

June 26, 2009

Hon. Greg Zoeller
Attorney General of the State of Indiana
Indiana Government Center South - 5th Floor
402 W. Washington St.
Indianapolis, IN 46204

Dear Attorney General Zoeller:

As you may be aware, CVS/pharmacy, the country's largest drugstore chain, has recently settled charges by the California Attorney General that CVS "routinely sold expired baby formula, over-the-counter medication and dairy products long after the expiration date,"¹ in violation of California's consumer protection laws. CVS signed a stipulated judgment (enclosed) that gives Californians enhanced protections from the potential hazards of expired products.

Under the judgment, CVS is now required to check all its California stores for expired products at least twice a month; conduct random audits for expired products in California stores twice a year; and provide compensation to each consumer who locates expired goods on CVS shelves in California. CVS also paid penalties totaling almost \$1 million. The settlement also deals with CVS stores' treatment of private patient information, an issue your office identified in 2007.

Change to Win has recently documented that CVS has sold expired products to Indiana consumers. In May, surveyors visited 46 Metro Indianapolis CVS stores and observed expired dairy, infant formula and/or child and adult medications at 23 stores in Metro Indianapolis – half of the CVS stores visited. Examples of the expired products include:

- A box of children's Claritin *nearly a year* past its May 2008 expiration date, purchased at the CVS store at 2320 Cunningham in Indianapolis. Expired containers of CVS Infants Ibuprofen (expired March 2009), CVS-brand Tension Headache pain reliever (expired January 2009) and Tylenol Allergy medicine (expired February 2009) were also purchased at the same store.
- A quart of Enfamil Lipil infant formula four months past its expiration date was bought at the CVS store at 9550 Allisonville Road in Indianapolis.
- At the CVS store at 2975 Lafayette in Indianapolis, a container of Nesquick Strawberry milk was purchased nearly two weeks past its April 26 sell-by date.

In early June, after community activists warned consumers about CVS's problems with expired products in Metro Indianapolis, surveyors visited 20 CVS stores to investigate whether the company had removed expired goods from its shelves. Of the 20 CVS stores visited, 12 stores (or 60%) had expired infant formula, medications or dairy products on their shelves.

¹ Office of the Attorney General, "Brown Forces CVS Pharmacy to Provide Customers a \$2 coupon if they find expired products on shelves" (press release) June 10, 2009. Available online at http://ag.ca.gov/newsalerts/print_release.php?id=1752

We hope you agree that the people of Indiana deserve the same level of protection as California residents from CVS's pattern of offering expired products for sale.

The New York State Attorney General has also taken enforcement action to protect New York consumers from expired goods at CVS. The Attorney General has filed a lawsuit charging that CVS has repeatedly sold expired products in the state, violating federal, state and local laws and breaking a 2003 assurance of voluntary compliance stemming from charges that CVS had sold expired over the counter medications. The New York suit seeks restitution for consumers who have purchased expired goods, disgorgement of revenues from the sale of expired products, civil penalties and independent random compliance checks to ensure that CVS stops selling expired products. The complaint, as well as the 2003 Assurance of Voluntary Compliance, is enclosed.

The potential hazards of expired infant formula and medication are well documented. The website of the infant formula trade group, the International Formula Council, notes that "after the expiration date, some vitamin levels decrease,"² and Baylor College of Medicine Pediatrician Sara Rizzi says, "Expired formula can accumulate moisture and have problems with spoilage and mold."³ CVS's own website warns that "Expired medications may not work as well for you, or may even be harmful."⁴

We believe our recent findings of expired goods on Indiana CVS shelves suggest that now is the time for a full-scale investigation by your office to secure for consumers the same protections afforded by the strict, judicially enforceable standards CVS now must operate under in California. Please contact me if you would like to review a full list of the products purchased during our Indianapolis-area surveys or samples of the actual products.

Sincerely,



Ahmer Qadeer
Director, Pharmacy Initiatives
917/207-8515

Enclosures:

Stipulation for Entry of Final Judgment, *People of the State of California v. CVS Pharmacy Inc.*, Case No. 37-2009-00001517.

Complaint for Injunction, Civil Penalties and Other Equitable Relief, *People of the State of California v. CVS Pharmacy Inc.*, Case No. 37-2009-00001517.

Verified Petition, *People of the State of New York v. CVS Corp* Case No. 402931-08.

Assurance of Voluntary Compliance, *In the Matter of CVS Corporation*.

² See <http://www.infantformula.org/faqs.html#10>

³ Carolyn Canville, "Are Some Stores Carrying Expired Items?" March 25, 2009, Fox 26/Houston news broadcast. Available online at: http://www.myfoxboston.com/dpp/news/consumer/090325_expired_baby_formula

⁴ See http://www.cvs.com/CVSAApp/health/consultation_corner_from_the_rx_article.jsp?content_id=600490&articleName=Safe+Medication+Storage+at+Home