



MiMedx caught red-handed circumventing VA regulations

Emails between the VA and MiMedx show MiMedx employees were instructed to circumvent VA policy regarding consignment agreements.

Viceroy obtained a series of emails between MiMedx employees and VA personnel. These emails are focused on the arrangement of consignment inventory, contrary to VA hospital regulations at the time. The issue comes to a head when a VA supervisor decides to hold MiMedx responsible for repeatedly sending product that was not ordered. The VA have been made aware of these and other emails with a report of concern.

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Among those named in the email exchange is Hal Purdy whose actions have already been documented by Viceroy.

Viceroy's previous research on MiMedx can be read at: www.viceroyresearch.org



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Emails between the VA and MiMedx

Viceroy has previously documented email exchanges between MiMedx and VA Medical Centers where MiMedx employees were seeking to circumvent consignment rules. This was done to enable channel-stuffing to occur, which would be much harder without a consignment agreement.

On May 9, 2016 the following email was sent to MiMedx's southwest regional sales directors from Ricky Palmer. The email details the supposed ins and outs of the VA's new policy regarding reimbursement. Note that the subject matter is largely centered around preventing pre-authorization of product usage ("prior-auth").

From: Ricky Palmer
Sent: Monday, May 09, 2016 3:15 PM
To: RSD Southwest
Cc: Mike Fox
Subject: VA consignment agreements - ACTION REQUIRED

RSD's,

Attached are both the AV/kare and Mimedx VA consignment agreements. For all consignment accounts, please get these signed ASAP so we have no issues moving forward. We will discuss this on the call tomorrow.

Also, if any VA's are telling you that they will need prior auth for grafts under \$3500, they are misinformed. If they have this consignment agreement signed, then its business as usual, unless they want to use product over \$3500. if so, they will need a prior approval for that tissue. There are some questions and answers on the "frequently asked questions tab" that was provided by the VA. I have also attached the email that was sent out fro Dr. Robbins to all VA DPM's. As you can see, it clearly states, the prior auth is required for implants over \$3500.

If pre-purchase accounts...all good. But for consignment tissue, let's get these consignment agreements signed ASAP.

Please run up any accounts that you are having issues with.

Thank you

Ricky Palmer
Area Vice President, Southwest
Cell: 602-321-5807

MiMedx Group, Inc.
1775 West Oak Commons Ct. NE
Marietta, GA 30062
rpalmer@mimedx.com
www.mimedx.com

Figure 1 Extract from email from Ricky Palmer to MiMedx Southwest regional sales directors

The rush to get consignment agreements is suspicious, as is the push to clarify the need for pre-authorization. If MiMedx was recognizing revenue at time of implant as they claim, why would authorization be an impediment to sales?

In response to this, VA employees question both the source of the information and clarify that the VA still has a "no consignment" policy. Now where has Viceroy heard the name Dr Robbins before?



A month later, Purdy tries again for a consignment agreement citing a consignment invoice at the Dallas VA Medical Center. No surprise that Purdy is the account executive for the facility. Note that Purdy attempts to distance himself from the order by claiming the distributors have responsibility, and that the email is dated the same day as the invoice.

From: Hal Purdy [mailto:HPurdy@mimedx.com]
Sent: Tuesday, May 10, 2016 10:15 AM
To: Jones, Rhonda J.
Cc: Shellman, Elizabeth M.
Subject: Re: [EXTERNAL] Fwd: VA consignment agreements - ACTION REQUIRED

Our company sent to me but it went out Nationally to **ALL** VA podiatrist form their Director Dr Jeffery Robbins. He is located at the Louis Stokes VA in Cleveland.

Hal Purdy

From: "Jones, Rhonda J." <Rhonda.Jones2@va.gov>
To: "'Hal Purdy'" <HPurdy@mimedx.com>
Cc: "Shellman, Elizabeth M." <ElizabethM.Shellman@va.gov>, "Farisa, Alexander" <Alexander.Farisa@va.gov>, "Hall, Cassandra D." <Cassandra.Hall@va.gov>
Bcc:
Date: Tue, 10 May 2016 18:07:07 +0000
Subject: RE: [EXTERNAL] Fwd: VA consignment agreements - ACTION REQUIRED

We here at North have not been told under \$3500 did not require PREAUTH and our contracting section is still standing on the no CONSIGNMENT rock.

