



The Pharmacist Activist

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"The Lord loves righteousness and justice." Psalm 33:5a

Editorial

Editor's note: My wife Sue is a pharmacist and Assistant Editor of *The Pharmacist Activist*. She subscribes to *Woman's Day* and informed me that a Bible verse is included at the top of the Contents page of each monthly issue. We felt this would also be of value for readers of this newsletter, and it will become a regular feature.

Judge Richard Leon and CVS

The Department of Justice approved the acquisition of Aetna by CVS-Caremark and many view this as "a done deal," and the companies have portrayed it as such. However, this action requires the review and action of District Court Judge Richard Leon. To his credit, Judge Leon astutely recognized that there were implications and important concerns with respect to this proposed acquisition that warranted further investigation and evaluation (please see my letters of December 5, 2018 and January 24, 2019 to Judge Leon in the February issue at www.pharmacistactivist.com).

In addition to Judge Leon's own thorough study of this situation, he held two days of hearings in June, at which the involved companies, and organizations that were opposing the acquisition, presented testimony and responded to questions. Following the hearing the Department of Justice asked to call more witnesses. The Judge denied the request, saying it was "phantasmagorical." I had to consult my dictionary and, for the benefit of the one or two readers who also do not know the meaning of this word, it is defined as "a rapid, bewildering sequence of fantastic images, as seen in fever or dreams." That characterization had previously escaped my awareness, but it can also be applied to CVS.

Judge Leon conducted a final hearing on this matter on July 19 following which he noted that he would announce his ruling in the not-distant future. I very much hope that his ruling blocks the acquisition. However, whatever the outcome, I highly

commend him for recognizing and investigating the concerns, problems, and risks that are so well known to pharmacists.

In anticipation of the hearing scheduled for July 19, I wrote to Judge Leon on July 8 and this letter is provided below. In addition to the responses I received from pharmacists and that were included in the May and June issues of *The Pharmacist Activist*, I provided to him some additional responses I received. These responses, as well as responses I have received after I wrote to the Judge on July 8, are provided in this issue following my letter.

July 8, 2019

The Honorable Richard J. Leon
U.S. District Court for the District of Columbia
333 Constitution Avenue N.W.
Washington, DC 20001

Dear Judge Leon:

I commend your continuing investigation of the potential consequences of the proposed CVS-Aetna acquisition/merger. I have previously communicated my strong concerns, with supporting information, about this proposed merger in my letters to you of December 5, 2018 and January 24, 2019. I have included copies of these letters.

During the last several months, I have been made aware of even more ways in which CVS-Caremark manipulates, disrupts, and fragments the pharmacy marketplace for its own benefit and profits, and at increasing risk of errors and harm for consumers. I have included many of the communications I have received in the May and June, 2019 issues of my newsletter, *The Pharmacist Activist*, copies of which I have included. The title of the editorial of the May issue is a quote of a current CVS pharmacist, “I believe I am a danger to the public working at CVS.” The editorial in the June issue includes communications from current and former CVS pharmacists and is titled, “They Must be Anonymous, But They Will Not be Silent.”

I continue to receive numerous communications from pharmacists, some of which will be included in the August issue of my newsletter. I have included a preliminary draft of much of the content of this issue. In addition to the strong concerns voiced by CVS pharmacists, I would call attention to the commentary on pages 4 and 5 from an employee pharmacist in an independent pharmacy. This commentary identifies what I consider to be anticompetitive and unfair practices and actions of CVS-Caremark, that may also be violations of HIPAA. These concerns do not even address the abysmal compensation that CVS-Caremark provides to other pharmacies for dispensing prescriptions in Caremark-administered prescription plans, and that has been an important factor in the closure of many independent pharmacies.

These situations describe the situation that presently exists. If CVS is permitted to acquire Aetna, the resultant power and domination of these already huge corporations will become even more anticompetitive, and the consequences will be even worse than they are now.

I urge you to take action to prevent the acquisition of Aetna by CVS. I also urge you to initiate action that will require CVS to divest Caremark.

Thank you for the concern you have already demonstrated and for your consideration of this additional information.

Sincerely,
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Pharmacist comments

From current CVS pharmacists

“Mistakes are occurring. People are dying!”

(excerpts from a letter to a Board of Pharmacy): “I am writing to beg you to act in the interests of the patients of CVS, Walgreens, and other chain drug stores in _____. I am employed by CVS, so this letter will consist mainly of my concerns with CVS practices, but I am told that other chains, specifically Walgreens, have similar policies and practices.

