

# Breaking Legal NEWS

## Pharmacy Whistleblower Medicaid Fraud Settlement

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Settlement Web site:

[www.PharmacyFraudSettlement.com](http://www.PharmacyFraudSettlement.com)

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### **U.S. Department of Justice Alleges Johnson & Johnson Paid Kickbacks to Steer Nursing Home Prescriptions for Anti-Psychotics: Joins Chicago Pharmacist's Whistleblower Case**

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Boston, MA: The United States Department of Justice filed a complaint in Boston federal court today alleging that pharmaceutical manufacturer Johnson & Johnson committed Medicaid fraud by paying Omnicare pharmacies kickbacks for steering nursing home patients to Risperdal® and other Johnson & Johnson drugs. Omnicare is the largest pharmacy supplying drugs to nursing homes in the United States. The Johnson & Johnson case was initiated by a Chicago pharmacist, Bernard Lisitza, who was fired by Omnicare after he challenged the Risperdal® kickbacks and other improper practices. On November 3, 2009, Omnicare paid \$98 million to settle Lisitza's allegations concerning Johnson & Johnson's Risperdal® payments and other alleged kickbacks.

According to the government's complaint, Johnson & Johnson paid tens of millions of dollars in kickbacks to Omnicare, the nation's largest pharmacy for nursing homes. The complaint extensively quotes internal documents from Johnson & Johnson and Omnicare, to demonstrate that the pharmacy's recommendations were for sale. For example, a Johnson & Johnson presentation reported Omnicare pharmacists in nursing homes were "highly motivated based on economics," which depended "less on net costs [to payers], and more on quality of product and 'spread' (their margin)." Confirming that perception, a letter from Omnicare Senior Vice President of Professional Services and Purchasing to Johnson & Johnson brags that "WE ARE SELLING MORE HIGH PRICED DRUGS (read Risperdal here) FOR THE PHARMACEUTICAL INDUSTRY!!"

According to the government and Lisitza, Johnson & Johnson paid huge sums to Omnicare under "market share rebate" agreements, which paid Omnicare according to its success in selling Johnson & Johnson products. Johnson & Johnson also conditioned payment of the rebates upon Omnicare's attempts to convince physicians to prescribe Risperdal® instead of other anti-psychotic drugs. Omnicare allegedly failed to disclose to physicians that its pharmacists' recommendations were tied to Johnson & Johnson's payments. According to the government, Johnson & Johnson's kickbacks drove Omnicare's sales of Johnson & Johnson drugs from \$100 million in 1999 to \$280 million in 2004.

The complaints filed by the United States and by Lisitza, as well as other court documents, can be found at the reference website [www.PharmacyFraudSettlement.com](http://www.PharmacyFraudSettlement.com).

Lisitza has been represented by nationally recognized whistleblower lawyers, Michael Behn and Linda Wyetzner, of Behn & Wyetzner, Chartered in Chicago, Illinois. "The government's complaint paints a sordid picture of Johnson & Johnson payola driving sales of drugs to mentally-ill seniors on Medicaid," said Behn. "Pharmacists are trusted professionals. There can be zero tolerance for kickbacks."

The United States is represented in this case by Senior Trial Attorney Laurie A. Oberembt of the U.S. Department of Justice, and Assistant U.S. Attorneys Gregg Shapiro and Christine Wichers of Massachusetts.

Lisitza's action is a "qui tam" suit 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 federal and state governments 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 governments' recovery.

The Johnson & Johnson case is another successful Medicaid fraud qui tam case handled by Behn & Wyetzner, Chartered. In 2006, Omnicare settled another qui tam by the Chicago pharmacist relator Lisitza that recovered nearly \$50 million for the United States and 43 states. In 2008, Behn & Wyetzner represented the pharmacist whistleblower in a \$37 million Medicaid fraud settlement with CVS pharmacies, and the pharmacist whistleblower in a \$35 million Medicaid fraud settlement with Walgreens pharmacies. Each of these cases were filed in the U.S. District Court in Chicago, Illinois.

Behn & Wyetzner have also handled significant defense procurement fraud cases. In 2009, the firm represented Chicago whistleblowers in a \$15.5 qui tam settlement with advertising agency Leo Burnett for alleged fraud in Army procurement contracts. 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. 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.

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](http://www.WhistleblowerAction.com) for further information about the False Claims Act.

**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 Johnson & Johnson, Omnicare, CVS and Walgreens qui tam whistleblower cases.** 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 Johnson & Johnson case 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 Johnson & Johnson, Omnicare, Walgreens, CVS cases as reported on the [www.PharmacyFraudSettlement.com](http://www.PharmacyFraudSettlement.com) website.

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