

NEWS RELEASE
FOR IMMEDIATE RELEASE

CONTACT

Jim Gottstein

907-274-7686

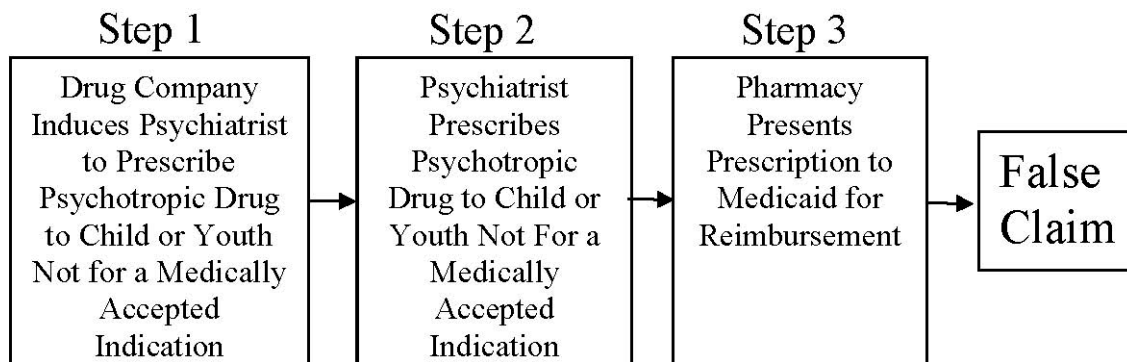
jim.gottstein@psychrights.org

March 24, 2011

**Department of Justice Moves to Protect Medicaid Defrauders:
Court Sets Hearing for April 7th**

Due to the massive amount of harm inflicted on children and youth, in July of 2009, the Law Project for Psychiatric Rights (PsychRights®) [launched](#) its [Medicaid Fraud Initiative](#) with a [model Qui Tam Complaint](#) for people to use around the country. This initiative combines Medicaid's coverage restriction of outpatient drugs to those that are for a "medically accepted indication" and the right of people to sue on behalf of the government and share in the recover, if any under the False Claims Act.

Fraudulent Scheme



The Department of Justice has recovered billions of dollars from drug companies for causing false claims at Step 1 of the Fraudulent Scheme, but have declined intervention involving defendants at Steps 2 & 3 in [two Alaska cases](#), as well as the [ex rel Nicholson](#) case in Illinois.¹

In a surprising action, however, on March 7th, the Department of Justice actively moved to protect alleged defrauding defendants at Steps 2 & 3 by [asking the judge to dismiss](#) the [ex rel Nicholson](#) case for what appears to be disingenuous reasons. Randy Kretchmar, Ms. Nicholson's attorney, said, "We have offered to address their concerns through agreement and they have thus far failed to respond. This reinforces the view stated in our [opposition](#) that the [motion to dismiss](#) is disingenuous."

As background, in 2007-2008, there were two suspicious letters on the letterhead of the agency charged with administering the Medicaid program, the Centers for Medicare and Medicaid Services (CMS), that assert

¹ [United States ex rel Linda Nicholson v. Lilian Spigelman, M.D., Hephzibah Children's Association, and Sears Pharmacy](#), USDC, ND Illinois Case No. 10-cv-3361.

Congress did not limit outpatient drug coverage under Medicaid to those used for a medically accepted indication.² This is directly contrary to the formal position of the United States Government, taken in a number of False Claims Act cases against drug companies.³

Law Project for Psychiatric Rights president Jim Gottstein in speaking with a US Attorney was told that even though they are false claims, the government would decline to intervene in that jurisdiction if a case was brought against a doctor or pharmacy as a matter of prosecutorial discretion. In the Alaska cases, the local US Attorney's office appeared to be taking its direction from CMS.

In light of this, PsychRights asked Eric Pruitt, the Assistant United States Attorney who filed the [motion to dismiss](#) on behalf of the United States Government, the following questions:

1. Why shouldn't it be concluded the Department of Justice and CMS are protecting prescribers and pharmacies for their participation in this continuing massive fraudulent scheme?
2. Does CMS take the position that prescriptions not for a medically accepted indication are covered under Medicaid?
3. Is CMS calling the shots on the Department of Justice's response to the *qui tam* cases against prescribers and pharmacies for causing and presenting false claims to Medicaid for psychotropic drugs used on children and youth that are not for a medically accepted indication?
4. Do the Department of Justice and CMS consider only the economic point, i.e., the drug companies have deeper pockets, or are they attempting to make an independent judgment that somehow psychiatrists and pharmacists are less culpable for the same fraud?
5. Even if so, why is CMS still paying these false claims on a massive scale?

Mr. Pruitt declined to answer, saying "We do not comment on pending cases:"

In response, Mr. Gottstein said, "The public is entitled to know the answers to these questions. Obtaining large recoveries from drug companies is an ineffective sanction, because the fraudulent prescribing practices are continuing unabated. It appears the Department of Justice is now actively protecting doctors and pharmacies committing Medicaid Fraud."

The court has set a hearing on the government's motion for April 7th at 9:25 am, Room 1725, 219 S. Dearborn, Chicago, Illinois.

###

The Law Project for Psychiatric Rights is a public interest law firm devoted to the defense of people facing the horrors of forced psychiatric drugging and electroshock. PsychRights is further dedicated to exposing the truth about psychiatric interventions and the courts being misled into ordering people subjected to these brain and body damaging drugs against their will. Due to the massive growth in psychiatric drugging of children and youth, PsychRights has made attacking this problem a priority. Extensive information about these dangers, and about the tragic damage caused by electroshock, is available on the PsychRights web site: <http://psychrights.org/>.

² See pages 6-8 of the [Opposition to United States Motion to Dismiss](#) at pages 6-8.

³ For example, see the United States' Statement of Interest in *United States of America ex rel Polansky v. Pfizer, Inc.*, EDNY, Case No. 1:04-cv-0074-ERK-ALC, which can be found on the Internet at <http://psychrights.org/States/Alaska/Matsutani/9thCir10-35887/37-2-110305USPolanskyStatementOfInterest.pdf>