

Department of Justice

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Forest Laboratories and Forest Pharmaceuticals to Pay \$38 million to Resolve Kickback Allegations Under the False Claims Act

Forest Laboratories LLC, located in New York, New York, and its subsidiary, Forest Pharmaceuticals Inc., have agreed to pay \$38 million to resolve allegations that they violated the False Claims Act by paying kickbacks to induce physicians to prescribe the drugs Bystolic®, Savella®, and Namenda®, the Department of Justice announced today.

“Kickback schemes undermine the integrity of medical decisions and increase the costs of health care for everyone,” said Principal Deputy Assistant Attorney General Benjamin C. Mizer, head of the Justice Department’s Civil Division. “Such schemes are particularly of concern when they are designed to influence drug prescriptions, and the Department of Justice will vigorously pursue companies that subvert the law at the public’s expense.”

The settlement resolves allegations that Forest violated the Anti-Kickback Statute, which prohibits the payment of remuneration to induce referrals of items or services covered by federal health care programs, by providing payments and meals to certain physicians in connection with speaker programs about Bystolic®, Savella®, or Namenda® between Jan. 1, 2008 and Dec. 31, 2011. The United States contends that the payments and meals were intended as improper inducements because Forest provided these benefits even when the programs were cancelled (and Forest provided no evidence of a bona fide reason for the cancellation), when no licensed health care professionals attended the programs, when the same attendees had attended multiple programs over a short period of time, or when the meals associated with the programs exceeded Forest’s internal cost limitations.

As a result of today’s \$38 million settlement, the federal government will receive \$35.5 million and state Medicaid programs will receive \$2.5 million. The Medicaid program is funded jointly by the state and federal governments.

“We are committed to protecting federally funded healthcare programs from fraud, and this settlement reflects that commitment,” said U.S. Attorney Gregory J. Haanstad for the Eastern District of Wisconsin. “We are particularly concerned with ensuring that drugs are prescribed based on patients’ needs and not on the personal financial interests of drug manufacturers or prescribing physicians.”

“Quality and patient safety must be the driving factors in the medical decision making process,” said Special Agent in Charge Lamont Pugh III of U.S. Department of Health and Human Services, Office of Inspector General (HHS-OIG) – Chicago Regional Office. “Attempting to sway physicians to deviate from those core values with illegal inducements, as alleged in this lawsuit, debilitates their unbiased medical judgment at the expense of patients and taxpayers.”

The settlement resolves allegations filed in a lawsuit by former Forest employee Kurt Kroening, in federal court in Milwaukee, Wisconsin. The lawsuit was filed under the *qui tam*, or whistleblower, provisions of the False Claims Act, which permit private individuals to sue on behalf of the government for false claims and to share in any recovery. Mr. Kroening will receive approximately \$7.8 million.

This settlement illustrates the government’s emphasis on combating health care fraud and marks another achievement for the Health Care Fraud Prevention and Enforcement Action Team (HEAT) initiative, which was announced in May 2009 by the Attorney General and the Secretary of Health and Human Services. The partnership between the two departments has focused efforts to reduce and prevent Medicare and Medicaid financial fraud through enhanced cooperation. One of the most powerful tools in this effort is the False Claims Act. Since January 2009, the Justice

Department has recovered a total of more than \$31.1 billion through False Claims Act cases, with more than \$19.4 billion of that amount recovered in cases involving fraud against federal health care programs.

The settlement is the result of a coordinated effort by the Civil Division's Commercial Litigation Branch and the U.S. Attorney's Office for the Eastern District of Wisconsin, with assistance from the HHS Office of the Inspector General, the HHS Office of Counsel to the Inspector General, the Office of the General Counsel for the Defense Health Agency, the National Association of Medicaid Fraud Control Units, and the FBI.

The case is captioned *United States ex rel. Kroening v. Forest Pharmaceuticals, Inc., et al.*, Case No. 12-CV-366. The claims resolved by the settlement are allegations only, and there has been no determination of liability.

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Civil Division

USAO - Wisconsin, Eastern

Topic:

Healthcare Fraud

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