Hewlett-Packard and Agilent to pay $7 million to settle whistleblower charges of defective medical equipment

July 30, 2002 — Hewlett Packard Co. and Agilent Technologies Inc. have agreed to pay a total of $7 million to the federal government to settle charges that they knowingly sold defective medical monitoring devices to federal government agencies and failed to investigate or correct the problems.

The settlement, made public today, resolves a whistleblower lawsuit brought in 1997 by a former HP engineer, Robert Hindin. Hindin's "qui tam" case has been under seal while the government investigated the allegations. The government recently joined the lawsuit, which was filed in federal district court in Boston.

HP and Agilent, which was spun off from HP in 1999, sold to the Department of Veterans Affairs and the Department of Defense medical equipment the companies knew was defective or failed at a higher than expected rate, according to the lawsuit and the government settlement. This included patient monitors, oxygen monitors (known as pulse oximeters) and equipment to monitor anesthesia.

Food and Drug Administration (FDA) regulations require that companies investigate complaints of medical equipment that is defective or that fails to perform to standard, and to document their investigations. The Justice Department alleges that HP and Agilent did not properly investigate the product failures, although they were aware of them.

"Reliable monitoring devices are an essential part of patient care," said Erika Kelton, a Washington, D.C., attorney with Phillips & Cohen LLP, which is representing the whistleblower. "HP ignored complaints it got about equipment failures and defects, and also failed to fully investigate whether patient safety was affected or could have been affected."

HP and Agilent sometimes replaced defective equipment. But the replacement equipment was often defective, too, the lawsuit said.

Hindin, who brought the qui tam lawsuit in 1997, is a resident of Andover, Mass., and was a production manager and electrical engineer at HP's Andover facility for approximately eight years. (The facility is now owned by Philips Medical Systems.)

After complaining about the defective products to his superiors and later informing HP that he had notified FDA of the problems, Hindin was harassed and shunted aside, the lawsuit says. He was terminated in 1997.
"After the company ignored my concerns, I would have felt terrible if I had not pursued the matter to the end," Hindin said. "Patient safety should be the top priority of a medical equipment company."

Hindin's lawsuit charges that HP and Agilent sold the defective medical equipment to public as well as private healthcare providers. The lawsuit and settlement cover only the government's losses from the fraud.

"Bob Hindin sacrificed his job to protect patient safety," Kelton said. "His knowledge of the fraud, his expertise in manufacturing practices and his familiarity with FDA regulations enabled the Justice Department to successfully pursue this case."

Phillips & Cohen's practice is devoted exclusively to representing whistleblowers in qui tam cases. The False Claims Act allows individuals to sue companies for defrauding the government and recover damages on the government's behalf. Liable defendants are required to pay as much as three times damages plus $5,500 to $11,000 per false claim. If the government joins the case, "relators" — as the whistleblowers are known — are entitled to 15 percent to 25 percent of the funds the government recovers as a result of their lawsuit.

**The HP and Agilent medical devices referred to in the settlement are:**

- patient monitors, model numbers M1092A/AA, M1094A/AA, M2310A and M2320A
- anesthesia gas modules and related components, model number M1026A
- oxygen monitors and related components (pulse oximeters), model numbers M1020A, M1900x series cables and M119x series sensors.

**The case referred to above is:** U.S. ex rel. Robert Hindin v. Hewlett Packard Co. and Agilent Technologies Inc., Civ no. 97-10243 (District of Massachusetts).

**For more information, please see the following news stories:**

- "Qui tam case against Hewlett-Packard results in $7 million settlement with U.S.,” BNA’s Health Care Fraud Report, 8/7/02.
- "Hewlett-Packard pays $7M on defective medical monitoring device allegations," Millin's Health Fraud Monitor, 8/5/02.
- "Suit on faulty medical devices settled," Houston Chronicle, 7/31/02.
- "Agilent to pay U.S., former employee $7M to settle medical equipment case," Louise Story, Boston Globe, 7/31/02.
- "Ex-worker, feds to get $7 million from Agilent, HP," San Francisco Chronicle, 7/31/02.
- Hewlett-Packard, Agilent to pay $7 mln over equipment claims," William McQuillen, Bloomberg News, 7/30/02.

**"Qui tam case looked like a winner - and was it ever."**

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