

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF ALASKA

UNITED STATES OF AMERICA)	Civil Action No. _____
<i>Ex rel.</i> Daniel I. Griffin)	
)	FILED <i>IN CAMERA</i> AND
Plaintiff,)	UNDER SEAL
)	
vs.)	FALSE CLAIMS ACT
)	MEDICAID FRAUD
)	
RONALD A. MARTINO, MD,)	
FAMILY CENTERED SERVICES OF)	
ALASKA, INC., an Alaska corporation, and)	JURY TRIAL DEMANDED
SAFEWAY, INC., a Delaware corporation,)	
)	
Defendants.)	
_____)	

**PLAINTIFF'S COMPLAINT PURSUANT TO 31 U.S.C §§ 3729-3732
OF THE FEDERAL FALSE CLAIMS ACT**

The United States of America, by and through *qui tam relator* Daniel I. Griffin (*Relator*), brings this action under 31 U.S.C §3729, *et seq.*, as amended, (False Claims Act) to recover all damages, penalties and other remedies established by the False Claims Act on behalf of the United States.

I. PRELIMINARY STATEMENT

1. This is an action to recover damages and civil penalties on behalf of the United States of America, for violations of the False Claims Act arising from false or fraudulent records, statements, or claims, or any combination thereof, made, used or caused to be made, used, or presented, or any combination thereof, by the defendants, their agents, employees, or co-conspirators, or any combination thereof, with respect to

false claims for psychotropic medications prescribed to *Relator* and other minors for which claims were made to the federal Medicaid Program.

2. The False Claims Act provides that any person who knowingly presents, or causes the presentment of, a false or fraudulent claim to the U.S. Government for payment or approval is liable for a civil penalty of up to \$11,000 for each such claim, plus three times the amount of damages sustained by the Government.

3. The Act allows any person having information about a false or fraudulent claim against the Government to bring an action on behalf of the Government and share in any recovery. The Act requires the complaint to be filed under seal for a minimum of 60 days (without service on the defendant during that time) to allow the Government time to conduct its own investigation and to determine whether to join the suit.

4. Under Medicaid,
- (a) psychiatrists,
 - (b) mental health agencies, and
 - (c) pharmacies,

all have specific responsibilities to prevent false claims from being presented and are liable under the False Claims Act for their role in the presentment of false claims.

5. This is an action for treble damages and penalties for each false claim and each false statement under the False Claims Act.

II. PARTIES

6. *Relator*, DANIEL I. GRIFFIN, was prescribed and given psychotropic medications when a minor that were presented to Medicaid and constitute false claims under the False Claims Act.

7. Defendant RONALD A. MARTINO, MD (Martino) is a resident of the District of Alaska and caused false claims to be presented to Medicaid by prescribing psychotropic drugs to *Relator* and other minors, and is continuing to cause false claims to be presented to Medicaid by prescribing psychotropic drugs to minors..

8. Defendant, FAMILY CENTERED SERVICES OF ALASKA, INC., (FCSA) is an Alaskan non-profit corporation doing business in the District of Alaska, and has caused false claims to be presented to Medicaid for drugs prescribed to *Relator* and other minors, and continues to causes false claims to be presented to Medicaid for psychotropic drugs prescribed to minors.

9. Defendant, SAFEWAY, INC., (Safeway) does business in the District of Alaska, is a national retailer, including of prescription drugs, and presented false claims to Medicaid for prescriptions prescribed to *Relator* and other minors, and continues to present false claims to Medicaid for reimbursement of psychotropic drugs prescribed to minors.

III. JURISDICTION AND VENUE

10. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §1331, and 31 U.S.C. §3732, the latter of which specifically confers jurisdiction on this Court for actions brought pursuant to 31 U.S.C. §§3729 and 3730.

11. There have been no public disclosures of the allegations or transactions contained herein that bar jurisdiction under 31 U.S.C. §3730(e).

12. This Court has personal jurisdiction over the defendants pursuant to 31 U.S.C. §3732(a) because that section authorizes nationwide service of process and because all the defendants have at least minimum contacts with the United States, and can be found in, reside, or transact or have transacted, business in the District of Alaska.

13. Venue exists in the United States District Court for the District of Alaska pursuant to 31 U.S.C. § 3730(b)(1) because all of the defendants have at least minimum contacts with the United States, and all the defendants can be found in, reside, or transact or have transacted business in the District of Alaska.

