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Former Owner of Bostwick Laboratories Agrees to Pay Up to $3.75 Million to Resolve Allegations of Unnecessary Testing and Illegal Remuneration to Physicians

Dr. David G. Bostwick has agreed to pay the United States up to $3.75 million to resolve alleged violations of the False Claims Act for billing Medicare and Medicaid for medically unnecessary cancer detection tests and offering incentives to physicians to obtain Medicare and Medicaid business, the Department of Justice announced today. Dr. Bostwick was the founder, owner and chief executive officer of Bostwick Laboratories Inc. from 1999 to 2011. Bostwick Laboratories is a pathology laboratory headquartered in Glen Allen, Virginia.

“The Department of Justice is committed to ensuring that every laboratory test ordered is based on the medical needs of the patient and not just to increase physician and laboratory profits,” said Principal Deputy Assistant Attorney General Benjamin C. Mizer, head of the Justice Department’s Civil Division. “This case shows that the Department will not hesitate to hold accountable both the companies and the individuals who order or perform excessive, non-patient specific tests and provide inducements to physicians that lead to unnecessary costs being imposed upon our nation’s health care programs.”

The settlement announced today resolves claims that, from 2006 to 2011, Dr. Bostwick allegedly directed Bostwick Laboratories to bill Medicare and Medicaid for expensive cancer detection tests known as Fluorescent In Situ Hybridization (FISH) tests, as well as other tests, that were not medically necessary and were performed without the treating physicians’ consent or order. FISH tests are used to detect bladder cancer. During the time period covered by the settlement, Medicare reimbursement for FISH tests ranged from $456 to $966 per test.

The settlement also resolves allegations that Dr. Bostwick, through Bostwick Laboratories, offered various discounts and billing arrangements to treating physicians to induce physicians to refer business to Bostwick Laboratories in violation of the federal Anti-Kickback Statute. The Anti-Kickback Statute prohibits offering, paying, soliciting or receiving remuneration to induce referrals of items or services covered by federally funded programs. The Anti-Kickback Statute is intended to ensure that a physician’s medical judgment is not compromised by improper financial incentives and is instead based on the best interests of the patient.

“We will continue to combat fraud against federal health care programs through actions against health care providers and by seeking accountability from responsible individuals,” said U.S. Attorney Carter M. Stewart for the Southern District of Ohio. “We are dedicated to holding accountable those who manipulate the health care system to collect money to which they are not entitled.”

Under the settlement announced today, Dr. Bostwick has agreed to pay over $2.6 million plus an additional $1.125 million if certain financial contingencies occur within the next five years - for a total potential payment of up to $3.75 million. On Aug. 28, 2014, Bostwick Laboratories previously agreed to pay over $6.5 million to resolve the allegations in this lawsuit.

The allegations resolved by these settlements were originally brought by whistleblower Michael Daugherty, who works in the industry, under the *qui tam* provisions of the False Claims Act. The act permits private citizens to sue on behalf of the government those who falsely claim federal funds. The act allows the whistleblower to receive a share of any funds recovered through the lawsuit. Daugherty will receive over $2.5 million from the government's settlements with Dr. Bostwick and Bostwick Laboratories.

The government's pursuit of the claims resolved by the settlements illustrates the government's emphasis on combating health care fraud and marks another achievement for the Health Care Fraud Prevention and Enforcement Action Team (HEAT) initiative, which was announced in May 2009 by the Attorney General and the Secretary of Health and Human Services. The partnership between the two departments has focused efforts to reduce and prevent Medicare and Medicaid financial fraud through enhanced cooperation. One of the most powerful tools in this effort is the False Claims Act. Since January 2009, the Justice Department has recovered a total of more than $27.1 billion through False Claims Act cases, with more than $17.1 billion of that amount recovered in cases involving fraud against federal health care programs.

The settlements were the result of a coordinated effort by the Civil Division's Commercial Litigation Branch, the U.S. Attorney's Office for the Southern District of Ohio, and the U.S. Department of Health and Human Services, Office of Inspector General.

The case is captioned, *United States ex rel. Daugherty v. Bostwick Laboratories, Inc.* and *David Bostwick*, Civil Action No. 1:08-cv-354 (S.D. Ohio). The claims resolved by the government are allegations only; there has been no determination of liability.

16-027
Civil Division
Healthcare Fraud

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