

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	No. 09 C 1943
v.	)	
	)	Judge Durkin
CHARLES L. BENNETT, M.D,	)	
	)	
Defendant.	)	

**COMPLAINT**

Plaintiff, the United States of America, by Gary S. Shapiro, Attorney for the United States, Acting Under Authority Conferred by 28 U.S.C. § 515, brings this action for treble damages and civil penalties under the False Claims Act (FCA), 31 U.S.C. § 3729, and alleges as follows:

**Jurisdiction and Venue**

1. This is a civil action arising under the laws of the United States to redress violations of 31 U.S.C. §§ 3729-30. This court has jurisdiction over the subject matter of this action: (i) pursuant to 31 U.S.C. § 3732, which specifically confers jurisdiction on this court for actions brought pursuant to 31 U.S.C. §§ 3729 and 3730; (ii) pursuant to 28 U.S.C. § 1331, which confers federal-question subject matter jurisdiction; and (iii) pursuant to 28 U.S.C. § 1345, because the United States is a plaintiff.

2. This court has personal jurisdiction over defendant Charles L. Bennett, M.D., (“Dr. Bennett”) under 31 U.S.C. § 3732(a) because the defendant can be found, resides, or transacted business in this district, or an act proscribed by 31 U.S.C. § 3729 occurred in this district. The defendant made, used, or caused to be made or used, false or fraudulent records in

this district to get false or fraudulent claims paid or approved by the government. Venue is proper in this district under 31 U.S.C. § 3732(a) and 28 U.S.C. § 1391.

### **Introduction**

3. This is a civil action brought by plaintiff, the United States of America, to recover treble damages and civil penalties arising from false statements and claims made, used, or caused to be made by defendant Dr. Bennett, a former researcher at Northwestern University, to the United States in violation of the FCA, 31 U.S.C. §§ 3729-33.

4. For several years, researchers at Northwestern have applied for and received millions of dollars in grants from the National Institutes of Health (“NIH”), the National Cancer Institute (“NCI”), and the U.S. Department of Health and Human Services (“HHS”). A “principal investigator” (“PI”) is designated by the grantee to direct the project or activity being supported by the grant. He or she is responsible and accountable to the grantee and the grant’s issuing agency for the proper conduct of the project or activity, including how the grant money is spent and accounted for.

5. In order to receive grant funding, Northwestern’s researchers had to submit applications to the federal government. Typically a grant application will contain detailed information about the grantee institution (in this case, Northwestern), the grant’s PI (here, defendant Dr. Bennett), and other contributing personnel, as well as an overview of the research or project for which funding is sought, the resources and support provided by the grantee institution, and a comprehensive budget.

6. As part of its application, the grantee and PI must also make specific certifications and assurances to HHS, the NIH, and the NCI. These certification and assurances: (1) require the grantee to provide true, complete, and accurate information in its application; (2) obligate the

grantee to abide by the Grant Application Guide and the *NIH Grants Policy Statement*, and; (3) require the grantee to acknowledge that any false or fraudulent statements or claims may lead to criminal, civil, or administrative penalties.

7. The Grant's Application Guide and the *NIH Grants Policy Statement* incorporate by reference, and require compliance with, numerous federal statutes, Code of Federal Regulations ("CFR") provisions, and Office of Management and Budget ("OMB") Circulars.

8. These sources establish the rules and requirements for institutions and PIs applying for grants in a number of key areas including: grant accounting; financial management and cost principles; grant administration procedures; grant audit requirements; grant reporting obligations; and grant closeout procedures.

9. The OMB, HHS, the NIH, and the NCI promulgate these regulations, policy statements, and circulars specifically to prevent and uncover fraud. While these sources address a wide variety of topics, the fundamental, overarching theme is that the grantee and PI are ultimately responsible for federally funded grants.

### **Parties**

10. The plaintiff in this action is the United States of America.

11. Defendant Dr. Bennett was a researcher at Northwestern University's Feinberg School of Medicine ("Feinberg School") between approximately September 1994 through February 1, 2010, and he was listed as a PI for at least five NIH/NCI grants during the relevant time.

12. Defendant Dr. Bennett currently resides in the state of South Carolina.

13. Between at least 2003 and February 1, 2010, defendant Dr. Bennett was a PI on federal grants exceeding \$8 million, including: Research on Adverse Drug-Events and Reports:

Novel Multiple Myeloma Drugs, NIH grant number CA 125077; Research on Adverse Drug-Events and Reports, NIH grant number CA 102713; Study of TTP: Incidence Rates and Risk Factors, NIH grant number HL 69717; Patient Navigator, NIH grant number CA116875; and Multi-City Study of HIV-PCP, NIH grant number DA10628.

