

RETURN DATE: AUGUST 14, 2018

STATE OF CONNECTICUT, <i>Plaintiff</i>	:	SUPERIOR COURT
	:	
v.	:	JUDICIAL DISTRICT OF HARTFORD
	:	
SUSAN BRITT <i>Defendant</i>	:	JUNE 19, 2018

COMPLAINT

The Plaintiff, the State of Connecticut, represented by George Jepsen, Attorney General for the State of Connecticut, alleges the following against the Defendant, Susan Britt (Defendant Britt).

SUMMARY

The Plaintiff, the State of Connecticut, brings this complaint under the Connecticut False Claims Act (Act), Conn. Gen. Stat. §§ 4-274 *et seq.* The complaint alleges that during the period beginning at least as early as January 2013 and continuing through at least September 2016, Defendant Britt engaged in a pervasive and illegal scheme to bill the Connecticut Medicaid program and collect tens of thousands of dollars for services she never provided to her Medicaid patients. This complaint alleges that Defendant Britt knowingly created and submitted false claims for reimbursement for behavioral health services which she never provided to indigent and/or disabled Connecticut residents who receive health care through Connecticut’s Medicaid program, and that she concealed her obligation to repay the state by either failing to maintain any patient records or destroying them. The State of Connecticut seeks treble damages, civil penalties, and other relief available under the Act for Defendant Britt's illegal conduct.

The Attorney General also brings this complaint on behalf of the Connecticut Department of Social Services (Department or DSS) under the common law of contract. The complaint

further alleges that Defendant Britt breached her duty arising under her agreement with the DSS to maintain records of all services she claimed to have provided to her Medicaid clients, and to provide these records to the DSS when requested in order to support the claims for reimbursement that she submitted and received payment for. The complaint alleges that she breached these duties when she either never maintained any patient records, or, as she has claimed, destroyed all of them, and failed to provide to DSS's agents any records to support the \$530,000 worth of claims she submitted to and was reimbursed by the Medicaid program.

PARTIES

1. The Plaintiff is the State of Connecticut, represented by George Jepsen, Attorney General. The Attorney General brings Counts One and Two, alleging violations of the Act, pursuant to the authority granted to him by the Act. The Act authorizes the Attorney General to bring a civil action in the name of the state if he finds that a person has violated the Act. Conn. Gen. Stat. § 4-276. The Attorney General brings Count Three of this complaint as the legal representative of the DSS, alleging that Defendant Britt breached her agreement with the DSS.

2. Defendant Britt is a professional counselor licensed by the State of Connecticut. She resides and works in Norwich, Connecticut.

3. During the relevant time period for the events described in this complaint Defendant Britt transacted business in the State of Connecticut under her name and under the tradename "An Inner Peace."

4. The relevant time period for the causes of action set forth below is at least as early as January 2013 through September 2016.

LEGAL AND PUBLIC POLICY BACKGROUND

5. The Act provides in relevant part, with respect to claims for payment or obligations to pay money under a state-administered health or human services program, that any person who:

(a) knowingly presents, or causes to be presented, a false or fraudulent claim for payment or approval; Conn. Gen. Stat. § 4-275 (a)(1); or

(b) knowingly conceals or knowingly and improperly avoids or decreases an obligation to pay or transmit money or property to the state; Conn. Gen. Stat. § 4-275 (a)(8);

is liable to the State of Connecticut for relief, including civil penalties and treble damages. Conn. Gen. Stat. § 4-275 (b).

6. For the purposes of the Act, "state-administered health or human services program" includes without limitation all programs administered by the DSS. Conn. Gen. Stat. § 4-274(7).

7. For the purposes of the Act: "knowing" and "knowingly" means that a person, with respect to information: (a) has actual knowledge of the information; (b) acts in deliberate ignorance of the truth or falsity of the information; or (c) acts in reckless disregard of the truth or falsity of the information, without regard to whether the person intends to defraud. Conn. Gen. Stat. § 4-274(1); and "obligation" means, among other things, an established duty, whether fixed or not, arising from the retention of an overpayment. Conn. Gen. Stat. § 4-274(5).

