MiMedx vendors soliciting up-coding of Medicare incentives.

MiMedx emails to former employees in clear violation of federal law: settlements contingent on retracting statements to regulatory bodies

Viceroy has obtained from a physician an email sent from MiMedx employees to physicians to fraudulently exploit the reimbursement system to financially benefit both the physician and MiMedx. This is done through manipulation of Q-codes which denote the form of treatment in which a product was used. The aim is for all treatments using MiMedx products to be coded as "wound care" in order to fraudulently maximize reimbursement. **This type of Medicare fraud is referred to as 'up-coding'.**

In addition to this Viceroy present recent court filings and emails showing that MiMedx engaged in illegal settlement terms in its legal actions against former employees. MiMedx has sent legal material to former employees requesting that they do not contact regulatory authorities and has stipulated in its settlement agreements that former employees retract their statements to any regulatory body. **This is a violation of the United States Code of Federal Regulations.**

As a reminder of MiMedx selective statements to its investors, it's by no coincidence that **MiMedx are now blatantly cloaking their conduct in public courts relating to former employee proceedings on *confidentiality grounds***.

Viceroy continue to be contacted by physicians, former employees, former and current VA employees all speaking on a similar theme when explaining MiMedx conduct. We thank these brave individuals for fighting back against the unnecessary, aggressive, and retaliatory actions of MiMedx.

Viceroy were informed by various physicians that they had reported their concerns to the Office of Inspector General U.S. Department of Health & Human Services[1].

We are also led to believe that MiMedx's statement of assisting the Department of Veterans Affairs with its on-going investigation is incomplete, if not deceptive, via omission. Viceroy believe investors should have been told of these investigations and what information was requested by VA investigators.

The more MiMedx management continue to lie to its investors through press releases and responses to short seller articles, the more disillusioned and harassed former employees send Viceroy evidence countering their claims.

[1] https://forms.oig.hhs.gov/hotlineoperations/report-fraud-form.aspx

Important Disclaimer – Please read before continuing

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The authors may continue transacting directly and/or indirectly in the securities of issuers covered on this report for an indefinite period and may be long, short, or neutral at any time hereafter regardless of their initial recommendation.

Medicare Fraud

Viceroy has received documentation and communications from many physicians, former employees and MiMedx agents – some of which we will be publishing separately – outlining that MiMedx could no longer do business with them. As a "work-around", the physicians/agent LLC's would do business with SLR.

Some physicians may have thought nothing of this - others have contacted Viceroy indicating that concerns and formal statements have been issued with the FDA and the HHS. This is because **SLR employees have allegedly been knowingly providing physicians with Explanation of Benefits (EOB) advice for up-coding procedures (i.e. coding for more expensive procedures).**

What we learnt from the physicians and agents who were "referred and redirected" to SLR is:

- Chris Cashman Executive VP and Chief Commercial Officer contacted the physicians and agents, shortly after a "mass firing" of MiMedx employees. The physicians were told by MiMedx employees – including Chris Cashman – that their MiMedx agreement was to be cancelled and the physicians could no longer be sold AmnioFix and EpiFix.
- Shortly after the contracts were terminated, the physicians/agents were contacted by Frank Braly (Regional Sales Director - Orthopedics/Spine and Pain Division) and Alex Alpha (MiMedx employee, title unknown), who introduced the physicians and agents to Jerry Morrison (formerly of MiMedx) of SLR Medical Consulting, which describes itself as a "medical consulting and distribution company"[2]/ The physicians stated that "MiMedx had fired its own agents who were selling EpiFix and AmnioFix because MiMedx had oversold the products to SLR, to meet sales predictions made by MiMedx.
- Braly and Morrison advised physicians/agents that they could continue to sell MiMedx products as a sub-agent of SLR with commissions paid by SLR.
- Of concern to regulators and investors: Alex Alpha (MiMedx Employee) assisted the physicians/agents selling SLR Medical's MiMedx catalogue.
- **Alex Alpha emailed agents and physicians a Blue Cross/Blue Shield EOB (Explanation of Benefits) example claim to demonstrate how to code for EpiFix injections and get reimbursed from insurance and/or Medicare.**
- AmnioFix and EpiFix are essentially the same product: the difference between AmnioFix and EpiFix (according to MiMedx itself[3]) is the presence of an "epithelial layer of cells" in EpiFix and its absence in AmnioFix. Physicians, agents and former employees with the necessary skillset within the biologics industry confirmed there is no clinical difference between the two products. Conveniently for MiMedx: EpiFix has the epithelial layer of cells so that prescribers can classify the product as a "skin graft substitute "(for wound care) which Medicare will reimburse.

As a reminder, doctors may choose any treatment they deem necessary, but **it is illegal for doctors to code for procedures they did not perform.**

AmnioFix and EpiFix agents informed physicians how to incorrectly represent the product/treatment to over-claim federal entitlements.

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[2] http://www.slrmedicalconsulting.com/about/about-slr-consulting

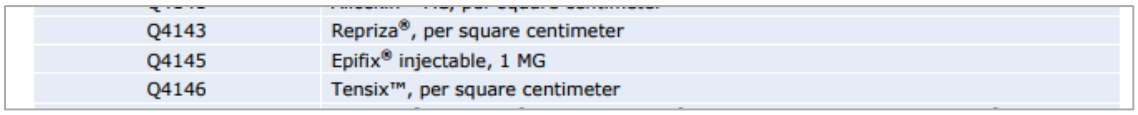
[3] MiMedx former employees and personnel at trade shows

Physicians were advised to code that they had used the products during wound treatment for a larger Medicare benefit. In fact, they were prescribing the products for pain management, sports treatment, osteoarthritis, and other pain related conditions.

