

Federal Jury Finds Cornell University's Medical College Committed Fraud

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Salmanson Goldshaw, P.C. →

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NEW YORK, July 29 /PRNewswire/ -- On Thursday, July 22, a federal court jury found that Cornell University's Weill Medical College and a former faculty member submitted false claims to the National Institutes of Health on three separate occasions from 1999-2001 arising from a grant designed to train neuropsychologists for a research career in HIV/AIDS.

The grant was awarded by the NIH from funds specifically allocated by Congress for HIV/AIDS research. A clinical neuropsychologist then at Cornell, Wilfred van Gorp, now at Columbia, applied for a training grant from NIH, promising to train post-doctoral fellows committed to a career in research in the neuropsychology of HIV/AIDS.

One of those fellows, Daniel Feldman, brought suit under a federal whistleblower statute, known as the False Claims Act, alleging that van Gorp and Cornell instead used the funds for inappropriate purposes, including requiring the fellows to see an excess of private fee-for-service patients with other medical conditions. At trial, Dr. Feldman showed that of approximately 160 clinical patients seen by the fellows over five years on the NIH-grant, only three patients were HIV- positive. Instead of seeing HIV- patients, the fellows often evaluated "medicolegal" cases, referred by insurance companies or attorneys who were in litigation over disability or worker's compensation claims, or criminal defendants. Indeed, Dr. van Gorp was well-known for his expert witness testimonies for the defense of several high-profile criminal defendants in New York during that period, including mob boss Vincente Gigante and Andrew Goldstein, the "subway pusher."

The jury specifically found that, over the course of the five-year grant, Dr. van Gorp and Cornell knowingly submitted three progress reports containing false or fraudulent statements to NIH in order to continue the funding of the grant. The original grant application had described a rich program of faculty and research resources, along with a detailed core curriculum, including courses in HIV/AIDS. Dr. Feldman and his counsel, Michael J. Salmanson, of Salmanson Goldshaw, P.C. of Philadelphia, argued during the course of the 8-day trial that the original grant application and the subsequent progress reports contained numerous false statements designed to convince NIH to originally secure and then continue the funding.

Dr. Feldman agreed that the fellows had spent some of their time in research-related activities, but at least as much of that activity was related to medicolegal research as it was to HIV. Indeed, Dr. van Gorp had argued in his initial grant application to the NIH that clinical work is a "springboard" for developing research activities, and considering the disproportionate number of medicolegal cases that the fellows evaluated, the focus of their research followed. Other key issues argued in the suit over the grant application and its progress reports were formal HIV-courses that were never taught, key faculty on the grant who were never introduced to the fellows, and a breadth of HIV-research to which the fellows were never exposed.

Although the jury concluded that the original application and the first progress report, which were submitted prior to the arrival of the fellows, did not contain any materially false statements, it apparently decided that once the training program was underway, the defendants falsely described the fellows' actual activities under the grant in a way that was capable of influencing the government to continue the funding.

Defendants denied making any false statements, and contended that, based on the subsequent career paths of the fellows, the grant had achieved its ultimate objective. They argued that the program was akin to a car trip, and that it did not matter what route one took, as long as some of the fellows ultimately arrived at the desired destination – a career in HIV-related research.

In his closing argument, Salmanson responded by asking the jurors to imagine that they had bought a car for a trip to California. Although they make it to California, they then discover that the seller had rolled back the odometer to misrepresent the mileage. Salmanson argued, in essence, "Just because you made it across the country, does that mean you haven't been defrauded? Of course you have." The nine jurors apparently agreed.

The issue of damages must now be decided by Judge William H. Pauley III, who presided over the trial. Judge Pauley had previously ruled that the proper measure of damages is the amount of money paid by NIH as the result of the false claims. Based upon the verdict, that is expected to be several hundred thousand dollars which, under the False Claims Act, will be automatically tripled. Although the bulk of the money is returned to the government, Dr. Feldman will be entitled to what is known as a "relator's share" of the funds as a reward for bringing the fraud to the government's attention. Defendants are also liable for reimbursement of his attorneys' fees and costs, which over the seven years of litigation since the case was filed in 2003, has reached several hundred thousand dollars.

Cornell was represented by Tracey Tiska, Brian Black and Eva Dietz at Hogan Lovells, LLP in New York. Dr. van Gorp was represented by Nina Beattie of Brune & Richard. Hogan Lovells had represented Cornell/Weill in two other whistleblower fraud cases. One of those cases had been settled in part last year for \$2.6 million, although the case is still ongoing. In 2005, the New York City-based medical school paid a \$4.4 million settlement to resolve charges raised by Kyriakie Sarafoglou, a pediatric endocrinologist, that it was using part of a \$23 million NIH research grant for private patient care.

Dr. Feldman says he is relieved that the case has finally been decided, having first raised concerns to Dr. van Gorp and Cornell during his fellowship from 1998-1999. In the ensuing years, he was compelled to abandon his academic career. In 2003, Dr. Feldman went into the pharmaceutical industry where he has built a successful second career. In 2008, Dr. Feldman was elected President of the Pharmaceutical Management Science Association and last year he was awarded the Pharmaceutical Market Researcher of the Year Award from the Pharmaceutical Market Research Group. Happily, he resides with his partner near Princeton, NJ, where they rescue animals and do organic gardening.

Despite the outcome of the trial, Dr. Feldman is still disappointed by the lack of oversight of billions of taxpayer dollars awarded by the NIH to large academic institutions. He feels that this remains a larger, unresolved issue. "And being a federal whistleblower is not something you undertake without tremendous sacrifice. Whistleblowers have to be willing to risk their careers, lose many of their work and social relationships, and wait for many years for justice. In the end, prevailing certainly feels great and worth the cost to do the right thing."

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