I believe that the pursuit of profits within CVS pharmacy has reached a critical point, where the lives and health of their patients are being put in danger regularly. CVS corporate has kept their pharmacies operating on a skeleton crew for several years now, and while prescription volume and responsibilities have gradually increased over the years, staffing hours have only been cut. The Board’s decision to allow more technicians per pharmacist several years ago, which I’m sure was enacted in the interest of safety, was actually used by CVS to stop ALL pharmacist overlap within this district. This means that no CVS pharmacies within this district, regardless of prescription volume, have more than one pharmacist on duty at any time. What this means is that pharmacists do not eat, have rare bathroom breaks, and are standing continuously for up to 14 hours. While CVS says they ‘allow’ their pharmacists to take breaks, the system they have in place does not allow this to happen. Because of a constant staffing shortage (which is actually enforced by corporate), pharmacists are responsible for all aspects of running the pharmacy. We are responsible not just for verifying prescriptions and counseling patients—in order to keep the pharmacy functioning, we must be cashiers (in the drive-thru and at the pharmacy counter), we must enter prescription information, count prescriptions, take out trash, answer constantly ringing phones, make ENDLESS unnecessary phone calls (which amount to high-pressure sales calls), and complete hours of required training modules. We are fully aware of our legal obligation to provide counseling for each new prescription, and are reminded regularly that we can be terminated or lose our license if we do not provide this counseling, but our employer makes no effort AT ALL to make it possible for us to provide this counseling. It is laughable to believe that CVS pharmacists have the time to counsel on each new prescription when they have endless metrics that they are expected to meet throughout the day, most of which have a 15-minute time limit before they “go red” and are considered late. But who do we complain to? If we go to upper management, we are told that we are underperforming

and are made to feel incompetent—unreachable metrics goals are used to make ALL of the CVS pharmacists feel as if their jobs are in jeopardy at all times. If we complain to the board, we are exposing ourselves to legal action against our license and our livelihood. If unsafe practices are exposed at CVS, the response of corporate will be to place more extreme burdens and expectations on their already laden pharmacists, with no additional help for easing these burdens.

I would like to suggest an answer for how the Board of Pharmacy could ensure the safety of CVS (and other retail chains) patients without allowing drug store corporations to transfer that burden directly onto the shoulders of their pharmacists. Cold calls to doctors' offices by pharmacists should STOP unless specifically requested by a patient. As it is now, if a patient has enrolled one of their Rx's in the Readyfill service, when it is close to being out of refills, THREE electronic requests are sent to the doctor by CVS. If there is no response to these 3 requests, the Rx becomes the responsibility of the pharmacist, it becomes part of our 'Doctor request queue,' meaning we must make an actual phone call (which is timed—it must last at least 30 seconds or we don't get 'credit'). Either the doctor agrees to supplying more refills (which is considered a 'successful' call), or he will fail to respond or deny more refills (an 'unsuccessful' call). What this means is that we are overwhelming doctors' office staff with constant calls, and patients are often kept on medications that are unneeded for extended period of time. I have many patients who see many doctors and take many medications. They frequently do not know the names of their medications or what they are taking them for. They often agree to sign up for the Readyfill not understanding what this service means. Many come and pick up bags of unneeded medicine on a monthly basis because CVS harasses their numerous doctors into giving refills, then proceeds to harass the customer into coming and picking up these refills (also the responsibility of the pharmacist). I encourage the Board to interview doctors' office staff and pharmacy staff and see if they feel that these calls are serving patients in any way. Stopping unrequested doctor calls would be in the best interest of not just pharmacists and doctors, but more importantly, it would be in the best interest of patients.

Secondly, staffing minimums MUST be put in place based on prescription volume, keeping in mind that at CVS and other chains, pharmacists are not just responsible for verifying and counseling, they are also responsible for numerous tasks and responsibilities that would be handled by other staff at a more responsible company. Overlapping pharmacists should be a requirement at some of the busier stores, so the work burden can be eased on the pharmacist, and so they have a reasonable

opportunity to take necessary breaks. Pharmacies filling a certain volume should be required to have not just a technician, but also a cashier. At all CVS pharmacies, the technicians are expected to also ring up the customers at the registers, which means that at many of the stores, the lone technician is stuck at the register helping a steady stream of customers when the pharmacist is left to count the Rx's, verify, counsel, answer the constantly-ringing phone, and make the ever present doctor and patient calls. In deciding the staffing minimums, prescription volume should be the primary concern, but also what other duties are expected of the staff. If cashiering, housekeeping, and numerous metrics are part of the job description, then adequate staffing should be provided so that the primary duty, PATIENT CARE, is not neglected.

