



The Pharmacist Activist

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

Editorial

Opioid Misuse and Overdoses The Management of Walmart and Some Other Chain Stores Just Don't Care!

I don't often write about addiction, or opioid misuse and overdoses/deaths. That does not reflect any lack of concern on my part; rather, it reflects my frustration in being unable to identify strategies and actions that are effective in addressing these deadly occurrences. However, I am convicted by my continuing self-assessment that I have not done enough to help individuals avoid such experiences. The timing of this commentary is motivated by an email message I received at 12:55 am on June 20. It was from my former student, Lisa Cairo. If you have not already done so, please read her experience in the last issue (July 15) of *The Pharmacist Activist* (www.pharmacistactivist.com).

Lisa's life and employment experiences had been challenging but none of that could compare with the tragedy of losing her daughter Nicole to an overdose of heroin laced with fentanyl. Nicole was born shortly before Lisa started her freshman year at the Philadelphia College of Pharmacy. I never met Nicole but almost felt like I knew her from my discussions with Lisa when she was a student in my courses. Lisa's sharing Nicole's experience and photo with me is a tragic reminder of the continuing need to give urgent attention to addiction and its deadly consequences.

I have personally known many individuals who have experienced addictions, including some former students who died from accidental overdoses. I knew one of these students very well from discussions we had regarding his coursework and related matters. However, I did not suspect that he was using drugs and I was shocked when I learned that he died from an accidental overdose. His death increased my attentiveness to possible signs of drug use on the part of future students, friends, and acquaintances. In their grief, his parents did something that was truly remarkable. To honor and

preserve the memory of their son and his many fine qualities, they established a Commencement Award for a Pharmacy graduate who has overcome important challenges (usually unrelated to drug use) in completing her/his degree requirements.

Ken Dickinson is a former student who has survived several near-death overdose experiences. He successfully participated in a rehab program and became a teacher, mentor, counselor, and advocate for others with drug dependencies, and also gave presentations for the goal of helping students and other attendees avoid drug use and its pitfalls. Over a period of many years during which I had the responsibility for a capstone course in our Pharmacy program, I invited Ken to speak each year in one of the 2-hour classes. Ken's experiences and the concerned manner in which he shared them, fully captured the attention of the students – you could hear a pin drop in the large classroom. Ken would always provide his personal phone number and encouraged students to contact him regarding questions and issues with which he might help. I would subsequently learn from graduates who attended those classes of the value of the assistance that Ken provided when they personally reached out to him. Ken's service to so many has been so extraordinary and valuable that he has been awarded an honorary doctorate degree by the Philadelphia College of Pharmacy/University of the Sciences.

I can't think of the subject of addiction and intervention without recalling the longstanding leadership in this area of Jeff Baldwin, a retired faculty member of the University of Nebraska College of Pharmacy. This topic was the centerpiece of his platform as President of the American Association of Colleges of Pharmacy, and he urged me to write on this topic (please see my editorial, "ADDICTION – Pharmacy Should Assume a Leadership Role in Addressing

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this Devastating Problem!” in the August 2009 issue of *The Pharmacist Activist*. I have been remiss in not writing and doing more to help individuals avoid and/or manage addictions.

Walmart the enabler

I wish I could report that great progress has been made in preventing and managing addiction. However, I can't, and the problems have gotten worse. A shocking story, “Walmart Was Almost Charged Criminally Over Opioids...,” was published in the March 25, 2020 issue of *ProPublica* (Jesse Eisinger and James Bandler). The subtitle notes, “Even as company pharmacists protested, Walmart kept filling suspicious prescriptions, stoking the country's opioid epidemic...” The story addresses an almost two-year investigation by federal prosecutors and agents in Texas, and excerpts are included below:

“Opioids dispensed by Walmart pharmacies in Texas had killed customers who had overdosed. The pharmacists who dispensed those opioids had told the company they didn't want to fill the prescriptions because they were coming from doctors who were running pill mills.”

