

United States ex rel. Kipp Fesenmaier v. Sightpath Medical, Inc., et al.

FOR IMMEDIATE RELEASE

SIGHTPATH MEDICAL AND ITS FORMER PRESIDENT PAY \$12,000,000 TO THE UNITED STATES TO RESOLVE FALSE CLAIMS ACT ALLEGATIONS BROUGHT BY FORMER VICE PRESIDENT KIPP FESENMAIER

CINCINNATI, OHIO — (August 21, 2017): Sightpath Medical, its parent, TLC Vision Corporation, and Sightpath's former President James Tiffany have paid \$12 million to resolve federal False Claims Act allegations that Sightpath paid kickbacks to physicians and physician practices to induce the use of Sightpath's products and services in eye surgeries paid for by the United States.

The settlement partially resolves a qui tam whistleblower case brought by Kipp Fesenmaier, a former Vice President of Operations for Sightpath's predecessor entity. The case was filed in Minneapolis federal court in November 2013 under the False Claims Act.

The False Claims Act encourages private citizens like Mr. Fesenmaier to bring cases in the name of the United States against government contractors like Sightpath accused of knowingly violating Medicare laws. False Claims Act cases, also called qui tam cases, return money back to the Treasury for false claims made to federal programs. The False Claims Act requires payment to successful whistleblowers of between 15% and 30% of the total recovery.

Mr. Fesenmaier advised the Justice Department that Sightpath and other defendants offered and paid bribes to physicians in the form of hunting, skiing, fishing, golfing, and other trips and entertainment, beginning in the 1990s and continuing until recently. He also provided evidence that Sightpath entered into sham consulting agreements with physicians and physician practices. The purpose of these bribes was to induce physicians to use Sightpath's products and services, including mobile cataract surgery equipment and services, in connection with eye surgeries paid for by Medicare from January 1, 2006 to January 1, 2015.

These payments violated the Anti-Kickback Statute and induced physicians to submit false, kickback-tainted claims to Medicare. By knowingly inducing physicians to utilize Sightpath's products and services in the eye surgeries those physicians performed and/or the facilities that those physicians owned or controlled, Sightpath violated the Anti-Kickback Statute and the False Claims Act.

"Mr. Fesenmaier courageously stepped forward to identify Defendants' illegal schemes to buy referrals from physicians and physician practices across the country," said Jennifer Verkamp of Morgan Verkamp LLC. "When Defendants try to influence the gatekeepers of our medical care, it corrupts our healthcare system and hurts patients. Without the integrity of whistleblowers like Mr. Fesenmaier, these kind of schemes would go undetected."

The allegations against Sightpath, its president, and owners were settled after the company entered into settlement discussions with the United States and Relator. The settlement amount is based on the defendants' lack of money to pay for all the damage it caused.

The matter was unsealed on August 21, 2017, and will proceed against the other defendants. The United States is expected to file an intervention complaint against Defendants Precision Lens, Paul Ehlen, and Jitendra Swarup within 90 days.

Mr. Fesenmaier is represented by Jennifer Verkamp, Frederick Morgan, Jr., and Maxwell Smith of Morgan Verkamp LLC in Cincinnati, and Susan Coler of Halunen Law in Minneapolis. The United States is represented by Assistant United States Attorney Chad Blumenfield, who was instrumental in reaching settlement terms with Sightpath and the other settling defendants.

The case is *United States ex rel. Fesenmaier v. Sightpath Medical, Inc., et al.*, Civil No. 13-3003. The civil complaint and settlement agreements are available at www.morganverkamp.com.

Morgan Verkamp LLC is a Cincinnati law firm whose practice is focused on whistleblower cases under federal and state False Claims Acts and IRS and SEC whistleblower laws. Its principals, Jennifer Verkamp and Rick Morgan, have handled qui tam cases nationwide for 22 years. More information at www.morganverkamp.com

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