The Pharmacist Activist

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"Do not be overcome by evil, but overcome evil with good." Romans 12:21

Editorial

CVS Pharmacist: "I am awakened by nightmares about prescription errors."

The Ohio Board of Pharmacy has documented errors/violations, but does pharmacy recognize the dangers for patients and our profession?

The comments provided below by a current CVS pharmacist would be alarming for CVS customers if they were aware of the working conditions in the stores in which they should be able to have confidence and trust.

"CVS opens its pharmacy at the strike of 8 am. There is already a line at the drive-thru and the phones begin to announce you have 4 (and often more) calls as the technicians and pharmacist begin to face another day of chaos. Before we even count a tablet, type a label, answer the phones, and manage the drive-thru, we are already 'red.' 'Red' at CVS means you are behind. Every step in the pharmacy is measured. Understaffing is the way of doing business at CVS.

"I am in the middle of verifying directions on a hard copy prescription and it is more than 'Take one capsule three times daily with food.' It is a complicated titration dosage for an antipsychotic drug. I am trying to focus on the dosage and I hear, 'Mary (not her real name), you have a DUR at drive-thru, Mary, you have a DUR at register 5 inside, and the customer on line 4 has been on hold for 7 minutes and is angry and will call corporate if you don't talk to her. She got home with an antibiotic and it is a powder and she does not know how to measure 5 mL. 'Oh God, help me – I am going crazy,' I think in my head. DUR stands for drug utilization review which is for the purpose of having the pharmacist counsel the patient and answer questions. I quickly respond to the DURs at both pick-up stations. It turns out that both DURs were only about trying to sell pneumonia and shingles vaccines. This is just one way in which CVS focuses on marketing rather than the most important parts of my responsibility which are providing the correct medication and instructions to the patients, and educating patients about their medications and answering their questions. I then take the call from the woman on the phone, and she is furious. I apologize and show empathy for her concern, and state that this is a rare incident and that she should please bring the prescription back and we will add the distilled water. She knows me and likes me and the other pharmacist, and I breathe a sigh of relief because she will not call 1-800 SHOP CVS and complain. Actually, not adding water to medication formulations that need to be reconstituted occurs commonly in CVS stores. I review the prescription and recognize the potential

for significant overdosage if she had not called to request clarification. I say a little prayer, 'Thank you, God.' I finally get back to the prescription for the antipsychotic drug and verify that the dosage and instructions are accurate.

"Other pharmacists and I have been involved in meetings with CVS regional managers about how we can increase the efficiency and service in the stores. I remember one roundtable, described as an open, transparent discussion, in which the regional manager stated, 'We are here to help you and provide total transparency in our operations, but if you came to the meeting to ask for more payroll, that is a non-issue.'

"I am awakened by a vivid, recurring nightmare that I have dispensed hydralazine and the drug was supposed to be hydroxyzine. I keep sending it back to the techs to retype and correct the drug but it still shows up on my screen as hydralazine. I have spoken to many of my colleagues, even some who are retired, and they also have misfill nightmares. It is impossible to leave the work at the store. I have no control of my brain at night when I am asleep."

The Ohio PBM experience!

For many years, Ohio independent pharmacists and the Ohio Pharmacists Association, with the collaboration of Antonio Ciaccia (a former lobbyist for the Association and now the CEO of 46brooklyn), have voiced strong concerns about the grossly inadequate compensation provided by pharmacy benefit managers (PBMs) and the predatory tactics of CVS. Marty Schladen is an exceptional investigative reporter for the *Ohio Capital Journal* and previously for the *Columbus Dispatch*. His investigations were very important in determining that in 2017, the PBM "middlemen" CVS Caremark and OptumRx charged Ohio $224 million more for drugs dispensed to participants in the Medicaid program than they paid pharmacies. These PBMs fought to prevent access to information they refused to release, as well as other reports that they claimed were protected by sealed confidentiality agreements. However, Schladen and several others persisted and discovered additional deception. The PBM middlemen used SECONDARY MIDDLEMEN to disguise their strategy to inflate the profits for both companies from the Medicaid prescription program. Several of the secondary middlemen with different names are owned by Centene.

