



The Pharmacist Activist

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“Whatever is true, whatever is noble, whatever is right, whatever is pure, whatever is lovely, whatever is admirable – if anything is excellent or praiseworthy – think about such things.” *Philippians 4:8*

Editorial

Paying \$10 Billion Means Never Having to Say You are Sorry! **NO ACCOUNTABILITY!**

There have been more than 500,000 opioid-related deaths in the United States during the last 20 years. Shame on all of us and our country for our failure to not substantially reduce the number of these tragedies! Regardless of the circumstances or the personal failures of some of those who died, every one of the victims had family members and friends who loved them, and most of us personally know some of these individuals.

There has been widespread media coverage of the announcements on November 2 from CVS and Walgreens that they have agreed in principle to multi-state settlements with respect to alleged wrongdoing in distributing opioids. The agreement comes in response to hundreds of lawsuits, and CVS and Walgreens would each pay approximately \$5 billion to local governments and native American tribes over a period of 10 years (CVS) or 15 years (Walgreens). The CVS chief policy officer and general counsel has stated, “We are pleased to resolve these longstanding claims and putting them behind us is in the best interest of all parties, as well as our customers, colleagues and shareholders.” A statement from Walgreens notes: “As one of the largest pharmacy chains in the nation, we remain committed to being part of the solution, and this settlement framework will allow us to keep our focus on the health and wellbeing of our customers and patients, while making positive contributions to address the opioid crisis.” Both CVS and Walgreens prefer to focus on steps they have taken to respond to the opioid crisis such as making naloxone readily

available and installing time-delay opening safes to deter theft (but which some employees view as placing them at increased risk of personal harm if that “intervention” triggers a violent response from the frustrated, addicted thief).

Wrongdoing

In reaching the tentative settlements, neither CVS nor Walgreens is admitting any wrongdoing. Their excuses include comments that they do not make opioid products, they do not prescribe opioid products, the prescriptions for opioids they dispense are written by licensed prescribers, and that they have no responsibility for how opioids are used/misused/diverted after they are dispensed. I understand that admitting to wrongdoing might further increase the number of lawsuits against these companies, but to pretend that there was no wrongdoing is a blatant lie and insulting to many of the victims of opioid overdoses (and their families) for whom the provision of opioids through CVS and Walgreens was a primary factor in their deaths. There IS responsibility and there HAS been wrongdoing, but these companies feel that by paying enough money (even \$5 BILLION each) that they can put the problems behind them. Other than money, there are no sanctions or other penalties, there is no accountability, no apologies, and no remorse, but no amount of money can bring the victims back to life or provide relief for their families who cannot put their grief and pain behind them. The scope of the

Contents

Continued Deception and Arrogance of CVS.....	Page 3
Smoking – The Neglected Pandemic.....	Page 4
A Bipartisan Political Message.....	Page 4

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problem is reflected to only a limited extent by the staggering amount of \$5 billion for which each of these companies is willing to settle the lawsuits. To my knowledge they are not even required to provide a strategy/plan that will prevent similar problems in the future. We can't afford to allow them to go back to business as usual and the DEA, Boards of Pharmacy, and other regulators should identify and penalize the appropriate individuals, and revoke the permits of the companies to dispense controlled substances. If it was an independent pharmacist owner who was charged with the actions that have been alleged against CVS and Walgreens, they would be prosecuted with the likely probability that their pharmacist license would be suspended or revoked, and that their pharmacy would be closed or sold. The number of opioid overdose victims resulting from actions, or failure to act, of a very large chain such as CVS and Walgreens is much larger than the number of victims that obtained their supply of opioids from one independent pharmacy. The chain pharmacies must not be enabled to have amnesty by paying enough money to escape more severe penalties. To permit them to do this is wrongdoing on the part of those who are making the allegations and filing lawsuits, that only compounds and permits perpetuation of the wrongdoing of the chains.

I recognize that a very small fraction of pharmacists are irresponsible, negligent, and/or driven by personal greed in dispensing/selling opioids. However, the vast majority of pharmacists, including those employed at CVS and Walgreens, can identify most suspicious prescriptions/individuals and determine what course(s) of action should be taken. But the most appropriate actions require the attention, judgment, and TIME of the pharmacists and may result in a prescription not being dispensed and, in the view of management, as a loss of valuable time of the pharmacist and no income from a dispensed prescription. Companies such as CVS and Walgreens do not provide incentives/recognition or even encouragement for pharmacists to resolve questions and provide counseling that would be of benefit for customers. Instead they have management-imposed policies, metrics, and inadequate staffing that would actually penalize and/or discipline pharmacists who take the time to exercise their professional judgment and take the most appropriate action(s). With respect to the dispensing and use of prescriptions for opioids, the company's refusal/failure to enable its pharmacists to address important concerns is wrongdoing that can have fatal consequences. Individuals and society would be best served by not permitting these and other companies with similar management policies to dispense controlled substances.

