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FORMER OWNER OF BOSTWICK LABORATORIES AGREES TO PAY UNITED STATES UP TO \$3,750,000 TO SETTLE ALLEGATIONS THAT HE DIRECTED HIS COMPANY TO OFFER INCENTIVES TO PHYSICIANS IN EXCHANGE FOR REFERRALS AND BILL THE GOVERNMENT FOR UNORDERED TESTS AND SERVICES

On behalf of its client Michael Daugherty, CEO of LabMD, Inc., Morgan Verkamp LLC is pleased to announce that Dr. David G. Bostwick has agreed to pay the United States up to \$3,750,000 to resolve allegations regarding violations of the False Claims Act.

The False Claims Act allows private citizens to bring cases in the name of the United States against government contractors charged with fraud. False Claims Act cases, also called *qui tam* cases, recover damages back to the Treasury for false claims made to federal programs, including federal healthcare programs.

The *qui tam* complaint was filed in May 2008. It alleges that Bostwick Laboratories, Dr. Bostwick's eponymous former company, improperly billed Medicare and Medicaid for tests and services referred in violation of the Anti-Kickback Statute and for tests performed without a doctor's order or consent. Dr. Bostwick was named as an individual defendant in the case when Mr. Daugherty amended the complaint in 2012 with allegations that Dr. Bostwick controlled the actions of his company to such an extent that Bostwick Laboratories had no separate mind from the man himself. In his opinion denying Dr. Bostwick's motion to dismiss, the late Judge S. Arthur Spiegel found that Mr. Daugherty had laid out sufficient allegations from which a plausible inference could be drawn that Dr. Bostwick "both personally participated in the fraud...and that the fraudulent actions of Bostwick Lab can be imputed to him by virtue of the control he exerted over the company." *U.S. ex rel. Daugherty v. Bostwick Laboratories, et al.*, 2012 U.S. Dist. LEXIS 178641 (S.D. Ohio Dec. 18, 2012).

The case against Bostwick Laboratories settled in September 2014 after the company entered into settlement discussions with Mr. Daugherty and the United States based on the company's inability to pay the full value of the damages sought in the *qui tam* action, and the settlement of Dr. Bostwick's case is similarly based on his inability to pay. The settlement is structured so that Dr. Bostwick will pay over \$2.6 million, with an additional \$1.125 million to be paid if certain financial contingencies occur within the next five years.

Jennifer Verkamp of Morgan Verkamp said "Mr. Daugherty exposed public health insurance fraud in one of the most costly, and most frequently abused, segments of health care. When laboratories and other suppliers and providers pay kickbacks to obtain business from providers, honest companies cannot compete, and the entire system suffers. We support the Department of Justice's efforts to hold accountable individuals as well as corporations who are responsible for directing fraud on the taxpayers, and we commend Mr. Daugherty for pursuing these serious allegations against both the company and the individual owner for devising the schemes at issue."

The Department of Justice was represented by Assistant United States Attorney Andrew Malek and Civil Division Trial Attorney Alison Cendali, of Washington, D.C., who were instrumental in reaching settlement terms with Dr. Bostwick. The case is *U.S. ex rel. Daugherty v. Bostwick Labs, et al.*, No. 1:08-cv-354, in the U.S. District Court, Southern District of Ohio.

Morgan Verkamp, LLC represents clients nationwide in cases under the False Claims Act.
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