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**MEDICATION ERRORS STILL A LEADING CAUSE OF
INJURY AND DEATH, DESPITE A DECADE DEVOTED TO
REDUCTION OF ADVERSE DRUG EVENTS**

ROBINS  KAPLAN^{LLP}

REWRITING THE ODDS

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MEDICATION ERRORS STILL A LEADING CAUSE OF INJURY AND DEATH, DESPITE A DECADE DEVOTED TO REDUCTION OF ADVERSE DRUG EVENTS

BY TERESA FARISS MCCLAIN

Medication errors and injuries are responsible for 700,000 emergency department visits and 100,000 hospitalizations each year, and they are one of the most common types of inpatient errors. Ambulatory patients may experience adverse drug events (ADE) at even higher rates.

Twelve years ago, the 2006 publication Preventing Medication Errors, produced by the Institute of Medicine and commissioned by Congress, reported at least 1.5 million preventable ADEs each year in the United States. It found that drug-related errors were the most common medical errors and occurred at every stage, from prescription through administration of a drug. The report estimated that, on average, at least one drug error per hospital patient occurred each day, with rates varying significantly by facility.

The report recommended that by 2008 all healthcare providers should have plans in place to write prescriptions electronically, by 2010 all healthcare providers should be using electronic prescribing systems, and by 2010 all pharmacies should have the capability to receive prescriptions electronically. As a result of this report, a number of initiatives aimed at increasing patient safety were adopted by the healthcare community as a whole.

The existence of confusing drug names, or so-called “look-alike sound-alike” (LASA) medications, is one of the most common causes of medication error. In 2001, The Joint Commission highlighted the potential for LASA medication errors through the issuance of a Joint Commission Sentinel Event Alert, which later became Medication Management Standard MM.01.02.01. A list of LASA drugs may be found here: www.ismp.org/recommendations/confused-drug-names-list.

Despite the investment in inpatient and outpatient computerized systems over the past decade aimed at reducing ADEs, minimal improvement has been shown. Errors in filling prescription medication continue to occur at a rate of 51.5 million annually.

The following are common touch points for medication errors:

TRANSCRIPTION

- Transcription errors account for approximately 15% of all dispensing errors.
- Pharmacists or pharmacy technicians misinterpret doctors' handwritten orders, resulting in transcription errors.

DISPENSING

- Dispensing errors account for approximately 21% of all medication errors. Errors occur at a rate of four per day in a pharmacy filling 250 prescriptions daily, which amounts to an estimated 51.5 million errors out of 3 billion prescriptions filled annually nationwide.
- Dispensing errors include any inconsistencies or deviations from the prescription order, such as dispensing the incorrect drug, dose, dosage form, quantity, or labeling inappropriately, incorrectly, or inadequately.
- Most ADEs are caused by a small number of commonly used medications that carry significant risks, including, antidiabetic agents (e.g., insulin), oral anticoagulants (e.g., warfarin), antiplatelet agents (such as aspirin and clopidogrel), and opioid pain medications. Together, these four medication categories account for more than 50% of emergency department visits for ADEs in Medicare patients.
- Mixing up similar drug names accounts for one-third of medication errors. Such errors can be reduced by placing reminders on the stock bottle or in the computer system to alert staff about these commonly confused drug names. Facilities and pharmacies often have policies in place to address look-alike sound-alike (LASA) medications.
- Many retail pharmacies use integrated automated verification systems to reduce the risk of dispensing the wrong drug. However, the verifying pharmacist can override these safety features, placing a patient at risk for dispensing errors.

ADMINISTRATION

- Bar-coded medication administration (BCMA) has been adopted by many institutions but has yet to be proven to have a significant impact on life-threatening ADEs.
- Many inpatient settings have invested in automated medication dispensing systems, such as the Pyxis system, for their patient care units. Caregivers must electronically sign in to the unit and enter patient data to withdraw medication that has been preloaded by the pharmacy department. Similarly, this type of system does not eliminate ADEs. The risk of human error remains, because humans continue to input pharmacy orders, prepare the pharmaceuticals to stock the system, and administer the medications that are withdrawn.

Despite the advances in technology intended to reduce medication related injuries, ADEs continue to occur, causing serious injury and sometimes death. When negligence cases are brought as a result of an ADE, important evidence may now be extracted from the advanced technology and obtained via discovery methods.

SELECTED CASE RESULTS



TERESA
MCCLAIN

\$3.1 MILLION VERDICT FOR INFECTION AND LOSS OF EYE

Teresa Fariss McClain represented an injured woman and her husband after the woman contracted a serious infection while undergoing surgery to repair a macular hold in her left eye. The infection, which occurred when the defendant hospital infused contaminated irrigation fluid into our client's eye during surgery, ultimately destroyed the retina, resulting in the loss of the eye. Following a two-week trial, the jury awarded our clients more than \$3.1 million.