IV. APPLICABLE LAW

A. Medicaid

14. Medicaid is a public assistance program providing for payment of medical expenses for low-income patients. Funding for Medicaid is shared between the federal government and state governments.

15. Federal reimbursement for prescription drugs under the Medicaid program is, as relevant, limited to "medically accepted indications," defined as an indication approved by the Food and Drug Administration or supported by a citation in one or more of the following Compendia:

- (i) American Hospital Formulary Service Drug Information,
- (ii) United States Pharmacopeia-Drug Information (or its successor publications), or

(iii) DRUGDEX Information System.

42 USC 1396R-8(k)(3); 42 USC 1396R-8(k)(6); 42 USC 1396R-8(g)(1)(B)(i).

B. False Claims Act

16. False Claims Act liability attaches to any person who knowingly presents or causes a false or fraudulent claim to be presented for payment, or to a false record or statement made to get a false or fraudulent claim paid by the government. 31 U.S.C. §3729(a)(1)&(2).

17. Under the False Claims Act, "knowing" and "knowingly" mean that a person:

(1) has actual knowledge of the information;

(2) acts in deliberate ignorance of the truth or falsity of the information; or

(3) acts in reckless disregard of the truth or falsity of the information,

and no proof of specific intent to defraud is required. 31 U.S.C. §3729(b).

18. The False Claims Act is violated not only by a person who makes a false statement or a false record to get the government to pay a claim, but also by one who engages in a course of conduct that causes the government to pay a false or fraudulent claim for money.

V. ALLEGATIONS OR TRANSACTIONS

19. Martino prescribed the following psychotropic drugs to *Relator* while *Relator* was a minor that were not for a medically accepted indication:

Date	Drug	Amount	Pharmacy
10/26/2004	Trazadone	\$ 11.01	Safeway
11/9/2004	Abilify	\$ 335.70	Safeway
11/19/2004	Zoloft	\$ 163.49	Safeway
12/3/2004	Trazadone	\$ 11.01	Safeway

Date	Drug	Amount	Pharmacy
12/6/2004	Zoloft	\$ 163.49	Safeway
12/27/2004	Abilify	\$ 171.65	Safeway
12/28/2004	Trazadone	\$ 11.01	Safeway
1/11/2005	Zoloft	\$ 171.38	Safeway
1/19/2005	Abilify	\$ 335.00	Safeway
1/25/2005	Trazadone	\$ 14.43	Safeway
2/9/2005	Zoloft	\$ 179.56	Safeway
2/15/2005	Abilify	\$ 335.70	Safeway
2/24/2005	Trileptal	\$ 132.29	Safeway
2/26/2005	Trazadone	\$ 14.43	Safeway
3/7/2005	Zoloft	\$ 179.56	Safeway
3/17/2005	Abilify	\$ 335.70	Safeway
3/24/2005	Trileptal	\$ 194.65	Safeway
4/7/2005	Trazadone	\$ 14.43	Safeway
4/18/2005	Abilify	\$ 335.70	Safeway
4/23/2005	Trileptal	\$ 198.99	Safeway
5/10/2005	Trazadone	\$ 14.43	Safeway
5/10/2005	Zoloft	\$ 179.56	Safeway
5/16/2005	Abilify	\$ 335.70	Safeway
5/21/2005	Trileptal	\$ 210.55	Safeway
6/8/2005	Trazadone	\$ 12.56	Prescription Ctr.
6/8/2005	Zoloft	\$ 181.11	Prescription Ctr.
6/20/2005	Abilify	\$ 335.70	Safeway
7/5/2005	Trileptal	\$ 210.55	Safeway
7/18/2005	Zoloft	\$ 179.56	Safeway
7/26/2005	Abilify	\$ 335.70	Safeway
8/9/2005	Zoloft	\$ 179.56	Safeway
8/19/2005	Trileptal	\$ 210.55	Safeway
8/20/2005	Trazadone	\$ 14.43	Safeway
8/31/2005	Abilify	\$ 350.45	Safeway
9/19/2005	Trazadone	\$ 11.01	Safeway
9/19/2005	Trileptal	\$ 210.55	Safeway
9/19/2005	Zoloft	\$ 179.56	Safeway
9/29/2005	Abilify	\$ 350.45	Safeway
10/19/2005	Trazadone	\$ 11.01	Safeway
10/19/2005	Trileptal	\$ 210.55	Safeway
10/19/2005	Zoloft	\$ 179.56	Safeway
10/22/2005	Abilify	\$ 350.45	Safeway

