

1 Malaika M. Eaton, WSBA No. 32837
Daniel M. Weiskopf, WSBA No. 44941
2 James G. Diehl, WSBA No. 54914
McNAUL EBEL NAWROT & HELGREN PLLC
3 600 University Street, Suite 2700
Seattle, WA 98101
4 (206) 467-1816
meaton@mcnaul.com
5 dweiskopf@mcnaul.com
jdiehl@mcnaul.com
6 Attorneys for Plaintiffs

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Jan 10, 2020

SEAN F. MCAVOY, CLERK

8 UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF WASHINGTON
AT RICHLAND

10 THE UNITED STATES OF
11 AMERICA, and
12 THE STATE OF WASHINGTON,
13 ex rel. DAVID YAM, M.D., an
14 individual,
15 Plaintiffs,

16 v.

17 PROVIDENCE HEALTH &
18 SERVICES, a Washington non-profit
corporation d/b/a PROVIDENCE ST.
MARY MEDICAL CENTER,
19 Defendant.

No.

RELATOR'S COMPLAINT
FOR VIOLATIONS OF THE
FALSE CLAIMS ACT; AND
COMPLAINT TO REDRESS
ACTS OF REPRISAL UNDER
THE FALSE CLAIMS ACT,
THE MEDICAID FRAUD
FALSE CLAIMS ACT, AND
WRONGFUL WAGE
WITHHOLDING UNDER
WASHINGTON LAW

JURY TRIAL DEMANDED

FILED UNDER SEAL

1 **INTRODUCTION**

2 1. David Yam, M.D. brings this suit on his own behalf and as a qui
3 tam relator on behalf of the State of Washington and the United States of
4 America to recover treble damages and civil penalties arising out of the false
5 statements and claims Providence Health & Services submitted to the State
6 of Washington and the federal government in violation of the Medicaid
7 Fraud False Claims Act, RCW Chapter 74.66, and the False Claims Act, 31
8 U.S.C. §§ 3729-3732, and to redress acts of retaliatory conduct Providence
9 forced Dr. Yam to endure as a result of his reporting Providence's fraudulent
10 practices to Providence administrators and to the Office of the Inspector
11 General.

12 **PARTIES**

13 2. The real party in interest to the False Claims Act and Medicaid
14 Fraud False Claims Act claims herein is the sovereign government of the
15 United States of American and the sovereign government of the State of
16 Washington. At this time, David Yam, M.D., as a qui tam relator, is
17 pursuing his cause of action on behalf of the Plaintiffs the United States of
18 America and the State of Washington set forth herein pursuant to 31 U.S.C.
19 §§ 3729-3732 and RCW Chapter 74.66. David Yam, M.D., as a qui tam
20 relator, brings this suit to recover treble damages, civil penalties, and all
21 other relief justiciable under the False Claims Act on behalf of the federal
22 government and under the Medicaid Fraud False Claims Act on behalf of the
23 State of Washington.

24 3. David Yam, M.D., as an individual plaintiff, is a citizen of the
25 United States of America, residing in Brush Prairie, Washington, who brings
26

1 this suit for False Claims Act retaliation, Medicaid Fraud False Claims Act
2 retaliation, and wrongful wage withholding on his own behalf.

3 4. Providence Health & Services is a non-profit corporation
4 organized under the laws of the State of Washington, which maintains its
5 principal place of business in Renton, Washington, and which routinely
6 transacts business in Walla Walla, Washington under the trade name
7 Providence St. Mary Medical Center.

8 JURISDICTION AND VENUE

9 5. This Court has personal jurisdiction over Providence because
10 Providence maintains a principal place of business in Richland County,
11 Washington.

12 6. This Court has subject matter jurisdiction over the claims
13 Dr. Yam brings as a qui tam relator under the False Claims Act. *See* 31
14 U.S.C. 3730(b).

