

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN
MILWAUKEE DIVISION

UNITED STATES OF AMERICA, and
The STATE OF WISCONSIN,

Ex rel. Dr. Toby Tyler Watson,

Relator Plaintiff,

v.

JENNIFER KING-VASSEL, CAPS CHILD
& ADOLESCENT PSYCHIATRIC SERVICES,
AND ENCOMPASS EFFECTIVE MENTAL
HEALTH SERVICES, INC..

Defendants.

Civil Action No.: _____
**FILED IN CAMERA AND
UNDER SEAL**

**FALSE CLAIMS ACT
MEDICAID FRAUD**

JURY TRIAL DEMANDED

PLAINTIFFS' COMPLAINT PURSUANT TO
31 U.S.C. §§3729-3732 OF THE FEDERAL FALSE CLAIMS ACT AND
WISCONSIN STATUTE §20.931 FOR FALSE CLAIMS FOR MEDICAL ASSISTANCE

Relator-Plaintiff Dr. Toby Watson, through his undersigned counsel, brings this qui tam action on behalf of the United States of America and the State of Wisconsin, and for his Complaint against the Defendants alleges as follows:

INTRODUCTION

1. This is an action to recover damages and civil penalties on behalf of the United States of America under 31 U.S.C. §3729, *et seq.*, as amended ("Federal False Claims Act") and on behalf of the State of Wisconsin under the Wisconsin False Claims for Medical Assistance Law, Wis. Stat. §20.931, as amended ("Wisconsin False Claims Law"), arising from the Defendants' actions which caused claims for outpatient psychotropic medications prescribed to Medical

Assistance Recipient N.B. and other children that were not for medically accepted indications to be made to and paid by the Wisconsin Medical Assistance Program and Medicaid.

2. The Federal False Claims Act was enacted during the Civil War. Congress amended the Federal False Claims Act in 1986 to enhance the Government's ability to recover losses sustained as a result of fraud against the United States after finding that fraud in federal programs was pervasive and that the Federal False Claims Act, which Congress characterized as the primary tool for combating government fraud, was in need of modernization. Congress intended that the amendments create incentives for individuals with knowledge of fraud against the government to disclose the information without fear of reprisals or Government inaction, and to encourage the private bar to commit legal resources to prosecuting fraud on Government's behalf. The Wisconsin False Claim Law was enacted to effectuate the same on the State's behalf.

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

4. The Wisconsin False Claim Law provides that any person who knowingly presents or causes to be presented a false claim for medical assistance is liable for a civil penalty of up to \$10,000 for each false claim, plus three times the amount of the damages sustained by this State.

5. The Federal False Claims Act allows any person having information about a false or fraudulent claim against the Government to bring an action for himself and the Government, and to share in any recovery. The Act requires that the complaint 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.

6. Likewise, the Wisconsin False Claim Law allows any person having information about a false or fraudulent claim for medical assistance to bring an action for himself and the State, and to share in any recovery. The Law requires that the complaint be filed under seal for a minimum of 60 days (without service on the defendant during that time) to allow the State time to conduct its own investigation and to determine whether to join the suit.

7. Under Medicaid, (a) psychiatrists and other prescribers and (b) mental health agencies all have specific responsibilities to prevent false claims from being presented and are liable under the Federal False Claims Act for their role in the submission of false claims.

PARTIES

8. Relator Dr. Toby Tyler Watson is a citizen of the Eastern District of Wisconsin, who has personal knowledge of N.B.'s confidential and non-publically-disclosed mental health treatment history. N.B. is a Wisconsin Medical Assistance recipient whose date of birth is January 18, 2000.

9. During times relevant to this Complaint, Defendant Jennifer King-Vassel transacted business in the Eastern District of Wisconsin.

10. During times relevant to this Complaint, Defendant Child and Adolescent Psychiatric Services ("CAPS") transacted business in the Eastern District of Wisconsin with a principal place of business at 933 N. Mayfair Road, Suite 308, in Wauwatosa, Wisconsin 53226, and employed Defendant Jennifer King-Vassel.

11. Defendant ENCOMPASS Effective Mental Health Services, Inc. ("Encompass") is a Wisconsin Corporation with a principal place of business at 1011 North Mayfair Road, Suite 304

in Wauwatosa, Wisconsin 53226, and at times relevant to this complaint employed Defendant Jennifer King-Vassel.

JURISDICTION AND VENUE

12. This Court maintains subject matter jurisdiction over this action pursuant to 31 U.S.C §§3732(a) (Federal False Claims Act).

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

14. This Court has Supplemental Jurisdiction over the state law claims pursuant to 28 U.S.C. §1367.

15. Venue is proper in this Court pursuant to 31 U.S.C §§3732(a) because the Defendants transact business in this District and did so at all times relevant to this Complaint, and because the Defendants committed acts giving rise to this action within this District.

