Bristol-Myers Squibb Agrees To Pay $30 million To Settle Whistleblower Case Brought Under The California Insurance Fraud Prevention Act (IFPA)

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In 1993, the California Legislature enacted the Insurance Frauds Prevention Act ("IFPA") in a unique effort to combat rampant insurance fraud that was driving up the cost of insurance premiums for citizens throughout the state. In particular, California lawmakers sought to deter fraudulent activity related to automotive insurance, workers’ compensation, and healthcare claims.

With regard to the latter, the IFPA expressly recognizes that “[h]ealth insurance fraud is a particular problem for health insurance policyholders. Although there are no precise figures, it is believed that fraudulent activities account for billions of dollars annually in added health care costs nationally. Health care fraud causes losses in premium dollars and increases health care costs unnecessarily.”

One of the specific fraudulent practices the IFPA is designed to prevent is the payment of unlawful kickbacks to doctors for prescribing certain medicines.

This month, after nearly a decade of litigation, Bristol-Myers Squibb agreed to pay $30 million to settle an IFPA lawsuit that was filed in 2007 by three former Bristol-Myers employees. The whistleblowers alleged that Bristol-Myers Squibb violated the IFPA by employing and using sales representatives for the purpose of defrauding private commercial health insurers by using kickbacks to procure patients or clients. The kickbacks were designed to increase physician prescriptions of several drugs produced by Bristol-Myers Squibb including Pravachol, used to lower cholesterol. Enticements included:

- Box suites at sporting events where physicians were provided tickets, food, drinks, and parking.
- Enrollment in a Lakers basketball camp for doctors and their children.
- Pre-paid golf outings at luxurious golf courses.
- Tickets for physicians and their families to see Broadway plays in California cities.
- Monetary incentives given to doctors responsible for prescription-drug decisions for formularies.
- Lavish dinners, resort hotel trips, and concert tickets, given to doctors who were large-volume prescribers, to induce more prescriptions in the future.

In addition to the $30 million payment, the settlement agreement with the California Insurance Commissioner Dave Jones requires Bristol-Myers Squibb to affirm its commitment to abiding by California laws regulating its sales representatives' interactions with doctors, including compliance with pertinent provisions of the IFPA.

The Bristol-Meyers settlement is a prime example of how regular citizens can use the IFPA to hold wrongdoers accountable for fraudulent acts that harm the public. The IFPA provides for civil penalties of $5,000 and $10,000 per insurance claim that is made as a result of fraud (so, here, every prescription doctors wrote as a result of the kickback scheme that was then submitted for payment by an insurer), plus an additional assessment of up to
three times the amount of each claim for compensation. In addition, the IFPA vests the court with authority to grant additional relief as needed to protect the public interest. This additional relief can take the form of an injunction, which prohibits future fraudulent conduct—and can change industry practices.

**How the IFPA works**

Codified at section 1871 of the California Insurance Code, the California Insurance Fraud Prevention Act ("IFPA") allows members of the public to bring whistleblower lawsuits in the name of the State against anyone who submits a fraudulent insurance claim to a California insurance provider. Some of the most common types of fraud prohibited by the IFPA include:

- Providing kickbacks to doctors to prescribe certain medications.
- Billing for healthcare services that were not provided.
- Submitting multiple claims for a single health service.
- Knowingly causing an auto accident for the purpose of submitting false insurance claims.
- Underreporting the number of employees to avoid paying proper workers' compensation insurance.
- Providing kickbacks to insurance agents for sending business to a particular automotive repair business.

Once an IFPA violation has been identified, the complaint is filed under seal in state court and served on the local district attorney and the California insurance commissioner. The district attorney and insurance commissioner then have 60 days (or longer) to decide whether or not to intervene in the case. If either the district attorney or the commissioner decides to intervene, government attorneys may take a leading role in the prosecution, or they may allow the relator (the technical term for the whistleblower or other private citizen who initiates the lawsuit) to take the lead with the government in a supporting role.

In cases where government attorneys intervene to assist with the prosecution of the case, the relator is entitled to collect 30-40% of any recovery from the defendant, whether that recovery is achieved through settlement or a favorable judgment. For purposes of determining the relator’s share, the “total recovery” is the amount remaining after the government and the relator have been reimbursed for reasonable attorneys’ fees, costs and expenses incurred during the case.

If the government does not intervene, the relator may proceed with the case with her own counsel. If she chooses to proceed without the government’s help, she stands to recover 40-50% of any eventual recovery. Whether the government intervenes or not, the exact percentage of the relator’s recovery will depend upon “the extent to which the person substantially contributed to the prosecution of the action.” Moreover, if the court determines that the relator’s case is based primarily on information that was already publicly available, such as news articles or public hearings, the relator’s share of the recovery is reduced to a maximum of 10% of the recovery.

In addition to steep penalties for fraudulent acts and generous payments to the relator in successful cases, the IFPA has specific provisions aimed at protecting whistleblowers from retaliation for reporting fraudulent practices. The Act states that employees who suffer retaliation as a result of their involvement in reporting insurance fraud are entitled to complete relief, which includes reinstatement in a position with seniority equal to what the employee would have had absent the retaliation, plus twice the amount of back pay the employee is due, with interest. In addition, employees who are discriminated against in violation of the statute are entitled to attorneys’ fees and reasonable litigation costs.

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