15 7. This Court has subject matter jurisdiction over Dr. Yam's claim
16 for retaliation under the False Claims Act. *See* 31 U.S.C. § 3732.
17 Supplemental jurisdiction over Dr. Yam's pendent claims brought under the
18 laws of the State of Washington is appropriate because those claims
19 integrally relate to Providence's fraud and Dr. Yam's claim for retaliation
20 under the False Claims Act. *See* 28 U.S.C. § 1367(a).

21 8. The United States District Court in and for the Eastern District
22 of Washington is the proper venue for this action because Providence resides
23 in this judicial district. *See* 28 U.S.C. § 1391(b).

24 FACTUAL ALLEGATIONS

25 9. Dr. Yam is a neurosurgeon who received his medical degree
26 from the University of Tennessee's College of Medicine, has been licensed to

1 practice medicine for almost a decade, and is currently an Associate
2 Professor of Neurological Surgery at the Oregon Health and Science
3 University.

4 10. Dr. Yam, through prior employment with Providence, advanced
5 the reputation of Providence's neurological program in Walla Walla, which
6 earned critical acclaim for safety and performance under his tenure. That
7 recognition is in part attributable to Dr. Yam's intradepartmental efforts to
8 review the work of his peers which began no later than 2016.

9 11. In February 2016, Dr. Yam reviewed the work of a now former
10 colleague, Dr. Dan Elskens.

11 12. The review revealed Dr. Elskens committed severe surgical
12 errors, including by operating on incorrect spinal sections, which resulted in
13 post-operation complications necessitating emergency remedial surgery.
14 Doctor Yam reported the errors to Providence's Chief Medical Officer,
15 recommending that Dr. Elskens be terminated. Providence, after rejecting the
16 recommendation, suspended Dr. Elskens when Dr. Yam discovered
17 Dr. Elskens botched an additional surgery, nearly paralyzing the patient
18 nearly a year later after many more patients were adversely harmed.
19 Dr. Elskens resigned while on voluntary suspension, and without adverse
20 reporting to the National Practitioner Data Bank.

21 13. Dr. Yam began reviewing the work of his fellow neurosurgeon
22 with greater scrutiny after Providence failed to take seriously his initial
23 allegations against Dr. Elskens. In keeping with that practice, Dr. Yam next
24 reviewed the work of Dr. Jason Dreyer because Dr. Dreyer, who studied
25 under Dr. Elskens, spoke highly of Dr. Elskens' work and recommended Dr.
26 Elskens to join the group in Walla Walla.

1 14. Dr. Yam’s review of Dr. Dreyer proved troubling. The review
2 revealed that Providence (through Dr. Dreyer) was billing the federal
3 government for medical services which neither Dr. Dreyer nor Providence
4 performed. In addition, Dr. Dreyer was fabricating patient diagnoses and
5 treatments to justify complex operations and to increase the billing and
6 reimbursement of both himself and Providence.

7 15. For example, in January 2017, Dr. Dreyer claimed to perform
8 fusion and decompression surgeries on a patient’s L1-L5 spinal segments,
9 and prepared records which, on information and belief, Providence used to
10 bill the federal government for those services. Providence’s purposeful
11 submission of those records to the federal government amounts to a false
12 claim for payment because Dr. Dreyer did not perform decompression
13 surgery on the patient’s L1 or L2 spinal segments. This false-billing incident
14 caused the federal government to pay Providence sums likely exceeding
15 \$150,000 for unnecessary and unperformed work.

16 16. Similarly, in December 2017, Dr. Dreyer reported performing
17 fusion surgery on a patient’s L-3 and L-4 spinal segments, and prepared
18 records which, on information and belief, Providence used to bill the federal
19 government for those services. Providence’s purposeful submission of those
20 records to the federal government amounts to a false claim for payment
21 because Dr. Dreyer did not fuse those spinal segments together—they had
22 already been fused together through prior surgeries. This false-billing
23 incident caused the federal government to pay Providence significant sums
24 for work which Providence never performed.

