The Pharmacist Activist

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I have chosen the way of truth; I have set my heart on your laws. Psalm 119:30

Editorial

# CVS Places Consumers at Risk of Harm, And is Destroying the Profession of Pharmacy! Part 3

I have come to recognize that the CVS situation is even worse than I thought. CVS pharmacists and technicians respond to my editorials with their own experiences that are so outrageous that none of us could make them up. I am very sympathetic regarding the circumstances these individuals must contend with, but I highly commend them for their willingness to voice their concerns, and I appreciate their trust that I will protect their identity.

## CVS creates risk for consumers

Vaccines to protect against influenza are available in "regular"-dose formulations, as well as high-dose formulations that are recommended for individuals such as the elderly who are at greatest risk of serious complications from the flu. Earlier in the current flu season, the high-dose vaccine was in short supply and many pharmacies were out of it. I have learned that, during that time, some CVS pharmacists were "encouraged" to use regular-dose vaccines for all patients even though they recognized that some of the patients were candidates for the high-dose vaccine. Rather than "losing" the patient to a physician or another pharmacy which had the high-dose vaccine, or jeopardizing not meeting management-imposed immunization quotas, CVS placed some of the most vulnerable patients at greater risk by not using the vaccine with the most protective dosage. It is my understanding that this "encouragement" came from local management (e.g., district leaders), as corporate management would certainly have recognized the risk to CVS if such a request would be discovered to have come from corporate.

## CVS causes harm

The situation that I describe below is just one of those for which I personally know the pertinent, specific information.

> A 5-year old girl underwent surgery and Roxicet (oxycodone-acetaminophen) 5-325 mg/5 mL was prescribed for management of her pain. The typed directions on the prescription were: 2.5 mL every 4 to 6 hours as needed. The pharmacy technician and pharmacist, in entering and verifying the information, respectively, made errors with the result that the label on the prescription container contained the directions: 2.5 teaspoonfuls every 4 to 6 hours as needed. Following the administration of several 5-fold overdoses, the child lost consciousness. Following hospitalization, the error was recognized, naloxone was administered, and the child survived.

CVS acknowledged that an error had been made. However, it initially claimed that it was not financially liable (beyond the costs of hospitalization) because the child had not been permanently "harmed," because the overdosage was successfully reversed and the child was presumably healthy again. CVS settled the case with the family. Although the error was made by the pharmacist and technician, management-imposed metrics and the resultant staffing and working conditions were important factors, with the pharmacist acknowledging dispensing about 500 prescriptions in a 10-hour shift.

## CVS kills

> A middle-age woman died as a consequence of complications from using oxycodone and other opioid-containing formulations that were initially prescribed for pain management prior to and following back surgery. Oxycodone was prescribed over an extended period of time, with the dosage often being increased, presumably because of the extent to which the patient experienced tolerance and dependence. The vast majority of prescriptions were written by the same physician and dispensed in the same

> CVS pharmacy by the same pharmacist. Following the death of the patient when I was made aware of the situation, the number and potency of oxycodone tablets being provided to the woman were so high that I raised the question as to whether she was actually taking that many tablets herself or whether there was diversion. I was informed that the possibility of diversion had been thoroughly investigated and ruled out, and that she was personally using all of the tablets provided her.

The prescribing physician and dispensing pharmacist were at fault in enabling these circumstances and the tragic outcome. However, it was also clear that CVS management did not have controls, safeguards, or supervision that would have identified and intervened in a situation in which there was such clear evidence of opioid misuse.

## CVS lies

Consider the following recent statements of CVS corporate:

> "Patient safety is our highest priority."

> "Qualified and trained pharmacy technicians allow pharmacists to have more time to provide patient care, answer questions about medications and serve as true health care counselors…"

> "Metrics are meant to provide better patient care, not penalize pharmacists."

> "We have a firm non-retaliation policy in place for any employee, including our pharmacists, who want to voice a concern."

