

# Don't Get Caught in the Gap

Professional volunteer work may require liability insurance

by Karen E. Peterson, RPh, JD

**P**harmacists and student pharmacists have many opportunities to become involved in their communities through volunteer participation in health fairs and similar events. This is a great way for pharmacists to demonstrate the value of their profession to their patients, friends, and neighbors. However, pharmacists and student pharmacists should remember to plan accordingly for the liability risks that accompany participation in these events.

Consider the case of John, a pharmacist employed by an independent pharmacy. John's employer has professional liability insurance on his behalf, but he does not have his own individual pharmacy professional liability coverage. John is certified to give immunizations. His church has money earmarked to use for the benefit of their elderly parishioners. The committee in charge of disbursing the funds decided the money could best be used to offer free flu shots to elderly parishioners. The vaccine was procured through the county health department and the church asked John to administer the vaccine. He willingly agreed because he recognized an excellent oppor-

tunity to use his talents to help his church assist its elderly parishioners.

Unfortunately, one of the people to whom John administered a flu shot developed pain, redness, and swelling at the injection site. She went to her doctor, who diagnosed an infection. The doctor also expressed a belief that the infection was related to the administration of the flu vaccine. The infection was successfully treated with antibiotics, but believing she should be compensated for her medical expenses, pain, and suffering, this person sued John.

What does John do now? The flu shot clinic was not related to his regular pharmacy employment, so his employer's professional liability insurance will not cover him for this lawsuit. The church does not have pharmacy professional liability insurance on John's behalf, so there is no coverage for this lawsuit through the church either. Because John does not have his own individual professional liability coverage, he is caught in a coverage gap. That means John will be personally responsible for paying an attorney to defend him in this lawsuit, as well as for the amount of any settlement or judgment.

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## What Wisconsin Statutes Apply in This Case?

by Sue Sutter, RPh, PSW President



Wis. Stat. § 450.035 covers the requirements that allow a pharmacist in this state to administer vaccines. Wis. Stat. § 450.035 (2t) (a) and Phar 7.10 (2) specifically state the pharmacist must have ". . . in effect liability insurance that covers the pharmacist against loss, expense and liability resulting from errors, omissions or neglect in the administration of vaccines in an amount that is not less than \$1,000,000 for each occurrence and \$2,000,000 for all occurrences in any one policy year." In the example case given in the above article, the pharmacist did not have

the required liability insurance to cover his volunteer vaccination services. Thus, in addition to being personally responsible for paying an attorney to defend him and responsible for any settlement or judgment, the Pharmacy Examining Board could discipline him for unprofessional conduct as allowed by Wis. Stat. § 450.10 and Phar 10.03 for violating any chapter 450 statutes. ●

## Liability: My Perspective

by Michael Dow, RPh

In Holland, a young boy stuck his finger in a dike to help stop a leak. There is a statue there that symbolizes the perpetual struggle of Holland against the water. This youngster made a difference. Our country is struggling with the availability of health care for many, many people. In making a difference, are you liable?



When I visited HealthNet of Janesville about 1½ years ago, I saw a ten-year-old drug distribution system that functioned without any pharmacist input. Many medications — some from drug companies' patient assistance programs, some samples and several generics — were given to patients by several volunteer physicians. The protocol used followed the Wisconsin guidelines for physician dispensing. I felt I could make a difference with safety and in helping the patients understand their medications.

I checked with my liability insurance carrier about my participation as a volunteer. The company had some concerns with the clinic not having a licensed pharmacy and not having to follow all the rules and regulations associated with licensure. I found out that Wisconsin has liability coverage for volunteers in a clinic such as HealthNet; however pharmacists were not included in the list of professionals that had coverage under this program. (I spoke with several people, and legislation to include pharmacists was introduced in the state legislature. The legislation did not move forward last year so we are working on this again for 2007.)

I explained the function of the clinic and my potential volunteering role to a member of the Pharmacy Examining Board who passed my thoughts on to the PEB legal counsel. When asked if pharmacist's participation with drug distribution like the scenario above was appropriate, his answer was "Who better than a pharmacist?"

That opinion has been my premise for volunteering at HealthNet. There may be questions about liability coverage, but there is no question that what I was making a difference in the health care of patients.

