

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

**DIMITRI DIMITROYANNIS**  
**Plaintiff**

v.

**DR. VIVEK KAVADI, U.S.  
ONCOLOGY INC., TEXAS  
ONCOLOGY P.A., & MCKESSON  
CORP.**  
**Defendants**

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**CIVIL ACTION NO.:**

**JURY DEMANDED**

**PLAINTIFF'S ORIGINAL COMPLAINT**

**TO THE HONORABLE JUDGE OF SAID COURT:**

**NOW COMES** Dimitri Dimitroyannis (“Plaintiff”), Plaintiff in the above styled and numbered cause, and files this, his Original Complaint and complains of Dr. Vivek Kavadi, U.S. Oncology Inc., Texas Oncology P.A., and McKesson Corp. (collectively “Defendants”), and for such cause of action would respectfully show the Court as follows:

**I. PARTIES**

1. Plaintiff is an individual that resides in Houston, Harris County, Texas and Sugarland, Fort Bend County, Texas. Dr. Dimitroyannis is a physicist who was formerly employed by Defendants as Chief Medical Physicist, and brings this action pursuant to 31 U.S.C. § 3730(h).

2. The Defendants are all residents of or maintain locations in Harris or Fort Bend Counties.

3. Dr. Vivek Kavadi resides in Fort Bend County, Texas. He may be served with citation by personally serving him at his place of business: Texas Oncology Sugar Land, 1350 First Colony Blvd., Sugar Land, TX 77479, or at such other place as he may be found.

4. Texas Oncology P.A. is a professional association with operations in Texas, including Houston, and with its principal place of business in Dallas, Dallas County, Texas. Texas Oncology may be served with citation by personal service on its registered agent John Sims, 12221 Merit Drive, Suite 500, Dallas, TX 75251.

5. US Oncology, Inc. is a health care network dedicated exclusively to cancer treatment and research. It can be served with citation by serving its registered agent Corporation Service Company d/b/a CSC-Lawyers Incorporating Service Company, 211 E. 7th Street, Suite 620, Austin, TX 78701.

6. McKesson Corp. is a healthcare services and information technology company. It can be served with citation by serving its registered agent The Prentice-Hall Corporations System, 211 E. 7th Street, Suite 620, Austin, TX 78701-3218.

## **II. JURISDICTION AND VENUE**

7. This court has jurisdiction pursuant to 31 U.S.C. §§ 3730 and 3732, which provide that any action under section 3730 may be brought in any judicial district in which the Defendant(s) resides or transacts business or in which any act proscribed by 31 U.S.C. § 3729 occurred. Defendant Kavadi resides in this judicial district and the acts giving rise to their liability occurred in this district, as explained in more detail below. And Texas Oncology, US Oncology, and McKesson maintain operations in this jurisdiction.

8. Venue is proper in this district and division pursuant to 31 U.S.C. § 1391(a) and (c) because a substantial part of the events or omissions giving rise to the claim occurred in this district and it is the district in which the Defendants' business is located and operated.

### III. BACKGROUND & FACTS

9. Plaintiff was formerly employed by Defendant Texas Oncology as a Chief Medical Physicist. He was recruited to come to the major Houston market from the Defendants' Kansas City Facility, where he received numerous awards and recognition.

10. During his tenure and upon arrival, he noticed that equipment was not properly staffed nor tested, yet Defendants continued to provide treatments and all the while the Government was being billed for it all.

11. Modern radiotherapy treatment delivery is a rather involved and inherently dangerous procedure. So dangerous in fact, that during treatment, the patient is always segregated behind physical barriers due to the toxicity of the treatment to those delivering it and to the rest of personnel and visitors. Intensity-modulated radiation therapy ("IMRT") is an advanced type of three-dimensional radiation that conforms to the shape of a tumor. The local and national community standards of care stipulate that there should be at minimum two radiation technologists, also referred to as radiation therapists, always present for IMRT. Additionally, Medicare rules stipulate that radiotherapy can only be delivered with a physician physically present in the clinic. The supervising physician or practitioner must be "prepared to step in and perform the service, not just respond to an emergency."

12. Radiotherapy patients receive treatments in separate, daily visits that can range anywhere from one to more than forty visits. IMRT uses hundreds of small radiation beams of varying intensities to precisely radiate a tumor. During treatment, the radiation intensity of each beam is controlled, and the beam shape changes hundreds of times during each treatment. As a result, the radiation dose bends around important healthy tissues in a way that is impossible with other techniques. Because of the complexity of these motions, physicians use special high-speed

computers, treatment-planning software, diagnostic imaging and patient-positioning devices to plan treatments and control the radiation dose during therapy. For IMRT to be effective, the anatomical position of the tumor and surrounding healthy tissues must be accurately defined.

13. Plaintiff became aware that radiotherapy patients were frequently treated by only one radiation technologist in the Memorial City location and exclusively treated by one radiation technologist in the Sugar Land locations of Texas Oncology. This was verified Plaintiff by his review and comparison of electronic radiation technologist attendance records kept by Defendants and electronic patient records.

14. While Defendants invariably staffed machines with only one radiation technologist, patient records contain electronic signatures of therapists that were present in the clinic but not involved with patient care which clearly evidences Defendants were aware that two radiation technologists were required to deliver treatment. Defendants do not even have the requisite number of staff on-hand to properly staff the radiotherapy equipment to protect patients and staff against potential dangers and ensure patients are being adequately and accurately treated.

