



The Pharmacist Activist

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"The man of integrity walks securely, but he who takes crooked paths will be found out." Proverbs 10:9

Editorial

Will a CVS Caremark Mail-Order Pharmacy License be Revoked?

A *Pharmacist Activist* reader called my attention to an article in STAT+, "California wants to revoke a CVS mail-order license for illegally filling opioid and ADHD prescriptions" (Ed Silverman, Dec. 21, 2022).

The Accusation (Case No. 7258) was filed on October 10, 2022 by the Executive Officer of the Board of Pharmacy of California against CVS/Caremark PCS Pennsylvania Mail Pharmacy LLC doing business as CVS Caremark or Ingenio Rx Home Delivery and four of its officers. The Accusation identifies the following causes for discipline:

1. Requirements (California's) for Dispensing Controlled Substance Prescriptions;
2. Failure to Exercise or Implement Corresponding Responsibility;
3. Gross Negligence;
4. Clearly Excessive Furnishing of Controlled Substances;
5. Unprofessional Conduct – Violation of Applicable Pennsylvania Laws and Regulations Governing Pharmacy;
6. Unprofessional Conduct.

A hearing is requested on the matters alleged, and that following the hearing, the Board of Pharmacy issue a decision:

1. Revoking or suspending the Nonresident Pharmacy Permit issued to the pharmacy;
2. Prohibiting the four officers of the pharmacy from serving

as a manager, administrator, owner, member, officer, director, associate, or partner of a licensee for five years if the Nonresident Pharmacy Permit is placed on probation or until the Permit is reinstated if it is revoked;

3. Ordering CVS Caremark PCS Pennsylvania Mail Pharmacy to pay the Board of Pharmacy the reasonable costs of the investigation and enforcement of this case.

The California Board Inspector reviewed the pharmacy's dispensing records from July 6, 2018 through July 6, 2021 and identified the following dispensing trends and multiple objective factors of irregularity:

1. Excessive furnishing/early dispensing of prescriptions;

During the 3-year period, the pharmacy filled/dispensed over 2,100 prescriptions *for controlled substances* (my emphasis), representing more than 69,000 tablets or other dosage units more than seven days early to 549 California patients.

2. Prescriptions written by out of state prescribers;

Controlled substances may only be prescribed by a California licensed prescriber when dispensed to patients in California. The

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Board Inspector reviewed the top 100 prescribers of controlled substances dispensed by the pharmacy and was able to confirm that only three had active unrestricted licenses to practice in California during at least part of the time for the time period reviewed. Over 6,800 prescriptions were dispensed to patients in California from prescribers listed as having offices in other states, including 2,665 prescriptions for *Schedule II controlled substances* (my emphasis), representing more than 316,000 dosage units. The pharmacy did not provide the Board Inspector any documentation to show that a pharmacist interviewed each patient to determine the authenticity of the prescriptions written by out of state prescribers.

3. Variation from prescriptions;

The Board Inspector found that the pharmacy deviated from the prescription instructions and dispensed 55 prescriptions against prescribers' orders that had clear instruction that the prescription "must last" a certain amount of time or have a "maximum" amount per day that could be taken. The pharmacy dispensed these prescriptions early.

The California Board of Pharmacy is to be commended for its thorough investigation of this pharmacy, and it and the Pennsylvania

Board of Pharmacy should revoke the license/permit of the pharmacy. It is not possible to estimate the number of individuals who were harmed or died as a consequence of the alleged illegal dispensing of hundreds of thousands dosage units of controlled substances from this pharmacy. However, there have to be victims of this alleged irresponsible and unprofessional conduct. The penalties requested for the four officers are not sufficient. They should receive prison terms, and there should be further investigation of the extent to which their actions were expected or encouraged by their parent company.

There should be no higher priority for Boards of Pharmacy in every state to conduct similar investigations of mail-order pharmacies for which it provides licenses or permits. These pharmacies have essentially escaped regulatory monitoring and actions. The primary duty and responsibility of Boards of Pharmacy is to serve and protect the interests and welfare of the residents of their states with respect to the services and actions of the individuals and facilities which they license and regulate. If they are not doing so already, they must investigate the dispensing practices of the pharmacies from which the largest number of prescriptions are dispensed. The California Board of Pharmacy has provided the example and model for doing this.

