

Direct negligence timely under ordinary negligence statute of limitation

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The Michigan Supreme Court recently held that a plaintiff's claim of direct negligence against a pharmacy is timely under the three-year period of limitations for ordinary negligence.

In *Kuznar v Raksha Corp*, ___ Mich___ 2008, the plaintiffs sued Crown Pharmacy and its nonpharmacist employee for negligence in refiling a prescription. The issue before the Supreme Court was whether the two-year statutory period of limitations for medical malpractice or the three-year period for ordinary negligence applies to the plaintiffs' claims against the pharmacy and its nonpharmacist employee.

Regarding the pharmacy, the Supreme Court held that the three-year ordinary negligence statute of limitations applied to such claims. The court affirmed the Michigan Court of Appeals' conclusion that a pharmacy is not a licensed health facility or agency and, therefore, cannot commit medical malpractice pursuant to *Bryant v Oakpointe Villa Nursing Ctr*, 471 Mich 411, 419 (2004). The Supreme Court concluded that the pharmacy cannot be directly liable for medical malpractice.

However, the pharmacy can be directly liable for ordinary negligence for operating without having a licensed pharmacist on site and for allowing a nonpharmacist to dispense medications. Therefore, the court held the plaintiffs' claims of direct negligence against the pharmacy were timely under the three-year period of limitations for ordinary negligence.

The Supreme Court further discussed whether the defendant nonpharmacist could be liable for medical malpractice. The court held that because the pharmacy is not a licensed health facility or agency, the defendant nonpharmacist employee was not an employee of such a facility or agency. Neither was she a licensed healthcare professional. As a consequence, the plaintiffs' claims alleging negligence by the nonpharmacist employee, and vicarious liability for that negligence by the pharmacy, may also proceed under the three-year statute of limitations for ordinary negligence.

Although the Supreme Court did not directly address this issue, pharmacists are licensed health professionals, and even under *Kuznar*, claims against pharmacists are likely still considered medical malpractice, as long as the pharmacist was using medical judgment at the time of the alleged malpractice. However, the court did leave open the issue of whether a pharmacy sued in connection with a pharmacist's alleged negligence is considered medical malpractice or ordinary negligence.