CVS has recently put into place a much-needed 2-step verification process. Most other chains have had this in place for years. It would work tremendously well for a well-staffed pharmacy. What it means for the CVS pharmacist is that one more metric has been put into place. There is one more queue to watch and another opportunity to 'go red.' It is inhumane. I have been at CVS for many years and I am currently looking for another job, as are most of my colleagues. If we leave CVS, there will be an abundance of inexperienced pharmacy school graduates to take our place for less compensation, so CVS will not suffer the consequences of their actions at all. The occasional lawsuit from customers harmed by their practices will be settled quietly out of court for a sum of money that will be less than what it would require to staff their pharmacies adequately to begin with, so they are not being harmed financially by their unsafe practices. I have only retail experience and have found that most of the larger chains have made note of the 'success' of CVS and are following suit in their practices. I am discouraged and fearful not just for my career and profession, but most importantly, for the millions of chain pharmacy customers. I am begging the State Board to make a difference in this state. Protect the patients in our state by demanding that their professional pharmacists are treated with the minimum amount of dignity to do their jobs well. Please. Thank you so much for your consideration. From a terrified, exhausted CVS pharmacist"

"I have practiced pharmacy for many years. I work at CVS currently and can attest to the conditions (that other CVS pharmacists have described that are included in your newsletter). For the first time in my career I actually dread and fear a shift at work. The staff morale is at a burnout level. I hope to assist you in making these issues known and acted upon. I agree completely that public safety is compromised and errors are increasing at an alarming rate.

My Board of Pharmacy recently conducted a survey regarding working conditions. I have inquired about the results but have not received a response.

I would like to add one more fact to the points addressed in the letters to the state boards (included in the May issue of *The Pharmacist Activist*). The fact is there is no possible way that a pharmacist in these conditions can meet the legal requirement of mandatory counseling on new prescriptions. I feel that this may be the position we must take to force action. The fact is CVS is in violation of law. CVS will not staff pharmacies adequately to meet this legal requirement. CVS is aware of this violation and continues to cut staff.

I challenge CVS to prove that mathematically a pharmacist can fill over 300 Rxs and counsel on 200 new ones in a 12 hour shift with one technician. This is in addition to ringing up every transaction on the register and answering every phone call. No call center staff and no cashiers. This is the current situation at my CVS location. Every CVS that I am aware of also works a skeleton crew. An industrial engineer could calculate the time required for each task and I guarantee that the results will show we are being put in an impossible situation. I'm good at what I do but I will say this – I cannot deny the laws of time and space!”

(Editor's note: I responded to this pharmacist and provided some suggestions, and also cautioned about the importance of remaining anonymous. The pharmacist quickly responded with the following additional comments.)

“You are free to use any ideas I share without using my name. I have no doubt that there would be instant retaliation when corporate would identify me as a ‘whistleblower.’ One important point in quantifying staffing levels is script count measurement. This is manipulated falsely by CVS when determining staffing and bonuses. In my opinion, for true representation of work being done, it is crucial to include all prescriptions processed in any calculations used to determine allowable technician hours. This is not the case. One trick that is used by CVS in determining volume of a location is that they only count the sold prescriptions in the weekly tally. The ‘return to stock’ prescriptions are subtracted from the total. I realize that unless the script is sold the store doesn't get paid but it is still work we did to fill it. This maneuver effectively reduces the volume by approximately 20%. For example, if I print my daily log I see the number for scripts filled that day. Usually 300 or so for a weekday and 150 or so for a weekend day. So one would think I am getting ‘credit’ for filling approximately 1800 per week which is what I am

actually doing. When corporate weekly reports come out I am listed as a ‘low volume’ store of under 1500 per week. This is because the data is manipulated by removing the return to stock prescriptions from the total filled. Every store has many ‘return to stocks’ daily. Many factors are in play here. I think e-prescribing of entire med lists and superfluous refill requests for automatic fills are the biggest culprits. The return to stock process is also time consuming in itself. Also, for fair comparison, whether a location has cashiers, self check-outs, or call center assistance should be taken into account. CVS has eliminated the cashier position in my pharmacy and our techs must also ring up every sale.”

