



# The Pharmacist Activist

Volume 18, No. 14 • November 2023

**“Give thanks to the Lord, for he is good; his love endures forever.”** | Chronicles 16:34

Editorial

## Pharmacy Concerns are Receiving Unprecedented Media Coverage: Synergies and Momentum can be Achieved!

**M**edia coverage of pharmacy-related issues during the last year has been extensive. The high cost of drugs has been a long-standing concern that continues, but much of the recent coverage has focused on medication errors, staffing and workplace conditions that cause moral injury to pharmacists and increased risk of errors for patients, anticompetitive practices of the health insurance companies with their PBMs and pharmacies, the domination of chain stores in community pharmacy and the decline in numbers of independent pharmacies, the increased number of pharmacy deserts, the fragmentation in the medication distribution system (i.e., local community pharmacy, mail-order pharmacy, specialty pharmacy), and the reduction of personal communication with and counseling of patients.

Media attention to these multiple issues is often initiated because of a harmful medication error. Although this coverage may focus on an experience in a single pharmacy that may also identify the pharmacist responsible for the error, the publicity is a blemish on the reputation of our entire profession. However, an increasing number of reporters are looking for explanations and underlying reasons for an error, and discovering there are many contributing factors such as corporate policies/metrics and understaffing. As much as we may dislike seeing a phar-

macy error publicized, the more extensive coverage that reveals the error-prone circumstances under which many pharmacists work is of value to our efforts to increase awareness of and reform the pharmacy practice system. Some examples of the recent media coverage are provided in the following discussion.

### *USA TODAY*

“Prescription for disaster: America’s broken pharmacy system in revolt over burnout and errors” is the title of the first-page story in *USA TODAY* on October 26. Written by senior investigative reporter Emily Le Coz, this commentary provides excellent comprehensive coverage that identifies numerous factors that contribute to the stressful pharmacy workplace challenges and the occurrence of errors. She initiated her investigation upon learning of a dispensing error that harmed a young child. At each stage of her investigation, she discovered one problem after another that result in the “broken pharmacy system” and the increased risk of errors. Excerpts of her article are provided below:

“Medication errors are a pharmacist’s worst nightmare. Many told *USA TODAY* they lie awake at night wondering if, in their haste, they made a mistake that

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might hurt or kill someone.

In May 2021, that someone was Brenden Fisher.

The Sarasota, Florida child overdosed on a newly prescribed anti-seizure medication after the CVS Pharmacy near his home dispensed the drug with the wrong instructions on the label.

By the third dose, Brenden was lethargic, dazed and struggling to breathe. His parents, Paris Bean and Jason Fisher, rushed their then 2-year-old to the hospital, thinking he was dying.

Hospital staff didn't know what was wrong with him, Bean recalled, until a nurse asked if he was taking his 1.2 ml of levetiracetam twice daily.

When Bean told her the instructions said to give him 7.5 ml, 'you could almost hear her jaw drop,' Bean recalled. She said, 'Did you give that to him?' And I said, 'Yes. Is that why we are here?' She said, 'I wouldn't be surprised.'

Brenden still suffers from a full-body tic he first developed during the incident, his parents said, Dozens of times a day, he will suddenly stop whatever he is doing, clasp his hands together, clench his jaw and tense every muscle in his body while staring off into space. Each episode lasts anywhere from 5-10 seconds.

His parents have not been able to definitively link the tic to the overdose, but they said they have no other explanation for it.

Bean said she blames CVS for the mistake but also herself: 'I'm the one who physically administered it...I could have killed him.'

CVS declined to comment on the error.

Bean and her husband filed a lawsuit against CVS in February that was settled out of court for an undisclosed amount. But they said they did not file a complaint with the Florida Board of Pharmacy.

That means it's one of countless errors for which there's no official tally or public record."

*(Editor's note: The strategy of CVS and others against whom lawsuits are filed when there is no question that harm was caused by an error, is to quickly reach a confidential settlement in an amount that is likely just a small fraction of what might have been obtained if the lawsuit had gone to trial).*

"No federal agency requires pharmacists to report medication errors, and few state boards of pharmacy mandate it. Many pharmacies and pharmacy chains track errors internally but do not share the numbers with the public. CVS and Walgreens both declined to share their data with *USA TODAY*."

Numerous pharmacists told *USA TODAY* that errors are not consistently reported – even internally. Small mistakes and those caught early are routinely hidden.

Even when they do report potentially fatal errors, some pharmacists said, no one from their companies investigates how they occurred or makes changes to prevent them from repeating.

Pharmacists are personally liable for medication errors and risk fines, discipline and loss of license if investigated and found responsible by their state board. Many told *USA TODAY* they get little or no support from their company when mistakes happen, even if the conditions imposed by those companies contribute to those errors."

