

Morgan Verkamp LLC – Cincinnati, Ohio (Contact: Frederick M. Morgan, Jr., Tel. (513) 651-4400)  
Calfee, Halter & Griswold LLP – Cleveland, Ohio (Contact: Virginia A. Davidson, Tel. (216) 622-8588)  
Sanford Heisler LLP – New York, New York (Contact: Ross Brooks, Tel. (646) 402-5668)  
Berger Montague, PC – Philadelphia, Pennsylvania (Contact: Daniel R. Miller, Tel. (215) 875-5702)

FOR IMMEDIATE RELEASE

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## **Omnicare (NYSE: OCR) Agrees to Pay United States \$120,000,000 to Settle Allegations of Illegal Discounts to Nursing Homes In Exchange for Patient Referrals**

Cincinnati-based Omnicare, a Fortune 400 company and the nation's largest provider of pharmacy services to nursing home patients, has agreed to pay the United States \$120 Million to resolve kickback and false-claims allegations brought by Donald Gale, an Ohio pharmacist who worked for the company from 1993 until 2010. Mr. Gale sued Omnicare pursuant to the United States Civil False Claims Act. The agreement between Mr. Gale and Omnicare, which was announced in open court in Cleveland on Tuesday, will not be final until it is approved by the Civil Division of the United States Department of Justice, avoids a jury trial scheduled for Monday, October 28. Omnicare acknowledged the settlement in SEC filings this morning, indicating a material impact on the corporation.

Mr. Gale's complaint alleges a kickback scheme called "swapping," asserting that Omnicare paid nursing home owners kickbacks in the form of heavily-discounted prescription drugs for Medicare Part A inpatients. The nursing homes are financially responsible for Part A patients' medical because Medicare pays a flat fee to the facility. Omnicare offered the nursing homes daily, or "*per diem*," pricing. Mr. Gale's Complaint alleges that the *per diem* pricing for hundreds of facilities was substantially below the fair market value of the goods provided, and that this violated the Medicare Anti-Kickback Statute and the False Claims Act because Omnicare gave the discounts intending that the nursing homes would refer, or "swap," their non-Part A patients, most of whom participate in the Medicare Part D prescription-drug benefit program, to Omnicare. Omnicare then charged full price for their prescription drugs and other pharmacy services. The HHS Office of Inspector General has made clear since 1999, when Medicare Part A services were converted to the "Prospective Payment system," that swapping was prohibited by the Anti-Kickback Statute.

Mr. Gale was the General Manager of an Omnicare pharmacy in Wadsworth, Ohio. His civil complaint was filed under seal in January 2010. The case was unsealed in 2011, after the U.S. Attorney for the Northern District of Ohio elected not to intervene. This decision, which occurs in about 85% of False Claims Act cases, cleared the way for Mr. Gale to pursue the case on behalf of the taxpayers. The case has been vigorously litigated since early 2012.

Omnicare has paid prior False Claims Act settlements alleging payment of kickbacks to nursing homes and receipt of kickbacks from drug companies. It has, since 2006 operated under a series of Corporate Integrity Agreements with the HHS Office of Inspector General.

The False Claims Act, also called "Lincoln's Law," was first signed by President Lincoln in 1863. Amendments in 1986 made it the primary weapon of the United States against fraud and abuse by government contractors. The FCA permits a private citizen like Mr. Gale to bring a case in the name of the United States, and to recover a portion of any recovery. If the Justice Department approves the Omnicare settlement, Mr. Gale's share of the proceeds will be 25 to 30% of the federal recovery.

According to Frederick Morgan of the Morgan Verkamp law firm in Cincinnati, "Don Gale is living proof that no matter how large the corporation, one person can make an enormous difference. He showed great courage in coming forward to bring Omnicare's swapping arrangements to the attention of the United States, and in weathering months of fierce litigation and trial preparation, with no certainty of recovery. Mr. Gale assembled a talented and devoted team of litigators who worked tirelessly to prepare this complex case for trial, resulting in the eleventh-hour settlement which we have asked the Justice Department to approve." Morgan believes that this is one of the largest settlements of a *qui tam* case which the Justice Department did not take over.

The False Claims Act creates a unique and powerful public/private partnership for the pursuit of fraud claims by whistleblowers. Mr. Gale's legal team worked in close coordination with attorneys of the Department of Justice's Civil Division in Washington and the Office of Northern District of Ohio United States Attorney Steven M. Dettlebach.

Mr. Gale is represented by Rick Morgan, Jennifer Verkamp, and Sara Vann of Morgan Verkamp LLC; Virginia Davidson and Eric Zell of Calfee Halter & Griswold LLP; Ross Brooks and Roland Marquez of Sanford Heisler LLP; and Daniel Miller and Shauna Itri of Berger Montague.

The case remains pending until final resolution before United States District Judge James S. Gwin of the United States District Court for the Northern District of Ohio. Judge Gwin has asked the parties to resolve all remaining issues within three weeks.