

June 26, 2009

Hon. Tom Corbett
Attorney General of the Commonwealth of Pennsylvania
1600 Strawberry Square
Harrisburg, PA 17120

Dear Attorney General Corbett:

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.

Change to Win has recently documented that CVS has sold expired products to Pennsylvania consumers in both the Pittsburgh and Philadelphia areas. In May, surveyors visited 30 Pittsburgh-area CVS stores and observed expired dairy, infant formula and/or over-the-counter medications 20 of them. Expired items purchased included:

- A package of Alavert Non-Drowsy Allergy Relief ten months past its expiration date of June 2008 purchased at the CVS store at 510 Brookline Avenue in Pittsburgh.
- A quart of Schneider Valley Farms Fat-free skim milk one week past its May 3rd sell-by date bought at the CVS store at 4692 Old William Penn Highway in Monroeville. At the same store, a container of Similac Advance infant formula was purchased six months past its expiration date.
- A package of Children's Tylenol two months past its expiration date of February 2009 was bought by the CVS store at 226 Sixth and Liberty Street in Pittsburgh.

In early June, after community activists warned consumers about CVS's problems with expired products in Greater Pittsburgh, surveyors visited 21 CVS stores to investigate whether CVS had removed expired goods from its shelves. Of the 21 CVS stores visited, 15 had expired infant formula, medications or dairy products on their shelves.

Earlier this year, from January to March, surveyors found expired products at 15 CVS drugstores around Philadelphia, including:

- Infants' Mylicon Gas Relief medicine purchased at the 6568 Haverford Ave. CVS in Philadelphia close to two years after it expired in March 2007.
- Crowley Black Cherry Yogurt that was 6 days outdated when purchased at the CVS at 5843 Rising Sun Ave. in Philadelphia.
- Children's Pepto, purchased over 10 months after its February 2008 expiration date at the 1046 Market St., Philadelphia, CVS.

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 Pennsylvania 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 have found expired products this year at dozens of CVS stores in Pennsylvania's two largest population centers. We believe these findings 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 Pennsylvania surveys or samples of the actual products.

Sincerely,



Ahmer Qadeer
Director, Pharmacy Initiatives
917/207-8515

Cc: Philadelphia Consumer Affairs Director Lance Haver

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