These statements have absolutely no credibility among most of those who are in the best position to respond – the CVS pharmacists and other employees. By making such statements that can be so quickly and comprehensively challenged with examples, CVS self-inflicts much of the damage to its own credibility.

## CVS steals

Primarily through its Caremark PBM and Aetna health insurance, CVS steals patients from other chain pharmacies and independent pharmacies. Many of the affected patients have enjoyed and benefited from the services and friendship of their previous pharmacists for decades.

Through its metrics and "expectations" that its pharmacists complete the prescriptions and other responsibilities occurring on their employment shift, CVS steals from its own pharmacists by not paying them for time worked "off-the-clock." One CVS pharmacist who maintains very careful records told me that he worked the equivalent of more than 4 weeks "off-the-clock" in 2019. In another situation, a district leader informed the pharmacists in his district that his expectations are that each pharmacist must stay 1 to 2 hours past the end of their shift to finish filling prescriptions, and that it is part of their duty to do so. This "expectation" of the district leader is an acknowledgement that it is not possible to complete all the prescriptions during regular hours with the number of pharmacist and technician hours of staffing provided. CVS pharmacists should specifically document such comments as soon as possible after they are made. They should also maintain detailed records of how many hours they work "off-the-clock."

## CVS cheats

CVS cheats pharmacies other than those it owns by not providing fair compensation for prescriptions and services for patients covered by Caremark and other CVS-owned prescription plans.

On December 17, 2019, the U.S. Department of Justice sued CVS and its Omnicare unit for violating the federal False Claims Act by illegally dispensing drugs to tens of thousands of patients in assisted living facilities, group homes for people with special needs, and other long-term care facilities. The complaint alleges that Omnicare assigned new numbers to prescriptions after the original prescriptions expired or ran out of refills, under what the company internally called "rollover" prescriptions. CVS responded that it did not believe the claims had merit, that it intended to defend itself in court, and "We are confident that Omnicare's dispensing practices will be found to be consistent with state requirements and industry-accepted practices."

The January 13, 2020 edition of *Bloomberg Businessweek* includes an article, "The Big Drug That Couldn't," (Riley Griffin with James Paton; pages 12-14) that provides details of how CVS Caremark, Express Scripts, and others manipulate the costs and availability of drugs to the disadvantage of patients, healthcare professionals, government agencies, and society. Amgen's cholesterol-lowering drug Repatha was approved and marketed in 2015 at an annual cost of $14,100. Half of all patients prescribed Repatha, or a similar drug Praluent, were denied approval for coverage during the first year these drugs were on the market, and many patients who were approved by their prescription plans often couldn't afford their share of the cost. In late 2018, Amgen cut its list price by 60%, to $5,850 annually. However, the substantial reduction in list price failed to boost sales. The story continues as follows:

> "Throughout 2019, many drug middlemen ignored the lower-priced meds in favor of putting the $14,000 versions on their approved lists-which would give heftier rebates.
>
> CVS Health Corp., for example, asked prescribers to provide one of two codes to request access to either the $14,100 product or the $5,850 product. Although it stated 'the two products are the exact same and made in the same manufacturing facility,' the company required a 'documented clinical reason' to access the cheaper drug. Even with such a reason, CVS said it wouldn't make the discounted drug available. So doctors filling out forms essentially had only one choice: request the expensive option."

> The chief medical officer of CVS Health "says the $14,100 product initially offered health plans the lowest net cost because

the company could pass them the rebate. However, he concedes its demand for a 'clinical justification' for the discounted product was inaccurate and unnecessary. 'It was a business decision that should have been reviewed more deliberately,' he says. After five months, CVS updated the form to eliminate that question and now covers the $5,850 version of Repatha."

## CVS retaliates

A pharmacist employed by CVS for more than 25 years was so concerned about the inadequate staffing, working conditions, and risk of errors that she convened a small group of CVS pharmacists to meet with their district leader to voice their concerns. The response was that increasing technician hours was out of the question and that they had a responsibility to meet the required metrics. Several months later she was terminated with the reason identified as violation of company policy because she rang up a personal sale for one of her own medications (which she did because of a lack of help and trying not to distract the technician from more important work).

