

Breaking Legal NEWS

Pharmacy Whistleblower Medicaid Fraud Settlement

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Settlement Web site:

www.PharmacyFraudSettlement.com

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Walgreens Settles Drug Switching Allegations, Pays \$35 Million;
Third National Pharmacy Exposed By Pharmacist Whistleblower
Whose *Qui Tam* Actions Have Returned \$120 Million To Taxpayers

CHICAGO – Walgreens today became the third national pharmacy to settle drug switching allegations exposed by a whistleblowing veteran pharmacist whose actions have returned more than \$120 million to federal and state governments. The cases against three of America’s largest drug store chains were pursued by Chicago-based whistleblower attorneys Michael I. Behn and Linda Wyetzner under *qui tam* provisions of state and federal False Claims Acts.

Walgreens paid \$35 million to 42 states and the Commonwealth of Puerto Rico to settle allegations it overcharged Medicaid by switching dosage forms in filling generic Prozac®, Zantac® and Eldepryl® prescriptions, according to Behn.

Known by its slogan, “The Pharmacy America Trusts”®, Walgreens claims to be America’s largest drugstore chain. Its 2007 annual sales exceeded \$53 billion from more than 6,200 stores, according to its Web site.

Today’s settlement resulted from a suit filed by Behn and Wyetzner in the United States District Court for the Northern District of Illinois. This is the third case their firm, Behn & Wyetzner, Chartered, has handled for pharmacist whistleblower Bernard Lisitza. Prior generic drug switching cases by Lisitza resulted in a \$37 million settlement earlier this year with CVS Caremark Corp., owner of CVS pharmacies, and a \$50 million settlement in late 2006 with Omnicare, Inc., the nation’s largest pharmacy for nursing homes.

“Bernie wanted the government to know that the drug switching programs he observed were schemes to increase pharmacy profits at taxpayers’ expense,” Behn said. “As a professional who has filled prescriptions for decades, Bernie saw no medical benefit for the drug switching.”

“The Walgreens settlement today, like CVS and Omnicare before it, shows how an alert, dedicated pharmacist whistleblower can help the government clean up an entire industry when profits are put ahead of the public trust,” Behn said.

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In all three cases Lisitza alleged that pharmacies were charging the government up to 400 percent more for Medicaid patients by switching dosage forms. According to his Complaint, Walgreens Co. had been illegally switching between tablets and capsules of ranitidine (generic Zantac) and fluoxetine (generic Prozac) in order to charge higher prices to Medicaid.

For example, according the Complaint against Walgreens, the generic form of Prozac, known as fluoxetine, typically comes in capsules. Given the drug's popularity, the government set maximum prices that Medicaid would pay for fluoxetine capsules, while tablets had no price ceilings because they were infrequently prescribed. According to court documents, Walgreens overcharged taxpayers by switching Medicaid patients' prescriptions from fluoxetine capsules to the more expensive tablets. For the generic form of the antacid Zantac, Walgreens allegedly switched prescribed tablets to capsules.

Behn praised the "unique and unparalleled coordination of state and federal prosecutors" in the Walgreens, CVS and Omnicare cases. All of Lisitza's cases were investigated and prosecuted through the combined efforts of federal and state prosecutors and investigators, including the U.S. Attorney's Office in Chicago, state Attorneys General in Illinois, Florida, Texas and Ohio, and the Federal Bureau of Investigation.

Today's Walgreens case is yet another successful whistleblower action brought by Behn & Wyetzner, Chartered. In addition to the Omnicare and CVS cases, Behn represented the plaintiffs in the largest whistleblower settlement in Chicago, which resulted in Northrop Grumman paying \$134 million to resolve claims involving the B-2 "Stealth" bomber. 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.

Federal and state False Claims Acts allow private citizens with knowledge of fraud to help the government recover ill-gotten gains and additional civil penalties. These statutes allow the government to collect up to three times the amount defrauded, in addition to civil penalties of \$5,500 to \$11,000 per false claim. Behn noted that whistleblowers, known as "*qui tam* relators," can receive between 15 and 30 percent of the governments' recovery.

Today's settlement was achieved through the efforts of Assistant U.S. Attorney Linda A. Wawzenski, Deputy Chief of the Civil Division of the U.S. Attorney's Office for the Northern District of Illinois; Patrick Keenan, Chief of the Medicaid Fraud Bureau and Assistant Attorney General of Illinois; John Guthrie, Director of the Ohio Attorney General's Health Care Fraud Unit; Bernabe Icaza, then Assistant Attorney General of Florida; Robert Robinson, Assistant Attorney General of Texas; and several other state prosecutors working with the National

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Association of Medicaid Fraud Control Units (“NAMFCU”). Special Agents of the FBI, the FDA, and the Office of the Inspector General, Department of Health and Human Services, also assisted in the investigation and prosecution of the Walgreens case.

States involved in the Walgreens settlement include Alabama, Arizona, Arkansas, Colorado, Connecticut, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington, Wisconsin, Wyoming, and the Commonwealth of Puerto Rico.

In executing the Settlement Agreement, Walgreens denied liability, wrongdoing or improper conduct.

UNITED STATES OF AMERICA *ex rel.* BERNARD LISITZA. States *ex rel.* BERNARD LISITZA, and BERNARD LISITZA, individually v. WALGREENS Co., Northern District of Illinois, 03C00744.

Visit <http://www.pharmacyfraudsettlement.com>, a reference Web site for pharmacy fraud and pharmacist whistleblowers just updated with material and filed documents relating to the Walgreens, CVS and Omnicare *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, which is clear from the Walgreens, CVS and Omnicare cases as reported on the PharmacyFraudSettlement.com Web site.

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