8. The DSS administers the Connecticut Medical Assistance Program (CMAP). The CMAP includes the State of Connecticut's Medicaid program. The CMAP, including Medicaid, is a state-administered health or human services program. Conn. Gen. Stat. § 4-274(7). The

CMAP pays enrolled healthcare providers for health care benefits provided to program recipients.

9. Medicaid is a joint federal-state program that provides health care benefits for certain groups of persons, including the indigent and disabled. The federal Medicaid statutes set forth the minimum requirements for state Medicaid programs to qualify for federal funding. 42 U.S.C. § 1396a.

10. The DSS Commissioner is authorized to promulgate regulations necessary to administer the CMAP, including the State of Connecticut's Medicaid program. Regulations of Connecticut State Agencies (R.C.S.A.) § 17b-262-523(13).

CMAP PROVIDER ENROLLMENT AND PARTICIPATION

11. The CMAP requires all providers who wish to participate in the CMAP to enroll and enter into an agreement with the DSS, known as a provider agreement. This agreement, which is periodically updated, remains in effect for the duration specified in the agreement. The provider agreement specifies conditions and terms that govern the program which the provider is mandated to adhere to in order to participate in the program. R.C.S.A. § 17b-262-524.

12. During the relevant time period Defendant Britt was enrolled in the CMAP as a provider, and was a party to a provider agreement with the DSS (Provider Agreement). Defendant Britt executed the Provider Agreement on January 12, 2012.

13. Defendant Britt was enrolled in the CMAP as a behavioral health clinician, and more particularly, as a professional counselor. *See* R.C.S.A. § 17b-262-913(15) (defining licensed professional counselor as one type of licensed behavioral health clinician).

CMAP PAYMENT REQUIREMENTS

14. The Provider Agreement between Defendant Britt and the DSS obligates Britt to submit to the DSS only those claims seeking reimbursement for covered goods and services that

are medically necessary and actually provided to the Medicaid beneficiaries in whose name the claims are made. Provider Agreement, Para. 15.

15. To receive payment for covered goods and services provided to CMAP beneficiaries, providers are required, among other things, to meet and maintain all DSS enrollment requirements. R.C.S.A. §§ 17b-262-914 and 17b-262-524.

16. The Provider Agreement requires Defendant Britt to comply with all laws, regulations, and DSS enrollment requirements. The Provider Agreement and state regulations expressly condition payment to the provider upon such compliance. R.C.S.A. §§ 17b-262-522, 17b-262-524, 17b-262-526, and R.C.S.A. §§ 17b-262-914-16; Provider Agreement, Paras. 1 and 2.

17. State regulations and the Provider Agreement require that any overpayment for CMAP goods or services, defined as the excess over the payment authorized, or any payment owed to the DSS because of a violation due to abuse or fraud, shall be payable to the DSS. R.C.S.A. § 17b-262-533; R.C.S.A. § 17b-262-523(18); Provider Agreement, Para. 23.

18. The DSS may recover any overpayments which the provider does not repay by bringing an action against the provider. Provider Agreement, Para. 23.

REQUIREMENTS FOR THE DOCUMENTATION OF SERVICES

19. State regulations and the Provider Agreement require licensed professional counselors to maintain specific documentation of the services they provide to their clients.

20. Specifically, state regulations require licensed professional counselors to maintain, without limitation, "pertinent diagnostic information, a current treatment plan signed by the licensed [professional counselor], ... documentation of services provided, including types

of service or modalities, date of service, location of the service and the start and stop time of the service." R.C.S.A. § 17b-262-925(a).

21. Licensed professional counselors must maintain their records for a minimum of five years. R.C.S.A. § 17b-262-925(c).

22. The DSS "may disallow and recover any amounts paid to the provider for which required documentation is not maintained and provided to the [DSS] upon request." R.C.S.A. § 17b-262-925(d).

