

JUSTICE NEWS

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UNITED STATES SETTLES FALSE CLAIMS ACT ALLEGATIONS AGAINST 21ST CENTURY ONCOLOGY FOR \$34.7 MILLION

21st Century Oncology Inc., the nation's largest physician led integrated cancer care provider and its wholly owned subsidiary South Florida Radiation Oncology LLC, have agreed to settle allegations that they performed and billed for procedures that were not medically necessary, the Department of Justice announced today. 21st Century is headquartered in Fort Myers, Florida, and has offices in 16 states.

The settlement relates to defendants use of a medical procedure – called the Gamma function – to measure the exit dose of radiation from a patient after receiving radiation treatment. The United States alleged that the defendants knowingly and improperly billed for this procedure under circumstances where the procedure served no medically appropriate purpose. For example, the government alleged that the procedure was performed by physicians and physicists at 21st Century Oncology locations who were not properly trained to interpret and utilize the Gamma function results. The government also alleged that the defendants billed for this procedure when no physician reviewed the Gamma function results until seven or more days after the last day patients received radiation treatment therapy. Finally, the government alleged that the defendants billed for the procedure when no Gamma result was available due to technical failures in the imaging equipment.

“Today’s settlement demonstrates our unwavering commitment to protect the Medicare trust fund against unscrupulous providers,” said Principal Deputy Assistant Attorney General Benjamin C. Mizer, head of the Justice Department’s Civil Division. “Providers who waste taxpayer dollars by billing for unnecessary services, including services that are not used or improperly performed, will face serious consequences.”

“The U.S. Attorney’s Office is committed to taking the steps necessary to protect Medicare, TRICARE, and other federal health care programs from fraud,” said U.S. Attorney A. Lee Bentley III for the Middle District of Florida. “Healthcare providers may bill for new technologies only when they have been proven to be useful and when individual physicians and staff have been trained to use them properly.”

This lawsuit was originally filed under the *qui tam* or whistleblower provisions of the False Claims Act by Joseph Ting, a former physicist at South Florida Radiation Oncology. Under those provisions, a private party, known as a relator, can file an action on behalf of the United States and receive a portion of the recovery. Ting will receive more than \$7 million.

“The waste of health care program dollars will not be tolerated,” said Special Agent in Charge Shimon R. Richmond for the Health and Human Services (HHS) Office of the Inspector General. “Providers at 21st Century Oncology have agreed to

settle claims that in some instances they performed tests that were not only medically unnecessary, but that no one had been trained to properly interpret, thereby allegedly causing the taxpayers to pay for useless tests.”

This past December, 21st Century Oncology LLC, a wholly owned subsidiary of 21st Century Oncology Inc., paid \$19.75 million to settle allegations that it violated the False Claims Act by billing for medically unnecessary laboratory urine tests and for encouraging physicians to order these tests by offering bonuses based in part on the number of tests the physicians referred to its laboratory.

This settlement illustrates the government’s emphasis on combating health care fraud and marks another achievement for the Health Care Fraud Prevention and Enforcement Action Team (HEAT) initiative, which was announced in May 2009 by Attorney General Eric Holder and Secretary of Health and Human Services Kathleen Sebelius. The partnership between the two departments has focused efforts to reduce and prevent Medicare and Medicaid financial fraud through enhanced cooperation. One of the most powerful tools in this effort is the False Claims Act. Since January 2009, the Justice Department has recovered a total of more than \$27.4 billion through False Claims Act cases, with more than \$17.4 billion of that amount recovered in cases involving fraud against federal health care programs.

“This settlement highlights the commitment of the Defense Criminal Investigative Service (DCIS) and its law enforcement partners to protect the integrity of TRICARE, the Department of Defense health care program that serves our warfighters, their family members, and military retirees,” said Special Agent in Charge John F. Khin of DCIS Southeast Field Office. “With DoD’s limited resources and budgets, DCIS must continue to aggressively investigate fraud, waste and abuse to preserve and recover precious taxpayer dollars for our most vulnerable programs.”

This matter was handled by the U.S. Attorney’s Office for the Middle District of Florida, with assistance from the Civil Division’s Commercial Litigation Branch, the Department of Health and Human Services Office of Inspector General (HHS/OIG) and the Defense Criminal Investigative Service (DCIS).

The claims resolved by this settlement are allegations only, and there has been no determination of liability. The lawsuit against the defendants was filed in the U.S. District Court for the Middle District of Florida and is captioned *United States ex rel. Ting v. 21st Century Oncology and South Florida Radiation Oncology*.

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Civil Division

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