

**Office of Professional Licensure and Certification
Enforcement Division
New Hampshire Board of Pharmacy
7 Eagle Square
Concord, N.H. 03301**

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The information in this report is CONFIDENTIAL and exempt from the provisions of RSA 91-A. Its contents may not be disclosed except as permitted by Statute and the Administrative Rules of this Board. See RSA 318:30, I; Ph 204.08 (a).

Licensee: Rite-Aid Pharmacy 10291
License No.: 0722
OPLC Case No: 2022-PHA-RITE AID-0621 & 2022-PHA-WENO-0093
Hearing Counsel: TBD
Investigator: James (Jay) M. Queenan, R.Ph. MBA
Date of Report: August 5, 2022

REPORT OF INVESTIGATION

I. Origin and Nature of Allegations

Dr. Kim Whitesell, a New Hampshire licensed psychiatrist, attempting to comply with a recently passed legislation, was unable to electronically prescribe controlled substances to several pharmacies including Rite-Aid Pharmacy 10291. Rite-Aid Pharmacy 10291 is located 1303 Woodbury Avenue Portsmouth, New Hampshire 03801. The facility would not accept eprescriptions from the Weno Exchange, Dr. Whitesell's electronic prescription application.

II. Sources of Information

Documents

4/17/19 Federal Trade Commissioner vs Surescripts
Complaint for Injunction and other Equitable relief filed 4/17/19 Exhibit 1
1/20/20 Civil Action No. 19-1080 (JDB) Exhibit 2
5/21/20 Civil Action No. 19-1080 (JDB) Exhibit 3
12/23/21 Prescription to CVS Pharmacy 118 Central Ave. Dover NH
1/13/22 & 1/14/22 Email Exchange Dr. Kim Whitesell, Robert Stout R.Ph. and State Rep. Gary Merchant
1/18/22 Email from Dr. Kim Whitesell to OPLC
1/21/22 Email from Dr. Kim Whitesell to OPLC
3/17/22 Email from Dr. Kim Whitesell to CI Queenan
3/16/22 Email request from CI Queenan to Dr. Kim Whitesell
3/17/22 Email from Dr. Kim Whitesell

4/26/22 FTC Accuses Surescripts of 'alternative reality' in antitrust case
5/18/22 Excel Spreadsheet of total prescriptions sent to Rite-Aid by Dr. Kim Whitesell
5/17/22 QRE Report from Rite-Aid Pharmacy # 10291
5/17/22 Copy of Rx 2038776 # 30 Lorazepam 0.5 mg
5/17/22 Audit Report for RX 2038776 Rite-Aid # 10291 1303 Woodbury Ave. Portsmouth
5/17/22 Audit Report for RX 1510754 Rite-Aid # 10299 190 Wakefield Ave Rochester
5/17/22 Audit Report for Rx 1510755 Rite-Aid # 10299 190 Wakefield Ave Rochester
5/17/22 Verification for several CPh.T that perform Data Entry

III. Background

Dr. Kim Whitesell is a 1990 graduate of the University of California San Francisco School of Medicine. She did her residency at Yale in New Haven Connecticut. She was certified by the American Board of Psychiatry and Neurology. She is licensed to practice medicine in New Hampshire.

Switch / Switches. Switch / Switches connect different devices to send, receive or forward data packets or data frames over the network. In health care they interconnect and route secure data to targeted providers, pharmacies, Prescription Benefit Manager (PBM) and insurance companies.

Weno Exchange is a Texas based electronic prescribing and transmitting intermediary. According to their website "*WENO Online is our stand-alone eRx system which connects to WENO's intermediary service and has a DEA approved audit for EPCS use (electronic prescribing of controlled substances for US DEA registrant practitioners).*" It is both a prescribing application and a "switch" that facilitates electronic prescribing transactions / transmissions of the prescription directly to the pharmacy.

Surescripts according to the website "*Surescripts aligns nearly all electronic health records (EHR) vendors, pharmacy benefit managers, pharmacies and clinicians in the U.S., plus health plans, long-term and post-acute care organizations, specialty hubs and specialty pharmacy organizations. All of these people and organizations working together make up the Surescripts Network Alliance.*"

"*Arlington, Va.-based Surescripts is owned by the National Association of Chain Drug Stores (NACDS), National Community Pharmacists Association (NCPA), CVS Health and Express Scripts. Its Surescripts Network Alliance includes virtually all electronic health records, pharmacy benefit managers, pharmacies and clinicians, plus an increasing number of health plans, long-term and post-acute care organizations and specialty pharmacy organizations.*" According to an article by Health Care Innovations.

IV. Results of Investigation

On January 13 and 14 Dr. Kim Whitesell reached out then President of the New Hampshire Pharmacist Association, Robert Stout, with a complaint. Her complaint was that multiple pharmacies would not accept her electronically prescribed controlled substance prescriptions.

Dr. Whitesell enrolled in an electronic prescribing prescription application called Weno Exchange. Weno Exchange, according to their web site, complies with DEA Federal regulation for electronic prescribing. Weno Exchange is approved in several states such as California and Nevada.

Mr. Stout referred Dr. Whitesell to both OPLC Enforcement, specifically CI Queenan, and State Representative Gary Merchant a sponsor of the prescribing legislation RSA 318:47-c III. The legislation requires electronic prescribing with several notable exceptions but does not mandate that all electronic prescription transaction companies be accepted by pharmacies.

Weno Exchange has developed software and performs “switches” allowing the transfer of prescriptions from a provider to the pharmacy circumventing Surescripts. Weno Exchanges claims “Pharmacies who receive eprescriptions or EPCS orders from Weno Prescribers will be given a free Weno online account which allows them to stay in compliance with DEA, federal and state rules until their own pharmacy software systems can connect to Weno’s eprescribing intermediary service.”