Doctors regularly miscoded the purposes for which they used the two drugs, which has likely resulted in significant Medicare reimbursements for non-reimbursable procedures. We have notified and provided substantial evidence of this to the HHS (as have physicians).

For the avoidance of doubt, the stated EOB for Blue Cross/Blue Shield "example" claim is included on the following page, provided to Viceroy by agents/physicians who received it from Frank Braly and Alex Alpha.

The EOB reflects the prescription of EpiFix to a patient (personal information redacted) for **a procedure that is non-wound care related** (likely to be osteoarthritis illness), **using a reimbursement code of Q4145**, which is for wound care treatment.



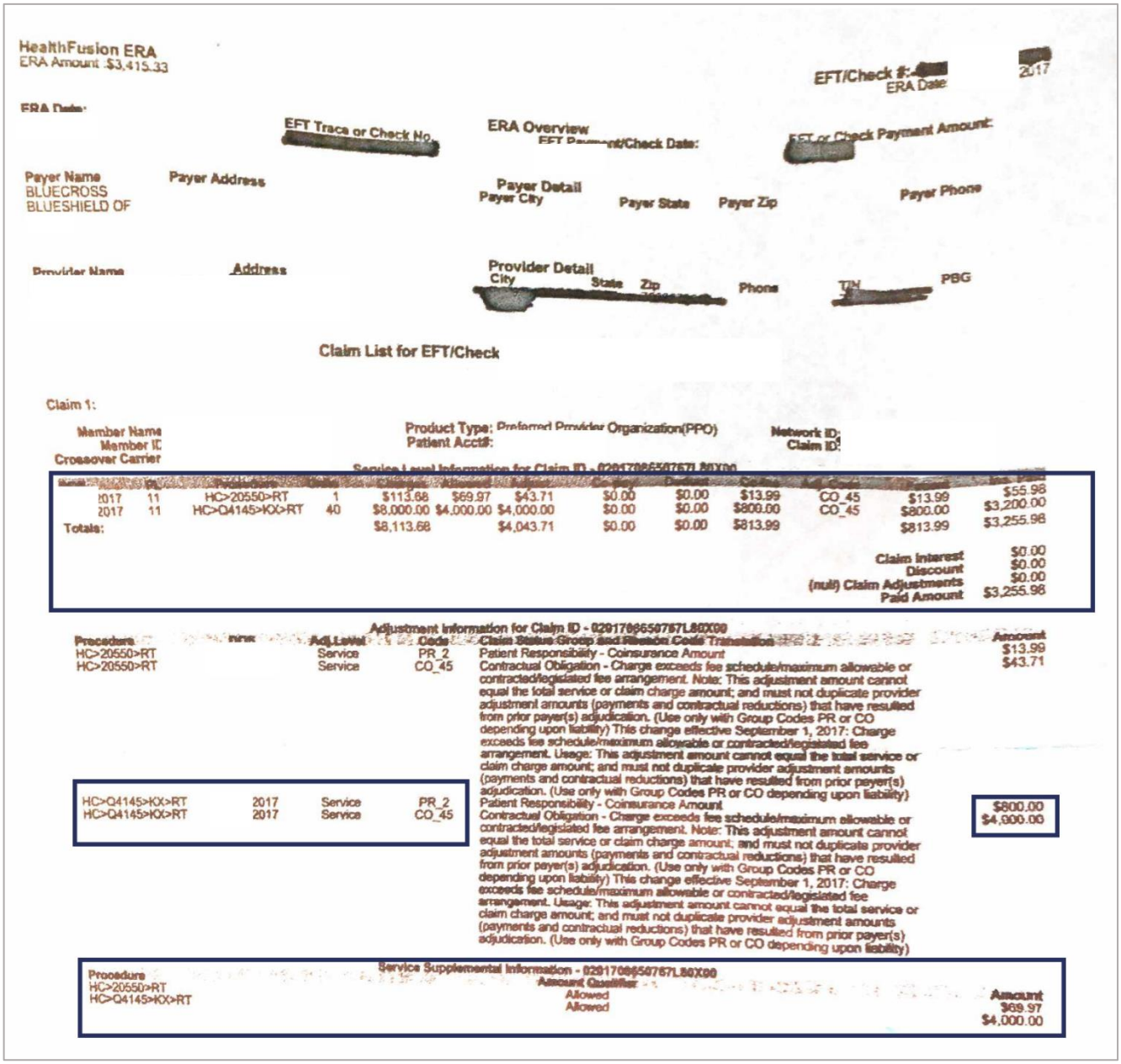
Q4143	Repriza®, per square centimeter
Q4145	Epifix® injectable, 1 MG
Q4146	Tensix™, per square centimeter

Figure 1 HCPCS Code References[4]

This miscoding is illegal. See the following page:

[4] https://www.unitedhealthcareonline.com/ccmcontent/ProviderII/UHC/en-US/Main%20Menu/Tools%20&%20Resources/Policies%20and%20Protocols/Medicare%20Advantage%20Policy%20Guidelines/Skin_Substitute_Application.pdf

EOB **Up-Coding** Example – sent to physicians / agents by **Frank Braly** and **Alex Alpha**



HealthFusion ERA
ERA Amount :$3,415.33

EFT/Check #: [redacted] ERA Date: [redacted] 2017

ERA Date:

EFT Trace or Check No: [redacted]

ERA Overview

EFT Payment/Check Date:

EFT or Check Payment Amount: [redacted]

Payer Name: BLUECROSS BLUESHIELD OF

Payer Address

Payer Detail
Payer City | Payer State | Payer Zip | Payer Phone

Provider Name | Address

Provider Detail
City [redacted] State | Zip | Phone | TIN [redacted] | PBG

Claim List for EFT/Check

Claim 1:

Member Name
Member ID
Crossover Carrier

Product Type: Preferred Provider Organization(PPO)
Patient Acct#:

Network ID:
Claim ID:

Service Level Information for Claim ID - 02917086507671 80X00

2017	11	HC>20550>RT	1	$113.68	$69.97	$43.71	$0.00	$0.00	$13.99	CO_45	$13.99	$55.98
2017	11	HC>Q4145>KX>RT	40	$8,000.00	$4,000.00	$4,000.00	$0.00	$0.00	$800.00	CO_45	$800.00	$3,200.00
Totals:				$8,113.68		$4,043.71	$0.00	$0.00	$813.99		$813.99	$3,255.98

Claim Interest	$0.00
Discount	$0.00
(null) Claim Adjustments	$0.00
Paid Amount	$3,255.98

Adjustment Information for Claim ID - 02917086507671 80X00

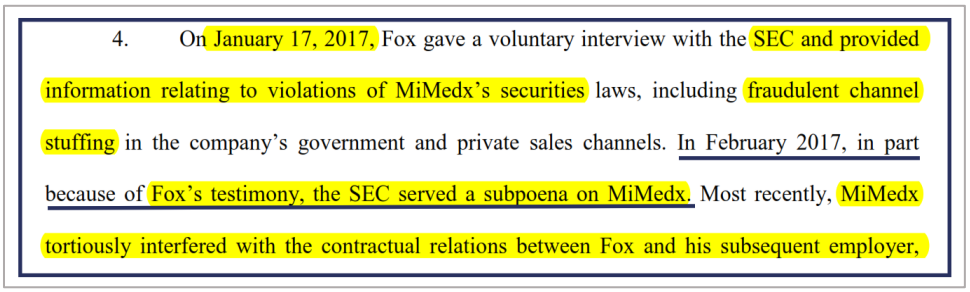
Procedure	Date	Adj Level	Code	Claim Status Group and Reason Code Translation	Amount
HC>20550>RT		Service	PR_2	Patient Responsibility - Coinsurance Amount	$13.99
HC>20550>RT		Service	CO_45	Contractual Obligation - Charge exceeds fee schedule/maximum allowable or contracted/legislated fee arrangement. Note: This adjustment amount cannot equal the total service or claim charge amount; and must not duplicate provider adjustment amounts (payments and contractual reductions) that have resulted from prior payer(s) adjudication. (Use only with Group Codes PR or CO depending upon liability) This change effective September 1, 2017: Charge exceeds fee schedule/maximum allowable or contracted/legislated fee arrangement. Usage: This adjustment amount cannot equal the total service or claim charge amount; and must not duplicate provider adjustment amounts (payments and contractual reductions) that have resulted from prior payer(s) adjudication. (Use only with Group Codes PR or CO depending upon liability)	$43.71
HC>Q4145>KX>RT	2017	Service	PR_2	Patient Responsibility - Coinsurance Amount	$800.00
HC>Q4145>KX>RT	2017	Service	CO_45	Contractual Obligation - Charge exceeds fee schedule/maximum allowable or contracted/legislated fee arrangement. Note: This adjustment amount cannot equal the total service or claim charge amount; and must not duplicate provider adjustment amounts (payments and contractual reductions) that have resulted from prior payer(s) adjudication. (Use only with Group Codes PR or CO depending upon liability) This change effective September 1, 2017: Charge exceeds fee schedule/maximum allowable or contracted/legislated fee arrangement. Usage: This adjustment amount cannot equal the total service or claim charge amount; and must not duplicate provider adjustment amounts (payments and contractual reductions) that have resulted from prior payer(s) adjudication. (Use only with Group Codes PR or CO depending upon liability)	$4,000.00

Service Supplemental Information - 02917086507671 80X00

Procedure	Amount Qualifier	Amount
HC>20550>RT	Allowed	$69.97
HC>Q4145>KX>RT	Allowed	$4,000.00

MiMedx illegally silencing former employees

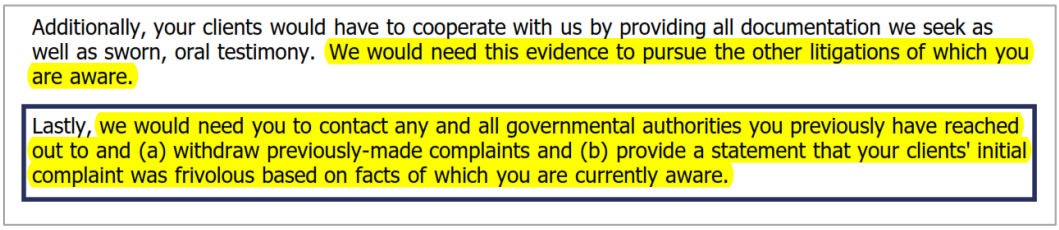
In February 2017, MiMedx received a subpoena from the SEC due in part to the testimony of a former employee Mike Fox (represented by Halunen Law) regarding MiMedx's alleged violations of securities law:



4. On January 17, 2017, Fox gave a voluntary interview with the SEC and provided information relating to violations of MiMedx's securities laws, including fraudulent channel stuffing in the company's government and private sales channels. In February 2017, in part because of Fox's testimony, the SEC served a subpoena on MiMedx. Most recently, MiMedx tortiously interfered with the contractual relations between Fox and his subsequent employer,

Figure 2 Extract from Mike Fox's amended complaint[5]

Since then, MiMedx have actively asked former employees to retract statements made to governmental authorities (including the SEC) within settlement agreements. Viceroy believes MiMedx would attempt to pressure former employees with lengthy and costly legal action to get them to sign these settlement papers:

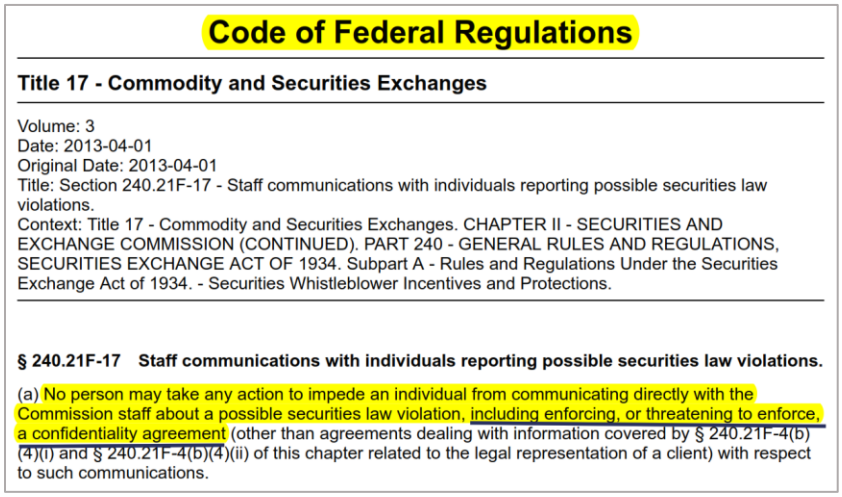


Additionally, your clients would have to cooperate with us by providing all documentation we seek as well as sworn, oral testimony. We would need this evidence to pursue the other litigations of which you are aware.

Lastly, we would need you to contact any and all governmental authorities you previously have reached out to and (a) withdraw previously-made complaints and (b) provide a statement that your clients' initial complaint was frivolous based on facts of which you are currently aware.

Figure 3 Extract of MiMedx's request to former employees[6]

The United States Code of Federal Regulations expressly forbid such actions.



Code of Federal Regulations

Title 17 - Commodity and Securities Exchanges

Volume: 3
Date: 2013-04-01
Original Date: 2013-04-01
Title: Section 240.21F-17 - Staff communications with individuals reporting possible securities law violations.
Context: Title 17 - Commodity and Securities Exchanges. CHAPTER II - SECURITIES AND EXCHANGE COMMISSION (CONTINUED). PART 240 - GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934. Subpart A - Rules and Regulations Under the Securities Exchange Act of 1934. - Securities Whistleblower Incentives and Protections.

§ 240.21F-17 Staff communications with individuals reporting possible securities law violations.

(a) No person may take any action to impede an individual from communicating directly with the Commission staff about a possible securities law violation, including enforcing, or threatening to enforce, a confidentiality agreement (other than agreements dealing with information covered by § 240.21F-4(b)(4)(i) and § 240.21F-4(b)(4)(ii) of this chapter related to the legal representation of a client) with respect to such communications.

Figure 4 Extract of Code of Federal Regulations[7]

[5] Case: 1:16-cv-11715 Document #: 112 Filed: 11/03/17 Page 7 of 165 PageID #:2073
[6] Case: 1:16-cv-11715 Document #: 112 Filed: 11/03/17 Page 115 of 165 PageID #:2181
[7] https://www.gpo.gov/fdsys/pkg/CFR-2013-title17-vol3/xml/CFR-2013-title17-vol3-sec240-21F-17.xml

In addition to attempting to stop former employees contacting regulators, MiMedx has also attempted to coerce former employees and their attorneys to retract evidence regarding MiMedx's conduct. MiMedx should also be aware we have attached their correspondence to our most recent submissions to the regulators, including agencies they have a requirement to certify against such activities.

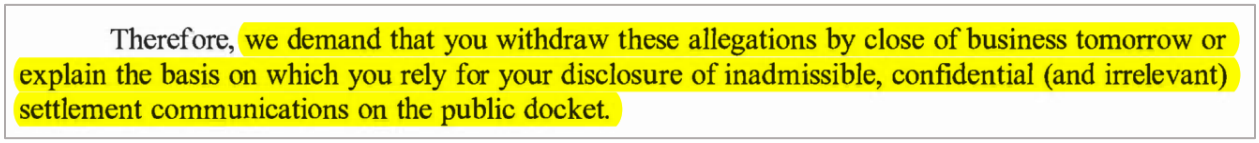

Therefore, we demand that you withdraw these allegations by close of business tomorrow or explain the basis on which you rely for your disclosure of inadmissible, confidential (and irrelevant) settlement communications on the public docket.

Figure 5 Extract of Letter from French Wargo to Halunen Legal[8]

We are sure MiMedx's General Counsel, Lexi Haden is aware of the requirements of the Georgie State bar, but to make sure, we have also submitted the evidence attached to this document to them. MiMedx do not need to thank us, as we have reported the matter and outlined the conduct of Ms Haden.

To highlight MiMedx's attempts to retract the evidence and statements of their negotiations to cover up their misconduct', we attach the full documents within the annexures. Investors should note the lengths MiMedx will go to shield their misconduct from investors and the public.[9]

Annexure 2 - The response from Mike Fox's Attorney maintains **MiMedx are caught red handed in their attempt to backtrack from regulations** that clearly prohibit such attempts to interfere in regulatory reports of misconduct.

Annexure 3 – Shows in full MiMedx request to former-employees to retract statements made to the regulators. **Whether as part of settlement or not, this is expressly prohibited under Federal Regulations**[10]

MiMedx will of course not want the investors they seek to hide their misconduct from reading the evidence of their wrong-doing.