A pharmacist employed by CVS for more than 30 years and who was about a month away from retirement, was terminated the day she returned to work following knee surgery. The explanation for her termination was that she was not filling prescriptions fast enough.

These two terminations are not isolated experiences, and the prevailing rumor is that the underlying reason for termination is age discrimination. Older pharmacists who have been employed by CVS for many years are making higher salaries than CVS would have to pay new pharmacy graduates who have huge college debts and may be desperate to identify any pharmacist position, even if the salary is much lower than previous norms. One individual has characterized pharmacists as quickly replaceable links in the CVS chain gang of pharmacists.

The concerns about situations such as those described above is now extending beyond our profession of pharmacy. If you were a CVS pharmacist and were terminated during the last 3 years for what you consider to be arbitrary, capricious, unjust, and/or retaliatory reasons (including violations of minor policies for which a warning [rather than termination] might typically be anticipated), I encourage you to contact me at danandsue3@verizon.net with a summary of the circumstances. I will not disclose your identity, and your provision of such information will be helpful in determining possible reasons/patterns for terminations, and the potential for pursuing further actions. Many current and former CVS pharmacists do not currently receive this newsletter, so please encourage them to sign up to receive it free-of-charge at www.pharmacistactivist.com.

The CVS acquisition of Aetna initially required the planning and agreement of the CEO of CVS and the CEO of Aetna, and subsequently the approval of the Boards and shareholders of the two companies. The CEO of CVS was designated as the CEO of the combined corporations, and the former CEO of Aetna was appointed to the Board of Directors. As his first term on the Board was concluding, the former CEO of Aetna learned, contrary to his understanding and expectation, that he was not being considered as a candidate for re-election as CVS was "downsizing" its Board to be better aligned with "best governance practices." One can imagine the former CEO of Aetna thinking, "with friends like CVS, who needs enemies?" But don't shed any tears for him. He was extremely well compensated for selling out Aetna, its employees, and the patients covered by its health plans.

## CVS places its employees at risk

CVS and some other chain pharmacies have installed time-delay safes in some stores to discourage robberies, and signs are placed in the pharmacy regarding the safes. When a pharmacist needs to open the safe, he initially activates it but the safe remains locked for several minutes. It is my understanding that there is a signal after several minutes when the door of the safe can be opened but, if the signal is missed (as could often occur in a busy pharmacy in which the pharmacist is multi-tasking), the lock is reset for the same number of minutes. This can significantly slow down a pharmacist in an understaffed pharmacy trying to comply with management-imposed metrics and policies. However, that is not the most important concern. I would contend that the use of such safes places pharmacists and other employees at greater risk of being *harmed*.

A would-be armed robber may already be high on drugs, possibly can't read or has not taken the time to read the posted signs, and is unlikely to be thinking clearly. If the pharmacist responds to the robber's request for drugs by saying that the safe can't be opened right away, I wouldn't expect that the robber would turn around and run out of the pharmacy, or instruct the employees to lie on the floor while they all wait for the safe to unlock. Rather, I would anticipate that the robber would be angry and irrational, and threaten or harm the employees. I learned from a CVS pharmacist that he was directed to have a bottle of 100 generic Vicodin on *top* of the time-delay safe that could be provided to a robber if circumstances became threatening. Another pharmacist states that CVS is more concerned in protecting the drugs and its money than in protecting their employees.

In a busy pharmacy in which the time-delay safe must be opened often to prepare prescriptions, I would anticipate that the pressures created by understaffing and metrics will result in pharmacists not locking the safe every time it is opened. I only hope that CVS management would not use such a situation as an excuse to terminate or otherwise discipline a pharmacist for not complying with a policy, assuming one exists. Pharmacists must have the authority to make the workplace decisions that will best protect the safety of the customers and employees, and not be required to rigidly follow policies that have been created by management/executives who are not exposed to such risks themselves.

