

False Claims Act Complaint Leads to \$256 Million Settlement for US Government

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A Bailey Glasser client alerted the government to fraud scheme that resulted in doctors ordering medically unnecessary and expensive lab tests.

As a compliance officer at Calloway Laboratories, Robert Cunningham learned of a scheme by Calloway competitor Millennium Health to encourage physicians to perform and order medically unnecessary urine drug screen tests. Millennium encouraged doctors to use its in-office “point of care” screening tests and then send those results to Millennium for lab confirmations done on a wholesale basis, without regard to the medical need for them. This confirmation test “production line” ran every screen through these expensive tests, when accepted medical practice called for confirming only positive results or those that were unexpected or unreliable.

On December 29, 2009, Cunningham filed a False Claims Act case against Millennium, putting the federal government on notice of a scheme that was costing government health care systems such as Medicare and Medicaid hundreds of millions of dollars.

On Monday, October 20, 2015, Millennium Health agreed to a \$256 million settlement with the federal government and participating states to resolve the allegations first raised by Cunningham. Cunningham died in 2010, but his estate carried on the claim, with the assistance of Bailey Glasser attorneys John Roddy and Elizabeth Ryan, and Boston attorney Robert Griffith.

“The Department of Justice is committed to ensuring that laboratory tests, including drug and genetic tests, are ordered based on each patient’s medical needs and not just to increase physician and laboratory profits,” said Principal Deputy Assistant Attorney General Benjamin C. Mizer, head of the Justice Department’s Civil Division. “We will not tolerate practices such as the ordering of excessive, non-patient specific tests and the provision of inducements to physicians that lead to unnecessary costs being imposed upon our nation’s health care programs.”

Cunningham supported his allegations with multiple disclosure memoranda, as well as extensive documentary evidence and a series of in-person interviews to support the complaint and assist the government’s investigation.

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Cunningham described the different ways Millennium induced doctors to order this unnecessary screening. The lab provided doctors with test cups that it said would allow them to test once but bill up to 12 times for each test result. Marketing material from Millennium aimed at physicians outlined the amount of money the doctors could make, and warned doctors that failure to confirm all negative test results could expose them to malpractice liability.

The information and evidence brought forward by Cunningham culminated in this settlement.