Breaking Legal NEWS Pharmacy Whistleblower Medicaid Fraud

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CVS, America's Largest Pharmacy Chain, Pays Nearly \$37 Million to Settle Federal and State Generic Drug Switching Charges

CHICAGO - CVS Corporation, which claims to be America's largest pharmacy chain, has paid nearly \$37 million to settle the nation's first retail pharmacy drug switching case. CVS allegedly charged the government up to 400 percent more for Medicaid patients by illegally changing generic Zantac® prescriptions from tablets to higher priced capsules, according to a multi-state complaint pursued by whistleblower attorneys Michael I. Behn and Linda Wyetzner.

The federal Complaint and Settlement Agreement unsealed today in the Northern District of Illinois stated that CVS garnered huge profits by evading federal and state price ceilings when it unlawfully switched dosage forms. Twenty-four states also entered separate settlements with the company, Behn and Wyetzner said.

The generic form of the antacid Zantac®, ranitidine, typically comes in tablets. Given the drug's popularity, the government set maximum prices that Medicaid would pay for tablets, while infrequently prescribed ranitidine <u>capsules</u> had no maximum prices. When CVS switched patients' prescriptions from ranitidine tablets to the expensive capsules it cost taxpayers up to 400 percent more, according to court documents.

This CVS case was pursued under federal and state False Claims Acts for more than five years by Illinois pharmacist Bernard Lisitza, the relator, and his Chicago attorneys, Behn and Wyetzner. "Bernie's your old-fashioned corner pharmacist who was alarmed by what he saw happening at CVS," said Behn. "It would have been easy for him to look the other way and let CVS's switching continue, at taxpayers' expense. Today's result is a vindication of a dedicated pharmacist's concern for his patients and all Americans who underwrite the costs of Medicaid."

The CVS case was spearheaded by "tough state prosecutors throughout the country," Behn added. "They stand ready, willing and able to take on big new cases. Lisa Madigan here in Illinois, Martha Coakley in Massachusetts, Marc Dann in Ohio, and other state Attorneys General have made health care fraud prosecutions a top priority, and this case is one of the results."

The CVS \$36.7 million settlement is another in a string of successful *qui tam* whistleblower cases brought by Behn & Wyetzner, Chartered. In 2006, Behn represented a pharmacist in a (More)

False Claims Act case against Omnicare for switching drug dosage forms which resulted in a settlement of more than \$50 million. In 2005, Behn represented the plaintiffs in the largest settlement in Illinois and the largest whistleblower settlement in Chicago, in which Northrop Grumman paid \$134 million to resolve claims involving the B-2 "Stealth" bomber. Behn also has represented the American Association of Retired Persons ("AARP") before the Illinois Supreme Court in upholding the constitutionality of the Illinois False Claims Act.

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 it was defrauded, in addition to civil penalties of \$5,500 to \$11,000 per false claim. Behn noted that whistleblowers can receive between 15 and 30 percent of the governments' recovery.

The 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, Deputy Attorney General of Illinois, Robert Patten and Peter Clark, Assistant Attorneys General of Massachusetts, John Guthrie, Director of the Ohio Attorney General's Health Care Fraud Unit, and several other state prosecutors working with the National Association of Medicaid Fraud Control Units ("NAMFCU"). Special Agents of the FBI also assisted in the investigation and prosecution of the CVS case.

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

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Reporters: Visit and bookmark the original-content Web site developed for this case at http://www.pharmacyfraudsettlement.com. 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 noted in the Web site. Pharmacyfraudsettlement.com's contents include filed documents, the fraud allegations, applicable federal laws, and information about the experienced *qui tam* whistleblower attorneys who handled this case.