

Cocktails as Sedatives?

The Risks for Mesotherapy Physicians Using Alcohol to Reduce Patient Anxiety and Pain

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Mesotherapy treatments can be a painful experience for patients, often involving 40 to 200 injections in a single treatment. Some mesotherapy educators advocate that physicians give a glass of wine or other alcoholic beverage to patients prior to beginning mesotherapy procedures in order to reduce patient pain and anxiety.

However, such advice may have exactly the opposite effect for physicians, exposing them to the pain of legal liability. This article will look at areas where physicians risk liability by dispensing alcohol to patients and possible alternatives.

I. Liability for Patients' Actions

Physicians may face third-party liability for dispensing alcohol to patients in at least 2 different ways. First, physicians could face third-party negligence claims for dispensing alcohol to patients who later injure another as a result of the alcohol consumed. As a general rule, physicians are shielded from third-party liability for harm caused by patients suffering the known side effects of prescribed medications, as long as the patient is made aware of the possibility of these side effects at the time the medication is prescribed. However, alcohol is not a medication prescribed for sedative purposes. Therefore, physicians who prescribe and administer alcohol to patients prior to beginning medical procedures are not protected in the same way as physicians who administer approved sedatives. The administering of alcohol by physicians could be seen as negligent if the physician administers alcohol to the patient in the office and then allows the patient to drive home while intoxicated.

Second, in some states, physicians administering alcohol to patients for sedative purposes may be subject to Dram Shop Acts. These state laws were originally designed to hold tavern owners liable for harms committed by underage drinkers and intoxicated individuals who were served by the tavern owners. Today, state Dram Shop Acts vary in their "bite," with some states having eliminated the Acts entirely¹ and others having expanded liability to include social hosts who serve alcohol to minors and intoxicated individuals.²

In states where Dram Shop Acts remain in place, physicians may face liability for administering alcohol to patients, depending on the language of the individual state law. For instance, some states limit Dram Shop liability to liquor licensees and their employees.³ In such states, physicians would not be liable to third parties for harm committed by patients who were given alcohol prior to their mesotherapy treatment because physicians generally do not have liquor licenses. In contrast are states such as New York, Alabama, and Minnesota, which create liability for all individuals who illegally sell alcohol to another whose intoxication ultimately causes harm to a third party. While physicians do not "sell" alcohol in the traditional sense of a bar or tavern, they do charge for their services and the materials used during procedures, and a credible argument could be made that physicians are in essence "selling" the alcohol. Once found to have illegally sold alcohol (i.e., without a liquor license), a physician could be held liable to third parties who have suffered harm caused by the patient. An example would be a family who sues on behalf of their deceased son, who was killed by a mesotherapy patient on the way home from the procedure and intoxicated from the alcohol given by the physician at the start of the procedure.

The result of such a state-by-state approach to Dram Shop liability is that the risk individual physicians take in providing patients with alcohol prior to mesotherapy treatments varies greatly depending on the state in which the physician practices.

II. Medical Malpractice

Physicians who dispense alcohol to patients prior to beginning mesotherapy procedures may also face medical malpractice liability. A physician may be held liable for medical malpractice if a negligent act (or failure to act) by the physician results in harm to the patient. In most cases, negligence is proven by establishing: (1) the physician owed a duty of care to the patient (usually established by the doctor/patient relationship); (2) the physician deviated from the applicable standard of care under the circumstances; (3) the physician's deviation from the standard of care caused the patient's injuries; and (4) that the patient suffered an injury as a result of this deviation.

In the United States, prescribing and administering alcohol for its sedative properties is generally not part of the standard of care among either general practitioners or specialists conducting cosmetic procedures. Even among physicians practicing mesotherapy, the practice of dispensing alcohol prior to mesotherapy procedures is not standard. Therefore, physicians who engage in such a practice are deviating from the standard of care which their patients should receive.

If a court finds the administering of alcohol to patients to be a deviation from the standard of care, then physicians risk medical malpractice liability in the event that a patient suffers a reaction to the alcohol directly or if complications arise during the mesotherapy treatment which are linked to the alcohol consumed at the start of the procedure.

III. Alternatives

Avoiding liability associated with dispensing alcohol to patients is simple – avoid giving alcohol to patients prior to treatment or at any time. This eliminates the risks of liability under the Dram Shop Acts, third-party tort liability, and the medical malpractice claims associated with injuries caused directly or indirectly by giving alcohol to patients.

However, for physicians who value the benefits of alcohol in mesotherapy treatment and refuse to give up the practice, it is important that such physicians take steps to limit their liability. At the very least, physicians who dis-

pense alcohol to patients should warn patients of the side effects sedatives, such as alcohol, may have on the patient. In addition, physicians should caution patients against driving following the procedure if any type of sedative is used. Physicians who insist on using alcohol or other sedatives for mesotherapy patients should require patients to arrange to be picked up by someone after the procedure and instruct patients not to drive following the procedure for a period of several hours, depending on the type of sedative used.

From a medical malpractice standpoint, physicians would be wise to choose medications that are widely prescribed to relieve patient stress, anxiety, and pain, rather than alcoholic beverages. By selecting medicines which are regularly used for such purposes, physicians then follow the standard of care for elective cosmetic procedures, and claims of medical malpractice related to the medication given are less likely.

Overall, the practice of giving alcoholic beverages to patients to eliminate anxiety and pain, while good-intentioned, is legally risky for physicians and should be replaced with more widely accepted treatments.

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References

1. Ten states today have no Dram Shop type of liability. The Marin Institute, Alcohol 101: Dram Shop Liability and Legislation: Holding Retailers Accountable for Injury and Damage. at http://www.marininstitute.org/alcohol_policy/dramshop.htm (Accessed June 13, 2005).
2. Georgia (O.C.G.A. § 3-3-22) and Indiana (Burns Ind. Code Ann. § 7.1-5-10-15) are among such states.
3. Among these states are Missouri (§537.053 R.S. Mo (2005), New Mexico (N.M. Stat. Ann. §41-11-1), and Arizona (A.R.S. §4-312 2004).

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