“Investigators had obtained records of similar cries for help from Walmart pharmacists all over the country... They reported hundreds of thousands of suspicious or inappropriate prescriptions.”

“In response to these alarms, Walmart compliance officials did not take corporate-wide action to halt the flow of opioids. Instead, they repeatedly admonished pharmacists that they could not cut off any doctor entirely... An opioid compliance manager told an executive in an email, gathered during the inquiry and viewed by *ProPublica*, that Walmart's focus should be on ‘driving sales.’”

“Once Walmart's headquarters knew its pharmacists were raising alarms about suspicious prescriptions, but the compliance department continued to allow – even push – them to fill them, that made the company guilty (of criminal actions), the Texas prosecutors contended.”

“This was not a question of a few rogue employees... Walmart had a national problem. Worse, the prosecutors contended, the company was a repeat offender. Walmart had agreed to a settlement with the DEA seven years earlier in which it had promised to improve its controls over the abuse of opioid prescriptions. Still the problems persisted. That's why the prosecutors believed they needed to pursue the extraordinary path of a criminal prosecution.”

“Walmart pharmacists repeatedly filled prescriptions that they worried were not for legitimate medical purposes, including opioids and mixtures of drugs the DEA considered red flags for abuse.”

Some pharmacists requested permission to stop filling opioid prescriptions for certain doctors, and one pharmacist wrote to

Walmart's national compliance department about a particular physician:

“We are all concerned about our jobs and about filling for a pill mill doctor. I'm in my 29th year with Walmart and have never had a situation this bad with a doctor. Other chains are refusing to fill for him which makes our burden even greater. Please help us.” However, “Walmart had a policy that pharmacists could conduct no ‘blanket refusals’ that shut off prescriptions from a particular doctor.”

“...Walmart's compliance department said each prescription had to be evaluated separately. To block a prescription and report the refusal, a pharmacist had to fill out a form that could take 20 minutes, a bureaucratic hurdle that pharmacists sought to avoid because they were under pressure to fill prescriptions quickly.”

Based on previous charges for violations, Walmart was operating under a secret settlement with the DEA known as a Memorandum of Agreement (MOA). When a regional manager raised questions regarding a list of “refusal to fill” prescriptions, the individual who then served as the director of Health and Wellness Practice Compliance at Walmart responded:

“The MOA that requires the reporting of the Refusal to fills expires in 30 days. We have not invested a great amount of effort in doing analysis on the data since the agreement is virtually over. Driving sales and patient awareness is a far better use of our Market Directors and Market manager's time.”

“The country was in a crisis, with hundreds of thousands of people dead and major companies poisoning people like drug dealers, as the prosecution team saw it. To the prosecutors, Walmart's attitude was not only that it hadn't done anything wrong, but that Walmart didn't even need to take the prosecutors seriously.”

Walmart responses

Throughout the investigations and planned prosecution, Walmart stonewalled the prosecutors by providing incomplete information from which pharmacist comments had been removed, as well as disingenuous explanations for comments of its officials and lack of corrective actions. Walmart attorneys went to federal Department of Justice (DOJ) officials in an effort to have them prevent the federal prosecutors in Texas from filing criminal charges. Walmart's attorney's letter to the Assistant Attorney General of the Criminal Division of the DOJ includes the following statements:

“The United States Attorney's Office for the Eastern District of Texas (EDTX) has not demonstrated – and cannot demonstrate – criminal intent on behalf of any Walmart employee... corporations do not themselves have intent and only act through their employees.”

“Even if EDTX could identify a Walmart employee with the

requisite criminal mental state, it would be improper to impute that employee's actions to the Company itself."

"There is no sound basis in law or policy to hold Walmart criminally liable for the alleged actions of unidentified lower-level employees..."

"If EDTX changed course and identified a rogue pharmacist who did in fact knowingly fill illegitimate controlled substance prescriptions, Walmart as a corporate entity should not be prosecuted for those actions."

Editor's comment: To protect the company and members of management, Walmart will sacrifice its "rogue" pharmacist(s) if any criminal action is identified with respect to controlled substances.