RITE-AID SPECIFIC

CI Queenan opened a complaint against the Rite-Aid Pharmacy # 10291 located 1303 Woodbury Ave Portsmouth based on communication with Dr. Kim Whitesell. RSA 318:47-c III, the mandate to electronically prescribing controlled substances, became law on January 1, 2022. The only controlled substance prescription filled at Rite-Aid 10291, was Lorazepam 0.5 mg filled on January 28, 2022. The hard copy prescription shows that the order was received as a telephone order on December 15, 2021, prior to the law implementation mandating electronic prescribing of controlled substances. So even though Rite-Aid 10291 did not accept the Weno Exchange electronic prescription transmission, the law was not in place.

Ironically, Deborah Hurley, the Senior Specialist for Boards of Pharmacy at Rite-Aid, in response to the complaint sent in a more comprehensive list. From January 1, 2022, through March 18, 2022, Dr. Kim Whitesell attempted to transmit 13 electronic prescriptions to various Rite-Aid Pharmacies in New Hampshire. Of the 13 electronic prescriptions only 3 were Controlled Substance prescriptions. The Rite-Aid Pharmacy # 10299 located at 190 Wakefield Street filled the other two controlled substances. That pharmacy was not part of the initial complaint, and they were not provided a copy of the complaint and was not asked to respond. If warranted the NH Board of Pharmacy may initiate a complaint against the Rite-Aid 10299 in Rochester.

V. Comments

Surescripts appears to be a monopoly. An extract from the Civil Action 19-1080 (JDB) states “The Federal Trade Commission (FTC) brought action against health information technology company

{Surescripts} alleging a monopolization claim under the Sherman act for maintaining a monopoly in two markets through anticompetitive conduct...” Surescripts generates revenue from the fees charged to pharmacies for electronic transmissions of prescriptions from the prescriber to the pharmacy. It also generated revenue when pharmacies send electronic transmissions to PBM for formulary compatibility. This fee is billed to the PBM.

VI. LAWS AND RULES FOR CONSIDERATION:

Ph 501.01 Standards of Conduct.

(a) The ethical standards set forth in this part shall bind all licensees, and violation of any such standard shall be a basis for the imposition of disciplinary sanctions.

(b) A licensed pharmacist shall:

(5) Observe the law, uphold the dignity and honor of the profession, and accept its ethical principles;

(6) Not engage in any activity that will bring discredit to the profession and shall expose, without fear or favor, illegal or unethical conduct in the profession;

(7) Seek at all times only fair and reasonable remuneration for services rendered;

(8) Never agree to or participate in transactions with practitioners of other health professions or any other person under which fees are divided or which might cause financial or other exploitation in connection with the rendering of their professional services;

VII. RECOMMENDATION:

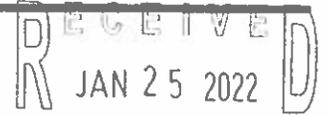
The documentation indicates that the decision to not accept eprescription orders from Weno Exchange is made on a corporate level. The major violation is a restraint of trade which is likely outside than the scope of the Board of Pharmacy, but the Board is not powerless to act.

The New Hampshire Board of Pharmacy may refer this complaint to the State of New Hampshire Attorney General for criminal investigation.

The New Hampshire Board of Pharmacy may initiate and support legislation that amends RSA 318:47-c III to require that all compliant electronic prescribing computer applications be accepted by pharmacies.

Queenan, James

From: OPLC: Enforcement Complaints
Sent: Friday, January 21, 2022 12:57 PM
To: Queenan, James
Cc: Porter, Michael
Subject: FW: [External] Problems with electronic prescribing (RSA 318:47-c)
Attachments: Rejected lorazepam eRx.pdf; Untitled attachment 00003.htm; CVS 20211223 rejected eRx.pdf; Untitled attachment 00006.htm; signature.asc



OPLC-ENF

Jay and/or Mike,
Can you take a look at this and please advise.
Thank you,
Elaine

From: Kim Whitesell <whitesellmd@gmail.com>
Sent: Tuesday, January 18, 2022 4:00 PM
To: OPLC: Enforcement Complaints <enforcement.complaints@oplc.nh.gov>
Subject: [External] Problems with electronic prescribing (RSA 318:47-c)

January 18, 2022

Office of Professional Licensure & Certification
7 Eagle Square
Concord NH, 03301
enforcement.complaints@oplc.nh.gov

RE: Problems with electronic prescribing (RSA 318:47-c)

Dear Colleagues,

I purchased an annual subscription to Weno Exchange, an electronic prescription application that meets DEA requirements including verification by a third party auditor. Weno is used in California, Nevada, Ohio, Indiana, and several other states. (Reference 1)

Unfortunately NH pharmacies have been rejecting my e-scripts. Pharmacists have told me that their IT departments refuse to import my scripts because they aren't routed through Surescripts, a contractual partner. I've asked for these denials to be in writing but only one pharmacy has sent me something on paper. (Reference 5)

If you google for prescriber e-script software, you'll find many products making you feel like you're in a typical marketplace. However in nearly every case these products build on a licensed Surescripts program linking to a Surescripts exchange.

Don't be bamboozled by software marketers making health IT sound complicated. They want you to defer to their self-interested, expensive recommendations and that can have devastating consequences (RIP, Frisbie Memorial).

E-scripts are basically emails with extra structured fields. We all accept emails from many exchanges, e.g., gmail, icloud, comcast, etc. I don't care and hardly notice the exchange a person uses. So I don't think pharmacists care which exchange a doctor might use for scripts. Yet it's been pharmacists, not IT people, who've been telling me to dump Weno. Why?

My guess is, the chain pharmacy IT staff can't say their systems won't import Weno scripts because they're already doing so in other states. Thus they sucker pharmacists into fighting on their behalf.