Ohio attorney general Dave Yost conducted an investigation that concluded that Centene-owned PBMs had overbilled Ohio for several years and not just in 2017. He filed a lawsuit in which Centene settled the case for $88.3 million, and announced that it was setting aside more than $1 billion to settle similar claims in 21 other states. Ohio was the first state to file a lawsuit to recoup these overbilling losses, but an increasing number of other states have followed its example and have been successful in reaching settlements.

The three largest PBMs, CVS Caremark, Express Scripts, and OptumRx, are each part of a corporation that also includes a health insurance company (Aetna, Cigna, and United Health, respectively). These three PBMs control an estimated 80% of the PBM prescription market place. Subsequent investigations by Marty Schladen have revealed examples of PBM deception and fraud in the Medicare prescription program. The patent for Tecfidera that is used in the treatment of patients with multiple sclerosis expired in 2020 and generic formulations of dimethyl fumarate became available at much lower cost. The list price for Tecfidera was about $8,000 for a one-month supply but some of the generic formulations of the drug had a list price of less than $900/month. CVS Caremark, Centene, Humana, and Anthem required patients in their programs for whom dimethyl fumarate (Tecfidera) was prescribed, to obtain the far more expensive brand-name Tecfidera. The motivation for this requirement is that these companies "negotiated" large rebates from the manufacturer of Tecfidera and the amount of these rebates far exceeded any rebates that might have been available from the companies marketing the generic formulations of the drug. Although the PBMs say they pass "most of" the rebates on to the government agencies/companies that use their programs, the PBMs themselves are the primary beneficiaries of the increased profits they extract from the programs. This self-serving PBM fraud adds substantial cost to prescription "benefit" programs, but the primary victims of this are the individual patients who do not have health insurance and those with Medicare coverage who will more quickly arrive in the "donut hole" in which they must pay a higher percentage of drug costs.

A former CVS senior director of Medicare Part D prescription programs has filed a whistleblower lawsuit accusing CVS of violating firewalls between its SilverScript prescription plan, CVS Caremark, and CVS stores. Among the situations identified in the lawsuit is the accusation that these CVS entities worked together to disallow coverage of less expensive multi-source generic products for at least 15 drugs. With most, if not all, of these drugs, the pharmaceutical companies that make the original high-cost, brand-name formulations of these drugs paid the CVS PBM large rebates to secure preferred formulary status for their products. It is noteworthy that, when CVS and Caremark merged in 2007, the companies assured the Federal Trade Commission (FTC) that there would be a firewall between the operations and information transfer of the two companies. The failure to observe firewalls alleged by whistleblowers and others is a primary reason for the current FTC investigation of apparent anticompetitive practices of the PBMs and the related entities within their corporate structures.

Other PBM abuses of prescription programs include "clawbacks"/DIR fees, providing higher compensation to the pharmacies owned by their parent companies than to independent pharmacies and other chain and "big box" pharmacies, and maintaining an impenetrable veil of secrecy regarding its financial operations and terms of agreements that not even government officials and legislators can access.

Continued errors, violations, and danger at CVS stores

Like other state boards of pharmacy, the Ohio Board of Pharmacy has inspectors who investigate complaints and make periodic visits to pharmacies to assure compliance with laws, regulations, and standards of practice. The *Ohio Capital Journal* has used the Ohio Public Records Act to obtain the reports submitted by the inspectors following their visits to 13 CVS stores in Ohio. Marty Schladen has reported the inspection findings and other concerns in his following recent stories in the *Ohio Capital Journal*:

> July 7, 2023: "'Corners are cut to dispense prescriptions,' CVS employee tells Ohio Board of Pharmacy: After years of buying and closing competitors, CVS understaffing leads to chaos and delays, Ohio regulator says."
>
> July 24, 2023: "Patient harmed, 1,800 doses of controlled drugs lost at CVS pharmacy, regulator says."
>
> August 3, 2023: "Problems at understaffed CVS pharmacies are said to be widespread. The Ohio AG is taking a look."
>
> August 15, 2023: "Ohio Board of Pharmacy proposes sweeping new regs to deal with understaffing."
>
> August 25, 2023: "Inspectors find more serious problems at Ohio CVS pharmacies."

