



The curious case of Mad River Community Hospital

Viceroy present further evidence of MiMedx illegally selling on reimbursement, adding our already extensive evidence of pervasive fraud.

Viceroy has obtained documents detailing a legal dispute between MiMedx and Mad River Community Hospital ("Mad River"). The documents clearly outline MiMedx's fraudulent sales methods including misrepresenting reimbursement rates for products and **"marketing the spread"**.

This report details the serious misconduct and underhanded sales tactics of MiMedx personnel in California, which executive management were certainly aware of given the ensuing litigation. As we have demonstrated over 20+ reports, these types of improprieties are commonplace throughout the organization. Never before have our legal advisors or consultants come across such gross and serious misconduct.

The Mad River documents also show MiMedx engaged in "selling on reimbursement", contrary to a several laws and regulations and some alleged MiMedx policies.

- MiMedx sued Mad River for non-payment of invoices for EpiFix and AmnioFix products. ***Unfortunately for MiMedx this is where the story becomes compelling for law enforcement and regulators.***
- **MiMedx misrepresented to Mad River the reimbursement rates for its EpiFix and AmnioFix products, as well as misrepresenting insurer's attitudes towards these products.** Several insurers considered MiMedx products "experimental and un-reimbursable".
- Following Mad River's failure to pay, MiMedx sent "reimbursement" specialists to Mad River who upheld that MiMedx's represented reimbursement rates were correct. Mad River believes that this **was simply a manner of continuing the ruse while raising further invoices.**
- **Mad River claim MiMedx personnel dressed up in surgical scrubs while on their campus** so as to give the impression of contemporaneous involvement with Mad River's surgical team, and falsely asserted to physicians that Mad River's billing department had approved orders.

The Mad River filings portray (we believe accurately) MiMedx as third-rate con-artists.

Contrary to Parker H. Petite's rhetoric of 'Good Business Acumen' and persistent denials of "marketing the spread", this report will **unlawful practices that MiMedx, including "marketing the spread"**. This is the very tip of the iceberg as law enforcement and regulators have been made aware of.

It is Viceroy's intention to continue the dialogue with MiMedx's auditors and regulators to bring about the prosecution of Parker H. Petit.

39.	Plaintiff's acts and practices as detailed above constitute unlawful, unfair or fraudulent business acts and/or practices within the meaning of California Business & Professions Code §17200.
40.	Plaintiff has engaged in an "unlawful" business act or practice by violating California's false advertising law at California Business & Professions Code §17500.
41.	Plaintiff has engaged in an "unfair" business act or practice in that the justification for such actions and the refusal to notify defendant of the true facts, either in the past or presently, based on the business acts and practices described above is outweighed by the gravity of the resulting harm, particularly considering the available alternatives, and/or offends public policy, is immoral, unscrupulous, unethical and offensive, or causes substantial injury to consumers.

Figure 1 Extract from Case 4:16-cv-02039-HSG Filed 04/18/16



In the wake of mounting evidence of fraud, illegal revenue recognition systems, retaliation against whistleblowers and concealing evidence from investors, we immediately call for Parker H. Petit's resignation.

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Marketing the Spread - How MiMedx illegally boosts sales

MiMedx's legal dispute with Mad River is one of two court cases Viceroy have exposed which MiMedx have never disclosed, despite their extremely litigious behavior. There are many more, but we shall let Parker H. Petit savor in this illegal and wrongful conduct before we expose them.

UNITED STATES DISTRICT COURT	
NORTHERN DISTRICT OF CALIFORNIA	
MIMEDX GROUP, INC.,) No. _____
Plaintiff,)
v.) COMPLAINT FOR DAMAGES:
MAD RIVER COMMUNITY HOSPITAL,) (1) BREACH OF CONTRACT;
Defendant.) (2) COMMON COUNT; AND
) (3) QUANTUM MERUIT

Figure 2 MiMedx Group, Inc., Vs Mad River Community Hospital

Mad River Community Hospital stopped paying MiMedx for product around November 2014, but **continued to order and receive product through to March 2015**, as stated in MiMedx's claim below. Compared to alleged turnover the amount owing is small at \$240,062.

5	13. Beginning in or around November 2014, Mad River stopped paying for the EpiFix [®]
6	and AmnioFix [®] product it was ordering.
7	14. Mad River continued ordering and receiving products from MiMedx through March
8	2015, but never paid MiMedx after November 2014. A true and correct copy of a chart listing the
9	unpaid invoices is attached hereto as "Exhibit 3."
10	15. MiMedx duly and fully performed all obligations required of it under the MiMedx
11	Invoices, except to the extent that any such obligation was excused by the conduct of Mad River.
12	16. As a result of MiMedx's provision of EpiFix [®] and AmnioFix [®] products, Mad River
13	owes MiMedx \$240,062. Mad River continues to owe this amount to MiMedx for goods provided,
14	but has refused to pay it despite demand therefor.

