



UNITED STATES OFFICE OF PERSONNEL MANAGEMENT

Washington, DC 20415

Office of the
Inspector General

October 16, 2013

MEMORANDUM FOR ELAINE KAPLAN
Acting Director

FROM: PATRICK E. MCFARLAND
Inspector General

A handwritten signature in black ink that reads "Patrick E. McFarland".

SUBJECT: Summaries of Recent OIG Investigations

The purpose of this memorandum is to share with you the results of investigations recently conducted by my office. You routinely receive copies of the Office of the Inspector General (OIG) Final Audit Reports, and we furnish you or your staff with executive summary reports on internal employee misconduct investigations. However, the majority of our investigative workload involves crimes affecting U.S. Office of Personnel Management (OPM) programs committed by external parties. In order to inform you of the impact these crimes have on OPM programs, periodically we provide you with brief summaries of investigations that have been resolved and are a matter of public record. Attached are examples of our investigations resolved during the period July 1, 2013 through September 30, 2013.

During this same time period we submitted nine debarment referrals to OPM. We recommended the debarment of nine former contract background investigators criminally convicted of falsifying background investigations. OPM action on these referrals is pending.

We also sent a notice of proposed debarment to a physician who was convicted in Michigan of possession of child pornography. The debarment will become effective on October 17, 2013, unless the physician contests the proposal by that date.

Please feel free to contact me if you have any questions at (202) 606-1200, or you may have someone from your staff contact Assistant Inspector General for Investigations Michelle B. Schmitz, at (757) 595-3968.

Attachment

cc: Liz Montoya, Chief of Staff
Angela Bailey, Associate Director, Employee Services
Kenneth Zawodny, Jr., Associate Director, Retirement Services
Mark Lambert, Associate Director, Merit System Accountability & Compliance
John O'Brien, Director, Healthcare and Insurance
Merton Miller, Associate Director, Federal Investigative Service
Joseph Kennedy, Associate Director, Human Resources Solutions
Sharon McGowan, Acting General Counsel

U.S. Office of Personnel Management
Office of the Inspector General
Office of Investigations

**Quarterly Case Summaries
October 2013**

Our investigative workload involves crimes affecting U.S. Office of Personnel Management (OPM) programs. In order to inform the public of the impact of these crimes, we periodically provide brief summaries of significant investigations that have been resolved. Examples of investigations resolved during the period July 1, 2013 through September 30, 2013 include:

Federal Employees Health Benefits Program (FEHBP) – Off-Label Promotion: A *qui tam* relator filed suit in the United States District Court for the Eastern District of Pennsylvania alleging that Wyeth Pharmaceuticals Inc. (Wyeth) marketed the prescription drug Rapamune for uses not approved as safe and effective by the U.S. Food and Drug Administration, resulting in false claims being submitted to the Federal health insurance programs. On July 30, 2013, Wyeth agreed to pay the United States \$490,984,000 to resolve its criminal and civil liability arising from the unlawful marketing of Rapamune for unapproved uses. The FEHBP recovered \$4,287,828.74.

FEHBP – False Claims: A *qui tam* relator filed suit in the United States District Court for the Eastern District of Michigan alleging that Kmart violated the False Claims Act by returning to stock and failing to delete or readjudicate prescriptions that were billed to Federal health insurance programs, but were not picked up by customers. Kmart billed for full prescriptions even though those prescriptions were only partially dispensed. In a settlement dated July 2, 2013, Kmart agreed to pay the United States and the Medicaid Participating States \$2,550,000. The FEHBP recovered \$227,770.09.

FEHBP – Improper Billing: The National Health Care Anti-Fraud Association informed OPM's Office of Inspector General (OIG) that the owner of NOVA Pain & Rehab Center was potentially submitting fraudulent billing to Federal health insurance programs. An investigation confirmed the allegations, resulting in the owner pleading guilty in the U.S. District Court for the Eastern District of Virginia to the charge of Theft or Embezzlement in Connection with Healthcare. The owner was sentenced on August 13, 2013 to two years of probation, 100 hours of community service, and ordered to pay \$29,943.70 in restitution, a \$10,000 criminal fine, and a \$25 assessment fine. The FEHBP recovered \$9,659.92.

FEHBP – Improper Billing: The OIG received a referral from Blue Cross Blue Shield of North Carolina alleging that RespiTest, a facility providing home based sleep study equipment and testing, was improperly billing Federal health insurance programs for their services. Medical record reviews and patient contacts revealed that sleep testing done by RespiTest did not meet the standard of care billed for nor did it meet the qualification to be billed as a complete monitored sleep study. The two owners of RespiTest pled guilty to the charge of False Statements in Healthcare Matter. On July 11, 2013, one of the owners was sentenced to five years in prison, three years of probation, and ordered to pay \$4,782,569.90 in restitution and a \$100 assessment fine. On July 19, 2013, the other owner was sentenced to three years in prison, two years of probation, and ordered to pay \$4,782,569.90 in restitution (jointly with owner one) and a \$100 assessment fine. The FEHBP recovered \$47,243.62.

