

**VIRGINIA:**

**BEFORE THE BOARD OF PHARMACY**

**IN RE: CVS/PHARMACY**

**CONSENT ORDER**

Pursuant to §§ 9-6.14:11 and 54.1-2400(9) of the Code of Virginia, an Informal Conference Committee ("Committee") of the Virginia Board of Pharmacy ("Board"), composed of Conway F. Stanley, Pharmacist; Sonny Currin, Jr., Pharmacist; and Luella A. Lightfoot, met regarding CVS/pharmacy ("CVS") on September 11, 1997 in Henrico County, Virginia. Shafi Shilad, Vice President of MIS Pharmacy Systems; Laura Lee, Licensing Manager; Carlos Ortiz, Director of Legislative and Government Affairs; and Diane McMonagle-Glass, Assistant General Counsel, were present on behalf of CVS, and Thomas J. Stallings, Esquire, was present as counsel to CVS. The case was prosecuted by Frank W. Pedrotty, Assistant Attorney General. Lynne R. Fleming, Assistant Attorney General, was present as counsel to the Board. The purpose of the informal conference was to review evidence that CVS may be in violation of the laws and regulations governing the practice of pharmacy as more fully set forth in the Notice of Informal Conference dated August 7, 1997.

**FINDINGS OF FACT**

After consideration of the evidence and statements concerning the allegations, the Committee makes the following findings of fact:

1. On or about February 6, 1997, Revco D.S. ("Revco") and CVS/pharmacy ("CVS") entered into an Agreement and Plan of Merger which would "consummate the acquisition of Revco by CVS." At the time of this Agreement, Revco, based in Twinsburg, Ohio, operated nearly 2,600 stores in 17 states; CVS, based in Woonsocket, Rhode Island, operated more than 1,400 stores in 14 states and the District of Columbia. The proposed transaction would create the nation's largest drug store company by number of stores and the second largest in terms of sales.

2. Pursuant to an agreement with the Federal Trade Commission ("FTC"), CVS agreed to divest 113 Revco stores in Virginia, along with all assets of those stores, to Eckerd Corporation ("Eckerd"), a subsidiary of J. C. Penney Company. The stores to be divested were primarily in the areas of Norfolk/Virginia Beach/Newport News, Richmond-Petersburg and Charlottesville. The agreement permitted CVS to retain approximately 124 Virginia retail drug stores using the Revco name. As part of this agreement, CVS/Revco was required to maintain the viability and marketability of all assets to be divested to Eckerd. The agreement forbade the sale, transfer, encumbrance or impairment of those assets, and required CVS/Revco to maintain the competitiveness of the assets. Further, CVS/Revco agreed to continue to offer to customers who obtain pharmacy services at the stores to be divested the same type and quality of pharmacy services that are offered at the Proposed Respondents' retail drug stores that are not divested by the terms of the agreement.

3. According to statements to the Committee by Laura Lee, Licensing Manager, in March 1997, two months before the effective date of the merger between Revco and CVS, Ms. Lee contacted the Board of Pharmacy by telephone to inquire whether the merger would necessitate the filing of applications for a change of ownership. Ms. Lee stated that she inferred from this telephone conversation that the merger between CVS and Revco would not necessitate the filing of applications for change of ownership.

4. On May 28, 1997, personnel from CVS contacted the Board of Pharmacy by telephone regarding the impending merger between Revco and CVS. During this telephone conversation, Board staff informed CVS that the merger between Revco and CVS would necessitate the filing of applications for a change of ownership.

5. On June 4, 1997, the Board of Pharmacy received a letter from CVS stating that a merger with Revco had taken place May 29, 1997, and that applications

for change of ownership would be forthcoming. The letter also stated that beginning June 17, 1997, 113 stores would be sold to Eckerd. On Monday June 23, 1997, the Board office started receiving complaints from the public concerning the Eckerd takeover of Revco and the fact that patients were not able to get prescriptions refilled because Eckerd no longer had the Revco computer system or all of the required Revco prescription records. According to the testimony of CVS officials, CVS and Eckerd agreed that Eckerd would be given a microfiche containing only four months of dispensing records at the time of transfer, with two years worth of prescription records to be available within two weeks of the transfer. As of June 23, 1997, the Board had still not received applications for pharmacy permits due to change of ownership from CVS for the original transfer from Revco of the approximate 237 stores and had not received applications for pharmacy permits due to change of ownership from Eckerd for the subsequent transfer of the 113 stores from CVS. On Tuesday, June 24, 1997, the Executive Director of the Board informed both CVS and Eckerd that the Board had received no applications for pharmacy permits subsequent to change in ownership as required by statute and that they were operating pharmacies without holding a permit from the Board. Both CVS and Eckerd stated that applications would be submitted no later than Friday, June 27, 1997. On that same day, the Executive Director informed both Eckerd and CVS by telephone that the problem with Eckerd not having required records needed to be resolved immediately in order that patients could get their prescriptions properly filled in accordance with law and regulation. The Board office was informed by CVS that CVS would not give back to Eckerd the Revco computer system which had been removed from the pharmacies immediately prior to the Eckerd takeover. CVS officials stated to the Committee that this was due in part to patient confidentiality concerns. The Board office was also informed that it would take approximately two weeks for CVS to provide the additional information on microfiche

