

An FDA Defense Will Not Increase Pharmacist Lawsuits

A concern has been expressed that, if North Carolina enacts an FDA defense, it will lead to more lawsuits against pharmacists. This has not occurred in other states with FDA defenses, including states with stricter defenses like New Jersey and Michigan. In fact, manufacturer liability increases the risk of pharmacists being sued in at least one respect: pharmacists may sometimes be included in lawsuits against manufacturers for tactical reasons, to prevent removal of the case from the state court to federal court.

Legally, most states limit pharmacist liability. North Carolina law says that a pharmacist has no duty to warn a customer of the side effects of the medication being dispensed unless the pharmacist specifically undertakes to give advice. *See, e.g., Ferguson v. Williams*, 374 S.E.2d 438, 440 (N.C. Ct. App. 1988). This law suggests that there will not be an increase in pharmacist lawsuits if the FDA defense is adopted.

Practically, lawsuits against pharmacists would be much less attractive than lawsuits against manufacturers. Lawsuits against manufacturers can be aggregated together in large numbers that allow a greater financial return for plaintiff lawyers. This makes them much more attractive than individual lawsuits against pharmacists, making it more unlikely that pharmacists would suddenly see increased liability if the FDA defense is adopted.