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Plea bolsters kickback case against Mass. medical firm The Boston Globe

By Alice Dembner, Globe Staff | January 4, 2008

The Massachusetts subsidiary of an international surgical device manufacturer is under federal investigation for allegedly paying kickbacks to doctors to use its equipment, according to court documents and company disclosures.

The federal case against Blackstone Medical of Springfield got a boost yesterday when an Arkansas neurosurgeon pleaded guilty to soliciting and accepting kickbacks from a salesman who worked for Blackstone's parent company, Orthofix International, based in Netherlands Antilles, as well as three other companies. Additional charges were dismissed in exchange for Dr. Patrick Chan's agreement to cooperate in the government's investigation into separate allegations that Blackstone and other companies defrauded the Medicaid and Medicare programs by paying illegal incentives to other doctors. Those allegations are contained in a whistle-blower's lawsuit.

"We are committed to vigorously investigating, prosecuting, and punishing those healthcare providers who seek to manipulate the system for their own financial gain," US Attorney Jane W. Duke, who serves the eastern district of Arkansas, said in a statement. She declined to discuss the government's broader investigation.

A spokesman for Blackstone yesterday said he knew nothing about the allegations or yesterday's developments in US District Court in Little Rock. But Orthofix's vice president for investor relations, Dan Yarbrough said, "We are continuing to defend ourself on this matter."

Orthofix purchased Blackstone in 2006, and has set aside \$50 million of the purchase price to pay for possible settlements of allegations involving improper payments to doctors. Blackstone manufactures and sells devices used in spinal surgery.

Blackstone is complying with subpoenas, received last summer and fall, from the US attorney in Nevada and the inspector general of the US Department of Health and Human Services, according to reports filed by Orthofix with the Securities and Exchange Commission. The subpoenas ask for documents from 1999 on regarding payments or gifts made to doctors.

Yesterday, Chan also agreed to pay \$1.5 million to settle allegations against him in the whistle-blower suit, which alleges Blackstone and another company provided kickbacks in the form of bogus consulting contracts, fake research studies, and gifts to Chan and doctors across the nation who agreed to use the companies' devices in back surgeries. The whistle-blower suit, filed on behalf of the government, alleges that the scheme led to false claims by hospitals where the operations were performed that defrauded the federal Medicare and Medicaid programs. More than \$1.1 million of the settlement will go to the federal government and to Arkansas. The rest goes to the whistle-blower, John Thomas, who sold equipment for a competitor to Blackstone.

Orthofix is contesting the suit.

Thomas's attorney, David Ivers of Little Rock, said the settlement - and Chan's cooperation with the government - should help in proving that Blackstone engaged in a pattern of illegal activity.

"As alleged in our lawsuit, Dr. Chan is only one piece of a big scheme that has been going on across the United States," Ivers said in a statement.

In the whistle-blower suit, Thomas alleges that Chan stopped buying equipment from him after Chan signed a \$25,000 consulting agreement with Blackstone. Thomas had earlier rebuffed a request from Chan for cash

kickbacks, even after Chan said salesmen for competing companies were providing them, according to the suit. Thomas also alleges that Blackstone, through a sales agent, offered similar bogus consulting contracts to other doctors in Arkansas, Missouri, Mississippi, and other states. The suit also alleges that Chan performed unnecessary surgeries. While he admitted guilt in the criminal matter, Chan did not admit wrongdoing in settling the whistle-blower case.

Orthofix and Blackstone are facing several other civil lawsuits alleging that Chan operated unnecessarily. One case alleges that Chan was given stock options in Blackstone for using its equipment. The suit, filed in Arizona, alleges that Chan implanted a spinal device in a young trucker's back in 2005, after telling him that he was at risk of becoming a quadriplegic without the surgery. After the surgery, a worker's compensation evaluation of the MRI done before the surgery showed the procedure was uncalled for, according to the lawsuit. Orthofix and Chan deny the allegations.

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