On August 21, 2017, Acting United States Attorney Gregory G. Brooker of the United States Attorney’s Office for the District of Minnesota announced that the U.S. government reached a settlement of $12 million with Sightpath Medical over its alleged use of kickbacks to promote its products, in violation of federal law. Whistleblower Kipp Fesenmaier, former vice president of the medical devices and services company, brought the qui tam lawsuit against the company in 2013 for allegedly violating the False Claims Act and the Anti-Kickback Statute. Fesenmaier claimed that Sightpath knowingly took advantage of Medicare by using extravagant trips and social events to entice doctors to use its products and services, which were then billed to government healthcare programs. The settlement is resolved with no admissions of liability or wrongdoing by the defendants, although their agreement to pay $12 million is a strong indication that the whistleblower’s allegations had strong support in the evidence.

Sightpath Medical is a subsidiary of TLC Vision Corporation, a privately-held Canadian company and provider of the popular Lasik eye correction procedure. Sightpath specializes in products and services in eye surgery centers and doctors’ offices across Canada and the U.S. that offer services that can be paid for by federal healthcare programs, such as Medicare. The lawsuit claimed that between January 1, 2006 and January 1, 2015, Sightpath Medical planned luxury hunting, skiing, fishing, and golfing trips, and offered phantom “consulting” agreements, as a way to bribe physicians to use its products in their practice, including the mobile cataract surgery equipment and eye surgery procedures that would be covered by Medicare. By improperly inducing these doctors to use its products and services, Sightpath violated the Anti-Kickback Statute and the False Claims Act. Former Sightpath president James Tiffany was also a defendant in the lawsuit, and also a party to the the $12 million settlement with whistleblower Fesenmaier and the U.S. government.

FBI Special Agent in Charge Richard T. Thornton of the Minneapolis Division stated, “The FBI together with our law enforcement partners aggressively investigate companies and individuals who engage in kickback schemes at the expense of Medicare and other federal health care programs.” Adding that, “Those who seek to exploit the nation’s healthcare system through fraud will be held accountable.”

As a whistleblower protected under the False Claims Act, Mr. Fesenmaier is entitled to receive between 15 and 30 percent of the $12 million recovered by his successful qui tam lawsuit. The settlement of this case stipulates that he will receive 19.5% of the amount recovered. This means that, as the qui tam whistleblower, Mr. Fesenmaier will receive approximately $2.3 million as his reward for bringing the lawsuit.

Healthcare companies like Sightpath Medical often engage in government programs fraud by using kickback schemes, or by submitting false claims to Medicare and Medicaid.

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