"Walmart conducted a thorough nationwide internal investigation and uncovered no evidence of criminal intent on behalf of any Walmart employee."

Editor's comments: Should we have expected a different conclusion to Walmart's internal investigation? An external investigation would probably reach a different conclusion, as did the two-year investigation that resulted in proposed criminal charges against Walmart.

"Walmart should not be singled out for prosecution by EDTX when other similarly situated chain pharmacies continued to fill Dr. xxxxxxx's prescriptions long after (three Walmart stores) and the Company as a whole had stopped filling his controlled substance prescriptions."

"Two recent actions against other chain pharmacies further underscore the inequity of a criminal prosecution of Walmart in this matter. First, the Covered Conduct in Walgreens' 2013 Settlement Agreement with the DEA contained far more egregious conduct than alleged here... Despite these facts, Walgreens was not prosecuted for its conduct, but instead paid \$80,000,000 to resolve the case civilly... Additionally, (in) CVS's 2015 Settlement Agreement... CVS was not prosecuted for its conduct, but instead paid \$22,000,000 to settle the case civilly. CVS has had at least 10 civil settlements since 2010 totaling in excess of \$130 million."

Editor's comments: Walmart has a point with this argument, but I would contend that criminal charges should have been filed against Walgreens and CVS, as well as Walmart. The three situations have some similar, but also different circumstances and participants. Previous settlements can't be changed now and should not be used as an excuse for not filing criminal charges against Walmart in the current situation. It is noteworthy that Walmart has no reluctance to identify negative information about other chain stores, but the question of which of these three companies is the worst is beyond the scope of this commentary.

"An indictment of Walmart would risk significant collateral consequences, the most severe of which is suspension and/or exclusion from a number of critical federal social and healthcare

programs. Walmart's inability to participate in these programs would jeopardize access to food, healthcare, and nutritional supplements for millions of Americans who rely on Walmart for these basic necessities of life. Charges against Walmart would also 'disproportionately punish innocent employees, shareholders, customers, and other stakeholders.'

"An indictment alone, much less a conviction, could result in the Company's exclusion from these critical healthcare programs, denying millions of Americans access to the medications they need, and posing an existential threat to Walmart pharmacies."

"Additionally, a criminal conviction would risk harming millions who rely on Walmart to redeem their food and nutritional benefits (under two federal programs). The inability to participate in these two programs would jeopardize the best – and, in some circumstances, the only – source of fresh, affordable food and nutritional supplements for those most in need."

"Finally, Walmart's possible exclusion from these programs would also have a profound and negative impact on the lives and families of the Company's 1.5 million U.S. employees and its innocent shareholders... It would also likely mean the loss of billions of dollars in the value of Walmart shares held in retirement savings accounts for millions of Americans and the pension funds of countless nonprofits and public employees."

Editor's comments: Walmart should have considered these possible consequences prior to its actions that contributed to numerous opioid overdose deaths. It attempts to excuse its policies and actions and it shows no remorse for the victims of these overdose deaths and the families they left behind. Walmart claims to be concerned for the millions of Americans whom they suggest would be disadvantaged if Walmart was not permitted to participate in federal programs. However, these alleged concerns are contradicted by its lack of concern regarding the failures of small businesses, the consequences for many individuals, and the destructive impact on the vitality of the business districts and towns when they opened in those areas. It is clear that Walmart's priority – and, perhaps only real – concern is the potential loss of billions of dollars in the value of its shares.

In a meeting of Walmart attorneys with EDTX prosecutors, as described in the *ProPublica* article, the two sides largely agreed on the facts of the case but differed completely on whether they justified a criminal charge. Walmart had acknowledged that "(it) could have and should have done more to voluntarily combat the opioid crisis," and made a settlement offer of \$34 million. A prosecutor suggested a payment of \$1.2 billion, based in part on Walmart's claim of giving \$1 billion a year to charities. Some prosecutors were willing to consider a financial settlement if Walmart admitted in a statement that would go public that it "killed people." An agreement was not reached.