The DEA requires pharmacy e-script applications to meet certain standards. One of those standards is the ability to "accurately and consistently import" physician prescriptions. Nothing in the law indicates that a physician's application must route scripts through a specific exchange. (Reference 2)

When a pharmacist tells me that his program can't import my legal e-script, he's admitting that his software isn't in compliance with DEA requirements. In this case, the DEA specifies that "the pharmacy must immediately cease to process controlled substance prescriptions using the application." The "IMMEDIATELY" in this clause implies that my problem is an urgent one. (Reference 3)

The FTC filed suit against Surescripts for anti-competitive behavior, such as forcing pharmacies into contracts punishing them for accepting scripts from a competing exchange. Neither the FTC nor anybody else wants a healthcare company indulging in high pressure, mafia-like tactics --especially not one sitting on all our personal prescription histories. (Reference 4)

I'm proud of my marathon-winning husband. But if he kneecapped his competition, nobody would think him a winner. In fact, talented athletes actually love a close race.

Weno tells me they've had to fight the Surescripts monopoly in other states rolling out e-prescribing mandates. You'd think the kneecapping would stop at some point, but no. I take this as further evidence that Surescripts sucks.

I'm asking the OPLC to support New Hampshire pharmacies in complying with DEA requirements in spite of the pressures they're under to pretend they can't.

Sincerely,
Kim Whitesell MD
3 Lakeview Dr
Dover NH 03820
603-591-8142

Reference 1: Example of a board of pharmacy approving Weno: https://bop.nv.gov/resources/ALL/Approved_E-Prescribing_Systems/

Reference 2: <https://www.law.cornell.edu/cfr/text/21/1311.200>

§ 1311.200 Pharmacy responsibilities.

(a) Before initially using a pharmacy application to process controlled substance prescriptions, the pharmacy must determine that the third-party auditor or certification organization has found that the pharmacy application does the following accurately and consistently:

- (1) **Import**, store, and display the information required for prescriptions under § 1306.05(a) of this chapter.
- (2) **Import**, store, and display the indication of signing as required by § 1311.120(b)(17).
- (3) **Import**, store, and display the number of refills as required by § 1306.22 of this chapter.
- (4) **Import**, store, and verify the practitioner's digital signature, as provided in § 1311.210(c), where applicable.

Reference 3: <https://www.law.cornell.edu/cfr/text/21/1311.200>

(c) If a pharmacy application provider notifies a pharmacy that a third-party audit or certification report indicates that the application or the application provider no longer meets the requirements of this part or notifies it that the application provider has identified an issue that makes the application non-compliant, the pharmacy must immediately cease to process controlled substance prescriptions using the application.

(d) A pharmacy that receives a notification that the pharmacy application is not in compliance with the requirements of this part must not use the application to process controlled substance prescriptions until it is notified that the application is again compliant and all relevant updates to the application have been installed.

The pharmacy's duty to make sure e-script software is DEA compliant doesn't stop after the initial audit but remains continuous:

"Similar to pharmacies' other ongoing obligations, pharmacies must ensure that the applications they use to process electronic prescriptions remain compliant on an ongoing basis as well."

<https://www.natlawreview.com/article/10-provisions-and-5-steps-to-electronic-prescription-compliance-pharmacies>

Reference 4: https://www.ftc.gov/system/files/documents/cases/surescripts_redacted_complaint_4-24-19.pdf

Reference 5: Auto-generated document Weno faxed to CVS with instructions for importing my electronic script. My signature looks post-stroke because I had to use a mouse to sign.



An electronic prescription was created & transmitted to you on Dec-23-2021 CST by WENO Exchange (WENO)

Until your system is capable, retrieve transmission on WENO Online: go to online.wenoexchange.com & enter pharmacy code XXXXXX. View its DEA Part 1311.205 pharmacy application audit before accessing this free service.

Warning: Unless reporting a temporary failure, dispense from the electronic version OR this fax notice if fax is an otherwise valid prescription. Requiring a new version before dispensing, without a qualifying exception, will obstruct the patient from obtaining their prescription which was electronically prescribed according to state/federal laws.

To report a temporary failure or get help: Contact Kara from WENO at 877-890-3726 wenoexchange.com

Prescriber	Supervising Prescriber	Pharmacy
Kimberly Whitesell NPI #: 1093910317 DEA # BW4441313 State License #: 9759 PH: 603-742-9550 3 LAKEVIEW DR. DOVER, NH 03820		CVS PHARMACY #10463 NCPDP ID: 3061594 NPI #: 1225470966 PH: 603-742-3995 Fax: 603-742-8180 118 CENTRAL AVE, DOVER, NH 03820

Message ID: 5d42fa09838c49c69df9836142bca343 Rx Reference/Serial #:

Patient: [REDACTED] Gender: M DOB: [REDACTED]
[REDACTED], DOVER, NH 03820, USA

Vitals:

Allergies:

PH: Responsible Party: [REDACTED]

Written: Dec-23-2021 CST Effective: Dec-23-2021 CST

Drug: LORazepam 0.5 MG Oral Tablet

Quantity: 30 (thirty) tablet Days Supply: 30 (thirty) Refills: 1 (one) DEA Schedule: IV

Directions: 1 tab po daily prn anxiety

Note:

Diagnosis: Generalized anxiety disorder

Substitution: Allowed

Signature on the electronic version: Digital

If prescriber manually signed this version it was device captured.

Benefit Coordination					
IIN (BIN)	PCN	Group ID	Card Holder ID	Payer Type	Support PH#
[REDACTED]	77	[REDACTED]	[REDACTED]	Discount Program	877-459-8474

Confidential: If you are not the intended recipient email the message ID to admin@wenoexchange.com then destroy

NOTE: While the Rx details herein will not change, the format & supplemental details are subject to version changes



An electronic prescription was created & transmitted to you on Dec-23-2021 CST by WENO Exchange (WENO)

Until your system is capable, retrieve transmission on WENO Online: go to online.wenoexchange.com & enter pharmacy code XXXXXX. View its DEA Part 1311.205 pharmacy application audit before accessing this free service.