The following are just a small number of selected quotes from these articles and/or the Board inspectors' reports; the full articles are readily accessible online:

> "On January 13, 2022, a patient picked up a prescription for what was labeled ropinirole… The patient ingested approximately 27 tablets of the incorrect medication and experienced adverse effects including increased anxiety, rapid heart rate, and sweating… On or about February 3, 2022, the patient picked up a prescription refill from the pharmacy and realized that the tablets looked different than those she had ingested from the previous bottle…. While the initial prescription bottle was labeled ropinirole, it actually contained digoxin… Even after switching to the correct medication, problems apparently persisted. The patient went to the emergency room on February 14, 2022 for 'accidental drug ingestion.'"
>
> Certain "CVS pharmacies in Ohio are so understaffed that they have seen rampant turnover, dirty conditions, lack of control over dangerous drugs and wait times as long as a month for prescriptions."
>
> "We were triaging thousands of prescriptions that were all in the system as being overdue but we sadly didn't know who needed what until the patients came… We were trying to be transparent with our patients and told them if you need something you have to call us because our system is not functioning the way it should because we're so overloaded."

"Understaffing is pretty deliberate from our upper and middle management…. It's not that we don't have people to work, it's that we are not allowed to be scheduled. Even in the past couple weeks, my pharmacy manager was told to cut 36 hours from her week and it was a Thursday. It wasn't possible for her to do. Others said that that the district and regional managers imposing such orders get bonuses based partly on savings from limiting employee hours."

In one instance, "Board of Pharmacy inspectors couldn't tell if employees were stealing controlled substances. In yet another, they couldn't tell if CVS was improperly billing insurers for scripts they didn't fill."

At CVS store No. xxx, "multiple audits consisting of 241 controlled substances were conducted by representatives from the Board between on or about November 11, 2021 and on or about April 27, 2022. In 42% of cases, they found that that too much or too little of the drugs had been provided. They discovered 'significant losses' of amphetamines and the painkiller tramadol. Additional losses and overages were discovered, some of which were reported to the board, but many were not reported at all or not reported in a timely fashion… On some days when controlled substances were delivered to the xxx Pharmacy, inventories of the drugs actually went *down*. That might indicate diversion… Inspectors on March 3, 2022 reviewed 49 prescriptions filled at the store. They found that seven'had errors in the directions to patients.'"

"During an inspection on February 1, inspectors found that an inventory of controlled substances hadn't been conducted from the previous April. That was the case even though there was a change of 'Responsible Person,' or head pharmacist, in December and one was required to be done then… A former CVS pharmacist told the *Ohio Capital Journal* that the lack of such controls – along with erratic doublechecks called 'cycle counts' – could allow narcotics to disappear from pharmacy shelves in a way that's impossible to trace."

"In one store, the pharmacy staff was too busy to retrieve a drug delivery from the front of the store for nine hours."

"Another way to lose track of dangerous drugs…is when they sit too long in bins waiting to be picked up. Those waits can be long because CVS aggressively pushes autofill for patients who often don't need refills yet."

"Staff at this location was not increased after the store had absorbed two other closed pharmacies' prescriptions."

"When an inspector arrived at CVS store No. xxx…, the staff was so harried that it took them 20 minutes to even acknowledge the inspector."

"The pharmacy was over a month behind in filling prescriptions."

"CVS staffers said that even as they lack time to properly consult with patients and keep them safe, constant dictates come out of corporate for them to take on new tasks, such as calling people and asking them to come pick up prescriptions or get vaccines."

"His district manager 'had this weird focus on all these corporate metrics, none of which helped get medications to patients… It was all calling people, trying to sell them on vaccines and we would get daily emails demanding that we go faster and faster on these things while the queue (of unfilled prescriptions) was piling up and there was no one to fill it. She just focused on the wrong things and didn't do anything to help."

The pharmacist "was made responsible for setting up CPAP machines to treat sleep apnea. 'I had no idea how to do any of that – CVS saw it as money signs – like, 'Hey we can get money to do this,' – but it didn't back up or train anybody on how to do it. It was a mix of greed from the top and information not trickling down."

"Inspectors described mass departures by frustrated, burnt-out employees who said that they couldn't do their jobs safely and didn't feel supported by CVS management."