23. The Provider Agreement also requires Defendant Britt to maintain specific patient records for each patient, including without limitation "pertinent diagnostic information including x-rays; current treatment plan; treatment notes; documentation of dates of services and services provided; and all other information required by state and federal law." Provider Agreement, Para. 7.

24. In addition, the Provider Agreement requires Defendant Britt to "maintain fiscal, medical, and programmatic records which fully disclose services and goods rendered and/or delivered to eligible clients," and to make her records and information "available to authorized [government] representatives upon request ... including but not limited to, information regarding payments claimed by the Provider for furnishing goods and services." Provider Agreement, Para. 21.

25. The Provider Agreement obligates Defendant Britt to "cooperate fully and make available to state and federal officials and their agents all records and information that such officials have determined to be necessary to assure the appropriateness of" the payments the DSS made to Britt, and "to assure Provider's compliance with all applicable statutes and regulations and policies." Provider Agreement, Para. 22.

26. In the event a provider dies or retires, state regulations require all healthcare providers and/or their successors to notify their patients by letter and publication in a newspaper, and to retain the "[m]edical records of all patients ... for at least sixty days following both the public and private notice to patients." R.C.S.A. § 19a-14-44.

THE FALSE CLAIMS SCHEME – A PERVASIVE PATTERN OF FRAUDULENT BILLING

27. During the relevant time period Defendant Britt conducted her counseling practice at her personal residence in Norwich, Connecticut.

28. Defendant Britt submitted claims to the CMAP for the counseling services she purportedly performed for her Medicaid clients.

29. Defendant Britt regularly received payments from the CMAP by check or electronic funds transfer as reimbursement for the claims she submitted for the counseling services she purportedly provided to her Medicaid clients.

30. During the relevant time period the DSS reimbursed Defendant Britt a total of more than \$530,000 for the claims she submitted for the services she purportedly provided to her Medicaid patients.

31. From at least as early as January 2013 through September 2016, Defendant Britt systematically and knowingly submitted false and fraudulent claims to the DSS for counseling services that Defendant Britt purported to have performed at her home office in Norwich, Connecticut, but which in fact she never provided to CMAP beneficiaries.

32. Defendant Britt falsified claims in several ways. In many instances, Defendant Britt provided bona fide counseling services to patients once or twice a week, but she submitted phony claims and received payment for three or four additional weekly counseling sessions with these patients that she in fact never conducted.

33. In other instances, Defendant Britt provided some bona fide counseling services to children, and met separately with their parents on one or two occasions. Using the parents' Medicaid identification number, Defendant Britt then submitted falsified claims for numerous dates of service for counseling sessions she never provided to the parents.

34. Defendant Britt submitted these phony claims to the CMAP using the billing code that reimbursed her at the highest rate paid by the CMAP for counseling services.

35. Defendant Britt submitted such claims for behavioral health services she purported to have rendered to Medicaid patients, and received payment for them from the CMAP, even though Defendant Britt rendered no services and did not treat these patients on the dates of services delineated on the claim forms.

36. More specifically, the following are examples of Medicaid patients for whom Defendant Britt submitted and received payment for numerous false claims:

A. During the period from March 6, 2015, through September 1, 2016, Defendant Britt billed the CMAP and received payment for behavioral health services she purported to have provided to Patient 1. Defendant Britt submitted 139 claims to the CMAP for these services, but for at least 95 of these claims she did not provide any service to Patient 1. Defendant Britt received \$8,989 for these 95 false claims for services that she never provided.

B. During the period from February 27, 2016, through September 1, 2016, Defendant Britt billed the CMAP and received payment for behavioral health services she purported to have provided to Patient 2. Defendant Britt submitted 90 claims to the CMAP for these services, but for at least 88 of these claims she did not provide any service to Patient 2. Defendant Britt received \$8,327 for these 88 false claims for services that she never provided.

