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July 9, 2018

The Honorable Commissioner David Jones
California Department of Insurance
300 Capitol Mall, Suite 1700
Sacramento, CA 95814

Re: Proposed Merger of Aetna, Inc. into CVS Health Corporation

Dear Commissioner Jones:

I am writing in response to the July 3rd letter to your office from Locke Lord LLP regarding the merger of Aetna into CVS Health. As you recall, I testified before you on June 19th in San Francisco about the rationales and potential benefits for this merger. My remarks that day focused on whether there are consumer benefits that might compensate for welfare losses from the merger. In particular, I critically evaluated the two parties' contention that retail clinics hosted in CVS pharmacies can effectively serve as a healthcare hub for patients and consumers, as the two companies contend.

On June 19th, I catalogued the presumed benefits from this merger as stated in the testimony of both parties. These included:

- Put the consumer at the center of the healthcare delivery system
- Remake the consumer healthcare experience
- Engage and empower consumers
- Help consumers achieve their best health
- Increase the coordination of care
- Address chronic illness
- Increase primary care and preventive care
- Improve medication adherence
- Solve the problems of healthcare cost, quality, and access

During my introductory comments, I stated that if Aetna and CVS can deliver on *any* of the promises they mentioned, they deserve the Nobel Prize. That is because each of these problems has plagued our healthcare system for decades, with little sign of success. My remarks were designed to challenge the two parties to spell out how their merger of two

companies would achieve goals that have eluded the entire healthcare industry for decades.

In their July 3rd letter, the two parties (via Locke Lord) repeat the same promises stated (both orally and written) during their June testimony. These include:

- Lower medical costs (p. 2)
- Increased patient engagement
- Better coordination of care
- Post-discharge support to increase medication adherence
- More effective medical interventions (p. 3)
- Manage patients' health
- Eliminate gaps in healthcare
- More effectively treat patients with chronic disease
- Put consumers at the center of their care (Appendix)
- Focus on prevention, chronic conditions, and primary care

Nowhere in their letter or its Appendix do the two parties specify how any of this is to be achieved or why the merger is necessary and sufficient to accomplish these goals. These are very difficult goals to achieve. By virtue of repeating so often that they will accomplish them, the two parties have apparently convinced themselves the task is quite do-able. Unfortunately, the repetition is not convincing to any outside reader. Instead, the July 3 letter merely reiterates the same hollow promises stated in their June testimony.

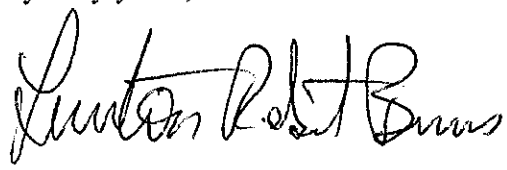
Moreover, the July 3 letter could have served to rebut my report that questioned the ability of retail clinics in CVS pharmacies to deliver on all of these desirable goals. Instead, the two parties have opted not to respond to any of my arguments (both written and oral) regarding the limited ability of retail clinics to accomplish much of anything. To me, the silence is telling. I believe they have failed to respond to my testimony because there is no plausible way to rebut it. Instead of the platitudes that pervade their testimony, the testimony I offered was based on peer-reviewed, research evidence.

The only time that Locke Lord cited me in their July 3 letter concerned my comment that retail pharmacies face mounting competition. The context for this comment concerned the total sales and revenues of retail outlets selling drugs and "health and beauty aids" (HABA), and the stagnant growth in this overall market. By contrast, Locke Lord take my comment out of context to argue that the pharmacy market is quite competitive. They also state that the 10,000 CVS pharmacies constitute only 16.2% of the U.S. market. This statement is very misleading. While CVS pharmacies are only 16.2% of the pharmacy establishments (10,000 out of 60,000), they controlled 28.9% of market revenues, according to a December 2017 IBISWorld Industry Report (#44611).

I made a LOT of arguments in my written testimony regarding why the retail clinics hosted in CVS pharmacies are unlikely to deliver on any of the merger benefits enumerated above. In light of the two parties' failure to address them, let alone try to rebut them, these arguments stand.

Thank you for considering my remarks. I trust you find them helpful.

Very truly yours,



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