APPLICABLE LAW

A. Medicaid and Medical Assistance

16. 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.

17. Wisconsin's Medical Assistance program ("MA") supports the costs for individuals who meet specified financial and nonfinancial criteria. Wisconsin must administer MA in conformity with federal law and policy, as claims paid by MA are partially reimbursed to the State by Medicaid.

18. Federal reimbursement for prescription drugs under the Medicaid program is, as relevant, limited to "covered outpatient drugs." 42 U.S.C. §1396b(i)(10), 1396r-8(k)(2), (3).

19. Outpatient drug prescriptions, as relevant, are covered under Medicaid, i.e., reimbursable only if the drug is prescribed for a medically accepted indication, defined as indications approved by the Food and Drug Administration (FDA), or supported by one or more of the following Compendia:

- (a) American Hospital Formulary Service Drug Information,
- (b) United States Pharmacopeia-Drug Information (or its successor publications, or
- (c) DRUGDEX Information System,

(Covered Outpatient Drugs).

20. Every MA provider and every Medicaid provider must agree to comply with all Medicaid requirements.

B. False Claim Liability

21. Federal False Claim Act and Wisconsin False Claim Law liability attaches to any person who knowingly presents or causes to be presented a false or fraudulent claim for payment, or who makes, uses or causes to be made a false record or statement to get a false or fraudulent claim paid. 31 U.S.C. §3729(a)(1)&(2); Wis. Stat. 20.931(2)(a)&(b).

22. Under the Federal False Claims Act and the Wisconsin False Claim Law, “knowing” and “knowingly” mean that a person, with respect to information:

- (a) has actual knowledge of the information;
- (b) acts in deliberate ignorance of the truth or falsity of the information; or
- (c) 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); Wis. Stat. §20.931(1)(d).

ALLEGATIONS

23. The Federal False Claims Act and Wisconsin False Claim Law are 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.

24. On the following dates, Defendant Jennifer King-Vassel prescribed the following psychotropic drugs to Medical Assistance recipient N.B. that were not for an indication approved by the FDA or supported by one of more of the Compendia:

a. Clonidine

1. November 29, 2004
2. December 28, 2004
3. January 27, 2005
4. February 21, 2005
5. July 21, 2005
6. September 8, 2005
7. November 3, 2005
8. December 13, 2005
9. February 7, 2006
10. August 14, 2006
11. September 18, 2006
12. October 17, 2006
13. November 15, 2006
14. December 27, 2006

15. February 5, 2007

16. May 17, 2007

17. July 17, 2007

18. April 29, 2008

b. Prozac

1. July 10, 2006

2. April 29, 2008

c. Risperdal

1. November 29, 2004

2. December 28, 2004

3. January 27, 2005

4. February 23, 2005

5. July 21, 2005

6. September 8, 2005

7. October 4, 2005

8. November 3, 2005

9. December 13, 2005

10. February 7, 2006

11. June 6, 2006

12. June 6, 2006

13. July 10, 2006

14. August 14, 2006

15. September 18, 2006

16. October 17, 2006
17. November 15, 2006
18. December 27, 2006
19. February 5, 2007
20. April 29, 2008

d. Seroquel

1. May 17, 2007
2. April 29, 2008

e. Strattera

1. December 13, 2005

f. Zoloft

1. November 15, 2006
2. December 27, 2006
3. February 5, 2007
4. May 17, 2007
5. July 17, 2007
6. April 29, 2008

25. On information and belief, Defendant Jennifer King-Vassel prescribed to other Medical Assistance recipients psychotropic drugs that were not for an indication approved by the FDA or supported by one or more of the Compendia.

CAUSES OF ACTION

Count 1: Psychiatrist Liability For Uncovered Drugs

Federal False Claims Act

26. Defendant Jennifer King-Vassel prescribed the psychotropic drugs to Medical Assistance recipient N.B. set forth above, and to other minors, that are not for an indication approved by the FDA or supported by one or more of the Compendia, thereby causing claims for such prescriptions to be made to Medicaid for reimbursement

- (a) with actual knowledge;
- (b) in deliberate ignorance; or
- (c) in reckless disregard

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

27. Upon information and belief, Defendant Jennifer King-Vassel continues to prescribe psychotropic drugs to minors that are not for an indication approved by the FDA or supported by one or more of the Compendia, thereby causing claims for such prescriptions to be made to Medicaid for reimbursement

- (a) with actual knowledge;
- (b) in deliberate ignorance; or
- (c) in reckless disregard