25 17. Other Providence documents establish that Providence’s
26 submission of those false claims for payment were not unintentional isolated

1 mistakes, but instead shed light on a purposeful, improper, and pervasive
2 Providence practice. The contents of those documents, which Dr. Yam
3 reviewed, but for reasons described below can no longer access, reveal that
4 Providence, through Dr. Dreyer, would knowingly, and routinely, falsify
5 patient medical records to justify as medically necessary certain expensive
6 surgical procedures for which the federal government would accept financial
7 responsibility. Doctor Yam alleges that Providence and Dr. Dreyer carried
8 out this improper practice by subjecting patients to risky procedures that
9 were legitimized through fraudulent diagnoses. In one instance, for example,
10 Providence and Dr. Dreyer claimed a patient receiving federally funded
11 medical treatment suffered from a severe deformity that required complex
12 surgery, which Dr. Dreyer performed at great risk to the patient when, in fact,
13 the deformity was documented not to exist in the patient. Doctor Yam
14 believes, and therefore alleges, that Dr. Dreyer's improper practices provided
15 a windfall to Providence at the federal government's expense which likely
16 amounts to tens of millions of dollars and likely more.

17 18. When Dr. Yam initially reported his concerns to Providence in
18 November 2017, Providence assured him action would be taken.
19 Providence's response was nevertheless insufficient, and, for this reason,
20 Dr. Yam alleges that the response was designed to allow Providence to
21 continue to benefit from the aforementioned windfall. Indeed, Dr. Dreyer
22 continued his same pattern and practice on Providence's behalf until Dr. Yam
23 again complained in April 2018, explicitly using the words "fraud,"
24 "malpractice," and "harm" in emails to key providence administrators in
25 Walla Walla, in Spokane, and in Renton. Providence responded to Dr. Yam's
26 renewed complaint through a flawed investigation which, Dr. Yam was told,

1 revealed no evidence of false billing. Providence administrators in Renton
2 nevertheless allowed for the voluntary suspension of Dr. Dreyer's that
3 limited his ability to practice at its Walla Walla facility as a result of that
4 investigation. Dr. Dreyer ultimately resigned and is now practicing medicine
5 in Spokane and, like Dr. Elskens, continues to practice without adverse
6 reporting to the National Practitioner Data Bank.

7 19. Rather than commend Dr. Yam for his actions to protect patients
8 and avoid further violations of law, Providence, acting through
9 administrators located in Walla Walla and in Renton, retaliated against
10 Dr. Yam. Providence, in this respect, involuntarily restricted Dr. Yam's
11 ability to practice medicine, removed him from key committees, and, among
12 other things, required that he participate in a review of his past works,
13 effectively without pay. Providence also subjected Dr. Yam to excessive call
14 and unpaid leave during this time attempting to force his resignation by
15 causing him professional and emotional harm.

16 20. These retaliatory acts ultimately forced Dr. Yam to suffer past
17 and prospective damages, and forced Dr. Yam's hand, causing him to
18 provide a 120-day notice of resignation to Providence, and to report his
19 concerns to the Office of the Inspector General. Providence shockingly
20 reacted by subjecting Dr. Yam to further retaliation, including by refusing to
21 pay Dr. Yam for past-due retention-bonuses, certain work which remains
22 under paid, and for his accrued paid time off.

23 **FIRST CAUSE OF ACTION**
24 **(False Claims Act Violation)**

25 21. Dr. Yam realleges the preceding paragraphs and, on behalf of
26 the United States of America and the State of Washington, incorporates them
as though fully restated through this reference.

1 that would allow Dr. Yam to identify each of those false claims for payment
2 remains in the possession, custody, and control of Providence.

3 36. The State of Washington, being unaware of the falsity of the
4 records, statements and claims made or caused to be made by Providence,
5 paid the claims that would not be paid but for Providence's illegal conduct.

6 37. The State of Washington, by reason of Providence's acts, has
7 been damaged in an amount to be determined at trial.

8 **FOURTH CAUSE OF ACTION**
9 **(Medicaid Fraud False Claims Act Retaliation)**

10 38. Dr. Yam realleges the preceding paragraphs and, on behalf of
11 the United States of America and the State of Washington, incorporates them
12 as though fully restated through this reference.