## CVS is unethical/fraudulent

I discussed earlier situations in which the shortage of high-dose flu vaccines resulted in some patients being administered the regular-dose vaccine, even though their risk factors warranted the higher dose. I

have learned of situations in which local CVS management has asked its pharmacists to contact these individuals and encourage them to now come in to receive the high-dose vaccine. This may actually be excellent advice for patients at high risk of flu complications. However, this is not the motivation for this action, but rather it is to meet or exceed immunization quotas. But who should pay for the second immunization that has been prompted by CVS initially administering the less appropriate dose? Certainly not CVS! This has been thought through with the possibilities including that insurers may not catch/deny a second immunization during the same flu season, that administration of one immunization in the fall and the second in the spring will be in different plan years and not be flagged, or that some individuals will have changed insurance coverage from one calendar year to the next.

## CVS is destroying other pharmacies and the profession of pharmacy

Many independent pharmacies have closed and many more are on the brink of doing so because they can't financially survive the anticompetitive policies and actions of CVS and other PBMs/health insurance companies. The impact on an independent pharmacy can be even better understood in the context of Target, the very large and successful national retailer, not being able to operate its pharmacies profitably, with the result that it sold them to CVS.

Several days ago it was announced that Ephrata, PA-based Royer Pharmacy will close its 5 pharmacies by March 18. Continuously operated for 141 years, it has more than 90 employees, some of whom *may* be offered positions at CVS, to which the prescription files have been transferred. P. J. Ortmann, one of Royer's pharmacists captures the experience with the following comments:

> "A very sad week in the pharmacy. Shock, disappointment, disbelief, and even some tears and hugs from patients. Many, many calls from physicians and office staff offering support for the Royer staff and sincere appreciation for all of the personal service offered at Royer Pharmacies which is not seen at the chain pharmacies. Providers are very concerned for their elderly and special needs patients who will now not have a local business who will make exceptions, pay special attention to prescription treatment, and accommodate inability to pay for prescriptions. They expressed how local independent pharmacy care for patients made their job as care providers easier, and more successful.
>
> Congratulations to our "concerned" legislators - hope you enjoy your lobbyist donations which influence your decisions and lack of action to care for your constituents the way we care for those same patients. Sleep well tonight!"

Pharmacists practicing in hospital and long-term care facilities must not consider themselves immune from these experiences. The destruction of independent pharmacies is only the beginning of the destruction of our entire profession if we don't take strong actions. Some hospital administrators and owners of long-term care facilities have observed what chain pharmacies, PBMs, and health insurance companies have been permitted to get away with, and are already starting to take similar actions.

## Actions needed

What Pharmacy Needs Most is a Revolution! (Please see my editorial in the January issue). Many more pharmacists are becoming outraged! Many pharmacists are desperate to find employment! However, they are also encouraged by the increased awareness of the public regarding the chaos in chain pharmacies as a result of articles such as those of Ellen Gabler in the *New York Times*. They are emboldened to share their experiences even if their identity must be protected. CVS is scrambling to construct excuses and protect its management, but there is reason to believe that all is not well at headquarters in Woonsocket.

BUT PHARMACISTS MUST BE ON GUARD! If CVS management can find ways to blame pharmacists for errors, drug-related problems, and policy violations, they will do it, and even terminate some alleged "wrongdoers" in their local pharmacies as evidence that management is taking the criticisms seriously.

The profession of pharmacy must respond by exploring the potential for class-action lawsuits on behalf of pharmacists who have been terminated for arbitrary, capricious, unjust, and/or retaliatory reasons. Current and closed independent pharmacies should explore the potential for class-action lawsuits against PBMs and health insurance companies to recoup the financial losses resulting from their anticompetitive actions and harm.

In a strong and concerted effort, pharmacists must hold their legislators accountable for the situations that have been so damaging for their constituents, pharmacists, and other healthcare professionals, and must insist that governments not use anticompetitive PBMs for administering the prescription plans for government employees.

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