15. Plaintiff also discovered that the Defendants, in order to acquire funds from Medicare, were engaging in fraudulent activity by submitting claims that they knew were false because the services made the basis of the claims submitted for reimbursement were not performed by the requisite number of qualified and properly trained personnel nor were they performed in accordance with standard operating procedures. The facts of this case show that the Defendants were staffing radiation equipment with one technologist to deliver treatment, when there should have been two. And, they billed as if there were two or more, despite only being staffed by one. Defendants also claimed procedures to have been supervised by a physician when in fact there was no physician in the requisite proximity according to Medicare

physician fees rules. In addition, Defendants incorrectly confirmed that all equipment was appropriately tested and working properly when they billed Medicare for treatments delivered by the equipment. These are clear violations of Medicare guidelines, and as such, not only was Medicare billed (and presumably continues to) for “ghost” employees, it is billed for “premium” services at a higher rate, when only “minimal” services are actually being provided.

16. Upon learning of the fraudulent activity described above, which he realized not long after coming to Houston, Plaintiff brought this to the attention of Dr. Kavadi and others at Texas Oncology. At one point, Plaintiff requested an internal audit of the clinics for which he was responsible. This was supposed to be a standard procedure within Texas Oncology whereby the company was supposed to search for any inappropriate actions or wrongdoings and rectify a situation before it became a serious issue.

17. To Plaintiff’s dismay, Defendant Kavadi prevented the audit of his clinic from taking place at all. Plaintiff’s insistence that: (1) the equipment needed to be properly calibrated and staffed, (2) the potential issues inappropriate staffing could cause to patients should be addressed, and (3) billing issues were of concern, resulted in Plaintiff being terminated from employment.

18. After being highly recruited to come to Houston, Plaintiff was terminated on October 11, 2011, a mere seven (7) months after beginning his employment with Defendants and just shortly after his formal written complaint and verbal complaints to management regarding violations of the law.

19. Plaintiff “blew the whistle” to his superiors of fraudulent billing to Medicare and also sought to stop violations. Shortly after, he was terminated.

#### IV. CAUSES OF ACTION

20. *Violation of the False Claims Act, 31 U.S.C. § 3730(h)*. Plaintiff repeats the allegations of paragraphs 1-19 and incorporates them by reference as if fully set forth herein.

21. Defendants retaliated against Plaintiff by terminating his employment for making informal and formal complaints regarding violations of the False Claims Act.

22. Defendants' actions were motivated in whole or in part by Plaintiff engaging in a protected activity under the False Claims Act.

23. There is no requirement that Plaintiff actually file a False Claims Act proceeding to pursue this retaliation claim. *Neal v. Honeywell, Inc.*, 33 F.3d 860, 864-65 (7<sup>th</sup> Cir. 1994) (“Nothing in the language or background of § 3730(h) suggests that, by paying enough to cause the government to forego suit, employers acquire the right to shoot the bearers of bad tidings.”); *Clemes v. Del Norte County Unified Sch. Dist.*, 843 F. Supp. 583, 595-96 (N.D. Cal. 1994); *United States ex rel. Kent v. Aiello*, 836 F. Supp. 720, 723-24 (E.D. Cal. 1993); *X Corp v. Doe*, 816 F. Supp. 1086, 1095-96 (E.D. Va. 1993); *Hopkins v. Actions, Inc.*, 986 F. Supp. 706, 709 (S.D. Tex. 1997).

24. In the event that he does, the six year statute of limitations controls that filing. 31 U.S.C. § 3731(b)(1) (Lexis 2010); *Graham County Soil & Water Conservation Dist. v. U.S.*, 545 U.S. 409, 412-13 (U.S. 2005).

25. There is no requirement that Plaintiff have actually reported his concerns to an agent of the government, as an internal complaint to his supervisor is sufficient. *Clemes v. Del Norte County Unified Sch. Dist.*, 843 F. Supp. 583, 595-96 (N.D. Cal. 1994); *United States ex rel. Kent v. Aiello*, 836 F. Supp. 720, 723-24 (E.D. Cal. 1993); *Neal v. Honeywell, Inc.*, 826 F. Supp. 266, 269-73 (N.D. Ill. 1993); *Velazquez v. Landcoast Insulation, Inc.*, No. 06-0174, 2007 U.S.

Dist. Lexis 25239, \*17 (W.D. La. March 22, 2007). Plaintiff reported violations and made efforts to stop future violations, and brought this to the attention of his supervisors.

26. When the complaint is internal, a plaintiff must have “told the employer that she was concerned about the company defrauding the government.” *See Velazquez*, 2007 U.S. Dist. Lexis 25239, \*17; *Clemes v. Del Norte County Unified Sch. Dist.*, 843 F. Supp. 583, 595-96 (N.D.Cal.1994); *United States ex rel. Kent v. Aiello*, 836 F. Supp. 720, 723-24 (E.D.Cal. 1993); *Neal v. Honeywell, Inc.*, 826 F. Supp. 266, 269-73 (N.D.Ill.1993). Plaintiff made it very clear to Dr. Kavadi and others that “ghost” billing was taking place, less sophisticated services were being performed on patients, yet the higher cost, premium services were being billed to the government, and other issues.

27. Shortly after having raised these issues, despite having been considered an exemplary performer before he raised these issues, Plaintiff was terminated.

28. By virtue of his complaints articulated herein, Plaintiff has perfected his cause of action under Section 3830(h).

## V. PRAYER

**WHEREFORE, PREMISES CONSIDERED**, Plaintiff demands a trial by jury and, after final trial, that judgment be rendered against the Defendants, jointly and severally, as follows:

- A. For monetary relief pursuant to 31 U.S.C. § 3730(h);
- B. Prejudgment and post-judgment interest as provided by law;
- C. For reasonable attorneys’ fees and costs; and
- D. For such other and further relief, at law or in equity, to which Plaintiffs are justly entitled.

Respectfully Submitted,



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