In addition to the above listed restitution in the criminal matter, owner one faced a Civil Forfeiture Action in which the United States seized any and all property derived from any proceeds he obtained directly or indirectly as a result of the offenses and all property involved in the criminal violations or proceeds traceable to that property.

FEHBP – False Claims: Allegations of false claims were made against Maryland General Hospital Inc. (MGH) in a suit filed under the *qui tam* provisions of the False Claims Act. Evidence revealed that MGH, an acute care hospital in Baltimore, Maryland, performed cardiac studies on patients and submitted bills to federally funded healthcare programs for services not rendered in connection with these studies. On August 12, 2013, MGH agreed to pay \$750,000 to settle these allegations. The FEHBP recovered \$8,776.56.

FEHBP – Improper Billing: The OIG at the Department of Health and Human Services notified OPM-OIG of allegations that the owner of Advanced Nuclear Diagnostics was submitting false claims to Federal and state healthcare programs. Allegations focused on the owner's improper billing for nuclear stress tests, including improper use of billing codes, billing for services not performed, and for double billing. On July 30, 2013, the U.S. District Court for the District of Columbia entered into a judgment requiring the owner to pay \$17,468,777.38. The FEHBP recovered \$3,482,203.00.

FEHBP – False Claims: Trans1 Inc., a North Carolina based medical device manufacturer, agreed to pay the United States \$6,000,000 to resolve allegations under the False Claims Act that the company caused healthcare providers to submit false claims to Federal healthcare programs. Trans1 improperly counseled physicians and hospitals to bill for minimally-invasive spine surgeries by using codes intended for more invasive spine fusion surgeries, resulting in healthcare providers receiving more reimbursement than which they were entitled. The allegations of false claims were made in a suit filed in the District of Maryland by a *qui tam* relator. The FEHBP recovered \$129,961.00

Retirement – Deceased Annuitant Fraud: OPM's Retirement Inspections branch identified an annuitant whose July 1, 1998 death had not been reported to OPM. As a result, OPM continued making annuity payments through January 2007, resulting in an overpayment of \$105,598.95. OPM recovered \$17,548.24 through the reclamation process, leaving a balance of \$88,050.71. The annuitant's son confessed to concealing his mother's death and to using the annuity payments for his own benefit. He pled guilty to the charge of Theft of Public Money and Property and was sentenced in Texas to five years of probation and ordered to pay OPM \$88,050.71 in restitution and a \$100 assessment fee.

Retirement – Deceased Annuitant Fraud: OPM's Retirement Inspections branch identified an annuitant whose November 16, 1993 death had not been reported to OPM. The annuitant was receiving two monthly annuity payments from OPM, one as the surviving spouse of her deceased husband, and the other as a retiree. OPM continued making survivor annuity payments through May 2010, and retirement annuity payments through August 2010, resulting in an overpayment of \$475,518.50. OPM recovered \$76,744.54 through the reclamation process, leaving a balance of \$398,773.96. The OIG's investigation revealed that the annuitant's daughter wrote checks to herself from her deceased mother's account, forged her mother's signature, and kept the money for herself. The daughter pled guilty to the charge of Theft of Government Property and on August 27, 2013 was sentenced in Georgia to 18 months in prison, three years of probation, and ordered to pay OPM \$398,773.96 in restitution and a \$100 assessment fee.

Retirement – Deceased Annuitant Fraud: OPM's Retirement Inspections branch identified an annuitant whose January 27, 1992 death had not been reported to OPM. OPM continued making annuity payments by hard copy check through May 2006, resulting in an overpayment of \$130,843.00. OPM mailed three Address Verification Letters (AVL) to the annuitant, all of which were returned to OPM supposedly signed and dated by the annuitant. The AVLs were dated after the annuitant's date of death. The OIG's investigation revealed that the annuitant's nephew had forged his uncle's signature on the AVLs in order to assure that the retirement benefits continued after his uncle's death. The nephew endorsed the annuity checks by forging his uncle's signature, cashed the checks, and used the money for his own personal use. The nephew pled guilty to the charge of Mail Fraud and on July 22, 2013 was sentenced in Tennessee to 15 months in prison, three years of probation, and ordered to pay OPM \$130,843.00 in restitution and a \$100 assessment fee.

Federal Investigative Services – Falsification: A former contract background investigator pled guilty to a charge of falsifying work on background investigations of Federal employees. The Federal Investigative Services' (FIS) reviewed the investigators work and identified 25 falsifications. On September 12, 2013, the former investigator was sentenced to six months imprisonment (suspended), 20 days in a halfway house, three years of probation, and ordered to

pay \$78,832.93 in restitution and a \$50 assessment fee. The OIG recommended the debarment of this individual based on this criminal conviction.

Federal Investigative Services – Falsification: The Federal Investigative Services Integrity Assurance group referred to OPM-OIG a case of falsification by a former contract background investigator who they found to have submitted 72 falsifications. The investigation resulted in the former investigator pleading guilty to making false statements on background investigations of Federal employees. On September 11, 2013, the former investigator was sentenced in the District of Columbia to four years of probation, 200 hours of community service, and ordered to pay \$79,468.00 in restitution and a \$100 assessment fee. The OIG recommended the debarment of this individual based on this criminal conviction.