PATRICK
STONEKING



BRANDON
THOMPSON

\$3.9 MILLION VERDICT IN FARGO, NORTH DAKOTA

Pat Stoneking and Brandon Thompson completed a two-week trial in Fargo, North Dakota, on behalf of a Nebraska truck driver who injured his back while delivering a load. His condition deteriorated while he was at Sanford Medical Center Fargo until he developed cauda equina syndrome, which resulted in significant permanent injuries. The trial was completely concluded and the jury had deliberated overnight before the matter was resolved confidentially. As

Brandon and Pat were putting the settlement on the record, the jury notified the court that it had reached a verdict, which the jurors reported was a total of \$3.9 million.

OTHER DRUG AND DEVICE INVESTIGATIONS

Robins Kaplan LLP is currently investigating many new potential cases. Please contact our Mass Tort team if you have any questions or know of any individuals whose case should be evaluated.

- **Abilify** – This atypical antipsychotic—used to treat a variety of disorders, including schizophrenia, bipolar, and depression—may cause impulse-control behaviors, including compulsive gambling.¹
- **Benicar** – Popular blood pressure medication can cause intestinal problems known as sprue-like enteropathy, with chronic diarrhea, weight loss, nausea, and vomiting.²
- **Premature Hip Implant Failures** – Litigating cases involving DePuy ASR, DePuy Pinnacle, Stryker Rejuvenate, Stryker LFIT COCR V40, Wright Profemur, Wright Conserve, and Biomet M2a-Magnum.³
- **Invokana, Farxiga, and Jardiance** – These Type 2 Diabetes drugs can cause ketoacidosis—very elevated blood acid levels—which may require hospitalization.⁴
- **Stockert 3t Heater-Cooler Device** – This device used during open-heart surgery has been linked with a specific type of rare, nontuberculous mycobacterium infections, which can occur up to five years after exposure.⁵
- **Taxotere** – Studies and reports have associated permanent hair loss (alopecia) with the use of chemotherapy drug Taxotere (docetaxel).⁶
- **Viagra** – Use is associated with increased risk of melanoma.⁷
- **Xarelto** – Anticoagulant (blood thinner) linked to serious bleeding complications, intracranial hemorrhaging, gastrointestinal bleeding, wound infections from inhibited clotting, and lack of effectiveness in preventing dangerous clotting.⁸
- **Zofran** – This anti-nausea drug prescribed “off label” for morning sickness is associated with increased risk of cleft palate and congenital heart defects.⁹

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REPRESENTING TRIBAL NATIONS IN THE OPIOID EPIDEMIC

BY TIM PURDON, BRENDAN JOHNSON, TARA SUTTON, AND HOLLY DOLEJSI



TIM
PURDON



BRENDAN
JOHNSON



TARA
SUTTON



HOLLY
DOLEJSI

With the opioid epidemic in the United States dominating the headlines and unleashing a torrent of litigation against opioid manufacturers and distributors, Robins Kaplan has entered the ring by taking on the representation of several American Indian Tribes in the National Opioid Litigation.

The firm's American Indian Law and Policy Group and Mass Tort Group have filed several lawsuits on behalf of American Indian Tribes against major manufacturers and distributors of opioids, alleging devastating public health effects on Tribal communities. Tribal plaintiffs have sued 24 opioid industry defendants in the action, which seeks both damages and injunctive relief.

The Robins Kaplan legal team includes Brendan Johnson, former United States Attorney for South Dakota, and Tim Purdon, former United States Attorney for North Dakota. "The effect of opioids on South Dakota Tribes has been horrific," said Johnson. "This epidemic has overwhelmed our public health and law enforcement services, drained resources for addiction therapy, and sent the cost of caring for children of opioid-addicted parents skyrocketing. This is a crisis that affects virtually every Tribal member in the state."

On December 5, 2017, opioid cases brought on behalf of counties and cities were consolidated in a single multidistrict litigation (MDL) action in the Northern District of Ohio. The American Indian Law and Policy Group felt it was important that American Indian Tribes not be left behind in this process. Working alongside Robins Kaplan's highly experienced Mass Tort Group, the firm has filed suit on behalf of several Tribal Nations across five states. These cases have been or will be consolidated in the MDL as well.

Robins Kaplan's American Indian Law and Policy Group has grown rapidly in recent years, and we now represent Tribes across the country on a variety of important issues. Led by Tara Sutton, Robins Kaplan's Mass Tort Department is widely viewed as one of the preeminent such groups in the nation. Together, this combined team of incisive strategic thinkers, tireless courtroom advocates, and champions for Indian Country hope to bring justice in the opioid fight to our Tribal clients.



TERESA FARISS MCCLAIN PROMOTED TO PRINCIPAL



**TERESA
MCCLAIN**

We are pleased to announce that Teresa Fariss McClain has been named a principal at the firm. Her promotion was effective January 1, 2018.