"The Nevada Board of Pharmacy in September fined and suspended the licenses of two CVS pharmacists who accidentally gave a pregnant woman the abortion drug misoprostol instead of the fertility treatment she was prescribed. The mistake, which was first reported by 8NewsNow in Las Vegas, ended the woman's pregnancy.

The Nevada board also fined CVS \$10,000 over the objections of company attorney William Stilling who argued CVS itself did nothing wrong.

'The only allegation' against CVS, Stilling said, 'is that they had these pharmacists.'

*(Editor's note: This shocking statement by CVS attorney Stilling demonstrates how the company's priority is to protect its own interests while making their pharmacists vulnerable to disciplinary action. It should be widely*

*communicated throughout our profession as a warning about the lack of support and potential consequences for pharmacists who work for certain corporate employers).*

“Pharmacists take an oath to hold patient safety in the highest regard when preparing and dispensing medication. But rising pressure within the nation’s largest retail stores have forced pharmacists to choose between that oath and their job.

The situation was bad before the pandemic. COVID-19 made it worse. It has only gone downhill since then. Frustrations boiled over this autumn in a series of high-profile walkouts that left a string of CVS and Walgreens pharmacies shuttered or short-staffed. Those actions might have caught consumers off guard. But inside the troubled industry, it was the clarion call of a beleaguered workforce pushed to the brink.

Pharmacists said it’s nearly impossible to meet all the demands without cutting corners, and when corners get cut, patients can get hurt.

In California, 91% of chain pharmacists surveyed by the state Board of Pharmacy in 2021 said they lacked the staff needed to ensure adequate patient care.

Ohio proposed a series of rules this year aimed at improving pharmacy working conditions. Among them: a ban on quotas and requirements for sufficient staffing. The rules are currently pending a vote amid overwhelming support from pharmacists and opposition from retail pharmacy chains, including Walgreens and CVS. ‘The Board should stay focused on the regulation of the practice of pharmacy rather than the business of pharmacy’ wrote CVS Director of Regulatory Affairs John Long in opposing an early version of Ohio’s rules last year.”

“Retail pharmacy wasn’t always this bleak.

A constellation of factors contributed to the industry’s downturn. They include rising drug costs, changing consumer habits and the emergence of online pharmacies.

But none looms larger than the outsized influence of pharmacy benefit managers. These third-party administrators of health insurers’ prescription drug

programs have eroded the profits of retail pharmacies to the point where they now lose money on many sales.

Pharmacy benefit managers, commonly referred to as PBMs, ...negotiate drug prices with manufacturers, determine which drugs will be covered by insurance plans and set reimbursement rates for pharmacies that buy and sell the drugs.

As the power of PBMs rose over the years, they demanded bigger rebates from drug manufacturers and pocketed increasingly bigger shares of those savings instead of passing them along. They also lowered reimbursement rates and tacked on hefty fees known as Direct and Indirect Remuneration.

While PBMs’ collective profits skyrocketed over the past decade, their tactics plunged retail pharmacies into financial distress and left them scrambling for alternative sources of revenue. The Federal Trade Commission launched an inquiry last year into PBM practices, which have already been the subject of several lawsuits.

Independent pharmacies have been hit especially hard. Not only are their reimbursement rates lower than those of chains, but their patients have been steered away by PBMs that insist they use a preferred chain pharmacy instead.

Other independent pharmacies simply closed.

Now the chains are following suit. CVS, Walgreens and Rite Aid all recently announced the closure of hundreds of pharmacies as they face slumping revenues and the fallout from multiple lawsuits for their alleged roles in the nation’s opioid crisis. Rite Aid filed for bankruptcy earlier this month.”

Ordinarily I would not include such extensive excerpts from another publication about situations that are so well known to pharmacists and that many are personally experiencing. However, what I have included is just a fraction of the *USA Today* coverage that also includes commentary on “Pharmacists bleeding, crying, working alone,” as well as issues such as pharmacists leaving the profession and plummeting enrollments at many colleges of pharmacy.

Emily Le Coz has provided exceptional coverage of the

risks for patients and the concerns of pharmacists in her report, and also very effectively identifies and connects the multiple factors that create and exacerbate the current challenges. Although her report focuses on problems, it is not until the problems are well understood by the public and our legislators that our profession will be effective in developing and implementing solutions. I encourage you to access and read the entire report, and use the coverage of her objective “outside” observations to support your personal relevant experiences in messages with your community and local media.

### *The Ohio Capital Journal*

Over a number of years, Marty Schladen has provided extensive coverage of pharmacy-related issues for the *Ohio Capital Journal* and previously for the *Columbus Dispatch*. His investigations were important in determining that in 2017, PBM middlemen and “secondary middlemen” charged Ohio \$224 million more for drugs dispensed to participants in the Ohio Medicaid program than they paid pharmacies. The Ohio attorney general filed lawsuits that resulted in large settlements with certain of the middlemen (please see the August 2023 issue of *The Pharmacist Activist*).