Previous opioid settlements

Thousands of lawsuits regarding opioid-related deaths and other consequences have been filed against manufacturers, wholesalers, pharmacies, and others involved with opioid products. Some manufacturers of opioid products have reached or proposed settlements, including Johnson & Johnson in an amount of \$5 billion and Purdue Pharma in the amount of \$6 billion. Purdue Pharma and Endo have filed for bankruptcy as a consequence of the extent of the litigation against them. The three largest pharmaceutical wholesalers, Ameri-

sourceBergen, Cardinal Health, and McKesson, have committed to a combined settlement in the amount of \$21 billion to be paid over 18 years. Earlier this year CVS and Walgreens agreed to pay \$484 million and \$683 million, respectively, to the state of Florida to settle opioid-related claims, and more actions against these and other chain pharmacies are anticipated. As this issue of *The Pharmacist Activist* goes to press, Walmart has announced a nationwide settlement in the amount of \$3.1 billion (please also see the August 1, 2020 issue of this newsletter at www.pharmacistactivist.com).

Notwithstanding the fact that several manufacturers of opioid products have declared bankruptcy, it is shocking that most companies that have agreed to pay billions of dollars to settle opioid-related claims not only financially survive but also declare increased sales, profits, and dividends. CVS, Walgreens, and others attempt to demonstrate that they have taken positive steps to address and reduce opioid-related problems. However, I have heard no such response that suggests that their pharmacists will be provided more time and support to assess each situation in which opioids are prescribed in a manner that will result in determining the best possible response. Responses must be individualized based on the particular needs and circumstances of each person who is currently treated with an opioid (some of whom are tolerant/addicted) or for whom an opioid is newly prescribed. Even paying billions of dollars does not assure that assessments and actions will be taken that will best meet the need and safety of individual patients. In fact, some have responded in a way that can exacerbate experiences that are already very challenging.

Responses

Some chains have developed policies or otherwise advised their pharmacists to decline to dispense prescriptions for opioids that would result in an individual taking more than 90 morphine milligram equivalents (MME) in a 24-hour period. The CDC defines MME as "The amount of milligrams of morphine an opioid dose is equal to when prescribed. Calculating MME accounts for differences in opioid drug type and strength." Some PBMs and health insurers have also established MME limits that could result in refusal of coverage for a claim or a delay in dispensing the requested medication. For a patient suffering with cancer pain or chronic severe pain for which the use of opioids has resulted in addiction, even a delay in continuation of treatment may result in withdrawal symptoms that may be acute and dangerous. Some of these individuals who have been denied timely access to prescribed opioids have obtained opioid products of unknown and varying content and potency from illicit sources with a resultant increase in accidental overdoses and deaths because of the unrecognized presence of fentanyl in many of these products.

In recognition of the rapidly increasing number of such incidents, the CDC updated its opioid prescription guidelines earlier this month to address situations in which some patients have been deprived of needed medications, as well as the circumstances that have resulted in the sharply increasing number of accidental opioid overdoses and deaths. The need for flexibility in managing pain in individual

patients is emphasized, as is the importance of not abruptly discontinuing or substantially reducing high-dose opioid treatment. Rigid dosage or duration of use limits for opioids are a disservice and even dangerous for many patients who need opioids for effective pain management.

Will anything change?

Although the understanding of and concerns about opioid-related problems has significantly increased, there continues to be a rapid increase in the number of accidental opioid-related overdoses and deaths, many of which are attributable to the unrecognized presence of fentanyl. Some appear to have concluded that the challenges are of such a magnitude and/or that the access and use of illicit opioid products are so rampant, that the problems can't be effectively controlled. But doing little or nothing is not acceptable.

Accountability is essential but billions of dollars do not provide that any more effectively than the even larger financial tobacco settlements of some years ago failed to reduce smoking/vaping-related problems. Companies and executives/management which have enabled and exacerbated opioid-related problems must be held responsible and appropriately penalized. Prescribers, pharmacists, and other health

professionals must also be accountable in protecting and increasing their responsibilities in caring for patients with severe pain and in providing interventions and other assistance to those who are addicted to opioids. Even in the best of circumstances, it is very challenging to make the best decisions with respect to the use of opioids. The decisions and care of each person using opioids must be individualized, and the expertise and time necessary to do that must be provided. Because of the likelihood of tolerance/addiction with longer-term use of opioids, there are valid reasons for which the dosage recommendations for an individual opioid do NOT include a maximum recommended dosage, as is the case with many other therapeutic agents. Pharmacists must not be restricted by limits such as 90 MME or any other number of MME in dispensing a needed legal prescription for an opioid because the necessary dosage for some patients with severe pain who have experienced tolerance/addiction often greatly exceeds 90 MME. If pharmacists are not provided the time and information necessary to appropriately assess and exercise professional judgment in determining the best course of action for each patient for whom an opioid is legally prescribed, constructive change will not occur and the problems will worsen.

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Continued Deception and Arrogance of CVS

I appreciate the many individuals who respond to my commentaries and who forward to me information of which I probably would not be aware. A pharmacist recently provided me the following statement from CVS Health:

CVS Health is standing up for Louisianans

“By inserting themselves in the state’s process of selecting a firm to manage prescription drug coverage for the Office of Group Benefits, special interest groups representing Louisiana’s independent pharmacists attempted to line their own pockets at the expense of the state’s taxpayers, employees and retirees.

