patient's condition that makes drug contraindicated).

*Javitz v. Slatius*, 461 N.Y.S.2d 44 (N.Y. App. Div. 1983) (granting summary judgment to a pharmacist on issue of failure to warn the customer of harmful side effects).

*Hand v. Krakowski*, 453 N.Y.S.2d 121 (N.Y. App. Div. 1982) (where druggist knew customer was alcoholic and either knew or should have known that prescribed drugs were contraindicated, the "druggist may have had a duty to warn [the customer] of the grave danger involved and to inquire of the prescribing doctors if such drugs should not be discontinued").

*Ullman v. Grant*, 450 N.Y.S.2d 955 (N.Y. Spec. Term 1982) (pharmacist who lawfully and correctly filled a prescription with a substitute drug had no duty to warn customer of possible side effects).

*Bichler v. Willing*, 397 N.Y.S.2d 57 (N.Y. App. Div. 1977) (pharmacist who reasonably lacked knowledge of drug's dangerous side effects could not be held liable for failing to warn the customer of those side effects).

#### **NORTH CAROLINA**

*Ferguson v. Williams*, 374 S.E.2d 438 (N.C. Ct. App. 1988), *appeal after remand*, 399 S.E.2d 389 (N.C. Ct. App. 1991) (even though pharmacist has no generally duty to warn a customer about potential risks, a pharmacist who undertakes to advise a client concerning a medication has a duty to give correct advice).

*Batiste v. Home Prods. Corp.*, 231 S.E.2d 269 (N.C. Ct. App. 1977) (pharmacist who did not give customer advice about a drug, or do anything but correctly fill a prescription, is under no duty to warn customer of potential risks associated with the drug).

#### **OREGON**

*Griffith v. Blatt*, 51 P.3d 1256 (Or 2002), <http://www.publications.ojd.state.or.us/S4647.htm> (under a strict liability claim against pharmacist, the learned intermediary doctrine does not apply. Restatement (Second) of Torts § 402A, comment j, (which is followed by Or. strict liability statute) provides that a seller must give warning if seller has or should have knowledge of the danger).

*Docken v. Ciba-Geigy*, 790 P.2d 45 (Or. Ct. App. 1990) (whether pharmacy has a duty to warn its customers of potential risks of prescription drugs is an issue to be answered by expert testimony as to the standard of care in the community).

#### **PENNSYLVANIA**

*Mazur v. Merck & Co.*, 964 F.2d 1348, 1356 (3d Cir. 1992) (finding that, Pennsylvania law does not impose an independent duty to warn patients of the risks of prescription drugs the pharmacists dispense).

*White v. Weiner*, 562 A.2d 378 (Pa. Super. Ct. 1989), *aff'd*, 583 A.2d 789 (Pa. 1991) (bulk supplier of pharmaceutical chemicals does not have the duty to warn the final manufacturer of the prescription drug of potential risks of that chemical, citing previous courts' reluctance to extend a duty to warn to pharmacists and reiterating that the duty to warn lies with patient's prescribing physician).

*Coyle v. Richardson-Merrell, Inc.*, 584 A.2d 1383 (Pa. 1989) (pharmacist has no duty to warn customer regarding risks associated with a prescription drug).

*Makripodis v. Merrell-Dow Pharm., Inc.*, 523 A.2d 374 (Pa. Super Ct. 1987) (pharmacists do not have a duty to warn customers of potential risks of prescription drugs).

*Ramirez v. Richardson-Merrell, Inc.*, 628 F. Supp. 85 (E.D. Pa. 1986) (despite expert testimony and excerpts from the "Standards of Practice for Professional Pharmacy" recommending a duty to warn, public policy and jurisprudence compel the ruling that pharmacists are not under a general duty to warn customers of potential adverse effects of prescription drugs).

*Riff v. Morgan Pharmacy*, 508 A.2d 1247 (Pa. Super. Ct. 1986) (where prescription exceeds manufacturer's recommended dosage, pharmacist has duty "to warn the patient or notify the prescribing physician of the obvious inadequacies appearing on the face of the prescription which created a substantial risk of serious harm to the plaintiff").

## TENNESSEE

*Pittman v. UpJohn Co.*, 890 S.W.2d 425 (Tenn. 1994) (pharmacy had a duty to warn, because other pharmacies regularly made warnings when dispensing the product, and pharmacist was aware that customer had not received a warning from her physician).

*Dooley v. Everett*, 805 S.W.2d 380 (Tenn. App. 1990) (issue of whether pharmacist had a duty to warn customer of potential drug interactions is a question of fact to be determined by a jury; pharmacists are judged according to the standard of care required by their profession).

*Laws v. Johnson*, 799 S.W.2d 249 (Tenn. App. 1990) (pharmacy did not breach a duty to customer by removing package inserts containing warnings about a prescribed drug).

## TEXAS

*Walgreen v. Hieger*, 243 S.W.3d 183 (Tex. App. – Houston (14<sup>th</sup> Dist.), Oct. 2007), *reh'g denied* Jan. 10, 2008 (rejection of attempts by plaintiff to use pharmacist expert (versus doctor) in trial to show causation in negligence case against pharmacy was affirmed on appeal).