[8] Case: 1:16-cv-11715 Document #: 120-1 Filed: 11/14/17 Page 67 of 72 PageID #:2401
[9] Source: Mike Fox Attorney Statements.
[10] https://www.gpo.gov/fdsys/pkg/CFR-2013-title17-vol3/xml/CFR-2013-title17-vol3-sec240-21F-17.xml

Timeline of events so far – investors would be wise to note.

The following is a timeline of events around the MiMedx channel-stuffing allegations.:

1. **November 2016** – Allegations of channel stuffing surface[11].
2. **December 2016** – MiMedx retaliates against whistleblower employees that raised concerns in November 2016.
3. **December & January 2017 -** Current and former employees file evidence with the SEC.
4. **December 27, 2017 –**MiMedx announces preliminary investigation findings which was conducted within 12 days, over the Christmas period. According to the company, no fault was found. The investigation was later proven to be conducted by **non-independent parties**[12].
5. **February 2017 -** Receipt by MiMedx of SEC subpoena[13].
6. **March 17, 2017 -** Employment of Luis Aguilar[14] former SEC Attorney 2017 – MiMedx still fail to disclose an 8-K in relation to the SEC subpoena. **MiMedx do however feel its material to employ a former SEC attorney**, after the receipt of a subpoena[15].
7. **April 18, 2017 –** MiMedx conceal the alleged public report of the internal investigation into wrong-doing, marking it confidential in SEC filings[16].
8. **September 21, 2017 –** MiMedx mislead investors about the publicly available findings of their report & the lack of independent connections on the investigation[17].
9. **September 21, 2017 –** MiMedx finally own up to the existence of an SEC subpoena some 7 months after its receipt. MiMedx own terminology suggests the subpoena is now material[18].
10. **September 26, 2017 –** MiMedx settle litigation with former employee Harold "Hal" Purdy[19]. These have already been filed with the SEC.
11. **VA & SEC investigation are on-going since at least December 2016** based on Viceroy's own filings to the VA OIG & GSA OIG and court reports. We will be releasing MiMedx own emails from the VA relating to concerns about channel-stuffing.

MiMedx do not consider filing an 8-K in relation to the SEC subpoena material enough, however, ***they do feel it is material to employ a former SEC attorney.***

Attached below are a series of emails and communications between Mike Fox and MiMedx's legal representation, Halunen Law and Wargo French respectively. The emails show MiMedx extremely aggressive attempts to keep settlement agreements away from prying eyes. While MiMedx management continues to claim that the company is a paragon of corporate virtue, every effort is made to keep former employees from speaking to regulatory authorities and to force a retraction of statements if they do.

[11] Case 1:17-cv-00577-LMM Document 1 Filed 02/15/17
[12] http://phx.corporate-ir.net/phoenix.zhtml?c=213465&p=irol-newsArticle&ID=2232886
[13] Mike Fox Amended Claim - Case: 1:16-cv-11715 Document #: 112 Filed: 11/03/17 Page 8 of 165 PageID #:2074
[14] https://www.sec.gov/Archives/edgar/data/1376339/000137633917000051/a8-kfordirectorappointment.htm
[15] http://phx.corporate-ir.net/phoenix.zhtml?c=213465&p=irol-newsArticle&ID=2302107
[16] https://www.sec.gov/Archives/edgar/data/1376339/000137633917000066/filename1.htm
[17] September 21 2017 Transcript of MiMedx Investor Call – Comments made by MiMedx Board.
[18] http://phx.corporate-ir.net/phoenix.zhtml?c=213465&p=irol-newsArticle&ID=2302107
[19] http://phx.corporate-ir.net/phoenix.zhtml?c=213465&p=irol-newsArticle&ID=2302818

Annexure

Annexure 1: Email from MiMedx to Halunen Law

WARGO FRENCH

ATLANTA LOS ANGELES MIAMI

SHANON J. MCGINNIS
DIRECT DIAL: 404-853-1575
E-MAIL: *smcginnis@wargofrench.com*

November 6, 2017

VIA EMAIL

Mack H. Reed, Esq.
Halunen Law
IDS Center, Suite 1650
80 South 8th Street
Minneapolis, MN 55402

Christopher S. Griesmeyer
Greiman, Rome & Griesmeyer, LLC
Two North LaSalle, Suite 1601
Chicago, Illinois 60602

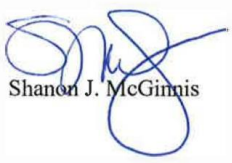
Re: ***MiMedx Group, Inc. v. Michael Fox***

Dear Counsel:

We are in receipt of your proposed draft amended counterclaims. As we discussed on our call this afternoon, while there are enumerable issues with this pleading, one initial issue is that you have improperly discussed and attached a Rule 408 settlement communication that my office communicated to your office while representing entirely different individuals who are not parties to Mr. Fox's action—Mr. Tornquist and Mr. Kruchoski—and whom you in fact no longer represent. The contents of any settlement offer to Messers. Tornquist and Kruchoski are not only confidential and to be used solely for settlement discussions concerning Messers. Tornquist and Kruchoski, but they are also not property of your firm to disclose when representing a different individual in a separate action altogether. Those communications are property of Messers. Tornquist and Kruchoski, and we see no evidence that they have waived the right for you to disclose those discussions. Moreover, our firm did not consent to the disclosure of those confidential communications. Finally, any contents of such discussions, which are irrelevant to Mr. Fox's case, are inadmissible in Mr. Fox's case under Rule 408 of the Federal Rules of Evidence. Your inclusion of them in Mr. Fox's proposed amended counterclaims is improper and inappropriate.

Therefore, we demand that you withdraw these allegations by close of business tomorrow or explain the basis on which you rely for your disclosure of inadmissible, confidential (and irrelevant) settlement communications on the public docket.