Teresa devotes her legal practice to obtaining justice for those who have been harmed by medical errors or medical negligence. She has dedicated her career to advocating for individuals, first as a registered nurse in the areas of labor and delivery and high-risk obstetrics, then in adult critical care, and now as an attorney. As first-chair trial counsel, she has obtained multimillion-dollar settlements and verdicts on behalf of clients injured or who have wrongfully died as a result of medical errors, pharmaceutical errors, medical negligence, and personal injury. Teresa is a member of the invitation-only American Board of Trial Advocates, the president of Minnesota Women Lawyers Foundation, past president of Minnesota Women Lawyers, and she serves on the board of directors of Minnesota Women Lawyers Foundation.



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1. <http://healthycanadians.gc.ca/recall-alert-rappel-avis/hc-sc/2015/55668a-eng.php>
2. <http://www.fda.gov/Drugs/DrugSafety/ucm359477.htm>; <http://www.ncbi.nlm.nih.gov/pubmed/22728033>
3. *Concerns about Metal-on-Metal Implants*, available at www.fda.gov
4. <http://www.fda.gov/drugs/drugsafety/ucm446845.htm>
5. See <https://www.cdc.gov/hai/outbreaks/heater-cooler.html>
6. See, e.g., Kluger, *Permanent Scalp Alopecia Related to Breast Cancer Chemotherapy by Sequential Fluorouracil/Epirubicin/Cyclophosphamide (FEC) and Docetaxel: A Prospective Study of 20 Patients*, *Annals of Oncology* 1 (May 9, 2012); Prevezas et al., *Irreversible & Severe Alopecia Following Docetaxel or Paclitaxel Cytotoxic Therapy for Breast Cancer*, 160 *Br. J. Dermatology* 883-885 (2009); Tallon et al., *Permanent Chemotherapy-Induced Alopecia; Case Report and Review of the Literature*, 63 *J. Am. Academy of Derm.* 333-336 (2010).
7. Wen-Qing Li, et al. *Sildenafil Use and Increased Risk of Incident Melanoma in U.S. Men: A Prospective Cohort Study*. *JAMA Intern. Med.* (June 2014)
8. Lassar, M.R., et al. *Rivaroxaban versus Enoxaparin for Thromboprophylaxis after Total Knee Arthroplasty*. *N. Engl. J. Med.* 2008; 358:2776-86; Kakkar, A.K., et al. *Extended duration rivaroxaban versus short-term enoxaparin for the prevention of venous thromboembolism after total hip arthroplasty*. *Lancet* 2008; 372:31-39; Ericksson, B.I., et al. *Rivaroxaban versus Enoxaparin for Thromboprophylaxis after Hip Arthroplasty*. *N. Engl. J. Med.* 2008; 358:2765-75; Jameson SS, et al. *Wound complications following rivaroxaban administration*. *J. Bone Joint Surg. Am.* 2012; 1554-8
9. M. Anderka et al. *Medications Used to Treat Nausea and Vomiting of Pregnancy and Risk of Selected Birth Defects*. *Birth Defects Res A Clin Mol Teratol.* (Jan. 2012); JT Anderson et al. *Ondansetron use in Early Pregnancy and the Risk of Congenital Malformations – A Register Based Nationwide Cohort Study*. *Pharmacoepidemiology and Drug Safety.* (Oct. 2013)

ATTORNEYS NAMED TO 2018 BEST LAWYERS IN AMERICA LIST; TWO RECEIVE “LAWYER OF THE YEAR” DESIGNATION

Nine of the firm’s personal injury, medical malpractice, and mass tort attorneys have been named to *The Best Lawyers in America 2018*, and two of those honorees have also earned recognition as “Lawyers of the Year.”

Presented by Best Lawyers, the “Lawyer of the Year” recognition is awarded to one attorney in a major practice area in each metropolitan area. Recipients are selected based on particularly impressive peer-review results gathered from other attorneys in the same communities and the same fields. The recognition stands as a reflection of the recipient’s abilities, professionalism, and integrity.

Robins Kaplan recipients of Lawyers of the Year for 2018 include Chris Messerly for Medical Malpractice Law and Tara Sutton for Mass Tort Litigation/Class Actions.

MASS TORT LITIGATION/CLASS ACTIONS - PLAINTIFFS:



KATE
JAYCOX



TARA SUTTON
*Lawyer of the
Year*

MEDICAL MALPRACTICE LAW - PLAINTIFFS:



JOHN
EISBERG



CHRIS
MESSERLY
*Lawyer of the
Year*



KATHLEEN
FLYNN
PETERSON



PHILIP
SIEFF

PERSONAL INJURY LITIGATION - PLAINTIFFS:



JOHN
EISBERG



LEO
FEENEY



JAMES
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