### **The False Claims Act (FCA)**

14. The False Claims Act provides liability for any person who—
  - a. knowingly presents, or causes to be presented a false or fraudulent claim for payment or approval; [or]
  - b. knowingly makes, uses, or causes to be made or used, a false record or statement material to a false or fraudulent claim

31 U.S.C. § 3729(a)(1)

15. The FCA further provides that persons who violate the Act: are “liable to the United States Government for a civil penalty of not less than \$5,000 and not more than \$10,000 . . . , plus 3 times the amount of damages which the Government sustains because of the act of that person.” 31 U.S.C. § 3729(a)(1)(G).

### **Defendant’s Certifications, Assurances, and Compliance Obligations**

16. Grantees are required to make specific certifications and assurances to the issuing agency (HHS), operating division (NIH), and the program office (NCI). These certifications, the SF 424 (R&R) and PHS 398, include Application Guides.

17. The Application Guides require that the applicant organization secure and retain a written assurance from the principle investigator. This assurance must be made available to the sponsoring agency upon request and needs to contain at least the following certifications:

- (1) That the information submitted within the application *is true, complete and accurate to the best of the PI's knowledge*;
- (2) that any *false, fictitious, or fraudulent statements or claims may subject the PI to criminal, civil, or administrative penalties*; and
- (3) that the PI *agrees to accept responsibility* for the scientific conduct of the project and to *provide the required progress reports* if a grant is awarded as a result of the application.

(SF 242(R&R) Application Guide: Part III, Section 2.14) (emphasis added)

18. Additionally, the Application Guides make it clear that by virtue of signing the face page of the grant application, the grantee certifies its compliance with an obligation to abide by the *NIH Grants Policy Statement*.

19. The *NIH Grants Policy Statement* is the authoritative publication that provides critical information that the grantee (Northwestern) needs to know. The *NIH Grants Policy Statement* details the policy requirements that serve as the terms and conditions of NIH grant awards.

20. Three areas of compliance with respect to federal grants are: (1) Administrative Requirements; (2) Cost Principles, and (3) Audit Requirements. The *NIH Grants Policy Statement* incorporates by reference specific Code of Federal Regulations provisions and OMB Circulars that apply to each of these compliance areas. Based on the certifications and assurances found in its grant application, the grantee and the PI (Defendant Dr. Bennett) are required to strictly abide by these Regulations and Circulars.

21. Defendant violated the *NIH Grants Policy Statement*, OMB Circulars, and federal regulations that apply to: (1) the basic cost principles; (2) the need to obtain prior approval for significant budget modifications; and (3) time/effort reporting procedures.

22. Defendant Dr. Bennett violated the *NIH Grants Policy Statement*, OMB Circulars, and federal regulations, as set forth above, when he submitted, or caused to be submitted, and received reimbursement from NIH grants for professional and consulting services, subcontracts to the University of Illinois, airfare and other transportation, conference registration fees, food and drinks, hotel, travel, meals, and other expenditures for items that were for the personal benefit of defendant Dr. Bennett, his friends, and family.

**A. Basic Cost Principles**

23. When seeking funds under a federal grant, the grantee and PI are subject to a series of cost principles that are designed to ensure that any expenses paid from federal grants are reasonable, will directly benefit the work done under the grant, will conform to the requirements of the applicable OMB Circulars, and will follow the terms of the Notice of Grant award (“NGA”). A cost that meets all of these requirements is deemed to be “allowable” and can be properly charged to a federal grant.

24. In order for any cost of work performed under a grant to be allowable, the cost must be: (1) reasonable; (2) allocable to the grant based on the accounting principles in OMB Circular A-21; (3) given consistent treatment through the use of generally accepted accounting standards; and (4) conform to any limitations or exclusions set forth in OMB Circular A-21 or the grant’s notice of award with respect to both the types or amounts of cost items. OMB Circular A-21, § C.2.

25. The reasonableness of a given cost should reflect the action that a prudent person would have taken under the same circumstances at the time the decision was made. Factors examined in determining reasonableness include: the generally recognized necessity of the cost; restraints and requirements imposed by factors such as arms-length transactions and adherence to federal and state laws and regulations; the notice of award; the due prudence exercised by an individual in light of their duty to the institution, its employees, the federal government, and the public at large; and the extent to which incurring costs were consistent with institutional policies and practices. OMB Circular A-21, § C.3.

26. A PI can use the grant for the cost of goods or services that are either incurred solely to advance the work under the grant or benefit and both the grant and other work of the institution in proportions that can be approximated by the use of reasonable methods. OMB Circular A-21, § C.4.