Sincerely,



Shanon J. McGinnis

Figure 6 Email from Wargo French to Halunen Law regarding use of past settlement agreements

Annexure 2: Email from Halunen Law to MiMedx

Minneapolis Office
80 South 8th Street
IDS Center, Suite 1650
Minneapolis, MN 55402
612.605.4098
612.605.4099

Chicago Office
415 North LaSalle Street
Suite 502
Chicago, IL 60654
312.222.0660
312.222.1656

halunenlaw
EMPLOYMENT · CONSUMER · WHISTLEBLOWER

November 7, 2017

VIA ELECTRONIC MAIL

Shanon McGinnis
WARGO FRENCH LLP
999 Peachtree St NE # 2600
Atlanta, GA 30309

Re: ***MiMedx Group, Inc. v. Fox***

Dear Counsel:

In response to your letter of November 6, 2017, we reject your demand to withdraw the allegations concerning Joseph Wargo's communication contained in Michael Fox's proposed Second Amended Counterclaim.

Federal Rule of Evidence 408 is just that – a rule of evidence – and does not create a blanket prohibition on the public disclosure of the terms of settlement discussions. *Alpex Comp. Corp.*, 770 F. Supp. 161, 166 (S.D.N.Y. 1991). Furthermore, Rule 408 only prohibits admitting into evidence settlement offers or statements used "to prove or disprove the validity or amount of a disputed claim." Rule 408(b) expressly allows the court to admit this evidence "for another purpose", such as "proving a witness's bias or prejudice, negating a contention of undue delay, or proving an effort to obstruct a criminal investigation or prosecution." This is not an exhaustive list. For instance, in *Ausherman v. Bank of Am. Corp.*, 212 F. Supp. 435, 454, 455 (D. Md. 2002), Rule 408 did not preclude the introduction into evidence deliberately untruthful statements of material fact communicated to opposing counsel in settlement negotiations relating to pending litigation.

A party cannot engage in wrongful conduct and then hide behind the cloak of confidentiality to shield its misconduct from public scrutiny. *Uniforma/Shelby Bus. Forms v. NLRB*, 111 F.3d 1284, 1293 (6th Cir. 1997) ("Rule 408 is . . . inapplicable when the claim is based upon some wrong that was committed in the course of the settlement discussions; e.g., libel, assault, breach of contract, unfair labor practice, and the like. . . . Rule 408 does not prevent the plaintiff from proving his case; wrongful acts are not shielded because they took place during compromise negotiations." (quoting 23 Charles Alan Wright & Kenneth W. Graham, Jr., Federal Practice and Procedure: Evidence § 4314 (1st ed. 1980))).

It is well-established that independently tortious conduct amounting to retaliation—to wit, conduct that would dissuade a person from making or supporting a report—is not only non-confidential and admissible, it is also independently actionable. *Carney v. Am. Univ.*, 151 F.3d 1090, 1095 (D.C. Cir. 1998) ("[Settlement] [c]orrespondence can be used to establish an independent violation . . . unrelated to the underlying claim which was the subject of the correspondence."); *see id.* at 1096 (noting that the plaintiff offered the settlement correspondence not to prove that the defendant discriminated against her, but to show that the defendant committed an entirely separate wrong by conditioning her benefits on a waiver of her rights). *Accord Williams v. Regus Mgmt. Grp., LLC*, 10 Civ. 8987 (JMF) 2012 U.S. Dist. LEXIS 68551, at *4–5 (S.D.N.Y. May 11, 2012) (denying motion in limine to exclude settlement communications, referring to *Carney*); *Mich. Precision Indus., Inc. and Dettman*, 223 N.L.R.B. 892, 893 (1976) (recognizing that an employer's statements telling employee to drop lawsuit or else it would not allow him to come back to work were independently tortious, constituted a violation of section 8(a)(1) of the NLRA and not protected "compromise negotiations" under Rule 408).

Conditioning the resolution of civil litigation against a federal witness on that witness recanting a sworn statement is precisely the type of conduct that might dissuade a reasonable person from making or supporting a report. *See, e.g., Burlington N. & Santa Fe Ry. v. White*, 548 U.S. 53, 68 (2006). *Cf. Carney*, 151 F.3d at 1095. Here, MiMedx's counsel, apparently acting at the Company's behest, conditioned the settlement of civil litigation against Messrs. Kruchoski and Tornquist on their counsel contacting "any and all government authorities," withdrawing any complaints made to those authorities, and affirmatively stating that those complaints were frivolous.

Accordingly, Mr. Wargo's communication is not only unprivileged, non-confidential, and admissible in this proceeding – it is also direct evidence of independently tortious retaliation against Messrs. Kruchoski and Tornquist. And most relevant here, it is evidence of MiMedx's retaliatory animus toward Mr. Fox. *Cf. Bankcard Am., Inc. v. Universal Bancard Sys.*, 203 F.3d 477, 484 (7th Cir. 2000), *cert. denied*, (U.S. Oct. 2, 2000) (holding that Rule 408 communications were admissible to show a party's state of mind); *United States v. Hauert*, 40 F.3d 197, 200 (7th Cir. 1994) (holding that Rule 408 communications were admissible to show defendant's knowledge and intent). In addition, the evidence provides background material to aid the jury in understanding the relationship between the parties and the historical backdrop of MiMedx's retaliation against Mr. Fox. *See* Rule Fed. R. Evid. 401.

