

Breaking Legal NEWS

Pharmacy Whistleblower

Medicaid Fraud Settlement

Immediate Release: Thursday, May 21, 2009

Settlement Web site:

www.PharmacyFraud.com

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National Pharmacy Omnicare Pays “Unusual” Settlement to Resolve Charges of Generic Drug Switching in Delaware Nursing Homes

Wilmington, DE, May 21, 2009 – Omnicare, Inc., which calls itself “the nation's leading provider of pharmaceutical care for seniors,” paid \$283,000 to settle Medicaid fraud charges by the State of Delaware. Delaware alleged that the pharmacy had committed Medicaid fraud by illegally switching the drugs of senior citizens in nursing homes and other facilities. Omnicare’s conduct had originally been reported by a Chicago pharmacist whistleblower, who was fired by Omnicare after reporting the switching. The United States and 43 other states had settled similar Medicaid fraud allegations with Omnicare in November of 2006. (01 C 7433)

“This is an unusual achievement by Delaware Attorney General Beau Biden’s Office,” said the pharmacist’s lawyer, Michael I. Behn, of Behn & Wyetzner, Chartered in Chicago, Illinois. “Deputy Attorney General Daniel Miller tenaciously pursued this case, even after the nationwide settlement, to ensure that Delaware taxpayers got back every nickel.”

Deputy Attorney General Miller is Director of Delaware’s Medicaid Fraud Control Unit, which polices Delaware’s Medicaid system. Miller also serves as President of the National Association of Medicaid Fraud Control Units, the organization uniting all state Medicaid fraud prosecutors and investigators.

Delaware charged Omnicare with switching tablets and capsules to garner huge profits by evading federal and state price limits. Ranitidine, the generic form of the antacid Zantac®, typically came in tablets. Given its popularity, the government set maximum prices that Medicaid would pay for the tablets. Ranitidine capsules were infrequently prescribed, and had no maximum prices. Allegedly, Omnicare switched patients’ prescriptions for ranitidine tablets to the expensive capsules -- costing taxpayers up to 400% more. For

Prozac®, Omnicare allegedly switched prescribed capsules to tablets, also to reap profits at taxpayers' expense.

"The Delaware Attorney General's Office and Dan Miller in particular have been at the forefront of national Medicaid fraud prosecutions," said Behn. "This remarkable Omnicare settlement highlights the kind of work Dan and Attorney General Biden's office are doing every day for Delaware taxpayers."

Today's settlement resulted from a "qui tam" suit filed under the Delaware False Claims Act by pharmacist whistleblower Bernard Litzta with Chicago qui tam lawyers Michael Behn and Linda Wyetzner in the United States District Court for the Northern District of Illinois. Delaware's False Claims Act, like the federal False Claims Act, allows private citizens with knowledge of fraud 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 whistleblowers, known as "*qui tam* relators," can receive between 15 and 30 percent of the governments' recovery.

Delaware's Omnicare case is yet another successful whistleblower action handled by Behn & Wyetzner, Chartered for Chicago qui tam relators. 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 2006, Behn & Wyetzner represented the pharmacist whistleblower in a \$50 million Medicaid fraud settlement with Omnicare.

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 (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.

Last year, Cohen represented the relator in a \$400 million multi-state Medicaid fraud settlement with Merck Inc. involving the drugs Vioxx® and Zocor® (EDPA 00CV6158). Terry, during his 17 year tenure as a Medicaid fraud prosecutor with Nevada Attorney General's office, served as President of the National Association of Medicaid Fraud Control Units, the organization uniting all state Medicaid fraud prosecutors.

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

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 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 Web site.

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