“Metrics are the top priority for the district managers. My particular district manager is not a pharmacist. Recently he was at our location for his ‘visit.’ The current focus is immunizations. The gist of the ‘conversation’ (i.e., ‘instructions’) was to test bill insurances for payment of pneumonia vaccine. That, I assume is his way of assessing appropriateness of such. He went on to tell me that he knew (from a drug rep) that infants get several doses during their first year so it must be safe...although he didn't even know the name of the vaccine. We barely have time to administer vaccines in a safe manner, let alone screen for appropriateness.

We are also being ‘encouraged’ to do off-site flu clinics on our day off. We will be paid; however, this is without tech help. We are to go alone and are responsible for picking up supplies, transporting, returning, paperwork, etc. I question cold supply chain, etc. Of course, the front of the store is on board and has suggestions of where we can travel to. All of this is verbal...too smart than to incriminate themselves in writing.

We all fear for our jobs if we have low numbers, etc. I always think that they can't possibly ask us to do one more thing, but then they add to the workload and take away tech support.

I have to say pharmacy schools shoulder some of the blame for this in that they cranked up enrollment and programs for extra tuition dollars. Supply and demandprovided entirely too much supply to make it easy for the chains to take full advantage. You may use any of the information that I provided but please keep me anonymous. I'm trying to hang in there as long as I can.”

From former CVS pharmacists

“I have another position with flexible hours but worked part-time for CVS for more than 20 years. I would travel wherever they needed me, taking emergency calls nobody else would

take, filling in double shifts on holidays nobody else would work. I got behind one day because of trying to fix insurance issues, customer questions, doctor calls, and a technician that called in sick. I was reported by the store manager for being too slow. I got a call from the new district manager and was berated and yelled at for being behind. During the next few weeks the relief shifts disappeared. I was told that the hours of some full-time pharmacists had been cut and that they were being given the shifts I had been asked to fill. I had no shifts at all for quite awhile. I vividly remember getting my mail one day and seeing a letter from CVS. The letter read: 'Dear 0000000 (employee number) – You have been terminated for not working a shift in 90 days.' After all those years, all I am is a number. No phone call, no thank you, nothing!"

"I worked in a number of CVS stores and saw and heard lots of things that bothered me enough to write things down. I filed numerous ethics complaints and at times I contacted the Board of Pharmacy and DEA. I needed to take a leave of absence because of a very painful medical issue and CVS fired me at the start of the leave of absence. I am pursuing legal action."

"There are hundreds of cites and fines in our state regarding CVS."

(Following recollections of earlier mostly positive experiences): "Next came the bean counters that were in charge of pharmacy operations. Why have pharmacists involved? So now all of a sudden we had too many pharmacy personnel and the bottom line was not being met. Five years of pharmacy school to ring the register. Never mind trying to find time to counsel a patient. Our profession has regressed to being questioned, 'Why can't you do your job faster and with a minimum number, or less, of staffing you really need?' After 50 years of seeing things go from fun, to bad, to stupid, I gave up my license."

From an employee pharmacist in an independent pharmacy

"The same games occur over and over again with CVS-Caremark and PBMs in general. Frankly, I am tired of these games and they wear on me as a community pharmacist. The following are things I experience on a daily basis, most often with CVS-Caremark:

1. Prescription stealing directly from physician offices—CVS has taken it upon themselves to contact physicians' offices and take all brand new prescriptions without patients knowing it. I have seen an uptick in patients calling the pharmacy saying CVS is sending automatic messages either from a local CVS or a CVS mail order facility saying their prescription is filled and ready. These

patients have been customers of ours and have NEVER filled a single prescription with CVS. They are very confused and want to know why this is happening. Who is contacting the doctor to say it is ok for CVS to take that prescription and all future new prescriptions?

2. Mandatory use of CVS after 2 fills—this seems to get worse from year to year. Most notably, CVS-Caremark allows the first 2 fills of a prescription at the patient's pharmacy of choice. Then it becomes mandatory to use CVS-Caremark's mail-order pharmacy or a local CVS store.
3. Medication therapy management (MTM)—MTM in theory sounds great as it can help in identifying noncompliance and resolving disease and therapy issues. HOWEVER, I would estimate that 95% of the MTM cases I complete for patients in CVS-Caremark benefit plans involve asking a prescriber to switch patients from a 30-day to 90-day supply of medication. In return, they may pay you a little bit more for completing the MTM case. A 90-day supply sounds great for compliance and cost savings. However, when mandatory use of CVS-Caremark kicks in, wave goodbye to all your patients.
4. MTM performance scores—CVS-Caremark provides points for disease state management, compliance, and enrolling patients for 90-day supplies (which are eventually lost to CVS). So the slow bleed of losing customers begins. Many patients are also contacted by CVS representatives handling MTM cases calling OUR patients. How does it make sense to conduct MTM on a patient without a profile who does not fill their prescriptions at CVS? Eventually when CVS-Caremark steals the patient, why would they need you to conduct MTM for the patients they stole from your pharmacy? It seems like they control the whole MTM process anyway, and their games seem like HIPAA violations."