"Drug shelves were dusty, cluttered, and overflowing."

"Pharmacy aisles were filled with stock bottles and trash (prescription inserts, foils, bits of paper, and loose pills)."

Responses from CVS corporate

During his investigations, Marty Schladen reached out to corporate CVS on many occasions in an effort to acquire explanations and additional information regarding the situations on which he was reporting. The responses he received are very familiar to those of us who have been long-term "observers" of CVS. Some of them are identified below and each is followed by my assessment of the reality of their responses:

CVS: "Patient safety is our highest priority."
REALITY: Profits are the highest priority for CVS.

CVS: "We strive to uphold the highest standards of patient service and safety."
REALITY: Standards of patient service and safety are ignored because of understaffing and metrics..

CVS: "We have comprehensive policies and procedures in place to support prescription safety."
REALITY: Policies and procedures support CVS metrics.

CVS: "The company's policies ensure that its stores are not dangerously short of pharmacy workers."
REALITY: CVS executives and managers have never experienced an error in having their personal prescriptions filled at a CVS store (Disclaimer: This has not yet been confirmed). However, customers obtaining their prescriptions at a CVS store do so at their own risk.

CVS: "Decisions about staffing, labor hours, workflow process, technology enhancements and other operational factors are made to ensure we have appropriate levels of staffing and resources in place at our pharmacies."
REALITY: CVS is working diligently to develop robotics and technology enhancements to replace imperfect humans (pharmacists and technicians) to fill prescriptions.

CVS: "Errors and violations are isolated incidents."
REALITY: Errors and violations occur frequently.

CVS: "Most of the situations identified occurred more than a year ago."
REALITY: CVS had hoped that the findings of the Ohio Board of Pharmacy inspectors would not become publicly known. If anything, working conditions have only become worse, and errors/violations have increased since the time of the inspectors' visits.

CVS: "Prescription errors are very rare, but if one does occur, we take steps to learn from it in order to continuously improve quality and patient safety."
REALITY: Prescription errors occur frequently. CVS does everything possible to suppress awareness and negative publicity regarding fatal/serious errors. It retains an "army" of attorneys to avoid trials and publicity regarding errors, and to settle lawsuits with terms that include confidentiality restrictions. The negative publicity about CVS stores in Ohio has allegedly prompted a visit by CVS CEO Karen Lynch to Ohio, creating a scramble to clean up the stores she would visit to provide a better appearance than they did to Board of Pharmacy inspectors.

CVS is greatly relieved that Marty Schladen's investigative reports have not identified errors that are fatal or seriously disabling. When serious errors do occur, the priority of CVS management is to determine a reason (e.g., violation of company policy) to fault the pharmacist and/or technician for the error. Management then takes disciplinary action that may include termination and, if questions about the error are subsequently raised, it states that the pharmacist who made the error is no longer with the company.

When CVS pharmacist 41-year old Ashleigh Anderson experienced a medical episode and collapsed and died in the store while waiting for a replacement pharmacist to arrive, CVS was successful in suppressing even local publicity about her death. However, this experience was reported in *The Pharmacist Activist* ("Death at CVS," November 2021), and a billboard was established on a busy highway in Indiana as a continuing tribute to her. CVS suppressed information about a former employee who returned to the Pennsylvania CVS

store in which he had worked and committed suicide, and store employees were instructed to not discuss the matter.

CVS: "To support our pharmacy teams' ability to focus on patient-centric work, we continue to invest in technology and automation while being a leading advocate for states to increase pharmacy technician-to-pharmacist ratios."

REALITY: CVS has been an advocate to increase *or eliminate* technician-to-pharmacist ratios, but for the purpose of reducing the involvement and staffing hours of pharmacists. The incentives CVS provides for customers to use its mail-order pharmacies, and its increased use of central/remote prescription filling operations are added confirmation of this motivation, as are its increased establishment/acquisition of clinics/nurse practitioners, physician practices, and home healthcare companies. If CVS could identify a way to legally dispense prescriptions without using pharmacists, it would do it.

CVS: "The company wants to hear its workers' complaints. We value the feedback of our employees and provide numerous resources for them to share their suggestions and concerns, anonymously if they choose, as part of our commitment to continual improvement."