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

Count 2: Psychiatrist Liability For Uncovered Drugs

Wisconsin False Claims Law

28. Defendant Jennifer King-Vassel prescribed the psychotropic drugs to Medical Assistance recipient N.B. set forth above, and to other minors, that are not for an indication approved by the FDA or supported by one or more of the Compendia, thereby causing claims for such prescriptions to be made to Medical Assistance for payment

- (a) with actual knowledge;
- (b) in deliberate ignorance; or
- (c) in reckless disregard

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

29. Upon information and belief, Defendant Jennifer King-Vassel continues to prescribe psychotropic drugs to minors that are not for an indication approved by the FDA or supported by one or more of the Compendia, thereby causing claims for such prescriptions to be made to Medical Assistance for payment

- (a) with actual knowledge;
- (b) in deliberate ignorance; or
- (c) in reckless disregard

that such claims are false, and are liable under the Wisconsin False Claims Law therefor.

Count 3: CAPS Liability for Uncovered Drugs

Federal False Claims Act

30. CAPS is liable for the actions of its agent and/or employee Jennifer King-Vassel under the doctrine of respondeat superior.

Count 4: CAPS Liability for Uncovered Drugs

Wisconsin False Claims Law

31. CAPS is liable for the actions of its agent and/or employee Jennifer King-Vassel under the doctrine of respondeat superior.

Count 5: Encompass Liability for Uncovered Drugs

Federal False Claims Act

32. Encompass is liable for the actions of its agent and/or employee Jennifer King-Vassel under the doctrine of respondeat superior.

Count 6: Encompass Liability for Uncovered Drugs.

Wisconsin False Claims Law

33. Encompass is liable for the actions of its agent and/or employee Jennifer King-Vassel under the doctrine of respondeat superior.

DEFENDANTS' LIABILITY

34. By virtue of the acts described above, defendants knowingly (a) submitted, and continue to submit, and/or (b) caused and/or continue cause to be submitted, false or fraudulent claims to the Wisconsin Medical Assistance program for payment and the United States Government for reimbursement of psychiatric drugs prescribed to Medical Assistance recipient N.B. and other minors that are not for an indication that is approved by the FDA or supported by one or more of the Compendia.

35. Wisconsin Medical Assistance and Medicaid paid and continues to pay such false claims.

36. By reason of the defendants' acts, the State of Wisconsin and the United States have been damaged, and continue to be damaged, in substantial amount to be determined at trial.

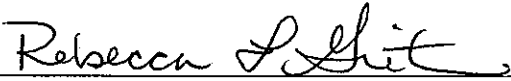
PRAYER FOR RELIEF

WHEREFORE, Plaintiff, United States of America and State of Wisconsin, 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 this Court enter judgment against Defendants in an amount equal to three times the amount of damages the State of Wisconsin has sustained because of defendants' actions, plus a civil penalty of not less than \$5,000 and not more than \$10,000 for each violation of Wis. Stat. §20.931.
- D. That Relator be awarded the maximum amount allowed pursuant to §3730(d) of the Federal False Claims Act and the maximum allowed pursuant to Wis. Stat. §20.931(11).
- E. That Relator be awarded all costs of this action, including attorneys' fees and expenses; and
- F. That Relator recover such other relief as the Court deems just and proper.

Dated: February 26, 2011

Relator Dr. Toby Tyler Watson, by


Gietman Law, LLC
Rebecca L. Gietman
WI Bar No.: 1052401
805 S. Madison St.
Chilton, WI 53014
920-737-3036

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

Place an X in the appropriate Box:

Green Bay Division

Milwaukee Division

I. (a) PLAINTIFFS

United States of America
State of Wisconsin
Ex rel. Watson, Toby Tyler, Dr.

(b) County of Residence of First Listed Plaintiff

(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Gietman Law, LLC, Rebecca L. Gietman, 805 S. Madison St., Chilton, WI 53014;
920-737-3036

DEFENDANTS

King-Vassel, Jennifer
CAPS Child & Adolescent Psychiatric Service
Encompass Effective Mental Health Services, Inc.

County of Residence of First Listed Defendant

Milwaukee

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
- 2 U.S. Government Defendant
- 3 Federal Question (U.S. Government Not a Party)
- 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | | | | | |
|---|----------------------------|---------|----------------------------|---|----------------------------|---------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | PTF DEF | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | PTF DEF | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input checked="" type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395f) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
- 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from another district (specify)
- 6 Multidistrict Litigation
- 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
31 USC 3729 et seq

Brief description of cause:
Medicaid Fraud

VII. REQUESTED IN COMPLAINT:

- CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23
- DEMAND \$ _____
- CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE _____

DOCKET NUMBER _____

DATE SIGNATURE OF ATTORNEY OF RECORD

February 26, 2011

Rebecca L Gietman

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFF _____ JUDGE _____ MAG. JUDGE _____