27. OMB Circular A-21 lists the following specific categories of expenses to be *per se* unallowable under all circumstances: “entertainment costs,” and “goods and services for personal use.” Costs that are expressly unallowable or mutually agreed to be unallowable must be clearly identified and excluded from any billing, claim, application, or grant proposal. OMB Circular A-21, § C.11.

28. Costs that are unallowable are required to be clearly identified and cannot be included in any billing, claim, application, or grant proposal. If an unallowable cost is paid under a federal grant, the grantee must refund the money to the grant’s issuing agency.

29. OMB Circular A-21 § C.8 states that “unallowable costs, excess costs due to noncompliance with cost policies, increased costs due to failure to follow a disclosed accounting

practice and increased costs resulting from a change in cost accounting practice” shall be refunded.

30. Defendant Dr. Bennett frequently submitted, or caused to be submitted, and received reimbursement from NIH grants for travel expenses incurred on trips that were unrelated to the NIH grants, not allowable, and for which Dr. Bennett incurred charges that were highly excessive. These costs were unallowable and not allocable pursuant to the standards in OMB Circular A-21.

31. Defendant Dr. Bennett submitted, or caused to be submitted, and received reimbursement from NIH grants for meals, entertainment expenses, conference registration fees, food and drinks, and other expenditures that were unallowable and not allocable pursuant to the standards in OMB Circular A-21

32. Defendant Dr. Bennett also engaged in a scheme to submit and receive payment for costs for consultants that he knew were unallowable and not allocable. Dr. Bennett chose consultants without first obtaining additional bids for work to be performed, failed to use “in-house” resources, which would have been sufficient to meet the project needs, and he awarded contracts to consultants based on personal relationships in violation of OMB Circular A-21.

33. The costs incurred by defendant were not objectively reasonable, did not constitute the actions of a “prudent person” and are in conflict with OMB Circular A-21’s admonition that an assessment of reasonableness should take into account “restraints and requirements imposed by factors such as arms-length transactions, adherence to federal and state laws and regulations.” OMB Circular A-21 § C.3.

### **B. Budget Modifications and Prior Approval**

34. As part of its application, a grantee is required to submit a detailed budget for approval. Using the submitted budget, the NIH/NCI issues the Notice of Grant Award (“NGA”), which sets forth the total award and breaks down the available funds for each distinct budget category.

35. Given the realities of conducting scientific research, there may be disparities between the estimated costs for materials, goods, and services as included in the application budget and the actual costs. Accordingly, the NIH allows grantees to make modifications or re-budget within certain limitations.

36. Deviation from the budget in the NGA and significant re-budgeting, where a single, direct-cost budget category deviates from the categorical commitment level by more than 25% of the total costs awarded, are not permitted unless a grantee first obtains the NIH’s written approval. OMB Circular A-110 § C.25. Additionally a “change in scope” of the grant will always require NIH prior approval. Prior-approval requirements exist to safeguard federal grant money and prevent the expenditure of funds on items that the NIH has not approved. This requirement is found in the *NIH Grants Policy Statement*.

37. The budget plan that serves as the financial expression of a project is approved during the award process. OMB Circular A-110 requires a grant recipient to report deviations from budget and program plans initially submitted. OMB Circular A-110, § C. 25.

38. Since at least 2003, Dr. Bennett engaged in significant re-budgeting that resulted in a change in scope under the grant without obtaining written prior approval for these deviations.

39. Defendant Dr. Bennett submitted or caused to be submitted invoices for vendors and consultants that were either not initially included in the budget or significantly deviated from the budgeted amounts in the budget portion of the SF 424 (R&R) application. Dr. Bennett failed to obtain prior approval for these expenses.

40. In one period between January 1, 2008, and December 31, 2008, Dr. Bennett authorized nearly \$250,000 in federal grant money to pay consultants who were never budgeted. These vendor and consultant payments were accelerated draw-downs that occurred near the end of the grants' budget periods.

41. The above mentioned vendors and consultants were paid using funds from NIH grant numbers: R01CA102713-02REV, R01CA102713-02S3, R01CA102713-02S1, R01CA125077-01A1, and R01HL069717-04.

42. Pursuant to the *NIH Grants Policy Manual's* guidelines, Dr. Bennett's extensive use of consultants who were not included in the SF 424(R&F) application would be deemed as a change in scope because of the significant re-budgeting required as well as because they materially departed from the NGA. As Dr. Bennett failed to obtain written prior approval from the NIH for this re-budgeting, his conduct violated the *NIH Grants Policy Manual*.

43. With respect to numerous NIH/NCI grants, defendant Dr. Bennett submitted false claims when he sought and received payments from grant funds for costs that were not included in the NGA or constituted a significant re-budgeting and required written prior approval from the NIH. By failing to comply with the prior approval requirements found in the *NIH Grants Policy Statement* and OMB Circular A-110, Dr. Bennett's certification of compliance amounts to a false claim.