Figure 3 Extract from Case 4:16-cv-02039-HSG Document 1 Filed 04/18/16 Page 3 of 5



1	FOURTH AFFIRMATIVE DEFENSE
2	(Failure of Consideration)
3	4. Defendant is informed and believes, and based thereon alleges, that any failure of
4	defendant to perform resulted from plaintiff's failure to fully and accurately disclose
5	reimbursement rates for plaintiff's product, which was a condition precedent of defendant's
6	performance. As a result, defendant rescinded the contract and offered to restore to plaintiff
7	everything received under the parties' agreement.

Figure 4 Extract from Case 4:16-cv-02039-HSG Document 11 Filed 05/12/16 Page 5 of 13

Simply, Mad River's justification of non-payment shows MiMedx are utilizing illegal schemes and "selling on reimbursement" (Marketing the Spread). In other words, full payment for the product is only due once reimbursement has been paid to the buyer by the client's insurance.

Mad River stopped paying for product because of MiMedx's "failure to fully and accurately disclose reimbursement rates for plaintiff's product, which was a condition precedent of defendant's performance. As a result, defendant rescinded the contract and offered to restore to plaintiff everything received under the parties' agreement."

Mad River's filings extensively evidence MiMedx's fraudulent scheme, including details of MiMedx personnel misrepresenting themselves to physicians and Mad River personnel:

8. Beginning in or about 2013, plaintiff's sales representatives traveled to defendant's campus. Plaintiff's sales representatives circumvented defendant's well-established procurement procedures, repeatedly misrepresenting to physicians and defendant's employees that plaintiff's products had been approved by defendant's purchasing department and donning scrubs while on campus so as to give the impression of contemporaneous involvement with defendant's surgical team.

Figure 5 Case 4:16-cv-02039-HSG Document 11 Filed 05/12/16 Page 7 of 13

These underhanded tactics are what sophisticated investors would expect from third-rate con-artists, not publicly listed medical suppliers.

Time and time again investors and customers have been misled regarding the underhanded sales practices of MiMedx personnel. Due to the legal action taken, both MiMedx's legal counsel Lexi Haden and Parker H. Petit would be fully aware of these issues.



MiMedx products “un-reimbursable”

Mad River not only relied on the misrepresentation of MiMedx regarding the payment and reimbursement terms of their product, they soon came to realize the product was considered experimental and un-reimbursable by client’s insurers.

10. Defendant relied on plaintiff’s representations in using plaintiff’s products over other available products on the market.
11. Only after the products were used on patients were invoices sent to defendant for the products, which bills defendant paid until it became clear that plaintiff had misrepresented the reimbursement rates for its products, including but not limited to (1) failing to disclose that the use of plaintiff’s products for in-patient stays was other than the rate for out-patient stays and (2) that some patient insurers considered plaintiff’s products experimental and un-reimbursable.

Figure 6 Case 4:16-cv-02039-HSG Document 11 Filed 05/12/16 Page 8 of 13

Of further concern, MiMedx expanded its business on the back of other products available on the market. The misrepresentations will no doubt mean further legal liabilities for MiMedx from legitimate, non-experimental suppliers of comparable products.

The Ruse – Keep using us at all costs

Once the reimbursements were declined or paid significantly under the rate represented by MiMedx, MiMedx’s conduct became even more questionable.

13. When reimbursement rates for plaintiff’s products were other than those promised by plaintiff, defendant asked for assistance from plaintiff’s sale representatives. Plaintiff responded by sending a “billing specialist” to defendant’s campus in January 2015. Although plaintiff’s billing specialist and defendant’s billing staff spent three days together reviewing records, plaintiff’s billing specialist identified nothing defendant needed to do differently in order to receive the billing rates promised by plaintiff. In late 2015, plaintiff sent a second team to defendant’s campus, this time two more billing specialists to determine if the reimbursement rate received by defendant was accurate. Defendant is informed and believes that the purpose of the billing specialists’ visits was to prevent defendant from recognizing the misrepresentations by plaintiff and to ensure defendant continued to use plaintiff’s product so that plaintiff could amass high sums in invoices before the misrepresentations were revealed to defendant.

Figure 7 Case 4:16-cv-02039-HSG Document 11 Filed 05/12/16 Page 8 of 13

In the above image, you will note that the Mad River’s view was that MiMedx were stalling for time to amass high sums in invoices because their misrepresentations had been discovered.

This statement provides greater transparency into the role of MiMedx’s “reimbursement specialists.”