“Following a fair and competitive procurement process, CVS Health stood ready to provide a prescription drug benefit plan for state employees that the state’s independent analysis estimated would save more than \$100 million in the first year, while also including a fair and market-based rate for reimbursing independent pharmacists. Instead, those same pharmacists opted to put profit over patients – inserting themselves into a process where the state had already outlined providing them fair compensation.

“This situation has set a dangerous precedent, endangering the healthcare coverage of state employees, threatening the fiscal solvency of the state employee and retiree benefit plan, and emboldening special interest groups whose sole concern is lining their own pockets. This bullying behavior, at a time

when the state is facing unparalleled economic uncertainty from a global pandemic and countless natural disasters, is nothing short of shameful. Moreover, it represents an alarming trend that all states should be concerned about.

“While we are disappointed in the outcome, we remain fully committed to working with public and private clients across Louisiana to deliver pharmacy coverage that puts patients first and brings down the costs for prescription drugs. Sadly, the independent pharmacists cannot say the same.”

I initially assumed that this was a recent statement from CVS but the date that is identified is October 13, **2020**. I am surprised that I am just learning about this now. There must have been some leaders in pharmacy who were aware of this highly insulting, inflammatory statement two years ago. How did they respond? Was there any effort to inform pharmacists throughout the country of this deceitful and shameful attack on a group of pharmacists whose future is threatened by the anticompetitive actions and programs of CVS? Should members of our profession not be aware of the false and adversarial actions of one of the largest “pharmacy” companies that pretends to have an interest in the health of its customers?

The pharmacist who alerted me to this statement asked the following questions: “Did NCPA respond? What is NACDS doing about this since CVS has discontinued its membership in NACDS? Have any colleges of pharmacy responded? How do Boards of Pharmacy view this?”

(Continued on Page 4)

Almost every sentence in the CVS statement can be challenged but I will only comment on several. To suggest that a CVS program “puts patients first” is ludicrous – it is the independent pharmacists from whom CVS steals patients who put patients first! The allegation that independent pharmacists are “lining their own pockets” has no credibility when many independent pharmacies have closed or been sold because of predatory and inequitable programs of CVS and some others. “Lining pockets” cannot come close to estimating the ill-gained wealth that CVS has accumulated that enables it to pay \$5 billion to settle claims for its role in opioid overdoses and deaths!

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Smoking – The Neglected Pandemic

The Great American Smokeout is observed each year on the third Thursday of November, just several days ago on November 17, 2022. Did you hear anything about it? I didn't. More than 50 years ago, the late Fred Mayer, a pharmacist and public health advocate, started the Great American Smokeout because of his strong concerns about the hazards and consequences of smoking, the cause or important contributing factor to the deaths of 480,000 Americans each year. He and other pharmacists have been among the strongest advocates for smoking cessation initiatives and products, and the profession of pharmacy must not relinquish this important responsibility and, indeed, must expand it. The leadership and accomplishments of Robin Corelli (University of California San Francisco) and Karen Hudmon (Purdue University) are particularly noteworthy in this advocacy. Very regrettably, large companies such as Rite Aid, Walgreens, and Walmart continue to sell tobacco products, placing their customers at risk and betraying the healthcare role of their pharmacists. By continuing to license pharmacies in which tobacco products containing toxic substances are sold, Boards of Pharmacy have been derelict in their responsibility to protect the health of the residents in their states.

When the FDA was provided the authority to regulate tobacco products, many anticipated that there would be substantial progress in reducing smoking and its fatal consequences. We were wrong! Little progress has been made. The most recent FDA smoke screen is described in its new release of November 16, 2022, “FDA Warns Firms for Selling Illegal E-cigarettes That Look Like Toys, Food, and Cartoon Characters.” The warning letters were sent to 5 firms for the unauthorized marketing of 15 different e-cigarette products that are packaged in a manner that “is likely to promote use by youth.” Additional information in the news release notes that, through October 28, the FDA has issued more than 440 warning letters to firms marketing illegal e-cigarettes containing tobacco-derived nicotine and that on October 18, the Department of Justice on behalf of the FDA, filed complaints for permanent injunctions against 6 e-cigarette manufacturers.

These companies know what the rules are and that they are marketing the products illegally. They also know that, although they might receive a warning, it is very unlikely that the FDA will seize the products and/or impose civil money penalties. Warnings are not enough! The FDA should confiscate existing supplies of the products, impose monetary penalties in at least the amount of the revenue from the products, prosecute the company owners/executives, and prohibit the companies from marketing related products in the future.

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A Bipartisan Political Message

Former President Trump just announced that he will be a candidate for the office of President in 2024, and it is my understanding that President Biden is conferring with his family and close advisors regarding plans to seek re-election in 2024. For multiple reasons, I recommend that the families of President Biden and former President Trump urge them to NOT be candidates. Both have experienced the distinction and prestige of serving as President and our country will be best served by new leadership.

Daniel A. Hussar

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