Walmart continued to communicate its concerns about criminal charges to officials in the DOJ's criminal division in Washington. This resulted in a call from an official in the deputy attorney general's

office that the Texas office's criminal investigation of Walmart should be stopped. The Texas prosecutors then directed their attention to criminal charges against the *former* Walmart compliance manager who had told an executive that Walmart should focus on "driving sales," as well as to the civil charges. Following more Walmart communications with officials in Washington, Texas prosecutors were informed that they could not indict the former Walmart compliance manager.

The civil charges continue to be pursued. Several of the DOJ officials who considered or were aware of the Texas prosecutors' plans for criminal charges against Walmart have since left the DOJ. One of them has taken a job in Walmart's legal department.

A CVS opioid experience

Following the publication of my last issue of *The Pharmacist Activist* (CVS...Part 6), I received a message from a pharmacist who had recently made a decision to leave CVS after working there for many years to accept another position. He noted how he and his colleagues had frequently voiced concerns about the metrics and auxiliary tasks increasing at the same time support staffing was being decreased. He states: "I would only like to voice a few of my grievances towards CVS as I still have friends who work there and am still afraid of CVS retaliation." He provided four experiences, including the following opioid experience:

"A female patient came in with a prescription for generic Vicodin #60 for menstrual cramps. It was an electronic prescription and the patient was new to CVS, and there was nothing else in the profile. My professional judgment was that 60 was an excessive amount, especially during the current opioid crisis. In speaking with the patient, she stated that she always got it from CVS and a quantity of 60 every month. Because I had no proof of either claim, the current red flags, and possible inappropriate prescribing by the physician, I contacted the physician and spoke with her personally. She stated that the patient came to her for the first time and claimed that another physician gave her this monthly prescription, so the physician sent an electronic prescription to my CVS. The physician reduced the number of tablets to 20, which seemed appropriate, and stated that should last the patient for a year. I documented this situation in the CVS system very thoroughly and told the patient, and I dispensed the prescription. One month later the patient returned with a hard copy for generic Vicodin #60 from a different doctor in the far suburbs. I told the patient that I was not comfortable filling the prescription as per our previous conversation last month. The patient left and called corporate

and my district leader (DL) called me the next day and said that the patient stated they are going to the news about this. My DL stated that if the patient goes to the news and complains, then I will no longer work at CVS. He said I should have turned my head and just filled it to prevent all this trouble for him and me. I learned that the DL was more about keeping the patient happy and less complaints meant less work for him. He did not care that every pharmacist took an oath and had a corresponding responsibility when dispensing prescriptions. I could go on about many other unsafe and unethical issues about CVS and my DL but this is good for now."

Pharmacist heroes

Management at Walmart, CVS, and some other chains are consumed by greed and obsession with the value of shares of their company's stock. They are unwilling to miss any sale, even when customers are placed at risk of serious harm, and their pharmacists must function in error-prone workplace conditions that increase the risk of errors, harm and/or death of customers, the destruction of the professional role of pharmacists, and the risk of pharmacists having their licenses suspended or revoked when serious errors occur. Walmart and CVS are among the very largest and wealthiest corporate entities in the world. They have the resources to do things the right way, but they just don't care and they don't. They can buy settlements in whatever amount necessary that arise from prosecution and lawsuits for dangerous practices, errors, and deaths. The things these companies fear most are extensive negative publicity and the resulting impact on their stock values. It is for this reason that *The Pharmacist Activist* will continue to expose these situations with the hope that there may still be some executives with a conscience at these companies.

The vast majority of pharmacists at Walmart, CVS, and other chain stores are highly committed to serving and protecting their customers, and to fulfilling their professional responsibilities on behalf of their employer. However, it is extremely difficult and often impossible to practice in this manner when pharmacists are caught in the middle between customers who have "wait times" and become impatient and demanding, and management which not only does not support its pharmacists and technicians but threatens them with termination.

Pharmacists who take a stand for what is right and communicate their concerns, whether personally or anonymously, are heroes of our profession! Thank you!

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