In sum, Halunen Law has no concerns about the propriety of including Mr. Wargo's communication in Mr. Fox's pleading. To the contrary, Halunen Law is more concerned about the underlying communication itself. Federal regulations prohibit a person from taking any

action to impede an individual from communicating directly with the Securities and Exchange Commission staff about a possible securities law violation, including (but not limited to) enforcing, or threatening to enforce, a confidentiality agreement. 17 C.F.R. § 240.21F-17. More troubling still, based on MiMedx's recent public statements it appears that, at the time Mr. Wargo sent his e-mail, MiMedx was under a federal subpoena by the SEC, brought on in part by Mr. Fox's protected reports to the Commission. According to the SEC's Enforcement Manual, the existence of the subpoena would suggest that the SEC had commenced a formal investigation. We understand that a formal SEC investigation satisfies the definition of a "proceeding" within the meaning of 18 U.S.C. § 1505. *United States v. Batten*, 226 F. Supp. 492, 493 (D.D.C. 1964) (concluding that the SEC's authority to issue subpoenas and administer oaths in conjunction with its investigations made the SEC investigation a § 1505 proceeding); *In re Wolis*, Exchange Act Release No. 43123 (Aug. 4, 2000). See again Rule 408(b).

Finally, whether Halunen Law has breached any obligations to its former clients—and we have not—is a matter solely between Halunen Law and its former clients. MiMedx Group, Inc. and Wargo French LLP do not have standing to object to the inclusion of Mr. Wargo's communication in Mr. Fox's pleadings on those grounds.

Very truly yours,

HALUNENLAW

Mack H. Reed

cc: Christopher S. Griesmeyer
Jason Marsico

Figure 7 Email response from Halunen Law to Wargo French regarding use of past settlement agreements

Annexure 3: Email from Wargo French to Halunen Law regarding press statement

-----Original Message-----
From: Wargo, Joseph D. [mailto:jwargo@wargofrench.com]
Sent: Monday, April 03, 2017 2:52 PM
To: Clayton Halunen
Subject: Settlement response

Clayton,

Thank you for your thoughts regarding settlement. My client would like to resolve the disputes between our clients. However, we continue to be hampered by public comments you, personally, have made in the press as well as you reaching out to governmental authorities concerning your clients' claims which we consider to be frivolous.

Because of the above, we have fashioned a press release that addresses the forgoing issues. Our proposed press release is set forth, below.

In addition to agreeing to the press release, your clients would have to pay restitution for the damages associated with their conduct as well as disgorgement. The amount paid must include (a) monies received from other entities from the sale of other product; (b) a portion of the compensation paid by my client to your clients. Relative to (b), for Jess that amount would be 25% of his compensation from the date of formation of his LLC; for Luke, 15% of his compensation from the time he received any money from any other entities as described above. Lastly, each would be responsible for some portion of the legal fees incurred by my client from these proceedings. We would discuss that amount in furtherance of our settlement discussions.

Additionally, your clients would have to cooperate with us by providing all documentation we seek as well as sworn, oral testimony. We would need this evidence to pursue the other litigations of which you are aware.

Lastly, we would need you to contact any and all governmental authorities you previously have reached out to and (a) withdraw previously-made complaints and (b) provide a statement that your clients' initial complaint was frivolous based on facts of which you are currently aware.

next page

I look forward to hearing from you.

JDW.

Clayton Halunen, Principal of Halunen Law Firm, commented "I would like to apologize to the management and shareholders of MiMedx for bringing this case. As any attorney will do, I took the allegations made by my clients at face value. I did not do sufficient due diligence into the claims or MiMedx processes and procedures. Also, most importantly, I was not aware of the fact that my clients had broken contractual commitments to MiMedx by selling competitive products and other products through their own private corporate entities. I am pleased that MiMedx decided to settle this case with my clients."

Joseph D. Wargo
Wargo French
<x-apple-data-detectors://3/0>999 Peachtree Street NE<x-apple-data-detectors://0/1> <x-apple-data-detectors://3/0>26th Floor<x-apple-data-detectors://0/1>
<x-apple-data-detectors://3/0>Atlanta, Georgia 30309<x-apple-data-detectors://0/1>
Telephone: (404) 853-1505<tel:(404)%20853-1505>
Miami: (305) 777-6005<tel:(305)%20777-6005>
Facsimile: (404) 853-1506<tel:(404)%20853-1506>
E-Mail: jwargo@wargofrench.com<mailto:jwargo@wargofrench.com>
Website: www.wargofrench.com<http://www.wargofrench.com/>

Figure 8 Email from MiMedx External Attorney to Former Employee Legal Counsel[20]

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Annexure 4: Administrative Law Judges Decision showing Mike Fox's innocence

4210-0575

Illinois Department of Employment Security
Appeals - Chicago
33 S State St - 8th Floor
Chicago, IL 60603
Phone: (800) 244-5631 · TTY: (312) 793-3184
www.ides.illinois.gov

MICHAEL P. FOX
1425 N RIVER RD
MCHENRY, IL 60051-4547

Date Mailed:	04/27/2017
Claimant ID:	5900570
Docket Number:	1710970
Appeal Filed Date:	04/06/2017
Date of Hearing:	04/26/2017
Type of Hearing:	Telephone
Place of Hearing:	Chicago

Administrative Law Judge's Decision

(Este es un documento importante. Si usted necesita un intérprete, póngase en contacto con el Centro de Servicio al Reclamante al (800) 244-5631)

Claimant	Employer Appellant
MICHAEL P. FOX 1425 N RIVER RD MCHENRY, IL 60051-4547	MIMEDX GROUP INC MIMEDX GROUP INC 1775 W OAK COMMONS CT MARIETTA, GA 30062-2254

Appearances/Issues/Employer Status: The claimant and employer appeared and testified. The claimant was represented by an attorney. The employer was represented by an attorney. The issue is whether the claimant was discharged for misconduct connected with the work? See 820 ILCS 405/602A. The employer is a party to the appeal.

