

Feds Eye J&J In Kickback Scheme

Antipsychotic Drug Risperdal At Center Of Suit

The Justice Department has filed a civil False Claims Act complaint against drug manufacturer Johnson & Johnson (J&J) and its subsidiaries Ortho-McNeil-Janssen Pharmaceuticals and Johnson & Johnson Health Care Systems, alleging the companies took part in a kickback scheme with pharmacy firm Omnicare.

The government said the companies allegedly paid millions of dollars in kickbacks to Omnicare, the nation's largest long term care pharmacy specializing in dispensing drugs to skilled nursing facility (SNF) patients, from 1999 to 2004. The payments broke federal antikickback laws and led to Omnicare submitting false Medicaid claims, the government said in the

complaint filed by the office of the U.S. attorney in Boston.

In November 2009, the government, numerous states, and Omnicare entered into a separate \$98 million settlement agreement that resolved Omnicare's civil liability under the False Claims Act for allegedly taking kickbacks from J&J.

The details of the new complaint allege that J&J paid kickbacks to entice Omnicare to purchase and recommend J&J drugs, including the antipsychotic drug Risperdal,

for patients suffering from dementia in nursing facilities. J&J understood that Omnicare's pharmacists reviewed nursing facility patients' charts at least monthly and made recommendations to physicians on what drugs should be prescribed for those patients, the complaint said.

In addition, the government alleges that J&J knew physicians accepted the Omnicare pharmacists' recommendations more than 80 percent of the time, and that J&J viewed such pharmacists as an "extension of [J&J's] sales force."

Risperdal is approved by the Food and Drug Administration to treat schizophrenia and bipolar disorder, but it is not specifically approved to treat behavioral problems in elderly people with dementia and has since been found to be harmful for treating Alzheimer's and related diseases.

The alleged kickbacks and payments came in numerous forms.

First, the complaint alleges that J&J entered into agreements with Omnicare by which Omnicare was entitled to increasing levels of rebates from J&J so long as Omnicare implemented specific

programs to increase the prescriptions of J&J drugs.

Second, the complaint alleges that J&J paid Omnicare millions of dollars for "data," much of which Omnicare never provided. According to the complaint, the true purpose of these payments was to induce Omnicare to

recommend J&J drugs.

Third, the complaint alleges that J&J made various other substantial kickback payments to Omnicare, calling the payments "grants" and "edu-

cational funding," even though their true purpose was to induce Omnicare to recommend J&J drugs.

Tony West, assistant attorney general for the Civil Division of the Justice Department, said the government would pursue the case aggressively.

"Kickbacks such as those alleged here distort the judgments of health care professionals and put profits ahead of sound medical treatment," he said.

The company said it will fight the allegations in court. "We are reviewing the complaint and will address the government's lawsuit in court. We believe airing the facts will confirm that our conduct, including rebating programs like those the government now challenges, was lawful and appropriate. We look forward to the opportunity to present our evidence in court," a J&J spokesman said.

Risperdal sales made up around 4 percent of J&J's \$45.3 billion, or \$1.73 billion, in revenue for the first nine months of 2009.

The complaint was prompted by two former Omnicare workers.

—Patrick Connoles

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