

I. Pharmacist's legal responsibility originates from law, regulations and administrative action laid down by public authorities and governing the specific areas he deals with as a retailer. At the same time he is subjected to the Penal Law and can be prosecuted by the Pharmacist Board if his behaviour is in violation to the professional code which he is bound to. In any event the pharmacist as a retailer is liable for every damage caused to a customer and may be required to compensate the injured party.

The possibilities of legal claim against the pharmacist seem to be increased as one moves from medicine to goods other than drugs, since the relationship between buyer and seller is no longer "protected" by stringent and detailed regulations, like those imposed on importers, producers, prescribers and dispensers of medications.

Italian law on cosmetics provides that products are not allowed to be put on the market if injury to the consumer's health can result from their use in normal conditions (1) Nevertheless any responsibility of the retailer is ruled out if cosmetics are distributed to the general public in their original pack, there is no evidence of alteration of the outer wrapping and the irregularity of the product is ascribed to inherent elements such as formulation, nature and condition of the container, use of prohibited chemicals, providing that the pharmacist, has no previous knowledge of them (2).

The last provision implies that the pharmacist has no way of preventing a faulty cosmetic from being put on the market other than by examination of its outer package for evident signs of degradation while other information will not be disclosed to him.

The legal responsibilities of the pharmacist are thus placed between these two provisions and can be ascertained on the ground of breach of contract, which departure from duty of care and strict liability might be added to, more than specific regulations issued by public authorities.

When a buyer receives from a pharmacist, or a

non professional store clerk, a cosmetic product in exchange for money he (or she) enters into a contract which is regulated by the existing rules of the Common Law.

It is rather speculative to attempt to define in detail how far contractual liability is extended by the pharmacist's behaviour, for most of the many factors concern warranties which automatically appear as part of the sale transaction.

There is no doubt indeed that fitness for a cosmetic purpose and quality of the product itself are implied warranties which are quite common in pharmacy practice, as when a customer describes his conditions and ask the pharmacist to recommend a cosmetic treatment that will alleviate them. Similarly a pharmacist supplying a cosmetic different from that described or presented as a model by the consumer, might be liable for breach of contract.

The ability of a given cosmetic to perform is not affected by personal opinions expressed by the seller because it is assumed that the consumer is able in turn to exercise his own judgment, providing that both parties are deemed to have no special knowledge about the matter. This last requirement does not seem to be satisfied in all circumstances, because the situation differs between a pharmacist and a non professional clerk of the same store, and a product purchased at the supermarket or any other outlet where the pharmacist's intervention is excluded.

2. It must be assumed that the buyer is relying on the pharmacist's skill and judgment in selecting a particular cosmetic while an implied warranty only for average quality is expected from a pharmacist's aid. A different responsibility might, however, be proposed if special knowledge in the cosmetic area is attributed to a pharmacist by the general public.

In fact academic education provides that a student of pharmacy can take official subjects in cosmetology and one of the five specific areas suggested by the new curriculum of study (3) is referred to cosmetic products. Furthermore, po-

stgraduates studies allow a pharmacist to complete his academic formation in this particular field by enrolling in one of the specialized schools of cosmetic activated by universities.

Epidemiologic data referring to the frequency of cosmetic damage in relation to the quality of the consultant give further support to the difference in specific knowledge existing between the pharmacist and non professional clerks (4).

Thus the attitude of the consumer is in line with both the university training and the general practice of the pharmacists so that professional liability can be contemplated in addition to contractual liability common to every retailer.

Legal responsibilities for consulting have been given considerable attention recently and the risk of future litigation is reducing the acceptance of the new wider role that most community pharmacist expect or pretend to have.

There is little doubt that a pharmacist owes a duty of care to patients to whom he gives advice when dispensing a medicament. If damage results from wrong warnings or lack of necessary advice he might well be liable for breach of contract. On the other hand, it is still questionable if the same principle applies to industrial cosmetics dispensed in a pharmacy and whether breach of duty of care can be ascribed to a pharmacist. Nevertheless consulting is to be taken into account in retailing cosmetics particularly when the manufacturer has failed to caution adequately, or at all, the consumer through the presentation of the product.

The extent to which a pharmacist can be liable for negligence, either contractual or professional, is not easy to decide, because the national law on cosmetics and consequently administrative regulations do not consider mandatory either inserting leaflets or sealing the outer packaging of a cosmetic product.

At the moment warnings and precautions are supposed to be displayed on the label only if a cosmetic contains one or more chemicals for which specific conditions of use are imposed (5). At the same time, indication of qualitative

and quantitative composition of a cosmetic is not a labelling requirement. Future legislation, following EC directive (6) will require qualitative composition.

Nevertheless the consumer's interest being paramount, a buyer must receive advice and information on the use of cosmetics so that the desired results can be attained. He must also be warned against potential damage and given adequate precautions.

The pharmacist need not be concerned with all foreseeable risks which are remote for the consumer. It is up to this professional to decide how much of information should be disclosed and to verify whether a particular danger is possible, having in mind the medication history of the buyer. The pharmacist is the only cosmetic retailer who can have access to the medication records of a consumer without violation of his privacy and confidentiality.

This takes us back to the duty of care owed by a pharmacist which is added to the contractual liability common to all retailers, and which is the expression of the different professional condition.

3. Under the civil law someone who has suffered damage from a product can obtain compensation only if he can prove that the manufacturer or the retailer are at fault or involved in the alleged complaints. Liability without proof of negligence is rarely established even if it is clear from evidence that serious injuries may occur even in the absence of negligence.

Under Council directive 85/374/EEC relating to strict liability from defective products, a claimant no longer needs to prove a producer's negligence and the manufacturer is assumed to have known the damage which can be caused by the use of his product (7).

Strict liability doctrine is applied to all products; therefore a pharmacist is liable for medicines and other goods as cosmetics which the consumer gains access to through a sale transaction. Strict liability did not change the existing penal law. It only made it easier for an injured person