Schladen has recently investigated and published in a series of reports about numerous errors and violations at CVS stores that were documented in Ohio Board of Pharmacy inspector reports. The Ohio Board held meetings on November 7-8 and Schladen’s excellent coverage and selected excerpts include:

November 8, 2023: “CVS disciplinary hearing before Board of Pharmacy begins.”

“With \$2.3 billion in profits in the third quarter, CVS continues to boast to shareholders about its financial performance. But it apparently doesn’t want current and former employees to talk to state regulators about what goes on in its pharmacies. It filed motions to quash Board of Pharmacy subpoenas for those employees to testify in this week’s proceedings. The motions failed.”

November 9, 2023: “Ohio pharmacy board members seem skeptical of CVS claims.”

“Henry Appel, principal assistant Ohio attorney

general, is prosecuting CVS in the administrative proceeding. He wants to subpoena the company’s custodian of records in an attempt to get copies of written communications between the Canton’s CVS pharmacy manager and her supervisors as problems spiraled in 2021. Dahmann (the CVS attorney) resisted first by refusing to give the records custodian’s name out of concerns for ‘personal confidentiality.’ She then argued that some of the relevant CVS entities are ‘foreign’ companies domiciled in Rhode Island and Connecticut and thus are not subject to subpoenas from Ohio’s pharmacy regulator.”

“The hearing won’t resume until the Board’s December meeting at the earliest.”

November 30, 2023: “Still more Ohio CVS pharmacies accused of staffing-related problems.”

“In hearings into conditions at one of its Ohio stores, lawyers for pharmacy giant CVS last month told regulators that problems were due to understaffing and extra tasks imposed by the coronavirus pandemic. But the Ohio Board of Pharmacy continues to find such problems – which could threaten patient safety – at CVS stores across Ohio. Some were found as recently as late September.

“The most recent citations accuse CVS of improper handling of dangerous drugs, dirty conditions and six-day backlogs in filling prescriptions. As it has previously, CVS called the findings ‘isolated incidents.’”

Marty Schladen understands and clearly articulates how pharmacy workplace conditions, errors, and violations are related to the policies and compensation/economic practices of PBMs that increase the risk of errors for patients, moral injury for pharmacists, and the financial survival of pharmacies. His recent commentary, “Pharmacy middleman grants huge bonuses for winning business meant to help the poor,” (November 17, 2023) begins:

“Medicaid might be a taxpayer-funded health program for the poor, but that doesn’t mean others aren’t getting rich off it – including employees of a company the state is suing on antitrust grounds. Several employees of drug middleman Express Scripts last year raked in bonuses of \$750,000 each for getting the business of a

managed-care company that depends on Medicaid for the bulk of its business.

In other words, in addition to their already-high pay, they received bonuses that were 18 times the average American's annual pay just for landing a contract. And that contract is with a company that has already paid out \$88.3 million to settle claims that it had defrauded the Ohio Medicaid program.

It might be striking to the average taxpayer that people with huge corporations are profiting so lavishly off of programs for the poor.”

Numerous other publications have also recently reported on the concerns of pharmacists and the risk to patients that result from the corporate dominance of pharmacy and other areas of health care. As examples, recent articles in *The Wall Street Journal* address issues about PBMs, health insurance companies, and pharmaceutical companies:

“Pharmacy Benefit Managers Under Fire.” (November 22, 2023; Melanie Evans);

“Senators Seek Probe of Insurers, Drug Prices.” (November 24, 2023; Joseph Walker);

“Cigna, Humana Explore Gigantic Merger.” (November 30, 2023; Lauren Thomas, Anna Wilde Mathews, Laura Cooper).

The possible merger between Cigna and Humana, which are already among the largest health insurers, has the potential to further reduce competition and increase corporate influence/control of the healthcare system. If the companies' discussions progress in this direction, a merger would probably be challenged by the Federal Trade Commission (FTC) which is already investigating anticompetitive actions and programs of merged/acquired healthcare companies that were previously approved. There is bipartisan interest and concerns regarding the issues being addressed by the FTC, as well as legislative proposals designed to correct current problems. However, we must never underestimate the ability of the corporations such as PBMs to identify and exploit loopholes in any legislation and manipulate them to their advantage. This makes it all the more important that the public, legislators, and government officials have a clear under-

standing of the present concerns and consequences for the purpose of constructing legislation and taking actions that will be most effective in providing impactful reforms of our current healthcare system. If substantial reforms are to be achieved regarding pharmacy-related issues, our profession must give a very high priority to assuring that the public, legislators, and other decision-makers have a full understanding of our concerns and their risks/consequences, as well as the urgency for reform. It is in this direction that investigative reports of Emily Le Coz, Marty Schladen, and others are of great value in increasing the awareness and understanding of the public of the issues that place them at risk of harm.