Warning: Unless reporting a temporary failure/dispatch from the electronic version OR this fax notice if fax is an otherwise valid prescription. Requiring a new version before dispensing, without a qualifying exception, will obstruct the patient from obtaining their prescription which was electronically prescribed according to state/federal laws.

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Message ID: 5d42fa09838c49c69df9836142bca343

Rx Reference/Serial #:

Patient:

Gender: M

DOB:

. DOVER, NH 03820, USA

Vitals:

Allergies:

PH: Responsible Party:

Written: Dec-23-2021 CST

Effective: Dec-23-2021 CST

Drug: LORazepam 0.5 MG Oral Tablet

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Benefit Coordination					
IN BIN	PCN	Group ID	Care Holder ID	Plan Type	Support PH#
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	Discount Program	877-450-8474

Confidential: If you are not the intended recipient, email the message ID to support@wenoexchange.com then destroy.

NOTE: While the Rx details herein will not change, prescription & supplemental details are subject to version changes.



MISSING/ILLEGIBLE INFORMATION ON RX

REASON FOR REQUEST:
MISSING/ILLEGIBLE INFORMATION ON RX

From: CVS/pharmacy
Store #: 10463

PHARMACY COMMENTS:
MISSING/ILLEGIBLE INFORMATION ON RX - SIGNATURE,
FURTHER CLARIFICATION ELECTRONIC SUBMISSION FAILED TO
REACH US. PLEASE RESEND OR CALL IN MANUALLY THANKS

Address: 50 STERLING WAY
DOVER, NH 03820
Phone: 603-742-3995
Fax: 603-742-8180

Thank you in advance for taking the time to review this information.
Sincerely,
Your local CVS Pharmacist



RESPONSE REQUESTED:

**Please send a new prescription, if appropriate (refer to store info above).
Do not fax this page back to the pharmacy.**

The information contained in this electronic message as well as any attachments to this message are intended for the exclusive use of the intended recipient and may contain confidential or privileged information. If you are not the intended recipient, please destroy all copies of this message as well as its attachments and advise the sender immediately. The recipient of this fax may make a request to opt-out of receiving future fax transmissions from CVS/Pharmacy. There are numerous ways you may opt-out: The recipient may call the toll-free number at 1-800-SHOPCVS and/or fax the opt-out request to 401-652-0893. The recipient may also send an opt-out request via email to do_not_call@cvscaremark.com. CVS/Pharmacy is required to honor an opt-out request within thirty days of receipt.

FOR CVS USE ONLY: PRWHX1

29000000006489664556

Queenan, James

From: Queenan, James
Sent: Wednesday, March 16, 2022 4:03 PM
To: Kim Whitesell
Cc: Medley, Rahkiya
Subject: Electronic prescribing

Hi Dr. Whitesell

I would like to take a deep dive in to the complaint that issued with OPLC (Board of Pharmacy). In our initial email exchange and subsequent zoom meeting I was able to gather some important information but I need to have the follow questions answered in greater detail Specifically I would like you to provide me with two separate emails. One email for Omnicare in Londonderry and one email for Walmart Newington

Omnicare Questions:

What were the date(s) that you tried to transmit the controlled Substance prescription to Omnicare?
What was the specific response from Omnicare?
Was the pharmacy response in writing?
What was the name of the pharmacist(s) who you spoke with?
What was the prescription order ? Quantity ? Directions?
How was the issue finally resolved?

Walmart Newington Questions :

What were the date(s) that you tried to transmit the controlled Substance prescription to Walmart?
What was the specific response from Walmart?
Was the pharmacy responses in writing?
What was the name of the pharmacist(s) who you spoke with?
What was the prescription order ? Quantity ? Directions?
How was the issue finally resolved?

Thank you in advance for your cooperation

Jay

James "Jay" Queenan R.Ph. MBA
james.m.queenan@oplc.nh.gov
Compliance Investigator Inspector
OFFICE OF PROFESSIONAL LICENSURE AND CERTIFICATION
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Email Disclaimer:

Please Note: Board staff are not authorized to provide legal advice. We are only able to refer you to the state statute/rule that may be applicable to your question. You should seek advice regarding its applicability to your specific situation from your personal or corporate legal counsel.

This email and any files transmitted with it are confidential and are intended solely for the use of the individual or entity to whom they are addressed. This communication may contain material protected by law. If you are not the intended recipient or the person responsible for delivering the email to the intended recipient, be advised that you have received this email in error and that any use, dissemination, forwarding, printing, or copying of this email is strictly prohibited. If you have received this email in error, please immediately notify me by telephone at 603-271-2350.

Queenan, James

From: Kim Whitesell <whitesellmd@gmail.com>
Sent: Thursday, March 17, 2022 2:55 PM
To: Queenan, James
Cc: Medley, Rahkiya
Subject: [External] Re: Electronic prescribing
Attachments: signature.asc

Hi Mr Queenan,

My 85 yo father is having heart surgery next week so I'm struggling to tie up loose ends before I fly to Buffalo this Saturday to next. I hope I can get you the info tomorrow.

Meanwhile, a couple hours ago I sent an e-script to Rite Aid Portsmouth on Woodbury Ave, phone 603-431-1580, fax 603-431-2914. The script was for lorazepam 0.5 mg tabs, 1/2 tab po daily #45 no refills. That's a 90 day supply for patient PC.

Rite Aid likely got an instructional fax from Weno because their IT dept hasn't allowed a connection to Weno yet. The pharmacist might be saying, WTF, at this very moment. So you have an opportunity to get the scoop on the process in real time, if you're not tied up with something else.

I'm expecting someone to phone or fax with a message that my e-script failed and I need to send a paper or voice order. Then I'll ask if they followed the instructions from Weno. They'll say they can't.

Maybe you can find out if there's a way to make this work without the hassle of a complaint. I love NH pharmacists and don't want to make any of them feel bad.

Regards,
Kim Whitesell MD

On Mar 16, 2022, at 4:02 PM, Queenan, James <James.M.Queenan@oplc.nh.gov> wrote:

Hi Dr. Whitesell

I would like to take a deep dive in to the complaint that issued with OPLC (Board of Pharmacy).