C. During the period from February 27, 2016, through September 1, 2016, Defendant Britt billed the CMAP and received payment for behavioral health services she purported to have provided to Patient 3. Defendant Britt submitted 88 claims to the CMAP for these services, but for at least 87 of these claims she did not provide any service to Patient 3. Defendant Britt received \$8,232 for these 87 false claims for services that she never provided.

37. For some of the dates of service Defendant Britt billed the CMAP for services she purportedly provided to Medicaid patients in Connecticut, the patients in fact were traveling out of state.

INTENTIONAL DESTRUCTION OF RECORDS

38. On or about March 3, 2017, the Connecticut Attorney General, pursuant to the Act, issued and caused to be served on Defendant Britt a subpoena dated February 28, 2017 (Subpoena). The Subpoena directed Defendant Britt to produce all documents concerning the dates, times and lengths of patient appointments, claims for reimbursement, patient diagnoses, and treatment plans and recommendations.

39. Britt did not produce any of these documents. Instead, when she was served with the Subpoena, Defendant Britt informed government investigators that in late May or early June 2016 she destroyed all of her records for all of her patients, including the records documenting her patients' appointments and the services she purportedly provided to these patients.

40. In response to the Subpoena, Defendant Britt submitted a sworn statement to representatives of the Office of the Attorney General stating that she had made a diligent search of all locations where responsive documents might be located, and that the documents she had produced – which did not concern patient records - constituted all of the responsive documents within her custody, control or possession.

41. In addition, Defendant Britt represented in a writing she provided to representatives of the Office of the Attorney General dated March 16, 2017, that she had no records pertaining to her Medicaid patients, and that she had destroyed all of her patient files; purportedly to protect her patients' health information in the event of her death.

42. Defendant Britt continued to submit claims to the CMAP and receive payment for services she purportedly provided to her patients during June, July, and August 2016, long after the date she purportedly had destroyed her records.

43. Defendant Britt never gave notice to her patients, as required by R.C.S.A. § 19a-14-44, before she purportedly destroyed their records.

COUNT ONE –Presentation of False Claims - Conn. Gen. Stat. § 4-275(a)(1)

44. The allegations of paragraphs 1 — 43 of this complaint are incorporated herein as allegations of Count One as if fully set forth herein.

45. Pursuant to the Act, Connecticut General Statutes § 4-275(a)(1), no person shall knowingly present, or cause to be presented, a false or fraudulent claim for payment or approval under a healthcare services program administered by the DSS.

46. From January 2013 through September 2016, Defendant Britt knowingly engaged in a long-term pattern and practice of submitting false claims to the DSS for services that Defendant Britt purportedly performed but in fact never rendered.

47. From January 2013 through September 2016, Defendant Britt knowingly presented or caused to be presented, to an officer or employee of the state, false or fraudulent claims for payment or approval under a healthcare services program administered by the DSS.

48. By virtue of the false or fraudulent claims made or caused to be made by Defendant Britt, the State has suffered damages.

49. Defendant Britt is liable to the state for treble damages under the Act, in an amount to be determined at trial, plus a civil penalty of \$5,500 to \$11,000 for each false claim presented or caused to be presented by the Defendant.

COUNT TWO –Concealing An Obligation to Pay Back An Overpayment - Conn.

Gen. Stat. § 4-275(a)(8)

50. The allegations of paragraphs 1 — 49 of this complaint are incorporated herein as allegations of Count Two as if fully set forth herein.

51. Pursuant to the Act, Connecticut General Statutes § 4-274(5), "[o]bligation means an established duty, whether fixed or not, arising from...(C) statute or regulation, or (D) the retention of an overpayment."

52. Pursuant to the Act, Connecticut General Statutes § 4-275(a)(8), no person shall knowingly conceal or knowingly and improperly avoid or decrease an obligation to pay money to the state under a healthcare services program administered by the DSS.