13 39. Providence's intentional mistreatment, abuse, and humiliation of
14 Dr. Yam as a direct and proximate result of his having engaged in protected
15 activity within the meaning of the Medicaid Fraud False Claims Act
16 damaged Dr. Yam and caused his constructive termination in violation of
17 RCW 74.66.090(1).

18 40. Dr. Yam has suffered great economic harm, including loss of
19 income and future earnings, and has suffered other injury as a result of
20 Providence's retaliatory conduct in an amount which will be proven at trial.

21 **FIFTH CAUSE OF ACTION**
22 **(Wrongful Wage Withholding)**

23 41. Dr. Yam realleges the preceding paragraphs and incorporates
24 them on his own behalf as though fully restated through this reference.

25 42. Providence's intentional withholding of Dr. Yam's past-due
26 retention-bonuses, wages for work which remains underpaid, and

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

compensation for his accrued time off amounts to willful wage withholding in violation of RCW 49.52.050.

43. Dr. Yam has suffered significant economic harm as a result of Providence’s willful withholding of his wages in an amount which will be proven at trial.

1 **DEMAND FOR JURY TRIAL**

2 Dr. Yam, on behalf of himself, the State of Washington, and the
3 United States of America, demands a jury trial on every element of his
4 personal and qui tam claims, and on every element of any potential defense
5 or affirmative defense Providence may assert.

6 **PRAYER FOR RELIEF**

7 WHEREFORE, Plaintiffs request the following relief:

8 A. That this Court enter judgment against Providence in an amount
9 equal to three times the damages sustained by the United States of America
10 as the direct and proximate result of Providence's conduct, plus a civil
11 penalty of \$22,363, as permitted by 28 C.F.R. § 85.5, for each violation of 31
12 U.S.C. § 3729 and RCW 74.66.020;

13 B. That Dr. Yam, in his capacity as a relator, be awarded the
14 maximum amount allowed pursuant to 31 U.S.C. § 3730(d) and RCW
15 74.66.070(1)(a) for bringing this action;

16 C. That Dr. Yam, in his capacity as a relator, be awarded all costs
17 associated with his prosecution of this action, including, and without
18 limitation, a reasonable award of attorney fees and all out-of-pocket expenses
19 as provided by 31 U.S.C. § 3730(d) and RCW 74.66.070(1)(c);

20 D. That Dr. Yam be awarded double back pay, interest on that back
21 pay, and compensation for his past and prospective economic damages, as
22 well as an award to compensate Dr. Yam for his special damages under 31
23 U.S.C. § 3730(h)(2) and RCW 74.66.090(2);

24 E. That Dr. Yam be awarded all costs associated with his
25 prosecution of this action for retaliation under the False Claims Act,
26 including, and without limitation, a reasonable award of attorney fees and

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

out-of-pocket expenses as provided by 31 U.S.C. § 3730(h)(2) and RCW 74.66.090(2);

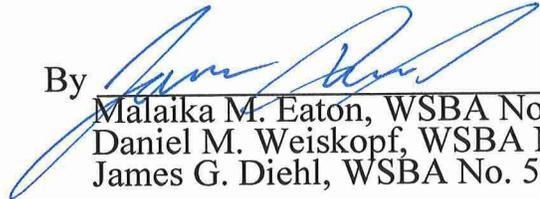
F. That Dr. Yam be awarded twice the amount of his unlawfully withheld wages, in addition to an award of attorney fees and out-of-pocket expenses as provided by RCW 49.52.070; and

G. For such other and further relief as the Court deems just and equitable.

DATED THIS 13th day of January, 2020.

McNAUL EBEL NAWROT &
HELGREN PLLC

By



Malaika M. Eaton, WSBA No. 32837
Daniel M. Weiskopf, WSBA No. 44941
James G. Diehl, WSBA No. 54914

600 University Street, Suite 2700
Seattle, Washington 98101
206-467-1816
meaton@mcnaul.com
dweiskopf@mcnaul.com
jdiehl@mcnaul.com

Attorneys for Plaintiffs