Figure 2 Email exchange between Rhonda Jones VA & Hal Purdy



MiMedx

Placed on June 13, 2016

Ship To:
VAMC DALLAS
4500 SOUTH LANCASTER RD
DALLAS, TX 75216

Sales Order Type: Consignment Order

PO Number: CONS6132016

Point of Contact: ROBYN SCOTT

Account Executive: Hal Purdy (501) 951-7246

Shipping Method: FedEx First Over

Shipping Notes: WinstonCenteno Surgery OR 8

From: halpurdy@gmail.com [mailto:halpurdy@gmail.com]
Sent: Monday, June 13, 2016 3:01 PM
To: Jones, Rhonda J.
Subject: [EXTERNAL] Fwd: Consignment Order for VAMC Dallas

Another separate issue-How did this get through as consignment?

It's distributors w our company but my name attached bc I own the acct

Hal
501-951-7246

Qty	Product	Ship Date	Line Total
4.0	APS-5100 AMNIOFIX 10MM DIA DISC	06/13/2016	\$0.0
2.0	APS-5230 AMNIOFIX 2X3 CM	06/13/2016	\$0.0
2.0	APS-5440 AMNIOFIX 4X4 CM	06/13/2016	\$0.0
1.0	AAS-5460 AMNIOFIX 4X6 CM	06/13/2016	\$0.0
Total Amount: \$0.0			

Figure 3 MiMedx Consignment Order

Note the \$0 line total denoting consignment inventory to be paid for when used. The response from the VA employees is as expected: confused surprise.

From: "Jones, Rhonda J." <Rhonda.Jones2@va.gov>
To: "Farisa, Alexander" <Alexander.Farisa@va.gov>
Cc:
Bcc:
Date: Mon, 13 Jun 2016 20:10:25 +0000
Subject: FW: [EXTERNAL] Fwd: Consignment Order for VAMC Dallas

I know nothing about this, do you?

Figure 4 VA internal email regarding consignment arrangements

It appears as though the MiMedx gambit backfired as just **one day later** Jones sends him an email regarding the very same order he was questioning the day before.



From: Jones, Rhonda J.
Sent: Tuesday, June 14, 2016 9:56 AM
To: Hal Purdy (halpurdy@gmail.com)
Subject: AMNIOFIX

Hal, I just got a call this morning that a box of AMNIOFIX arrived at the Dallas VA **w/ no PO#?** The warehouse sent the box to my counterpart up by the O.R. and he called inquiring did I have this sent in. I knew nothing about this and had one nurse's name Winston and the vendor was MIMEDX. He said that he was told by the rep that a consignment order would be shipped in overnight and conversation supposedly happened yesterday. You and I have gone over this many times that there is NO LEGAL CONSIGNMENT here currently and until Central Office makes a decision, no product will be shipped in here without PREAUTHORIZATION of stock purchased UP FRONT or by CASE eaches purchased. I asked that the 4 line items be returned to MIMEDX immediately. We will get the clinician what they need, we just need to work together and do it the right way. Please enlighten me of why this was done AGAIN? The time and other folks time to help figure this out is ridiculous. I thought it was very clear the last time we talked of the process. **All the clinician has to do is put a consult for a surgery date to order in for the case or IF he wants it stocked on the shelf,** we need to get together and I can go over it again. Very frustrated. Please call or email regarding this matter at 903 583 6528.

Figure 5 VA email to MiMedx Employee Note: "w/ no PO#" is short form for "with no product order number"

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Note that these events occurred half a year prior to Purdy leaving MiMedx and the ensuing legal action between the two. The legal action did not involve breaches of VA regulations leading us to believe that MiMedx was aware of this behavior. Further, the first email sent regarding consignment inventory suggests that similar events played out at VA facilities all over the country.

