

FRESENIUS MEDICAL HOLDINGS, INC. ORDERED TO PAY \$19.4 MILLION FOR FRAUDULENT MEDICARE CLAIMS

Philadelphia, PA, March 24, 2010. United States District Court Judge William J. Haynes, Jr. issued an order on March 22, 2010 awarding the United States \$19,366,705.00 plus prejudgment interest on unjust enrichment claims against Renal Care Group (“RCG”), RCG Supply Company (“RCGSC”) and Fresenius Medical Care Holdings, Inc. as the successor-in-interest to RCG and RCGSC. This award to the United States arises from claims made in a whistleblower complaint alleging fraudulent Medicare and Medicaid billing practices by RCG and RCGSC that violated the False Claims Act. Philadelphia-area law firms Kenney & McCafferty and Egan Young filed the Complaint.

RCG engaged in a multi-state scheme whereby it created a sham supply company, RCGSC, solely to take advantage of higher reimbursement rates paid for home dialysis supplies under the now defunct Medicare Method II billing program, according to the *qui tam* Complaint filed on behalf of former RCG employees, Julie Williams and John Martinez, M.D.

Between January 1999 and December 2005, RCGSC submitted claims for reimbursement to the Medicare program for home dialysis equipment and supplies provided to End-Stage Renal Disease (“ESRD”) patients. All of these claims, as well as related claims for support services rendered by RCG dialysis clinics were ineligible for reimbursement because RCGSC was not qualified to bill Medicare for these home dialysis patients.

“This ruling serves as a significant reminder that fraudulent Medicare billing practices are not going to be tolerated. RCG was aware, as evidenced by their own internal communications and documents, that they were attempting to operate ‘above the law.’ Through the persistence and dedication of the government and our clients, the Court has rendered justice,” said Brian Kenney, who along with Kenney & McCafferty lawyer Emily Lambert and Egan Young attorney, Eric L. Young, represented the whistleblowers.

According to Eric Young, “RCG’s operation of a bogus supply company in order to artificially increase its Medicare reimbursements came at a great cost to taxpayers. Due to the courageousness of people like Ms. Williams and Dr. Martinez, in addition to the hard work and tenacity of counsel, including federal prosecutors, Andrew Lay and Laurie Oberembt, Fresenius is being held accountable for RCG’s misconduct. It is our hope that this decision will encourage more people who become aware of fraud on the government to step forward, particularly when waste and abuse of our tax dollars is at an all time high.”

Emily Lambert agreed stating “RCG’s operations not only took advantage of taxpayers through fraudulent Medicare billing, they also took advantage of the sick and vulnerable nature of their patients using their Medicare beneficiary status to line corporate pockets”.

In granting judgment for the United States, Judge Haynes found that RCG and RCGSC were unjustly enriched by their receipt of Method II payments for dialysis supplies that RCGSC procured unlawfully. Additionally, the Court found that the supply company itself was not a legitimate supplier of home dialysis supplies.

The federal investigation into RCG's fraudulent billing practices was conducted by the U.S. Attorney's Office for the Eastern District of Missouri under the direction of acting U.S. Attorney Michael W. Reap, and Assistant U.S. Attorney Andrew Lay with the assistance of the U.S. Attorney's Office for the Middle District of Tennessee, under the direction of U.S. Attorney Edward Yarborough, and Assistant U.S. Attorney Lisa Rivera, and Laurie Oberembt from the Department of Justice.

United States ex rel. Williams, et al. v. Renal Care Group, et al.
Middle District of Tennessee CA No.: 3:09-00738