Additionally, sales representatives are not allowed to give any reimbursement advice by policy and training. MiMedx has a staff of experienced reimbursement specialists that are separate from the sales department and will assist providers with questions regarding MiMedx products. If the provider desires, they can contact the MiMedx reimbursement department to assist with an insurance verification request (IVR) with the patient's insurance company.

Figure 8 MiMedx Short Seller Commentary – Village Podiatry Communications Part 2 – 26 Nov 2017

Relative to Mr. Rosenberger's document, that is not an official company document. Mr. Rosenberger prepared it himself for his own staff regarding how reimbursement works, and it was not used for selling purposes with healthcare providers. As we have stated previously, MiMedx has policies against "marketing the spread." Mr. Rosenberger's document does not provide evidence of any "marketing on the spread."

Figure 9 MiMedx Short Seller Commentary – MiMedx Addresses Viceroy 22 – 14 Dec 2017

Viceroy believe it is quite clear that providing on-site "billing specialists" to assist in the **determination** of reimbursement rates is quite different to assisting with IVR forms, and ultimately a futile practice as insurance companies evidently did not reimburse Mad River at all, or to the extent represented by MiMedx. Likewise, its clear MiMedx marketed the spread of their product over competitors.

MiMedx should have known about the false reimbursement rates given to Mad River given this is not an isolated incident (as we've already shown, and will continue to show in the future).

14. Defendant is further informed and believes that plaintiff knew or should have known that the reimbursement rates it represented to defendant were false at the time they were made, and plaintiff intended that defendant would rely upon those misrepresentations in using plaintiff's products.
15. Defendant did, in fact, rely on plaintiff's misrepresentations in its course of conduct.

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In simple terms, Mad River's response and summary is pertinent.

20. Plaintiff breached the contract by providing allograft products with reimbursement rates other than promised.

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MiMedx breached the contract by providing allograft products with actual reimbursement rates lower than promised.

Summary

The Mad River legal documents corroborate many of Viceroy's previous findings as detailed in our reports, specifically relating to the widespread practice of selling on reimbursement, manipulation of reimbursement schemes to increase sales and systemic misrepresentation made by sales staff.



MiMedx employee conduct obtaining in obtaining sales have the characteristics of third-rate con-artists.

1. According to Mad River Community Hospital, MiMedx sold product on falsely represented reimbursement rates despite assurances made by MiMedx CEO Parker H. Petit to the contrary.
2. MiMedx sales staff allegedly wore scrubs on Mad River campus and falsely advised physicians the Mad River's billing department had approved MiMedx orders
3. MiMedx, according to Mad River Community Hospital, continued the misrepresentation by sending "billing specialists" to unsuccessfully "resolve" the issue over a prolonged period of time in order to increase the amount owed to MiMedx.

Questions for the MiMedx's auditors

1. MiMedx state they have a policy whereby they do not sell product on the basis of the reimbursement spread. The Mad River Community Hospital court filings, similar to the Village Podiatry Center court filings, clearly show this is untrue. How are the auditors assessing these sales, which are based on an illegal activity?
2. How many times have customers been sold on this illegal process?
3. Are the auditors assessing how much product Village Podiatry and other similar customers have obtained? MiMedx only expects payment where the client has been reimbursed.

Questions for MiMedx's independent directors

Parker H. Petit has consistently lied about the sales practices of MiMedx. Despite this legal claim and that of Village Podiatry Centers being sanctioned at a high level, Parker H Petit is clearly misrepresenting the conduct of his sales force.

1. Now there are two court cases validating an unlawful revenue recognition scheme: is MiMedx comfortable condoning the practice of selling their products on the reimbursement spread?
2. Is MiMedx firing Parker H. Petit for misleading the board and investors over a prolonged and extended period regarding fraudulent schemes easily evidenced in court documents, whistleblower statements, depositions by current MiMedx employees and former?
3. Have MiMedx notified the authorities about the unlawful conduct of their sales personnel and senior employees? If not, when will they notify them?

We believe the following passage summarizes Mad River's viewpoint.

47.	As a result of plaintiff's false advertising as described throughout, defendant suffered injury in fact and lost money as a result.
48.	Pursuant to California Business & Professions Code §17535, defendant seeks (1) to enjoin plaintiff from continuing to make representations regarding the reimbursement rates of its allograft products, and (2) to have restored the money plaintiff acquired from defendant as a result of plaintiff's false advertising as described throughout.
FIFTH CROSS-CLAIM (Unjust Enrichment)	
49.	Defendant realleges and incorporates herein by reference paragraphs 1 through 48, inclusive, of this Cross-Claim.
50.	Plaintiff has been unjustly enriched as a result of the conduct described in this Cross-Claim and other inequitable conduct.
51.	Plaintiff received a benefit from defendant in the form of payment for products with promised reimbursement rates.

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