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Warning From a CVS Pharmacist

I am grateful to the readers of *The Pharmacist Activist* who send me information and commentaries of which I otherwise would not be aware. Many of these messages are social media postings, some of which I have included in previous issues. I have provided one below from a CVS pharmacist whose name I do not know. One might ask how I am sufficiently confident in an anonymous commentary that I will publish it. My reasons include the facts that I have personally heard similar observations from CVS pharmacists I do know, and this pharmacist has so articulately captured these concerns based on her/his personal experience. I don't believe that anyone would or could fabricate such a commentary. I am very sympathetic to the dilemma described by this pharmacist but congratulate her/him for taking the time to share this experience as a warning for others.

"I am writing this to spare you from suffering the same outcomes I have. This is a warning to not, under any circumstances, accept a position with CVS. It has ruined the lives of everyone I know who has worked for the company for any significant number of years. I don't know

any pharmacists in this company who have not had to take antidepressants or anti-anxiety medications in addition to a slew of other medications for their generally ruined health. Now, to my horror, I have realized that is happening to me as well. I was once an athlete, and now find that my ability to maintain my health has been permanently stolen now that my feet and knees are destroyed to the point that I can no longer run or even jog. I thought that it wouldn't happen to me. At least not this fast, but don't underestimate the damage that forced standing for 10-14 hours per day will do to you. Of course, you wouldn't have to stand all day if you weren't forced to be constantly doing the jobs of three people. But you will, because the intentional business model of this company is to never provide enough staff. I want to emphasize this point, because it is the foundation of a hundred other problems you will have to endure as a result. You will be expected to work at a level 10 frenzy of stress and misery while trying to type prescriptions, fill prescriptions, verify prescriptions, all while you have anywhere from 1-10 calls simultaneously ringing, shipments to check in

and put away, lines of customers up to 30 feet long, and the expectation to give vaccines. Do you think you could do this with 3 technicians? How about 2? No? How about 1? HOW ABOUT ZERO? Regardless of the store's prescription volume, you will always have half of the staff that the job requires. The staffing shortage has been absolutely crippling for years, and we were completely dumbfounded to find out that now, during the busiest part of the year, staffing hours have again been cut. So here that means that most stores have 1 to 2 technicians working when 5 are actually needed. As a result, quality of service and safety are almost nonexistent. How would you like (on top of having an already miserable life courtesy of your employer) to have your license suspended for a safety violation when it was really the fault of your employer who provided absolutely none of the logistics required to do your job correctly and safely? Don't be surprised if it happens because I can't tell you how many stores have expired drugs on the shelves, misfills, incorrectly billed prescriptions, misfiled documents, controlled substance inventory errors, mistyped prescription labels and so on. It is a daily occurrence. And it is compounded by constant quitting. People are always quitting because it is so miserable, so you always have new and inexperienced people working, hence an even greater propensity for errors. And don't think the state boards of pharmacy will do anything. We've tried. They sit firmly under the thumb of CVS. Anything they ever (extremely rarely) do is just for show and changes nothing. Most of the time they simply won't respond.

Any pharmacy school that doesn't caution their students about CVS is negligent. But because many of them are, I am speaking out to make sure you know that this company will ruin your physical and mental wellbeing, your relationships, your career, your happiness, and your life."

I encourage readers to share this commentary with members of Boards of Pharmacy and deans and faculty of colleges of pharmacy. CVS and some other chain pharmacies want to explain away these concerns by claiming that there is a shortage of pharmacists and technicians, and trying to increase technician:pharmacist ratios. However, there is NOT a shortage and any claim of such is self-inflicted because so many of their current employees quit as soon as they can and warn others not to seek employment with these companies.

I highly commend the pharmacist who voiced this warning. I would be pleased if this pharmacist sees that I have shared her/his commentary and contacts me to see if I can assist in identifying a professional and fulfilling employment opportunity. And we can be encouraged that the California Board of Pharmacy has taken the action described in the lead editorial in this issue.

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CVS Follies: How to Turn a Charitable Contribution into a Scandal and Lawsuit!