to give Eckerd a two year dispensing history. CVS did agree to set up a system of "partner" pharmacies in which an Eckerd pharmacist could telephone another former Revco pharmacy retained by CVS and obtain a copy of a prescription for those prescription records not included in the four month microfiche. On Wednesday, June 25, 1997, the Board received a letter from CVS outlining their plans for providing Eckerd pharmacies access to records. On Friday afternoon, June 27, 1997, a letter was sent to CVS in response to the June 25 letter, stating that while the efforts of CVS may have helped somewhat in providing a means of access to patient records by Eckerd pharmacists, the effort does not meet requirements for a prescription record keeping system and also stating that despite assurances to the contrary, the Board had still not received any applications for pharmacy permits.

6. From on or about May 29, 1997 to on or about July 1, 1997, CVS operated approximately 124 pharmacies without having applied for or obtaining the appropriate pharmacy permits from the Board, as specifically listed in Attachment #1.

7. According to statements by CVS officials to the Committee, throughout the transition period, CVS worked cooperatively with Eckerd to provide prescription information in the format Eckerd requested, to include an offer to download the relevant prescription information into a "flat file" tape and provide this tape to Eckerd for Eckerd to load into Eckerd's computer system. According to statements by CVS officials, Eckerd declined this offer. CVS also offered to provide the relevant prescription information to Eckerd by paper copy. Eckerd declined this offer in favor of microfiche on grounds that the microfiche would be less cumbersome to work with than the paper copies.

8. For the approximate 113 pharmacies transferred to Eckerd, immediately prior to the transfer, CVS removed the pharmacy computers and all access to the Revco on-line computer system, effectively removing all patient profile data used to conduct

prospective drug reviews and counseling and all required dispensing history in an approved format. CVS only provided Eckerd with prescription dispensing records and patient information on microfiche, which does not meet the requirements for either a manual record-keeping system or an automated data processing system, the only two record-keeping formats allowed by Board regulation. According to statements by CVS officials to the Committee, Eckerd was aware of and agreed to the removal of the computer system and being provided only with microfiche records, as follows:

- a. In addition to providing Eckerd with prescription dispensing records in an unauthorized format, CVS initially provided Eckerd with microfiche dispensing records for prescriptions which had only been dispensed within the four months prior to the production of the microfiche. CVS provided two years worth of prescription records on microfiche within two weeks of the initial delivery of microfiche.
- b. Initially, there were no prescription dispensing records provided to Eckerd for the interim days between the production of the microfiche and the takeover of the Revco pharmacies by Eckerd. CVS provided prescription dispensing records for the interim days within two weeks of the initial delivery of microfiche.
- c. CVS provided to Eckerd only partial information needed to conduct prospective drug reviews. CVS provided microfiche to Eckerd in two batches. The first batch contained prescription information relating to the four months immediately prior to the preparation of the microfiche. The second batch, provided within two weeks after the first batch, provided two years worth of prescription information. Each batch organized the records in two ways: alphabetically by patient name; and numerically by prescription number. CVS provided a separate microfiche organized by

patient name with only the records of drugs dispensed to patients who had received a prescription from Revco during the four months prior to the preparation of the microfiche. The Revco computer system had the capability of assisting the pharmacist in conducting a prospective drug review by screening the current prescription against all drugs dispensed to the individual patient at any pharmacy within the Revco system and against other information submitted to Revco by the patient; i.e., allergies.

9. While CVS officials stated to the Committee that they provided prescription information in the format requested by Eckerd, nevertheless, due to the removal of the existing system of Revco patient and prescription dispensing records, CVS failed to transfer the records needed for an appropriate transfer of ownership of a pharmacy wherein pharmacy services could be continued uninterrupted, and thereby effectively closed the approximately 113 former Revco pharmacies which it sold to Eckerd. CVS failed to provide proper notification to the public or the Board that it was closing existing pharmacies, in that:

- a. It failed to post a conspicuous notice at least thirty days prior to the anticipated closing indicating the date of such closing and the name of the pharmacy to which prescriptions were to be transferred; or
- b. It failed to mail a notice, at least 14 days prior to the anticipated closing, to every current pharmacy customer having refill authority, indicating the date of such closing and the name of the pharmacy to which prescriptions were to be transferred; and
- c. It failed to provide notice to the Board, at least 14 days prior to the closing date, of the pharmacies closings.