53. By failing to maintain or destroying all of her patient records of any actual services she may have provided, Defendant Britt effectively concealed evidence of her scheme to submit false claims to the DSS for services she never provided.

54. By failing to maintain or destroying her patient records, Defendant Britt knowingly concealed or knowingly and improperly avoided or decreased her obligation to repay the state the overpayments she received under a medical assistance program administered by the DSS for the services she billed the CMAP for but never provided to her clients.

55. The State has suffered damages due to Defendant Britt's knowing concealment or knowing and improper avoidance or decrease of her obligation to repay the state the overpayments she received under a medical assistance program administered by DSS.

COUNT THREE – Breach of Contract

56. The allegations of paragraphs 1 — 55 of this complaint are incorporated herein as allegations of Count Three as if fully set forth herein.

57. The Provider Agreement establishes duties for Defendant Britt: (a) to maintain records pertaining to the services she provided to her patients, including without limitation diagnostic information, treatment plans and notes, the types of services provided, and the dates and times she provided these services, and (b) to provide her records to the DSS in order to verify that she provided the services for which she received payment from the DSS. Provider Agreement, Paras. 7, 21, and 22.

58. The Provider Agreement also establishes a duty for Defendant Britt to comply with all federal and state regulations pertaining to her participation in the CMAP, including those requiring Britt to maintain patient records regarding the services actually provided to patients, and the dates and times of those services. R.C.S.A. § 17b-262-925(a) and (c).

59. Pursuant to state regulations and the Provider Agreement, the DSS's payments to Defendant Britt were conditioned on Britt adequately documenting the services she purported to provide to her patients. R.C.S.A. §§ 17b-262-522, 524, and 526; R.C.S.A. §§ 17b-262-914-16.

60. Pursuant to state regulations and the Provider Agreement, the DSS may disallow and recover any amounts paid to the provider for which required documentation is not maintained and provided to the DSS upon request. R.C.S.A. § 17b-262-925(d).

61. From 2013 through 2016 Defendant Britt received payments of at least \$530,000 from the DSS as reimbursement for the claims she submitted to the CMAP for the licensed professional counseling services she purportedly provided to her Medicaid patients.

62. Defendant Britt never maintained or destroyed all of her records regarding the services she purported to have delivered to her patients, and failed to provide any documentation of any services to the DSS's agents when they demanded her records.

63. The DSS has complied with all of its material obligations required of it under the terms and conditions of the Provider Agreement.

64. Defendant Britt breached her duties under the Provider Agreement to maintain records documenting the services she claimed to have provided to her patients, for which the DSS paid her \$530,000, and to provide these records to the DSS.

65. The DSS is entitled to recover all amounts which it paid to Defendant Britt because she failed to maintain the required documentation, and failed to provide any documentation to the DSS when the DSS requested it.

66. The State has suffered damages as a result of Defendant Britt's breach of the Provider Agreement.

DEMAND FOR RELIEF

WHEREFORE, the STATE OF CONNECTICUT requests the following relief:

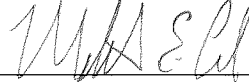
1. Pursuant to Conn. Gen. Stat. § 4-275(b), a civil penalty of not less than five thousand five hundred dollars or more than eleven thousand dollars, or as adjusted from time to time by the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, for each violation of the Act;
2. Pursuant to Conn. Gen. Stat. § 4-275(b), three times the amount of damages that the State of Connecticut sustained because of the acts of Defendant Britt.
3. Pursuant to Conn. Gen. Stat. § 4-275(b), costs of investigation and prosecution of this action;
4. Money damages; and
5. Such other relief as is just and equitable to effectuate the purposes of this action.

The amount, legal interest or property in demand is \$15,000 or more, exclusive of interest or costs.

Dated at Hartford, Connecticut, this 19th day of June, 2018.

**PLAINTIFF
STATE OF CONNECTICUT**

BY: GEORGE JEPSEN
ATTORNEY GENERAL



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