November is "National Diabetes Month." On November 2, 2021, the American Diabetes Association (ADA) and CVS Health each made announcements about a partnership between the two organizations that described a CVS \$10 million commitment over three years to the ADA to reach five million patients and transform health outcomes. The announcements include the following statement:

"CVS Health will *also* (my emphasis) host an in-store fundraising campaign at all CVS Pharmacy locations nationwide during American Diabetes Month, now through November 27, to give customers an opportunity to support the ADA and build a future without diabetes."

The "customer opportunity" was implemented by providing customers with options on a checkout screen to donate pre-selected dollar amounts, as well as an opt-out option, for the ADA. This request of customers provided little additional information.

In May 2022, a CVS customer who had made a donation filed a lawsuit intended to be a class-action suit against CVS about this program. However, it has only been recently that this situation has received wider news coverage (e.g., *Boston Globe* article by Alexa Gagosz, December 5, 2022). The lawsuit alleges that customer donations are being used to help meet CVS's "debt" or commitment to the ADA, and that this represents fund-raising fraud. CVS has filed a motion to dismiss the case which is currently under review.

The basic question is whether customer donations are *in addition to or a part of* the CVS \$10 million commitment to the ADA. In the motion to dismiss the case, CVS lawyers state, "CVS has no debt to the ADA." This motion

contends that, after three years of fundraising from customers, CVS would make up the difference between the total amount of customer donations and \$10 million. However, this information is not included in the initial press announcements or to customers at the time of their checkout at a CVS when they are asked to consider a donation. My interpretation of the press announcement is that the word “also” implies that the donations from customers are in addition to the \$10 million commitment from CVS. To my knowledge, CVS made no mention that its commitment was to “make up the difference” between customer donations and \$10 million until it was sued. CVS has described its financial commitment in a manner in which it derives maximum recognition for itself in contrast to the minimal recognition for its thousands of anonymous customers who have responded with a donation. Ironically, CVS’s own words of “also” and “making up

the difference” should be sufficient reason for the courts to reject its motion to dismiss the lawsuit.

The ADA is just one of the many beneficiaries of CVS’s vast wealth, as well as the donations it convinces its customers to contribute. Some may wonder how CVS has accumulated such wealth that it can not only be so philanthropic, but also still be in a position to commit \$5 BILLION (without admitting any wrongdoing) to settle the claims for its alleged role in the opioid usage and overdose deaths tragedies. A large majority of CVS employees will quickly provide the explanation – CVS understaffs its stores, has deplorable working conditions for most employees, and places its customers at risk of errors!

At the same time CVS rigorously protects every penny it feels it is due. A social media posting of a recent letter sent to a CVS employee reads as follows:

“In reviewing your payroll records, an overpayment has been identified. The overpayment was a result of incorrect Payment Submission and occurred on check(s) dated xxxx-xx-xx. This error resulted in an overpayment in a gross amount of \$0.01, and a net amount of \$0.01. We understand the overpayment was out of your control, but we must work together to resolve the situation without delay.

Please send a personal check or money order for the net amount of \$0.01. Payment is required no later than 2 weeks after the date of this letter. Failure to resolve this issue may result in the balance being sent to a Collection Agency.

Please make each check or money order payable to CVS Caremark and include your ID number and the Service Request xxxxxxxx on your payment.”

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The 5-Year Murder Mystery

On December 15, 2017, the bodies of Barry and Honey Sherman were discovered at their home in Toronto. Mr. Sherman was the founder of Apotex, the large Canadian generic drug company, and he and his wife were one of Canada’s richest and philanthropic couples.

More than five years later, no arrests have been made. The Shermans’ son Jonathon has made the following statements and offered an additional \$25 million for information leading to an arrest, bringing the total amount of the reward to \$35 million.

“This week marks the five-year anniversary since my parents were murdered in their home. Every day since then has been a nightmare. I have been overwhelmed with pain, loss, and sorrow and these feelings only continuously compound. Closure will not be possible until those responsible for this evil act are brought to justice. I hope for the day when I make this payment, as it will finally allow for healing.”

It is amazing that the murder of such well-known people can be unresolved for so long.

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