In our initial email exchange and subsequent zoom meeting I was able to gather some important information but I need to have the follow questions answered in greater detail

Specifically I would like you to provide me with two separate emails. One email for Omnicare in Londonderry and one email for Walmart Newington.

Omnicare Questions:

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What was the specific response from Omnicare?

Was the pharmacy response in writing?

What was the name of the pharmacist(s) who you spoke with?

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How was the issue finally resolved?

Walmart Newington Questions :

What were the date(s) that you tried to transmit the controlled Substance prescription to Walmart?

What was the specific response from Walmart?

Was the pharmacy responses in writing?

What was the name of the pharmacist(s) who you spoke with?

What was the prescription order ? Quantity ? Directions?

How was the issue finally resolved?

Thank you in advance for your cooperation

Jay

James "Jay" Queenan R.Ph. MBA

james.m.queenana@plc.nh.gov

Compliance Investigator/Inspector

OFFICE OF PROFESSIONAL LICENSURE AND CERTIFICATION

STATE OF NEW HAMPSHIRE

DIVISION OF HEALTH PROFESSIONS (PHARMACY)

7 Eagle Square

Concord, New Hampshire 03301

Tel: (603) 271-7603

Cell (603) 892-5827

www.oplc.nh.gov/pharmacy/

Email Disclaimer:

Please Note: Board staff are not authorized to provide legal advice. We are only able to refer you to the state statute/rule that may be applicable to your question. You should seek advice regarding its applicability to your specific situation from your personal or corporate legal counsel.

This email and any files transmitted with it are confidential and are intended solely for the use of the individual or entity to whom they are addressed. This communication may contain material protected by law. If you are not the intended recipient or the person responsible for delivering the email to the intended recipient, be advised that you have received this email in error and that any use, dissemination, forwarding, printing, or copying of this email is strictly prohibited. If you have received this email in error, please immediately notify me by telephone at 603-271-2350.

Queenan, James

From: Kim Whitesell <whitesellmd@gmail.com>
Sent: Thursday, March 17, 2022 3:02 PM
To: Queenan, James
Subject: Fwd: More info about specific CVS/Omnicare violations of state and Federal law
Attachments: signature.asc

EXTERNAL: Do not open attachments or click on links unless you recognize and trust the sender.

Hi Mr Queenan,

I'm forwarding an email I sent to Mr Padmore at the NHMS naming specific infractions of NH's EPCS law, based on info I got from WENO who has dealt with this issue in other states with similar language in their regulations.

KW

Begin forwarded message:

From: Dr W <whitesellmd@gmail.com>
Subject: More info about specific CVS/Omnicare violations of state and Federal law
Date: March 13, 2022 at 11:08:27 PM EDT
To: Michael Padmore <Michael.Padmore@nhms.org>

Hi Mr Padmore,

WENO sent me info about specific rule violations related to pharmacies refusing my e-scripts. They've had to fight the Surescripts monopoly in every state rolling out e-script mandates so they know more about the law than I do. They say CVS/Omnicare are violating NH law as written. Good news because amending RSAs probably takes a lot of effort. The pharmacies are also violating Federal record keeping rules defined in 21 CFR 1311.200(f) and (g), concerned with retrieving, annotating, and archiving electronic prescriptions. I count five specific violations below.

1. When CVS/Omnicare refuses to connect to WENO to import my e-scripts, they interfere with my patient's freedom to choose a pharmacy (NH RSA 318:47-C, II(b)).

When I send a script to a pharmacy that hasn't yet connected to WENO, an informational fax is automatically sent to the pharmacy from WENO. If the bottom portion of the fax is legal for dispensing (e.g., in the case of a non-controlled medication), the pharmacist can use it. If the bottom portion is not legal (e.g., the medication is controlled or there's some other issue), the pharmacist is instructed to retrieve the electronic version from WENO's free online pharmacy application. The application has a visible link to an independent audit confirming that it complies with DEA regulations.

Usually CVS/Omnicare doesn't respond to my e-scripts. But sometimes the pharmacist phones to let me know he got a fax but he can't use it to dispense.

I ask "Did you follow the instructions to get the electronic script online?"

The pharmacist says, "No we're not going to do that."

2. When CVS/Omnicare refuses to follow the faxed instructions for retrieving the electronic script, they interfere with my patient's freedom to choose a pharmacy.

Once notified by fax that an electronic prescription was sent to the pharmacy with instructions for retrieval, the fax and the electronic prescription become part of the pharmacist's record-keeping duties. WENO Online logs when the electronic prescription was accessed by the pharmacist and when notations were made.

3. CVS/Omnicare's refusal to retrieve my e-script violates Federal record keeping rules defined in 21 CFR 1311.200(g):

"When a pharmacist receives a paper or oral prescription that indicates that it was originally transmitted electronically to the pharmacy, the pharmacist must check its records to ensure that the electronic version was not received and the prescription dispensed. If both prescriptions were received, the pharmacist must mark one as void."

And in 21 CFR 1311.200(f):

"When a pharmacist fills a prescription in a manner that would require, under part 1306 of this chapter, the pharmacist to make a notation on the prescription if the prescription were a paper prescription, the pharmacist must make the same notation electronically when filling an electronic prescription and retain the annotation electronically in the prescription record or in linked files. When a prescription is received electronically, the prescription and all required annotations must be retained electronically.

4. When CVS/Omnicare pharmacists refuse to retrieve an electronic prescription for a controlled substance and insist that I replace it with an order given verbally, by fax, or by mail in spite of my admission that I have no qualifying exception and am mandated to send controlled prescriptions electronically, they violate NH's EPCS mandate.

CVS/Omnicare pharmacists have told me that they aren't required to verify whether a qualifying exception exists for written, oral, or faxed prescriptions for controlled meds. However they can't pretend an exception exists when a prescriber states that an electronic prescription is required.