### **Building momentum**

Emily Le Coz's investigations involved interviews with numerous pharmacists which increased the scope and depth of her coverage. Among those whom she interviewed are Michael Hogue, CEO of the American Pharmacists Association (APhA), and Doug Hoey, CEO of the National Community Pharmacists Association (NCPA). They are the leaders whom the media contact at an early point in their investigations of pharmacy-related issues, and they have been widely quoted in recent media coverage. These interviews, as well as those with other pharmacists have great benefit not only for increasing the awareness of the public of our concerns, but also their awareness of our associations and their programs and activities which are of importance for the public. The formidable challenges continue and may seem impossible to resolve, but I am impressed and encouraged by recent actions of our associations, as well as many individual pharmacists.

In addition to their support for pertinent legislative proposals, the associations' concerns about the anticompetitive actions of health insurers and PBMs have been widely communicated. At its annual meeting in October it was announced that NCPA is working with three law firms in creating a limited liability company called TRUST LLC ([www.fightPBMs.com](http://www.fightPBMs.com)), which will investigate and, when appropriate, litigate or arbitrate on behalf of community pharmacists to recover coerced price concessions (DIR fees) which have been assessed by PBMs and insurance plans and appear to be in violation of federal antitrust law and state contract laws. It has also been recently announced that Matt Osterhaus of Iowa is the lead pharmacist in a class-action lawsuit against CVS Health, CVS Caremark, and Aetna.

The APhA has established several programs to document unacceptable workplace conditions and to support the well-being of pharmacists. CEO Michael Hogue has recently stated that: “The APhA has been focused on longer-term fixes, and what we’ve heard loud and clear is we need to focus on the acute problems. That’s what we are going to do.” Hogue has met with CVS pharmacists who participated in the walkout of numerous CVS stores in the Kansas City area in protest of understaffing and stressful working conditions. The actions of these courageous pharmacists have resulted in wide media coverage and has provided the impetus for subsequent walkouts and initiatives to start a pharmacy guild. On October 30, Michael Hogue released a statement regarding the challenges for pharmacists, and excerpts are provided below:

“APhA stands with every pharmacist who participated in the walkout today.

For years, you have dealt with workplace issues, leading to frustrations and burnout, affecting your mental health and well-being.

While today Walgreens and CVS pharmacies are the focus of attention, I’ve also seen and heard clearly that corporate chain pharmacies are not the only place where pharmacists are being asked to work without adequate staff. I’ve heard from pharmacists in hospital outpatient pharmacies, federal facilities, and mail facilities about the same burnout from inadequate staffing.

In many ways, the recent headline of a *USA TODAY* story is true, our pharmacy system is broken.”

“For far too long, employers have made the situation worse than it needed to be. Supervisors who are not pharmacists do not understand the needs of care teams and make unreasonable demands on time-based productivity. Quotas on the number of prescriptions

filled per hour or vaccines administered per day, or even time to answer the phone, simply fail to recognize that the pharmacist-patient relationship is not transactional. It is a special covenant – and supervisors who distill everything down to numbers and time metrics are destroying that relationship in the name of profitability. This must stop immediately. Employers should ensure supervisors clearly understand the covenantal pharmacist-patient relationship and that systems support this relationship fully. I again call on all employers to act swiftly on these issues that your pharmacy staff has made clear that they will no longer tolerate.”

“I’m also calling on CVS/Caremark, Express Scripts, Optum and all other PBM companies to immediately cease the assessment of DIR fees on retail prescriptions and ensure your contracts result in payment to pharmacies of at least their cost for the medicine they are providing plus a reasonable fee for doing so. You are breaking the backs of community pharmacists and are ultimately complicit in the workplace issues I am describing. Your corporate policies are unfair, restrict trade, and are causing the closure of hundreds of pharmacies across America. You are worsening health disparities and creating a new health emergency.”

This is, by far, the strongest and most direct position I have seen from APhA regarding the challenges that threaten future opportunities and accomplishments in our entire profession. Pharmacists in every area of responsibility must support these positions, and synergies can be achieved by close working relationships with media personnel in increasing public awareness of the concerns that place them at risk.

We must build on the momentum that currently exists!

Daniel A. Hussar  
DanH@pharmacistactivist.com

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**Author/Editor/Publisher** – Daniel A. Hussar, Ph.D.  
Dean Emeritus and Remington Professor Emeritus at  
Philadelphia College of Pharmacy  
**Assistant Editor** – Suzanne F. Hussar, B.Sc. (Pharmacy)

The Pharmacist Activist, 1 Boulder Creek Lane, Newtown Square, PA 19073  
E-mail: [info@pharmacistactivist.com](mailto:info@pharmacistactivist.com)

*Distribution/Design Services provided by Jeff Zajac*