REALITY: CVS employees know that they place their employment status at risk if they personally communicate complaints, concerns, or even questions to management. The CVS workplace culture is characterized by intimidation and fear. Even communicating concerns anonymously places employees at risk that CVS will discover the source of the complaint and impose disciplinary action or termination for some other reason. Pharmacists who have voiced concerns to management have received responses such as, "I have 10 applications on my desk from pharmacists who would love to have your job. If you don't like the way we do things, you should start looking for a position elsewhere."

CVS management has sometimes tried to explain its staffing problems by stating that there is a national shortage of pharmacists. There is NOT a national shortage of pharmacists at the present time, although there probably will be within several years. CVS's staffing challenges have occurred because prospective applicants have learned about the deplorable workplace conditions, and many current CVS pharmacists are actively seeking employment elsewhere, and resign when they can identify another position, even one that pays a considerably lower salary.

The following are RUMORS that are NOT confirmed:

- CVS has considered washing the windshields of cars waiting in the drive-thru.
- For customers who pay for their prescriptions with a credit card, CVS is considering adding a "tipping" option to supplement the abysmal salaries it pays its pharmacy technicians (Would you like to round up several dollars?)

Ohio leads the way!

The Ohio Board of Pharmacy and *Ohio Capital Journal* reporter Marty Schladen have done excellent work in identifying and exposing the risks and harm for both customers and employees that result from CVS policies, metrics, and workplace conditions. Their work and example should be emulated throughout the United States, as has begun with a number of states following Ohio's lead in challenging and recouping many millions of dollars expended because of deception and fraud of PBMs.

In 2021 Ohio pharmacists were asked to respond to a survey in which one of the questions asked whether they agreed with the statement, "I feel that the workload-to-staff ratio allows me to provide for patients in a safe manner." Almost 90% of the responding pharmacists who worked at large chain pharmacies indicated that staffing wasn't adequate to protect patient safety, compared with 26% of the responding pharmacists who worked at independent and small-chain pharmacies. The Ohio Board of Pharmacy has proposed comprehensive new rules to address the concerns that have been identified in the opinion survey and its inspectors' reports. The proposed rules have been very carefully crafted to address the concerns that have been identified. However, there will be a public comment period and likely legal challenges from chain pharmacies that could result in substantial delays as well as compromises. But this is a positive step that is to be commended!

I very much dislike providing information that reflects negatively on my profession of pharmacy. However, the individuals and companies that exploit and betray patients and my profession must be exposed, held accountable, and disciplined. There is an immediate need to address the errors and violations that have already been identified by Board of Pharmacy inspectors in 13 Ohio CVS stores. The first hearing for one of these stores is scheduled for the Board's November 7-8 meeting. Based on the admittedly incomplete information of which I am aware, it is my opinion that the Board of Pharmacy has sufficient documentation of continuing errors and violations to justify suspension or revocation of the pharmacy licenses of these stores. However, because some of these 13 stores are in rural areas in which there is no longer an independent pharmacy (perhaps as a consequence of CVS predatory tactics) or another chain pharmacy, the suspension/revocation of the license of the CVS store would create the most severe hardships on the residents of the region. Therefore, other disciplinary options need to be identified. Although pharmacists and pharmacy technicians are involved in the reported errors and violations, it is the policies, metrics, and understaffing resulting from decisions of executives/management that create the stressful and error-prone workplace environment, and it is CVS and its decision makers that should be held accountable and disciplined.

My recommendations for the Ohio Board of Pharmacy

I recommend that the Ohio Board of Pharmacy consider the following actions:

1. Continue to have its inspectors conduct investigations of additional Ohio CVS stores.
2. Obtain the strong support of Ohio Attorney General Dave Yost for the Board's investigations and actions based on concerns about errors and violations that jeopardize the safety of Ohio residents.
3. Require verifiable documentation of the number of hours of pharmacist and pharmacy technician staffing, as well as the number of prescriptions dispensed each week for the period of 2019 to the present.
4. Based on the information requested in #3, require that the store DOUBLE the number of hours of pharmacist and pharmacy technician staffing no later than 3 months following the date of this action.
5. Require the submission of reports of errors/misfills in the 13 CVS stores for the period of 2019 to the present.
6. Require the submission of records of lawsuits against the 13 CVS stores for the period of 2019 to the present, and the financial and settlement outcomes of the lawsuits.
7. Require the submission of reports of any disciplinary actions against pharmacists and pharmacy technicians employed in the 13 CVS stores for the period of 2019 to the present.
8. Require the continued reporting of all of the above information until a date to be determined by the Board.
9. For those of the 13 CVS stores that are located in a community that is also served by independent and/or other non-CVS chain stores, consider suspending the license of the CVS store for a period of at least 3 months.
10. If the continuing investigations of Board of Pharmacy inspectors identify errors and violations that warrant disciplinary actions in more than 25 Ohio CVS stores, CVS should be required to provide all of the above information for EVERY CVS store in Ohio.
11. Require CVS to pay the costs of the Board investigations and actions pertaining to the 13 CVS stores (and any additional CVS stores in which actions are taken), as well as any additional fines the Board considers appropriate.
12. Work with the governor, legislators, and other pertinent individuals and agencies to prohibit CVS Health (i.e., all entities within its corporate structure) from using mandates and/or financial incentives that require/encourage residents of Ohio to use a pharmacy other than the one they personally choose.

It can be expected that CVS will complain, use its political influence, and sue the Board of Pharmacy. However, the Board has the best possible defense against any such threats – you are protecting the safety and well-being of the residents of Ohio in accordance with the responsibilities that the Board is expected to fulfill. CVS would also be required to pay the Board's costs for its successful defense against CVS lawsuits.

The above recommendations do not include, but should not be considered to exclude, any action against CVS executives/management the Board considers appropriate.

Beyond Ohio

The situations described in this commentary are not unique to Ohio, but exist in every state and warrant questions such as the following as to what is being done beyond Ohio:

1. What are individual state boards of pharmacy and the National Association of Boards of Pharmacy doing to address errors and violations?
2. What are individual state pharmacy associations and the American Pharmacists Association doing?
3. What are colleges of pharmacy doing?
4. What are individual pharmacists doing?
5. Are these questions even being asked?

A pharmacist who resigned from CVS last year and who was among those interviewed by Marty Schladen, stated that the corporate practices and her experience at CVS had made her question her career choice. "I didn't feel that I had completed a good job. Even though I'd go in, work a 14-hour day and be working the entire time without breaks, I didn't feel like I had accomplished anything. I didn't feel like I had an impact. It wasn't why I went into pharmacy. It was surviving, not thriving. A lot of times at CVS, I didn't feel like I was doing any kind of patient care beyond hopefully checking a prescription that they needed and allowing them to have that. If I knew what I know about pharmacy now, I probably wouldn't have made the choice to go to pharmacy school."

The number of applications to colleges of pharmacy has declined more than 60% in less than a decade but many college of pharmacy deans and pharmacy association leaders seem oblivious to the relationship of that decline to the issues addressed in this commentary. Alumni should ask the deans of their alma mater to identify their positions on these issues and whether the college receives educational grants or other financial support from CVS. Members of pharmacy organizations should ask the same questions of their association leadership. Individual pharmacists can support "reforms" in their states by making copies of selected articles by Marty Schladen and copies of this commentary and another report that will soon be available (stay tuned!), and by providing them to family members, friends, neighbors, strangers, individuals who come into the pharmacies in which you are employed, the dean and faculty of your college of pharmacy, the members of your state board of pharmacy, the officers and directors of your local and state pharmacy associations, legislators, government officials, human resources managers of companies and union leaders who make decisions regarding the selection of prescription drug plans, other influential individuals, and anyone else who is interested.

For those who feel that the focus on CVS in this commentary lets other chain and big-box stores with pharmacies escape attention and action, they will quickly get the message and make appropriate changes, or they will face the consequences proposed here. However, I and others consider CVS "Health" to be *the* company that places the largest number of customers at risk, causes the greatest reduction in the number of college-age individuals who might consider pharmacy as a career but don't because of what they have observed and learned about the toxic, stressful workplace cultures at CVS and other chain stores, and represents the greatest destructive influence on the profession of pharmacy. It is where drastic measures and reform must begin!

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