5. When CVS/Omnicare, a conglomerate notorious for anti-competitive practices and responsible for degrading US independent pharmacy practice generally, recommends that I buy something compatible with their proprietary, monopolistic Surescripts system, they violate New Hampshire law by interfere with my patient's freedom to choose a pharmacy.

Regards,
Kimberly Whitesell MD

An electronic prescription

offered transmission on WENO Online

Warning

<p>11/11/2022 10:00 AM</p> <p>11/11/2022 10:00 AM</p> <p>11/11/2022 10:00 AM</p> <p>11/11/2022 10:00 AM</p>	<p>11/11/2022 10:00 AM</p> <p>11/11/2022 10:00 AM</p> <p>11/11/2022 10:00 AM</p> <p>11/11/2022 10:00 AM</p>	<p>11/11/2022 10:00 AM</p> <p>11/11/2022 10:00 AM</p> <p>11/11/2022 10:00 AM</p> <p>11/11/2022 10:00 AM</p>
---	---	---

Message ID: [redacted] Rx Reference Serial #: [redacted]

Patient: [redacted] Gender: [redacted] DOB: [redacted]

[redacted] Patient & Provider ID: [redacted]

State: MA [redacted] [redacted] [redacted] [redacted] [redacted]

Address:

PH: [redacted] Responsible Party: [redacted]

Written: 11/11/2022 10:00 AM Expires: 11/11/2022 05:00 PM

Drug: [redacted]

Quantity: [redacted] Days Supply: [redacted] Refills: [redacted] DEA Schedule: [redacted]

Directions: [redacted]

Note:

[redacted]

[Handwritten Signature: K Whitesell]

Signature on the electronic version

Signature on the electronic version

[redacted] [redacted]

[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
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Confidential

NOTE: [redacted]

WFO

Advanced Health Services, Inc. (PHS)

Advanced Health Services, Inc. (PHS) WENO Online

Warning:

<p>PHS 10000 10000 10000 10000</p>	<p>10000 10000 10000 10000</p>
--	---

Message ID: [redacted] Rx Reference Serial #: [redacted]

Patient: [redacted] Gender: M DOB: [redacted]

[redacted]
 10000
 10000
 10000

PH: [redacted] Responsible Party: [redacted]

[redacted] [redacted]

Drug: [redacted] Quantity: [redacted] Days Supply: [redacted] Refills: [redacted] DEA Schedule: [redacted]

Directions: [redacted]

Note:

[redacted]

** Whitesell*

Signature on the electronic version of

[redacted]

[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
------------	------------	------------	------------	------------

Confidential

601E



State of New Hampshire Board of Pharmacy
 7 Eagle Square - Concord, NH 03301
 Tel: (603) 271-2152
 Website: www.oplc.nh.gov/board-pharmacy

DEADLINE
 5/16/22



Quality Related Event (QRE) Report

Date of Report:	5-3-22	Date of Incident:	N/A	Time of Incident:	N/A	<input type="checkbox"/> A.M. <input type="checkbox"/> P.M.
Type of Prescription Involved:	<input type="checkbox"/> New <input type="checkbox"/> Refill N/A	How Received:	<input type="checkbox"/> Hard Copy Rx N/A	<input type="checkbox"/> Telephoned In	<input type="checkbox"/> Fax or E-Prescription	
If Telephoned In, Order Was Taken By:	<input type="checkbox"/> Pharmacist <input type="checkbox"/> Certified Pharmacy Technician <input checked="" type="checkbox"/> Not Applicable					
At What Level Was the Event Discovered?	<input type="checkbox"/> Patient <input type="checkbox"/> Prescriber <input type="checkbox"/> Pharmacist <input type="checkbox"/> Pharmacy Staff <input checked="" type="checkbox"/> Other: N/A					
Was the Patient Harmed?	<input type="checkbox"/> Yes <input type="checkbox"/> No N/A	Describe Incident Type (Check All That Apply)	<input type="checkbox"/> Wrong Medication <input type="checkbox"/> Transcription Error <input type="checkbox"/> Incorrect Dosage <input type="checkbox"/> Labels Switched <input type="checkbox"/> Mislabeled/Misread <input type="checkbox"/> Allergy Not Listed in Profile <input type="checkbox"/> Communication Error <input type="checkbox"/> Incorrect Directions or Usage <input checked="" type="checkbox"/> Other: N/A			
Describe in detail what happened – be specific using facts only – no opinions. Do not include names or any other patient, prescriber or pharmacy staff identifiers. Attach additional sheet if required.						
Unaware of any quality related event						
Medication Ordered			Medication Actually Dispensed			
Name	N/A		Name	N/A		
Strength			Strength			
Quantity			Quantity			
Directions			Directions			
Using the description of the six stages of filling a prescription (explained at end of this form), at what stage of the process does it appear that the problem originated:						
N/A <input type="checkbox"/> Stage One <input type="checkbox"/> Stage Two <input type="checkbox"/> Stage Three <input type="checkbox"/> Stage Four <input type="checkbox"/> Stage Five <input type="checkbox"/> Stage Six						
Whom was the initial cause of the error related to:		<input type="checkbox"/> Pharmacist <input type="checkbox"/> Intern <input type="checkbox"/> Technician <input type="checkbox"/> Prescriber <input type="checkbox"/> Patient <input type="checkbox"/> Prescriber's Office Staff <input checked="" type="checkbox"/> Other: N/A				
Did the error reach the patient?	<input type="checkbox"/> Yes <input type="checkbox"/> No N/A	Did the patient use/ingest the medication?	<input type="checkbox"/> Yes <input type="checkbox"/> No N/A	Patient's Age:	N/A	
Was the patient counseled?	<input type="checkbox"/> Yes <input type="checkbox"/> No N/A	Is documentation of patient counseling available?	<input type="checkbox"/> Yes <input type="checkbox"/> No N/A	Was a "Prospective Drug Review" completed?	<input type="checkbox"/> Yes <input type="checkbox"/> No N/A	Where in the process was the "Prospective Drug Review" Completed? <input type="checkbox"/> During Rx data entry <input type="checkbox"/> During Rx final verification N/A
Was this a "Central Fill Processing" Prescription?	<input type="checkbox"/> Yes <input type="checkbox"/> No N/A	* If Yes, name and location of pharmacist?				

