

June 26, 2009

Hon. Anne Milgram
Attorney General of the State of New Jersey
Richard J. Hughes Complex
25 Market Street, CN 080
Trenton, NJ 08625

Dear Attorney General Milgram:

Given your office's focus on the sales of expired products by drugstore chains, we are writing to call your attention to the problem at CVS/pharmacy, the country's largest drugstore company. As you may be aware, CVS 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.

Change to Win has recently documented that CVS has sold expired products to New Jersey. In May, surveyors visited 19 CVS stores and observed expired infant formula and/or medications at nine of them – nearly half the CVS stores visited. Expired products surveyors purchased at CVS included:

- A package of Excedrin Back and Body Extra Strength pain reliever over six months past its expiration date of October 2008, bought at the CVS store at 217 Main Street in West Orange.
- At the CVS at 20 South Valley Road in West Orange, a quart of expired infant formula six months past its November 1, 2008 expiration date. Expired infant formula was also purchased at stores in North Arlington, Arlington and another store in West Orange.
- At the CVS store at 1000 S. Elmora Avenue in Elizabeth, a container of CVS brand All Day Pain Relief over a month past its expiration date.

In early June, after community activists warned consumers about CVS's problems with expired products in the Newark area, surveyors visited the same 19 CVS stores to investigate whether CVS had removed expired goods from its shelves. Of the 19 CVS stores visited, surveyors found expired infant formula or medications on the shelves of seven stores.

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

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

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 New Jersey 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 New Jersey 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