Findings of Fact: The claimant was employed as a full time vice President of Sales. He started working for the employer in July of 2012. The claimant last performed work and earned wages on 12/29/2016. The claimant was discharged on the premise that the employer believed that the claimant had knowledge that employees were violating the employer's non compete policy and failed to report it and that he sent emails with confidential information to employees who were not authorized to receive that information. The claimant sent an email indicating the sale's team rankings in order to promote competition. The claimant did inform those employees that they could not share that information. The claimant had emailed another employee a report that he wanted to discuss for business related purposes. The claimant denied having knowledge of any activity by the sales people that was in violation of the employer's non compete policies.

Conclusion: 820 ILCS 405/602A provides that an individual shall be ineligible for benefits for the weeks in which he has been discharged for misconduct connected with his work and, thereafter, until he has become re-employed and has had earnings equal to or in excess of his current weekly benefit amount in each of four calendar weeks. The term "misconduct" means the deliberate and willful violation of a reasonable rule or policy of the employing unit, governing the individual's behavior in performance of his work, provided such violation has harmed the employing unit or other employees or has been repeated by the individual despite a warning or other explicit instruction from the employing unit. The previous definition notwithstanding, "misconduct" shall include any of the following work-related circumstances: 1. Falsification of an employment application, or any other documentation provided to the employer, to obtain employment through subterfuge. 2. Failure to maintain licenses, registrations, and certifications reasonably required by the employer, or those that the individual is required to possess by law, to perform his or her regular job duties, unless the failure is not within the control of the individual. 3. Knowing, repeated violation of the attendance policies of the employer that are in compliance with State and federal law following a written warning for an attendance violation, unless the individual can demonstrate that he or she has made a reasonable effort to remedy the reason or reasons for the violations or that the reason or reasons for the violations were out of the individual's control. Attendance policies of the employer shall be reasonable and provided to the individual in writing, electronically, or via posting in the workplace. 4. Damaging the employer's property through conduct that is grossly negligent. 5. Refusal to obey an employer's reasonable and lawful instruction, unless the refusal is due to the lack of ability, skills, or training for the individual required to obey the instruction or the instruction would result in an unsafe act. 6. Consuming alcohol or illegal or non-prescribed prescription drugs, or using an impairing substance in an off-label manner, on the employer's premises during working hours in violation of the employer's policies. 7. Reporting to work under the influence of alcohol, illegal or non-prescribed prescription drugs, or an impairing substance used in an off-label manner in violation of the employer's policies, unless the individual is compelled to report to work by the employer outside of scheduled and on-call working hours and informs the employer that he or she is under the influence of alcohol, illegal or non-prescribed prescription drugs, or an impairing substance used in an off-label manner in violation of the employer's policies. 8. Grossly negligent conduct endangering the safety of the individual or co-workers. For purposes of paragraphs 4 and 8, conduct is "grossly negligent" when the individual is, or reasonably should be, aware of a substantial risk that the conduct will result in the harm sought to be prevented and the conduct constitutes a substantial deviation from the standard of care a reasonable person would exercise in the situation. Nothing in paragraph 6 or 7 prohibits the lawful use of over-the-counter drug products as defined in Section 206 of the Illinois Controlled Substances Act, provided that the medication does not affect the safe performance of the employee's work duties.

MICHAEL P. FOX 04/27/2017

None of the subsections of Section 602A are applicable in this case. Under the general definition of misconduct a preponderance of competent and compelling evidence must show that the claimant willfully and deliberately violated a known and reasonable policy of the employer. In this case there was no evidence that the claimant had any knowledge of the sales peoples violations or that he sent the emails in violation of the employer's policies. A finding is made that the claimant did not commit actions in this instance which would constitute misconduct connected with work. Accordingly, the claimant is not subject to the disqualification provisions of 602A of the Act.

Decision: The Local Office Determination is AFFIRMED. Pursuant to 820 ILCS 405/602A, the claimant is eligible for benefits, as to this issue only, from 02/12/2017.

NIKI GEORGOPOULOS, Administrative Law Judge
Appeals - Chicago
Fax: (312) 793-0977

FURTHER APPEAL RIGHTS

A. LATE APPEAL: If this appeal was dismissed without a scheduled hearing on a finding the appeal was not filed in a timely manner under the provisions of 56 Ill. Adm. Code 2720.207, this dismissal may be appealed to the Board of Review.

B. FAILURE TO APPEAR: IF YOU FAILED TO APPEAR AT THE HEARING, then you may request a rehearing of the appeal, but only if you failed to appear. Your request for a rehearing must state the reason/s you did not attend the hearing and why you did not request a continuance (or why a continuance was erroneously denied) (See 56 Ill. Adm. Code 2720.255(e) (1)) A request for rehearing must be made within 10 days of the scheduled hearing or first receipt of notice of hearing, whichever is later. A request for rehearing must be made in writing, to the Appeals Division, 33 S State St - 8th Floor, Chicago, IL 60603, directed to the referee Administrative Law Judge whose name appears on this decision. A request for rehearing may also be made by fax at the referee Administrative Law Judge fax number (312) 793-1119.

You may also file an appeal to the Board of Review. It must be in writing and filed within 30 days from 04/27/2017. **See paragraph C. below.**

C. If the decision is against you then you may file a further Appeal to the Board of Review. An appeal to the Board of Review must be in writing and filed within 30 days from 04/27/2017. The appeal to the Board of Review must be mailed to the Board of Review at 33 S State St, 9th Floor, Chicago, IL, 60603 or by fax at (630) 645-3731.

TO: MICHAEL P. FOX, Claimant
TO: MIMEDX GROUP INC MIMEDX GROUP INC, Employer

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Figure 9 Administrative Law Judges Decision showing Mike Fox's innocence[21]

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