The young boy in Holland did what was needed and made a difference in his town. Taking care of people with their medication needs, whether they have insurance or not, is making a difference in my community. We may not be able to fix the problems of our health care system, but we CAN make a difference with each patient we meet. I believe it is the right thing to do. ●

## Pharmacists as Volunteer Health Care Providers

by Tom Engels  
PSW Vice President of Public Affairs

Last session, Senator Judy Robson (D, Senate District 15), at the request of Mike Dow and other PSW members who are volunteering their time and work for the Volunteer Health Care Provider Program (VHCPP), offered a bill to extend VHCPP liability protection to pharmacists and pharmacy technicians. The bill did not pass before the session ended. Senator Robson, now the Senate Majority Leader, intends to reintroduce this bill.



Since 1989, the Volunteer Health Care Provider Program has provided services for many uninsured low income Wisconsin citizens. With the help of this program, physicians, nurses, dentists, optometrists and others who volunteer their time have the comfort of knowing that they will be protected from personal liability. The VHCPP provides health care services from volunteer health care providers through a non-profit agency. These volunteers are, for the provision of services under the VHCPP, state agents of the Department of Health and Family Services (DHFS). As agents of DHFS, these volunteers are provided liability protection by the state.

This bill expands the types of volunteer health care providers who may provide services under the VHCPP and have status as state agents of DHFS to include licensed pharmacists and persons who perform functions described for pharmacy technicians in rules promulgated by the Pharmacy Examining Board. The exclusion of pharmacists and technicians appears to have been an oversight, not an intentional exclusion. Pharmacists and their staff are an integral part of any health care system and their role is growing as prescription drugs become one of the cornerstones of 21st Century health care. The ability of pharmacists and pharmacy technicians to be involved as volunteers will help improve the care we are able to provide to our neediest citizens.

Last session the bill number was Senate Bill 544 and it was supported by PSW. When Senator Robson does reintroduce the bill in 2007, PSW will again be supporting this legislation. ●

By administering immunizations, doing health screenings, and participating in other professional activities that involve direct patient care, student pharmacists are open to the same professional liability risks as pharmacists. If these activities are not performed as part of school or employment, a student pharmacist could be in the same type of coverage gap as John the pharmacist.

Recognizing that there are liability risks involved with volunteering your professional expertise, it is wise to consider ways to protect yourself. Some states have laws limiting the liability of volunteers. Of course, when volunteering, you should exercise the same professional judgment and discretion as in your regular pharmacy employment. Purchasing individual pharmacist professional liability insurance is an excellent way to protect yourself, regardless of your state's laws concerning volunteers. In fact, you may be required to show proof of liability insurance prior to volunteering in a professional capacity.

If having your own professional liability insurance is part of your plan to protect yourself from the risks associated with volunteering, make sure you are familiar with your policy. You need to be certain that your volunteer activities are covered

by your policy. Also, make your insurance company aware if you volunteer in a professional capacity on a routine basis. The extent to which you volunteer could affect your insurance rates.

Volunteering in a professional capacity is an excellent way for pharmacists to be involved in their communities and demonstrate the value of their profession. If you choose to volunteer your professional expertise, consider purchasing your own professional liability insurance if you have not already done so. Not only will having your own policy close the coverage gap, but it will give you peace of mind and allow you to focus on what you do best—caring for patients. ●

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## GOT NPI? (NATIONAL PROVIDER IDENTIFIER)

Compliance date:  
May 23, 2007

HIPAA requires all health care providers to have their own NPI by May 23, 2007 for all standard transactions by covered entities.

As of this date, the NPI will be the only health care provider identifier that can be used for identification purposes in standard transactions by covered entities (e.g. Medicare, Medicaid, private insurers, and clearinghouses).

## WHO NEEDS AN NPI?

**Any pharmacy adjudicating claims and/or any pharmacist billing for professional services.**

**STEP 1.** Visit the National Plan & Provider Enumeration website at <https://nppes.cms.hhs.gov/NPPES/Welcome.do> to create an account and register for your NPI.

**STEP 2.** Fax the NPI notification you receive from CMS to NCPDP at (480) 767-1043.

Phone: 800-465-3203 or 800-692-2326 (TTY)

E-mail: [customerservice@npienumerator.com](mailto:customerservice@npienumerator.com)

U.S. mail: NPI Enumerator, P.O. Box 6059, Fargo, ND 58108-6059