MiMedx has settled its lawsuit with former employee, Harold Purdy. In this settlement, Mr. Purdy has agreed to pay a substantial six figure settlement to MiMedx as restitution and to reimburse litigation expenses. **Harold Purdy said, "Although I originally filed counter-claims, I learned through the discovery process that I was incorrect. I am therefore dismissing those claims and we have settled this case, and I apologize for my error. I do not have any personal knowledge about alleged 'channel-stuffing' by the Company." In fact, in sworn testimony, Mr. Purdy admitted that all of the MiMedx product he sold into his accounts was used, was not returned, and ordering patterns in the following months were not affected.**

Figure 6 MiMedx Press release with Harold Purdy Statement¹

Remember Hal Purdy's statement above? Customers, and individuals we have spoken to, suggest Purdy did not make this statement willingly and we have presented evidence to the regulators. Please note that MiMedx attempted to compel other former-employees to retract statements despite transcripts proving otherwise.

Summary

MiMedx continues to put on a show for investors to distract from the mounting evidence against them. We believe the captains have decided to go down with the ship and Viceroy will continue to publish MiMedx's conduct.

Viceroy will be publishing further evidence soon regarding the practice referred to as "up-coding": using improper procedural codes to fraudulently increase reimbursement, and another smoking gun MiMedx have failed to disclose to investors. In addition we will also be publishing emails involving Ricky Palmer and Frank Braly on sales arrangements, the existence of which the company continues to deny.

¹<https://www.prnewswire.com/news-releases/mimedx-agrees-to-lawsuit-settlement-with-terminated-employee-300525648.html>



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 surface².
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**³.
5. **February 2017** - Receipt by MiMedx of SEC subpoena⁴.
6. **March 17, 2017** - Employment of Luis Aguilar⁵ 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 subpoena⁶.
7. **April 18, 2017** – MiMedx conceal the alleged public report of the internal investigation into wrongdoing, marking it confidential in SEC filings⁷.
8. **September 21, 2017** – MiMedx mislead investors about the publicly available findings of their report & the lack of independent connections on the investigation⁸.
9. **September 21, 2017** – MiMedx final own up to the existence of an SEC subpoena some 7 months after its receipt. MiMedx own terminology suggests the subpoena is now material⁹.
10. **September 26, 2017** – MiMedx settle litigation with former employee Harold “Hal” Purdy¹⁰. 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.
12. **September 20, 2017** – MiMedx initiate litigation with Village Podiatry Centers (VPC) for payment regarding channel-stuffed stock. Anti-Kickback statutes expressively prohibit this.
13. **November 20, 2017** – Court documentation appears publicly¹¹. For the first time in MiMedx’s existence a court case has not been disclosed. Viceroy know why, MiMedx know why, the existence of the spreadsheet ‘pay only when you get paid’ disproves MiMedx’s assertions. The regulators have been given copies of all exhibits and transcripts. We strongly urge investors to read up on Anti-Kickback Statutes.

² Case 1:17-cv-00577-LMM Document 1 Filed 02/15/17

³ <http://phx.corporate-ir.net/phoenix.zhtml?c=213465&p=irol-newsArticle&ID=2232886>

⁴ Mike Fox Amended Claim - Case: 1:16-cv-11715 Document #: 112 Filed: 11/03/17 Page 8 of 165 PageID #:2074

⁵ <https://www.sec.gov/Archives/edgar/data/1376339/000137633917000051/a8-kfordirectorappointment.htm>

⁶ <http://phx.corporate-ir.net/phoenix.zhtml?c=213465&p=irol-newsArticle&ID=2302107>

⁷ <https://www.sec.gov/Archives/edgar/data/1376339/000137633917000066/filename1.htm>

⁸ September 21 2017 Transcript of MiMedx Investor Call – Comments made by MiMedx Board.

⁹ <http://phx.corporate-ir.net/phoenix.zhtml?c=213465&p=irol-newsArticle&ID=2302107>

¹⁰ <http://phx.corporate-ir.net/phoenix.zhtml?c=213465&p=irol-newsArticle&ID=2302818>

¹¹ <http://petiteparkerthebarker.com/wp-content/uploads/2017/11/Deposition-Transcript.pdf>