**CONCLUSIONS OF LAW**

The Board concludes Findings of Fact # 5, 6, 8 and 9 constitute a violation §54.1-3316(7), § 54.1-3434, and § 54.1-3434.01 of the Code of Virginia (1950), as amended, and 18 VAC 110-20-130(A) of the Virginia Board of Pharmacy Regulations.

**CONSENT**

Thomas Ryan, President, as representative of CVS/pharmacy, by affixing his signature hereon, agrees to the following:

1. He has been advised specifically to seek the advice of counsel prior to signing this document on behalf of CVS;
2. He is fully aware that without his consent, no legal action can be taken against CVS except pursuant to the Virginia Administrative Process Act, § 9-6.14:1 et seq of the Code of Virginia;
3. CVS has the following rights, among others:
  - a. the right to a formal fact-finding hearing before the Board;
  - b. the right to representation by counsel; and
  - c. the right to cross-examine witnesses against CVS.
4. CVS waives all rights to a formal hearing;
5. CVS denies the above Findings of Fact and Conclusions of Law; however, CVS agrees that it will not contest the above Findings of Fact in any future proceeding before the Board; and
6. CVS consents to the following Order affecting their conduct of pharmacy in the Commonwealth of Virginia.

**ORDER**

WHEREFORE, on the basis of the foregoing Findings of Fact, Conclusions of Law, and with the consent of the CVS/pharmacy, it is hereby ORDERED that CVS/pharmacy be and hereby is REPRIMANDED.

It is further ORDERED that CVS/pharmacy be assessed a monetary penalty of One Million Five Hundred Eighty-two Thousand Dollars (\$1,582,000). This monetary penalty shall be paid to the Board within twenty (20) days from the entry of this Consent Order. If said monetary penalty is not received within the prescribed deadline, it shall constitute grounds for further disciplinary action and an administrative proceeding will be convened.

Pursuant to § 9-6.14:14 of the Code of Virginia, the signed original of this Consent Order shall remain in the custody of the Department of Health Professions as a public record and shall be made available for public release, inspection and copying upon request.

FOR THE BOARD:

William T. Walker  
William T. Walker, Chairman

ENTERED: 10-9-97

SEEN AND AGREED TO:

Thomas Ryan  
Thomas Ryan, President  
CVS/pharmacy

STATE OF Rhode Island  
CITY/COUNTY OF Providence

Subscribed and sworn to before me, a Notary Public in and for the city/county of Providence, this 16<sup>th</sup> day of October, 1997, by Thomas Ryan, President, CVS/pharmacy. My commission expires the 23 day of April, 1998.

Kelly A. Durning  
Notary Public

**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the foregoing Consent Order was mailed to Thomas Ryan, President, CVS/pharmacy, 280 Irving Avenue, Providence, Rhode Island 02906, on the 20<sup>th</sup> day of October, 1997. copy hand-delivered to Thomas J. Stallings, counsel of record, on October 9, 1997.

Cathy M. Reiniers-Day  
Cathy M. Reiniers-Day  
Deputy Executive Director  
Board of Pharmacy

## REVCO STORES BOUGHT BY CVS ON MAY 29, 1997

Previous Revco Permit Number 0201	Current CVS/Revco Store Number	Date Revco Permit Received	Date Application from CVS for Permit Received	# Days Operated Prior to Board Receiving Completed Application
003395	2295	July 1	July 9	40 days
002922	3335	July 1	July 1	32 days
002933	3336	July 1	July 1	32 days
000564	3379	July 1	July 1	32 days
003284	3396	July 1	July 1	32 days
003248	3397	July 1	July 1	32 days
002793	3415	July 1	July 1	32 days
002917	3460	July 1	July 1	32 days
002931	3482	July 1	July 1	32 days
000698	3501	July 2	July 1	33 days
000704	3502	July 1	July 1	32 days
001413	3503	July 2	July 1	33 days
000697	3507	July 1	July 1	32 days
000707	3508	July 1	July 1	32 days
001499	3509	July 1	July 1	32 days
001102	3510	June 30	July 1	32 days
000700	3512	July 2	July 1	33 days
001497	3515	July 1	July 1	32 days
000694	3517	July 1	July 1	32 days
000690	3544	July 1	July 1	32 days
001414	3545	July 1	July 1	32 days
000701	3548	July 2	July 1	33 days
001177	3555	July 1	July 1	32 days
002806	3566	July 1	July 1	32 days
002920	3605	July 1	July 1	32 days
002921	3785	July 2	July 1	33 days
001448	3873	July 2	July 1	33 days
001449	3893	July 1	July 1	32 days
002918	3915	July 1	July 1	32 days
002804	3922	July 1	July 1	32 days
002929	3949	July 1	July 1	32 days
002930	3969	July 1	July 1	32 days
000734	3970	July 2	July 1	33 days
000937	4031	July 1	July 1	32 days
000941	4123	July 1	July 1	32 days
000938	4161	July 1	July 1	32 days
003109	4175	July 1	July 1	32 days