*Morgan v. Wal-Mart Stores, Inc.*, 30 S.W.3d 455 (Tx. Ct. App 3<sup>rd</sup> Dist. 2000) (pharmacists have no general duty to warn their customers of potential adverse effects of prescription drugs absent some special circumstance; the learned intermediary doctrine and public policy in general weigh against imposing such a duty), *review denied* (June 14, 2001), *petition for reh'g denied* (Sept. 20, 2001).

*Wimm v Jack Eckerd Corp.*, 3 F.3d 137, 142 (5th Cir. 1993) (affirming grant of summary judgment in favor of pharmacist based on no general duty to warn, where prescription cough medicine was allegedly dispensed with improper instructions).

## **UTAH**

*Whiting v. Rite Aid Corp.*, 28 F.Supp.3d 1192 (D. Utah 2014) (denying a pharmacy's motion to dismiss, finding, based on Utah's generally recognized pharmacist duty of care, that a pharmacy can be liable for breaching that duty if its pharmacist negligently advised a patient on a *non-prescription* drug, which in this case allegedly led to the patient's death).

*Downing v. Hyland Pharmacy*, 194 P.3d 944 (Utah 2008) (reversing trial court decision dismissing lawsuit against a pharmacist who dispensed a drug withdrawn from the market because the learned intermediary doctrine does not bar suit against that pharmacist, and, in such cases, the pharmacist owes a "duty of reasonable care").

*Schaerrer v. Stewart's Plaza Pharmacy, Inc.*, 79 P.3d 922 (Utah 2003) (affirming dismissal of claims against pharmacy; "we will not impose a duty upon the pharmacist to warn of the risks associated with the use of prescription drugs").

## **VERMONT**

*Perkins v. Windsor Hosp. Corp.*, 455 A.2d 810 (Vt. 1982) (the court held that a Vermont statute defining "pharmacy practice" does not establish a statutory duty for pharmacists, but the court did not directly address a common law duty to warn).

## **WASHINGTON**

*Silves v. King*, 970 P.2d 790 (Wash. Ct. App. 1999) (where there were no absolute contraindications regarding the interaction of two prescription drugs, pharmacist is under no duty to warn customer or notify prescribing physician).

*McKee v. Am. Home Prods. Corp.*, 782 P.02d 1045 (Wash. 1989) (pharmacists do not have a general duty to warn customers of adverse effects of prescription drugs, but "pharmacists should have a duty to be alert for patent errors in a prescription, for example: obvious lethal dosages, inadequacies in the instructions, known contraindications, or incompatible prescriptions, and to take corrective measures").

## **WEST VIRGINIA**

*Hartman v. Caraco Pharmaceutical Laboratories, Ltd., et al.*, 789 F.Supp.2d 701 (S.D. W. Va., 2011) (concluding that a pharmacy was not fraudulently joined with a manufacturer in a duty to warn case where WV state statute did not provide the pharmacy immunity from the claim and the WV state Supreme Court previously had rejected the learned intermediary doctrine for manufacturers, leaving open the issue of its application to pharmacies).

## **FEDERAL**

*Wimm v. Jack Eckerd Corp.*, 3 F.3d 137 (5th Cir. 1993) (pharmacies do not have a duty to warn customers in Texas when physicians prescribe the wrong medicine).

*Sanks v. Parke-Davis, et al.*, 2000 WL 33910097 (M.D. Ala. Oct. 30, 2000) (under Alabama law, a pharmacist who fills a prescription in strict accordance with the prescribing doctor's directions is not required to warn patients of any adverse side effects).

*Jones v. Irvin*, 602 F. Supp. 399 (S.D. Ill. 1986) (“a pharmacist has no duty to warn the customer or notify the physician that the drug is being prescribed in dangerous amounts, that the customer is being over medicated, or that the various drugs in their prescribed quantities could cause adverse reactions to the customer”).

*Shampaine v. Bayer Corp. et al.*, 2003 WL 22023391 (D. Minn. Feb. 26, 2003) (pharmacy that advertises it will detect, and warn customers of, adverse drug interactions assumes a duty to warn of such interactions and can be liable for breach of that duty if it negligently operates the computer drug interaction system, or if the customer relies on the advertised promise in using that particular pharmacy).

*In re Rezulin Products Liability Litigation*, 133 F. Supp. 2d 272 (S.D.N.Y. 2001) (plaintiffs in prescription diabetes litigation had no basis for failure to warn and other claims against pharmacists under Alabama, Mississippi, Louisiana, Texas, or West Virginia law).

*Van Dyke v. U.S. et al.*, 388 Fed.Appx.786 (10<sup>th</sup> Cir. 2010) (unpublished) (upholding dismissal of Federal Tort Claims Act case, in part, by concluding that pharmacist did not have a duty to warn patient of suicidal risks of Paxil in a case where a surviving wife sued the VA pharmacist).