Initial data entry of prescription information was performed by:	<input type="checkbox"/> Pharmacist <input type="checkbox"/> Intern <input type="checkbox"/> Certified Technician <input type="checkbox"/> Registered Technician <i>N/A</i>				
*If registered technician, has technician been trained on data entry?	<input type="checkbox"/> Yes <input type="checkbox"/> No <i>N/A</i>		* Is there documentation available that the registered technician completed Board approved data entry training?		<input type="checkbox"/> Yes <input type="checkbox"/> No <i>N/A</i>
Upon completing the data entry, did the computer identify any problem with drug interaction, dosage alert, etc.?	<input type="checkbox"/> Yes <input type="checkbox"/> No <i>N/A</i>		Did the computer require the pharmacist or technician to do a "manual over-ride"?		<input type="checkbox"/> Yes <input type="checkbox"/> No <i>N/A</i>
During the dispensing process, did the "stock" bottle accompany the finished product up to the time of final verification?	<input type="checkbox"/> Yes <input type="checkbox"/> No <i>N/A</i>		Did the "original" hard copy prescription physically follow the order through the process to the point of verification?		<input type="checkbox"/> Yes <input type="checkbox"/> No <i>N/A</i>
Was the "original" prescription "scanned" into the system?	<input type="checkbox"/> Yes <input type="checkbox"/> No <i>N/A</i>		Was the dosage ordered (for administration) different than the commercially available form of the medication? (example: Zantac @ 75mg/5ml Sig 25 mg once daily)		<input type="checkbox"/> Yes <input type="checkbox"/> No <i>N/A</i>
How many hours was the pharmacy open the day the incident occurred?	<i>N/A</i>		Staffing level at pharmacy on the day of the incident?	<input type="checkbox"/> Usual staffing level <input type="checkbox"/> Reduced staffing level <i>N/A</i>	
If staffing was reduced / lower than usual, please explain why (i.e. vacation, sick, etc.)	<i>N/A</i>				
Number of pharmacists on duty at the time of incident?	<i>N/A</i>	Total number of pharmacist hours that day?	<i>N/A</i>	Total time in hours of pharmacist "overlap" on day of incident? (i.e. more than 1 RPh on duty at same time)	<i>N/A</i>
Number of pharmacy technicians on duty at the time of incident?	<i>N/A</i>	Does the PIC (Pharmacist-In-Charge) or staff pharmacist have the ability to regulate the scheduling of pharmacists and/or technicians?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Scheduling is done by? (title only)	<i>PIC</i>
Does the PIC (Pharmacist-In-Charge) have any input into the scheduling?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Did any other store personnel become involved in the incident? (i.e. front store manager, PDM, etc.)	<i>N/A</i>	<input type="checkbox"/> Yes <input type="checkbox"/> No	If Yes, identify all involved by title only:
Total number of prescriptions (new & refill) that were filled at the pharmacy on the date of the incident?	<input type="checkbox"/> 0 - 50 <input type="checkbox"/> 51 - 100 <input type="checkbox"/> 101 - 150 <input type="checkbox"/> 151 - 200 <input type="checkbox"/> 201 - 250 <input type="checkbox"/> 251 - 300 <input type="checkbox"/> 301 - 350 <input type="checkbox"/> 351 - 400 <input type="checkbox"/> 401 - 500 <input type="checkbox"/> 501 - 600 <input type="checkbox"/> Over 600 <i>N/A</i>				
Any unusual distractions on the date of the incident? (If so, explain)					
<i>N/A</i>					
Any other issues that might have contributed to the incident? (Be brief and specific)					
<i>N/A</i>					

Initial data entry of prescription information was performed by:		<input type="checkbox"/> Pharmacist <input type="checkbox"/> Intern <input type="checkbox"/> Certified Technician <input type="checkbox"/> Registered Technician <i>N/A</i>			
* If registered technician, has technician been trained on data entry?		<input type="checkbox"/> Yes <input type="checkbox"/> No <i>N/A</i>		* Is there documentation available that the registered technician completed Board approved data entry training? <input type="checkbox"/> Yes <input type="checkbox"/> No <i>N/A</i>	
Upon completing the data entry did the computer identify any problem with drug interaction, dosage alert, etc.?		<input type="checkbox"/> Yes <input type="checkbox"/> No <i>N/A</i>		Did the computer require the pharmacist or technician to do a "manual over-ride"? <input type="checkbox"/> Yes <input type="checkbox"/> No <i>N/A</i>	
During the dispensing process, did the "stock" bottle accompany the finished product up to the time of final verification?		<input type="checkbox"/> Yes <input type="checkbox"/> No <i>N/A</i>		Did the "original" hard copy prescription physically follow the order through the process to the point of verification? <input type="checkbox"/> Yes <input type="checkbox"/> No <i>N/A</i>	
Was the "original" prescription "scanned" into the system?		<input type="checkbox"/> Yes <input type="checkbox"/> No <i>N/A</i>		Was the dosage ordered (for administration) different than the commercially available form of the medication? (example: Zantac 75mg/5ml Sig: 25mg once daily) <input type="checkbox"/> Yes <input type="checkbox"/> No <i>N/A</i>	
How many hours was the pharmacy open the day the incident occurred?		<i>N/A</i>			
If staffing was reduced / lower than usual, please explain why (i.e. vacation, sick, etc.)		Staffing level at pharmacy on the day of the incident?		<input type="checkbox"/> Usual staffing level <input type="checkbox"/> Reduced staffing level <i>N/A</i>	
Number of pharmacists on duty at the time of incident?		Total number of pharmacist hours that day?		Total time in hours of pharmacist "overlap" on day of incident? (i.e. more than 1 RPh on duty at same time)	
<i>N/A</i>		<i>N/A</i>		<i>N/A</i>	
Number of pharmacy technicians on duty at the time of incident?		Does the PIC (Pharmacist-In-Charge) or staff pharmacist have the ability to regulate the scheduling of pharmacists and/or technicians?		<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
<i>N/A</i>		<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		Scheduling is done by? (title only) <i>PIC</i>	
Does the PIC (Pharmacist-In-Charge) have any input into the scheduling?		Did any other store personnel become involved in the incident? (i.e. front store manager, PDM, etc.)		<input type="checkbox"/> Yes <input type="checkbox"/> No	
<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		<i>N/A</i>		<input type="checkbox"/> Yes <input type="checkbox"/> No	
Total number of prescriptions (new & refill) that were filled at the pharmacy on the date of the incident?		<input type="checkbox"/> 0 - 50 <input type="checkbox"/> 51 - 100 <input type="checkbox"/> 101 - 150 <input type="checkbox"/> 151 - 200 <input type="checkbox"/> 201 - 250 <input type="checkbox"/> 251 - 300 <input type="checkbox"/> 301 - 350 <input type="checkbox"/> 351 - 400 <input type="checkbox"/> 401 - 500 <input type="checkbox"/> 501 - 600 <input type="checkbox"/> Over 600 <i>N/A</i>			
Any unusual distractions on the date of the incident? (if so, explain)					
<i>N/A</i>					
Any other issues that might have contributed to the incident? (Be brief and specific)					
<i>N/A</i>					

