

Breaking Legal NEWS

Pharmacy Whistleblower Medicaid Fraud Settlement

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Settlement Web site:

www.PharmacyFraudSettlement.com

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Omnicare Pays Nearly \$100 Million to Resolve Medicaid Fraud Charges: Second Omnicare Settlement With Chicago Whistleblower Pharmacist

Boston, MA November 2, 2009 – Omnicare, Inc., which calls itself “the nation's leading provider of pharmaceutical care for seniors,” paid \$98 million to settle Medicaid fraud charges by the United States and multiple states. The government alleged that the pharmacy had committed Medicaid fraud through various kickback schemes, such as taking payments from pharmaceutical manufacturer Johnson & Johnson to increase sales of its anti-psychotic Risperdal®. (District of Massachusetts, No. 07-10026-RGS). The payments allegedly induced Omnicare pharmacies to switch patients to Risperdal® from other anti-psychotic medications.

Omnicare's Risperdal® scheme had been reported by a Chicago pharmacist whistleblower who was fired by Omnicare after reporting improper practices. In November 2006, Omnicare had settled other Medicaid fraud allegations by the same Chicago pharmacist, Bernard Lisitza, by paying nearly \$50 million to the United States and 43 states. (Northern District of Illinois, 01-C-7433) Both cases were handled by nationally recognized whistleblower lawyers, Michael Behn and Linda Wyetzner, of Behn & Wyetzner, Chartered in Chicago, Illinois.

“The settlement underscores the government's commitment to prosecuting Medicaid fraud at pharmacies,” said Behn. “Pharmacies are the gatekeepers to Medicaid payments for drugs. There can be zero tolerance for kickbacks.”

According to the settlement agreement, Johnson & Johnson had made quarterly rebate payments on Omnicare's purchases of Risperdal® under rebate agreements executed in April 1997 and March 2000. The rebate agreements conditioned payment of the rebates upon Omnicare engaging in an “active intervention program” to convince physicians to prescribe Risperdal® and requiring that all competitive anti-psychotic products be “Prior Authorized for

Risperdal® failure.” The government alleged that Omnicare failed to disclose to physicians that such intervention activities were a condition of receiving such rebate payments.

Other Medicaid fraud and kickback charges settled today included: (1) claims that Omnicare paid \$50 million to secure long-term contracts with certain nursing home chains; (2) claims that Omnicare had accepted \$8 million in payments for promoting drugs from Ivax Pharmaceuticals Inc., a generic drug manufacturer; and (3) claims that Omnicare had provided consultant pharmacist services to nursing homes below fair market value in order to secure contracts from the nursing homes.

The settlement agreement and other court documents can be found on the reference website www.PharmacyFraudSettlement.com.

Today’s settlement resulted from “*qui tam*” suits filed under the False Claims Act. The False Claims Act allows private citizens with knowledge of fraud, known as “relators,” to help the government recover ill-gotten gains. False Claims Acts allow the government to collect up to three times the amount defrauded, in addition to civil penalties. Behn noted that *qui tam* relators can receive between 15 and 30 percent of the government’s recovery.

Today’s settlement was achieved through the efforts of Senior Trial Attorney Laurie A. Oberembt of the U.S. Department of Justice, Assistant U.S. Attorney Gregg Shapiro of Massachusetts, as well as a team from the National Association of Medicaid Fraud Units including Assistant Attorney General Keesha Mitchell of Ohio, Bureau Chief Patrick Keenan of the Illinois Attorney General’s Office Medicaid Fraud Bureau, Assistant Attorney General Robert Patten of Massachusetts, and Assistant Attorney General Susan Aranella of Texas.

The Omnicare settlement is yet another successful whistleblower action handled by Behn & Wyetzner, Chartered for *qui tam* relators in the U.S. District Court for the Northern District of Illinois. Earlier this year, the firm represented Chicago whistleblowers in a \$15.5 *qui tam* settlement with advertising agency Leo Burnett for alleged fraud in Army procurement contracts (04 C 3897). Last year, Behn & Wyetzner represented the pharmacist whistleblower in a \$37 million Medicaid fraud settlement with CVS pharmacies (03 C 744), and the pharmacist whistleblower in a \$35 million Medicaid fraud settlement with Walgreens pharmacies (03 C 742).

In 2004, Behn represented the *qui tam* relators in a defense procurement fraud case that resulted in Northrop Grumman paying \$134 million to resolve claims involving the B-2 "Stealth" bomber – one of the largest False Claims Act *qui tam* settlements in Chicago federal court (89 C 6111). Behn also represented the American Association of Retired Persons ("AARP") in a case upholding the constitutionality of Illinois' False Claims Act before the state's Supreme Court. (Illinois No. 97023)

Behn & Wyetzner is part of the Whistleblower Action Network, a team of attorneys who have dedicated their law practices to representing citizens-whistleblowers willing to help state and federal government efforts to fight fraud. Whistleblower Action attorneys include Steven H. Cohen of the Cohen Law Group in Chicago, Illinois, and L. Timothy Terry of The Terry Law Firm of Carson City, Nevada. Cohen and Terry have also achieved prominence in prosecuting *qui tam* actions under state False Claims Acts.

Visit their website www.WhistleblowerAction.com for further information about the False Claims Act.

In executing the settlement agreement, Omnicare denied liability, wrongdoing or improper conduct.

Visit <http://www.pharmacyfraudsettlement.com>, a reference website for pharmacy fraud and pharmacist whistleblowers just updated with material and filed documents relating to the Omnicare, CVS and Walgreens *qui tam* whistleblower settlements. Included are filed documents, fraud allegations, applicable federal laws, and information about the experienced *qui tam* whistleblower attorneys from Behn & Wyetzner, Chartered who handled the Walgreens and other whistleblower cases.

About Pharmacists: As front line professionals responsible for dispensing medications to Medicaid beneficiaries, pharmacists are particularly well suited to discover and report Medicaid fraud as *qui tam* relators, which is clear from the Omnicare, Walgreens, CVS cases as reported on the PharmacyFraudSettlement.com website.

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