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Victory Pharma Inc. of San Diego Pays $11.4 Million to Resolve Kickback Allegations in Connection with Promotion of Its Drugs

Victory Pharma Inc., a specialty pharmaceutical company headquartered in San Diego, has agreed to pay $11,420,743 to resolve federal civil and criminal liability arising from its marketing of the pharmaceutical products Naprelan, Xodol, Fexmid and Dolgic, the Justice Department announced today. Under the agreement announced today, Victory entered into a deferred prosecution agreement and paid a criminal forfeiture of $1.4 million to resolve federal Ant-Kickback Statute allegations, and paid $9,938,310 to resolve False Claims Act allegations.

The settlement resolves allegations that Victory engaged in a scheme to promote its drugs by paying kickbacks to doctors to induce them to write prescriptions for Victory's products, including prescriptions for patients covered by Medicare and other federal health insurance programs. The kickbacks included tickets to professional and collegiate sporting events; tickets to concerts and plays; spa outings; golf and ski outings; dinners at expensive restaurants; and numerous other out-of-office events. Victory also encouraged its sales representatives to schedule paid "preceptorships," which involved sales representatives "shadowing" doctors in their offices. The settlement also resolves allegations that Victory improperly used these preceptorships to induce doctors to prescribe Victory's products.

"Kickback schemes undermine the integrity of medical decisions, subvert the health marketplace and waste taxpayer dollars," said Stuart F. Delery, Principal Deputy Assistant Attorney General for the Civil Division. "We will continue to hold accountable those who refuse to play by the rules and provide illegal incentives to influence the decision making of health care providers."

"This resolution underscores the need for physicians to make treatment decisions based on their own independent medical judgment, without being influenced by kickbacks or other improper benefits," said Laura E. Duffy, U.S. Attorney for the Southern District of California. "Protecting taxpayers from health care fraud is a priority of this office. We will continue to work closely with our investigative partners in taking both criminal and civil measures to combat health care fraud."

The settlement resolves a False Claims Act lawsuit filed in the Southern District of California by Chad Miller, a former sales representative for Victory. The whistleblower, or *qui tam*, provisions of the False Claims Act permit the whistleblower (or relator) to obtain a portion of the proceeds obtained by the federal government. As part of today's resolution, Mr. Miller will receive $1.7 million.

"Patients expect health care providers to be concerned only with patients' best medical interests," said Glenn R. Ferry, Special Agent in Charge for the U.S. Department of Health and Human Services Office of Inspector General Los Angeles region. "Financial kickbacks betray that patient trust, and taxpayers' expectation that federal and state health dollars be put only to the wisest use."

FBI Special Agent in Charge Daphne Hearn commented, "Many laws of this nation are put in place to protect our citizens from corrupt practices that may endanger our health and safety. When individuals or businesses operate outside of the fence in order to turn a bigger profit the FBI will pursue them in the justice system."

Chris Hendrickson, Special Agent in Charge, Western Field Office, Defense Criminal Investigative Service, stated: "The Department of Defense is committed to its partnership with the Department of Justice and other federal and state enforcement agencies to aggressively pursue those who take advantage of taxpayer-funded health care systems for illicit gain. Doctors providing services to our military members and their families should be free from undue influence in prescribing medicines and other care decisions, and DCIS will act swiftly against those who engage in these illegal and unethical acts."

This settlement is the result of a coordinated effort by the Department of Justice, Civil Division, Commercial Litigation Branch; the U.S. Attorney's Office for the Southern District of California; the FBI; and the Offices of Inspectors General for Health and Human Services, the Department of Defense, the Department of Labor, the U.S. Postal Service, the Veteran's Administration, and the Office of Personnel Management.

This resolution is part of the government's emphasis on combating health care fraud and another step for the Health Care Fraud Prevention and Enforcement Action Team (HEAT) initiative, which was announced by Attorney General Eric Holder and Kathleen Sebelius, Secretary of the Department of Health and Human Services in May 2009. 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 that effort is the False Claims Act, which the Justice Department has used to recover $10.1 billion since January 2009 in cases involving fraud against federal health care programs. The Justice Department's total recoveries in False Claims Act cases since January 2009 are over $13.9 billion.

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