### **C. Effort Reporting Procedures**

44. Researchers who work on federal grants are paid their salary based on a process referred to as “effort reporting.” Through effort reporting, researchers record and quantify the amount of time they have spent working on a particular federal grant. As part of its application, the grantee includes an estimate outlining the amount of time a PI and researchers plan to devote to a grant.

45. Like any other direct cost, researcher salaries must be: (1) reasonable; (2) allocable; (3) given consistent treatment based on accepted accounting practices; and (4) in conformance with limitations or exclusions set forth in OMB Circular A-21 or the NGA (OMB Circular A-21, § C.2).

46. The general grant cost principles apply not only to expenses but to effort reporting as well. Among the cost principles, allocation is the most relevant in the context of effort reporting. Researchers must not co-mingle their efforts among different grants if they are unable to approximate with reasonable certainty the actual time they spent working on a single grant.

47. OMB Circular A-21 requires a process of reconciliation between estimated and actually expended effort so that salaries reflect no more than the percentage of time actually performed on a given grant.

48. The proposed or estimated effort a PI plans to expend on a grant tends to vary from what actually occurs. Therefore, OMB Circular A-21 establishes a number of effort-reporting procedures that require that effort reports be verified to ensure that a researcher actually performed the work for which they are receiving payment. Grantees are required to reconcile *estimated-effort* reports, to determine the amount of approved funding for researcher

and PI salaries in the NGA, and *actual-effort* reports, as any excess grant funds which were budgeted or paid to the grantee must be returned to the grant's issuing agency.

49. Dr. Bennett failed to accurately allocate his effort reporting while working on several NIH grants at once. With respect to numerous NIH/NCI grants, defendant presented or caused to be presented, false claims when he submitted effort reports that were not properly allocated and when he violated grant cost principles, allowing defendant to seek and receive payments from grant funds.

50. Dr. Bennett co-mingled his effort reporting and allocated time in a manner that was most advantageous to his own interest based on which grants had available funding for direct costs, such as researcher salaries.

51. Defendant Dr. Bennett presented false claims when he submitted effort reports for payments that failed to comply with the cost principles established in OMB Circular A-21.

52. Defendant Dr. Bennett submitted false claims when submitting the after-the-fact certification to verify effort reports pursuant to the methods proscribed by OMB Circular A-21.

53. Documents that reflect the fraud include: PHS 398 and SF 424(RR) Grant Applications and accompanying materials; Notice of Grant Awards; original and reconciled effort reports submitted by researchers and PIs working on federal grants; reports and documentation showing after-the-fact certification or verification of researcher effort reports; and Northwestern's institutional policies regarding effort reporting and procedures to verify effort reports.

54. By virtue of the above-described acts, among others, between 2003 and February 1, 2010, defendant Dr. Bennett knowingly presented, or caused to be presented, directly or

indirectly to officers, employees, or agents of the United States, false or fraudulent claims for payment or approval.

55. By virtue of the above-described acts, among others, defendant Dr. Bennett knowingly made, used, or caused to be made or used, and may continue to make, use, or cause to be made or used, false records and statements to obtain payment from the United States for false or fraudulent claims.

56. By virtue of the above-described acts, defendant Dr. Bennett knowingly made or used, or caused to be made or used, false statements to avoid or conceal obligations to the United States.

57. The false or fraudulent claims to the United States were material.

58. Plaintiff United States, being unaware of the falsity of the claims and/or statements made by defendant Dr. Bennett, and in reliance on the accuracy thereof, paid false or fraudulent claims submitted by the defendants.

#### **Claim for Relief**

WHEREFORE, the United States prays for judgment against defendant Dr. Bennett as follows:

- a. That defendant is found to have violated and is enjoined from future violations of the federal False Claims Act, 31 U.S.C. § 3729-32.
- b. That this court enter judgment against defendant in an amount equal to triple the amount of damages the United States has sustained because of defendant's false or fraudulent claims, off-set by any amount of single damages recovered by the United States for claims it had against Northwestern University, or its employees, for the same grant reimbursements as alleged in this complaint;

- c. That this court enter judgment against defendant for the maximum civil penalty for each violation of 31 U.S.C. § 3729.
- d. That the United States be awarded the maximum amount allowed pursuant to § 3730(d), and all relief to which it is entitled pursuant to § 3720(h) of the False Claims Act.
- e. That the United States be awarded all costs of this action, including expert witness fees, attorneys' fees, and court costs.
- f. That the United States recover such other relief as the court deems just and proper.

Respectfully submitted,

GARY S. SHAPIRO  
Attorney for the United States  
Acting Under Authority Conferred by  
28 U.S.C. § 515

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