001073	4194	July 1	July 1	32 days
002798	4235	July 2	July 1	33 days
002799	4237	July 1	July 1	32 days
002801	4239	July 1	July 1	32 days
001551	4285	July 1	July 1	32 days
001702	4292	July 1	July 1	32 days
003175	4335	July 1	July 1	32 days
003161	4363	July 1	July 1	32 days
001590	4378	July 2	July 1	33 days
003182	4380	July 1	July 1	32 days
003395	4463	July 1	July 1	32 days
003298	4630	July 1	July 1	32 days
001625	5505	July 23	July 1	55 days
001664	5507	July 1	July 1	32 days
001734	5509	July 1	July 1	32 days
001655	5514	July 1	July 1	32 days
001877	5582	July 1	July 1	32 days
002004	5703	July 1	July 1	32 days
001880	5722	July 1	July 1	32 days
002246	5729	July 1	July 1	32 days
002366	5735	July 1	July 1	32 days
002336	5736	July 1	July 1	32 days
002781	5750	July 1	July 1	32 days
002441	6282	July 1	July 1	32 days
002439	6283	July 1	July 1	32 days
002438	6284	July 1	July 1	32 days
002436	6285	July 1	July 1	32 days
002431	6286	July 15	July 1	46 days
002430	6287	July 1	July 1	32 days
002429	6288	July 2	July 1	33 days
002426	6289	July 1	July 1	32 days
002424	6290	July 1	July 1	32 days
002423	6291	July 1	July 1	32 days
002421	6292	July 1	July 1	32 days
002420	6293	July 1	July 1	32 days
002562	6296	July 1	July 1	32 days
002449	6300	July 1	July 1	32 days
002732	6301	July 1	July 1	32 days
002569	6302	July 2	July 1	33 days
002571	6303	July 1	July 1	32 days
002440	6321	July 2	July 1	33 days
002437	6322	July 1	July 1	32 days
002428	6325	July 1	July 1	32 days
002427	6326	July 2	July 1	33 days

002425	6327	July 3	July 1	34 days
002422	6328	July 2	July 1	33 days
002570	6329	July 1	July 1	32 days
002568	6330	July 2	July 1	33 days
002595	7002	July 1	July 1	32 days
003081	7027	July 1	July 1	32 days
002651	7028	July 1	July 1	32 days
002790	7032	July 1	July 1	32 days
002792	7033	July 1	July 1	32 days
001724	7304	July 2	July 1	33 days
001870	7308	July 2	July 1	33 days
002055	7342	July 2	July 1	33 days
002137	7343	July 1	July 1	32 days
002211	7352	July 1	July 1	32 days
002094	7358	July 1	July 1	32 days
002227	7362	July 1	July 1	32 days
002138	7363	July 2	July 1	33 days
002228	7365	July 1	July 1	32 days
002853	7368	July 1	July 1	32 days
002175	7378	July 1	July 1	32 days
002234	7389	July 1	July 1	32 days
002248	7503	July 1	July 1	32 days
002330	7509	July 2	July 1	33 days
002365	7510	July 1	July 1	32 days
002310	7518	July 1	July 1	32 days
002413	7520	July 1	July 1	32 days
002293	7525	July 1	July 1	32 days
002344	7526	July 2	July 1	33 days
002654	7543	July 2	July 1	33 days
002340	7545	July 1	July 1	32 days
002447	7557	July 1	July 1	32 days
002605	7558	July 2	July 1	33 days
002726	7561	July 2	July 1	33 days
002467	7565	July 1	July 1	32 days
002362	7577	July 2	July 1	33 days
002445	7581	July 2	July 1	33 days
002534	7582	July 2	July 1	33 days
002529	7589	July 1	July 1	32 days
002524	7592	July 2	July 1	33 days
002510	7593	July 1	July 1	32 days
003297	7594	July 1	July 1	32 days
000697	7657	July 2	July 1	33 days
000246	7658	July 2	July 1	33 days