How could the handling of the incident been improved?

N/A

What system or process changes could help to avoid a similar recurrence?

N/A

Submitter's Title:

- Pharmacist-In-Charge Staff Pharmacist Pharmacy Intern Pharmacy Technician
 Other

Pharmacy Script - Segmented by RXID

For: ((is_del_ind=0)) AND (between(datesrvc;20220101;20220318)) AND

Store Number		City		State		Prescription Number	Label Name	Quantity	Dispensed	Dea Code	Prescription Origin Code
10291	PORTSMOUTH	NH	2038776	LORAZEPAM 0.5 MG TABLETS	45.000	4	1				
10299	ROCHESTER	NH	1510754	METHYLPHENIDATE LA 40	30.000	2	1				
10299	ROCHESTER	NH	1510755	METHYLPHENIDATE 10 MG	30.000	2	1				

((dctr_nbr=672667))

Date	Drug	First	Last	Middle
Of	Enforce	Name	Name	Initial
Service	ment			
	Agency			
	Number			
01/28/2022	BW444131	KIMBERLY	WHITESELL	K
02/02/2022	BW444131	KIMBERLY	WHITESELL	K
02/02/2022	BW444131	KIMBERLY	WHITESELL	K

Queenan, James

From: Deborah A Hurley <dhurley@riteaid.com>
Sent: Wednesday, May 25, 2022 11:23 AM
To: Queenan, James
Cc: Shauna T. Armiento
Subject: Rite Aid Pharmacy 10291 -- NH Board of Pharmacy Inspection/Complaint Investigation
Attachments: 10299 Rx Audit Report both Rxs.pdf; 10291 Rx Audit Report 2.pdf; 10291 Rx Audit Report 1.pdf

Importance: High

EXTERNAL: Do not open attachments or click on links unless you recognize and trust the sender.

Jay – this email is #2 – I will be forwarding one more shortly.

This email contains the requested prescription audit reports. Deb

Deb Hurley
Senior Specialist Boards of Pharmacy
Government Affairs Department

Rite Aid
PO Box 3165
Harrisburg, PA 17105

dhurley@riteaid.com

Office 717-975-5979
FAX 717-303-3109

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Queenan, James

From: Deborah A Hurley <dhurley@riteaid.com>
Sent: Wednesday, May 25, 2022 11:33 AM
To: Queenan, James
Cc: Shauna T. Armiento
Subject: Rite Aid Pharmacy 10291 -- NH Board of Pharmacy Inspection/Complaint Investigation
Attachments: ATT61909.pdf, Attached Image

Importance: High

Categories: Appointment made

EXTERNAL: Do not open attachments or click on links unless you recognize and trust the sender.

Jay – this email is #3 – the final email in this matter.

This email contains the requested prescription copies.

All WENO prescriptions are being handled like any other fax prescription – we recommend verifying controls since we are not comfortable with the security of the WENO platform.

The Rx out of 10291 was data entered by pharmacist Marc Mycko.

Rxs out of 10299:

One was typed by RXPCM15 which is Chelsea McKevitt. She is a pharmacist.

The other was typed by Andrea Pepin. A technician. Attached is her national certification license from the BOP.

Please let me know if I missed anything. Deb

Deb Hurley
Senior Specialist Boards of Pharmacy
Government Affairs Department

Rite Aid
PO Box 3165
Harrisburg, PA 17105

dhurley@riteaid.com

Office 717-975-5979
FAX 717-303-3109

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Rx Image

Rx Label Info

Store # 10291
DOS 01/28/2022
Rx # 2038776
Str DEA # BR7592745
QA RPH: RXPJN14
Cust Name [REDACTED]
Cust Adr: [REDACTED]
03903-1300
Cust DOB [REDACTED]
MD Name: WHITESELL
KIMBERLY K
MD DEA BW4411313
MD Addr: 251 CENTRAL
AVE
DOVER, NH
03820-4188
Drug: LORAZEPAM 0.5
MG TABLET
Mfr.: AUROBINDO
PHARM
Distrib.: AUROBINDO
PHARM
NDC: 13107-0083-01
DAW: 0
Quantity: 45.0
Quantity Dispensed: 45.0
Quantity Owed: 0.0
Days Supply: 90.0
Type: NEW