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## Free Prozac in the Junk Mail Draws a Lawsuit

By ADAM LIPTAK

FORT LAUDERDALE, Fla., July 3 -- The unsolicited Prozac arrived in a hand-addressed manila envelope. It came from a Walgreens drugstore not far from here, and there was a "Dear Patient" form letter inside.

"Enclosed you will find a free one month trial of Prozac Weekly," it said. "Congratulations on being one step to full recovery."

The mailing infuriated one recipient, a 59-year-old home caregiver who filed a class-action lawsuit this week in state court here.

"They're going after me because I have a problem," said the caregiver, who agreed to an interview in her lawyer's office here on the condition that her name be withheld. "It bothers me to think that somebody could get into my medical records and start sending me dangerous medications."

The suit says Walgreens, a local hospital, three doctors and Eli Lilly, which makes Prozac, misused patients' medical records and invaded their privacy. It also accused the drugstore and Lilly of engaging in the unauthorized practice of medicine.

The plaintiffs' lawyers said they did not know how many people received the mailings. "It could be anywhere from several dozen to several thousand," said Gary M. Farmer Jr., one of the lawyers.

The suit seeks an unspecified amount of money and an injunction to prohibit further mailings.

Legal experts said that sending drugs through the mail could be criminal if the recipient does not have a prescription. How privacy law applies to medical records used in marketing is an open question.

A Lilly spokeswoman said that sending unsolicited drugs through the mail was against company policy and inappropriate. "While Lilly supports informing people about new treatment options and encouraging them to discuss these options with their doctor, what occurred in Florida appears to go beyond this," the spokeswoman, Debbie Davis, said.

Experts in medical privacy have been critical of mailings of targeted marketing materials based on information in patients' pharmaceutical and medical records. They say the mailing of drugs is an unwelcome innovation.

"This is appalling in every possible way," said David L. Pearle, a professor of medicine at Georgetown University. "It's an escalation of a deplorable practice."

Joy Pritts, senior counsel at the Health Privacy Project in Washington, said that "this is one step beyond what we normally see." On the other hand, Ms. Pritts continued, the Prozac mailing was part of "the increasing trend for the commercialization of health care information."

"It's being bought, sold and used like any other commodity," she said, referring to patients' medical information. "This has nothing to do with treating the patient. This has everything to do with generating profits."

Aggressive marketing tactics, experts said, are often linked to plummeting sales. Lilly's patent for Prozac expired last August, and the drug's sales have dropped more than 80 percent as generic equivalents have become available. But Prozac Weekly is still under patent.

John Newton, a Florida assistant attorney general, said that a whole range of pharmaceutical marketing practices was legally problematic.

"We are looking at these practices," Mr. Newton said. "The office of the attorney general believes many of these practices violate Florida unfair and deceptive practices laws."

The Prozac mailing, he said, may have been unlawful for reasons unrelated to privacy.

"The safety concern is a legitimate concern," he said, referring to the danger that the drugs would be found by children or used inappropriately.

"Another concern," he said, "is, if she doesn't have a current prescription for Prozac, it's an illegal distribution" of a prescription drug.

The form letter that accompanied the Prozac was apparently prepared by a sales representative for Lilly; it was signed by the caregiver's doctor and two other local doctors.

"We are very excited to be able to offer you a more convenient way to take your antidepressant medication," the letter said. "If you wish to try Prozac Weekly, stop your antidepressant one day before starting Prozac Weekly, then take Prozac Weekly once a week thereafter."

Stephen A. Sheller, a Philadelphia lawyer who also represents the plaintiffs in the lawsuit here, had a suggestion for drug companies inclined to mail unsolicited samples.

"What they should be doing is developing a drug to diminish their greed," Mr. Sheller said.

The lawsuit says the lead plaintiff, the caregiver, identified only as S. K., has had a diagnosis of depression, "which she maintains in the strictest of confidence due

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to potential public embarrassment and employment repercussions.” It says she did not have a prescription for Prozac.

“I hadn’t been using Prozac for seven years or better,” she said in the interview. “It was a matter of a few months. It didn’t agree with me.”

She was living in Massachusetts when she tried the drug. She said her doctor here, Lise Lambert, had not discussed Prozac with her, much less prescribed it.

Dr. Lambert, one of the doctors who signed the “Dear Patient” letter, is a defendant in the suit. She did not return calls for comment. Her medical group referred questions to Holy Cross Hospital, which is also a defendant.

A hospital spokeswoman said the hospital did not comment on matters in litigation. In early June, however, the hospital issued a statement to The Sun-Sentinel in South Florida.

“This particular effort,” it said, “was the result of well-intentioned, respected physicians being given an opportunity to arrange for some of their patients to receive sample medications, at no cost, through proper, licensed pharmacy channels.”

The plaintiff here said Dr. Lambert admitted signing blank letterhead, which the Lilly representative added text to and delivered to the drugstore for mailing.

Whether or not Dr. Lambert reviewed the letter before signing, Dr. Pearle said, the mailing was improper.



(Scott Fischer/South Florida Sun-Sentinel)

Gary M. Farmer Jr. represents plaintiffs in a suit over mailings.

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**Dear Mr. Depressed:  
We thought you could  
use these pills.**

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“It’s highly unethical,” he said, “because it’s clear that the letter is not an outgrowth of the doctor’s relationship with the patient.”

The plaintiff said the packaging that Lilly uses for the samples worried her, too.

“They were very attractive because they had little beads inside a capsule,” she said.

“If my grandchildren were there and they got a hold of this little package, they would have thought it was candy.”

Michael Polzin, a spokesman for Walgreen Company, said the drugstore did nothing improper.

“We received a valid prescription from the doctor,” Mr. Polzin said. “All of the prescriptions in this program were faxed by doctors’ offices. It was our understanding that it was going out to people who are on Prozac.”

Mr. Polzin said Lilly reimbursed the pharmacy for the samples. It is not clear whether the doctors who signed the letter were compensated for doing so.

Mr. Polzin said that prescription drugs were routinely sent through the mail and that the practice did not pose any safety hazard.

Ms. Davis, the Lilly spokeswoman, apologized for the mailing.

“It is inappropriate for Lilly sales personnel to support programs in which medicine is mailed to patients without the patient’s request,” she said in a statement.

“We understand why people should be concerned about receiving unsolicited prescriptions in the mail. To the extent Lilly personnel may have participated in this program, Lilly apologizes to those patients affected by it.”