From a Walgreens pharmacist

"Several years ago Walgreens tried to take a stand against Express Scripts' low reimbursement. For a year, Walgreens did not have a contract. Walgreens developed an entire strategy and hoped that the service might be able to get people to talk to their employers and change away from Express Scripts. This did not work and, unfortunately, all the other pharmacies jumped on the opportunity and advertised that they took Express Scripts. Prescriptions were transferred out left and right. A year or so later, Walgreens got back in the Express Scripts network.

Nowadays, CVS-Caremark and its acquisition of Aetna have hurt tremendously. There are many groups in the CVS-Caremark that Walgreens is not contracted with. Other groups allow members to fill a few months at the retail pharmacy before being forced to switch to either CVS or their mail order. Most of the Aetna plans have significantly cheaper copays for people to go to CVS. All of this greatly hurts the ability to obtain prescriptions elsewhere. I know in my area we saw tremendous losses of prescriptions due to this. Last year Walgreens nationwide saw bonuses cut in half due to not meeting expectations set the previous year. Meanwhile, I have friends at CVS who said they received their largest bonuses ever.

PBMs make it difficult for even a large chain like Walgreens to be profitable. My store has seen massive cuts in help. Our reimbursements are down so, even though in June we had a 3% increase in prescriptions compared to June 2018 (despite further loss of Caremark and Aetna prescriptions), our revenue was actually slightly down. This resulted in a 10% decrease in tech help compared to the same month last year. Increases in prescription count and expectations with a decrease in hours is a recipe for problems in patient safety and increased workloads and stress for the pharmacy staff.”

Solutions for some

“After being fired by both CVS and later Walgreens for practicing pharmacy the way I was taught and the way I believe Pharmacy should be practiced, I bought a compounding pharmacy. Now I have hired enough technicians that I am free to practice pharmacy the way it should be practiced. When I counsel a patient, I have the time I need to speak with them. I interact with my patients all the time and they love it. They like that they can come to my pharmacy and not have to wait more than a minute or two to speak with a pharmacist. Plus, I get to use my education. In compounding, you really get to use your education. Even though we have some sophisticated equipment, I still use a mortar and pestle which I find is the best for making oral suspensions for humans and pets. My advice for unhappy big chain pharmacists is to buy or start your own pharmacy. Join NCPA and take advantage of its Ownership Academy

program. Banks will work with you to lend money to buy or start an independent pharmacy.”

“In North Dakota we have an unbelievable pharmacy ownership law that I hope will never go away. However, the health insurance companies and PBM prescription plans are beating pharmacies down. My independent pharmacy had been dispensing 300 prescriptions a day, but I was hating the direction we were going in so I opted out of a major plan due to a 40% drop in reimbursement, as well as some other plans. My volume fell very quickly to 200 prescriptions a day, and along with the backlog of payment from Medicare part D, I almost had a nervous breakdown. I rolled the dice and could not have been happier for what we did as a pharmacy and for our patients, as well as for my sanity. I really wanted to focus on patient care, compounding, and nutrition because those were my passions. Early this year, we drew another line in the sand and walked away from one of the remaining health plans in which we were participating. The financials were looking grim so I developed my ‘pharmacy rescue plan.’ We had to make some cuts but, six months in, we are doing well but are not out of the woods. We have USP 800 and the expense to deal with, but we continue to grow the profitable areas of our practice, compounding and nutrition, which now account for about 75% of our profit. Most importantly, we have time to visit with our patients and we are doing more and more cash consultations because other pharmacies don’t have the time to visit with their patients.”

The responses above that I have received from pharmacists are but a small fraction of the number I have received. However, they reflect the specific areas of risk and concern, as well as the frustration and emotion that exist. I wish I could publically give credit to the individuals who have provided this information but, for reasons that are clear, they must remain anonymous. I highly commend them and express appreciation for the time they have taken to share this information and their concerns for the purpose of increasing awareness of the problems and risks that exist.

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