20. FCSA employed physicians prescribed the following psychotropic drugs to *Relator* while a minor that were not for a medically accepted indication:

Date	Drug	Amount	Pharmacy
1/24/2006	Abilify	\$ 87.59	Safeway
1/24/2006	Trazadone	\$ 8.39	Safeway
1/24/2006	Zoloft	\$ 47.72	Safeway
1/26/2006	Trileptal	\$ 226.58	Safeway
1/31/2006	Abilify	\$ 98.35	Safeway
1/31/2006	Trazadone	\$ 11.01	Safeway
1/31/2006	Zoloft	\$ 49.78	Safeway
3/6/2006	Abilify	\$ 98.35	Safeway
3/6/2006	Trileptal	\$ 63.14	Safeway
3/6/2006	Zoloft	\$ 49.78	Safeway

21. Safeway presented false claims to Medicaid for reimbursement of the psychotropic drugs prescribed to *Relator* that were not for a medically accepted indication set forth in the preceding 2 paragraphs.

VI. CAUSES OF ACTION

Count 1: Martino Liability

22. Martino prescribed the psychotropic drugs to *Relator* set forth above and to other minors that are not for a medically accepted indication, thereby causing claims for such prescriptions to be made to Medicaid for reimbursement

- (1) with actual knowledge;
- (2) in deliberate ignorance; or
- (3) in reckless disregard

that such claims are false, and is liable under the False Claims Act therefor.

23. Martino continues to prescribe psychotropic drugs to minors that are not for a medically accepted indication, thereby causing claims for such prescriptions to be made to Medicaid for reimbursement

- (1) with actual knowledge;
- (2) in deliberate ignorance; or
- (3) in reckless disregard

that such claims are false, and is liable under the False Claims Act therefor.

Count 2: FCSA Liability

24. FCSA

(a) caused the presentment to Medicaid of claims for psychotropic drugs prescribed to *Relator* and other minors that are not for a medically accepted indication, and

(b) continues to cause claims to be presented to Medicaid for reimbursement of psychotropic drugs prescribed to minors that are not for a medically accepted indication,

by providing or arranging for psychiatric services to *Relator* and such other minors,

- (1) with actual knowledge;
- (2) in deliberate ignorance; or
- (3) in reckless disregard

that such claims are false, and is liable under the False Claims Act therefor.

Count 3: Safeway Liability

25. Safeway presented claims to Medicaid for reimbursement of prescriptions of psychotropic drugs to *Relator* and other minors, and continues to present claims to Medicaid for prescriptions of psychotropic drugs to minors that are not for a medically accepted indication,

- (1) with actual knowledge;
- (2) in deliberate ignorance; or
- (3) in reckless disregard

that such claims are false, and is liable under the False Claims Act therefor.

VII. DEFENDANTS' LIABILITY

26. By virtue of the acts described above, defendants knowingly (a) presented, and continue to present, or (b) caused and continue to cause to be presented, false or fraudulent claims to the United States Government for payment of psychotropic drugs prescribed to *Relator* and other minors that are not for a medically accepted indication.

27. The Government paid and continues to pay such false claims.

28. By reason of the defendants' acts, the United States has been damaged, and continues to be damaged, in substantial amount to be determined at trial.

VIII. PRAYER FOR RELIEF

WHEREFORE, Plaintiff, United States of America, through *Relator*, requests the Court enter the following relief:

A. That defendants be ordered to cease and desist from violating 31 U.S.C. §3729 *et seq.*

B. That this Court enter judgment against Defendants in an amount equal to three times the amount of damages the United States has sustained because of defendants' actions, plus a civil penalty of not less than \$5,500 and not more than \$11,000 for each violation of 31 U.S.C. §3729;

C. That *Relator* be awarded the maximum amount allowed pursuant to 31 U.S.C. §3730(d).

D. That *Relator* be awarded all costs of this action, including attorneys' fees and expenses; and

E. That *Relator* recover such other relief as the Court deems just and proper.

DATED: December 14, 2009.

**James B.
Gottstein,
Esq.**

By: _____

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Date: 2009.12.14 07:40:40 -09'00'

Certificate of Service

The undersigned hereby certifies that a copy of this Complaint and written disclosure of substantially all material evidence and information *Relator* possesses have been served on the Government as provided in FRCP 4.

**James B. Gottstein,
Esq.**

Dated: _____

James B. Gottstein

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