

**FILE COPY**

**IN THE CHANCERY COURT FOR DAVIDSON COUNTY,  
TENNESSEE AT NASHVILLE**

STATE OF TENNESSEE,

Plaintiff,

v.

JAMES ANDERSON, M.D. AND  
AFFILIATED NEUROLOGISTS, PLC.,

Defendants

No. 20-535-III

Division

Jury Demand

CLARENCE ANDERSON  
DAVIDSON COUNTY CHANCERY CT.  
DC&M

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FILED

**COMPLAINT**

1. This action, brought by the State of Tennessee against the Defendants James Anderson, M.D. (Anderson) and Affiliated Neurologists, PLC (Affiliated Neurologists), seeks civil penalties and treble damages under the Tennessee Medicaid False Claims Act, Tenn. Code Ann. §§ 71-5-181 to -185 (TMFCA), and under the common law theories of unjust enrichment and payment by mistake of fact.

**INTRODUCTION**

2. Anderson is a neurologist and psychiatrist who provides medical services at Affiliated Neurologists, PLC which during the relevant time period, operated clinics in Goodlettsville, Tennessee and Clarksville, Tennessee.

3. From May 1, 2017 to December 31, 2018, Anderson and Affiliated Neurologists presented false claims to the Tennessee Medicaid program (TennCare) when they billed TennCare for implantable neurostimulators that stimulate the spinal cord when what Dr. Anderson was really doing was taping acupuncture devices behind his patients' ears.

## **JURISDICTION AND VENUE**

4. This Court has jurisdiction over this action pursuant to Tenn. Code Ann. § 71-5-183.

5. Venue lies in this judicial district pursuant to Tenn. Code Ann. § 71-5-185 because the alleged acts occurred in this judicial district.

6. This Court may exercise personal jurisdiction over the Defendants pursuant to Tenn. Code Ann. § 20-2-222 because James Anderson is domiciled in Tennessee and Affiliated Neurologists is organized under the laws of Tennessee.

## **THE PARTIES**

### **PLAINTIFF**

7. Plaintiff, the State of Tennessee, brings this action through the Tennessee Attorney General and Reporter (the Attorney General) on behalf of TennCare. The Attorney General has standing to bring this action pursuant to Tenn. Code Ann. § 71-5-183(a).

### **DEFENDANTS**

8. Defendant Anderson resides at 1682 Jacobs Drive, Gallatin, TN 37066.

9. Defendant Affiliated Neurologists is a Tennessee professional limited liability corporation, formed in Tennessee, and with its principal office located at 314 Bluebird Dr. Goodlettsville, TN 37072. Anderson is the sole member of Affiliated Neurologists.

## **LEGAL AND REGULATORY BACKGROUND**

### **THE MEDICAID/TENNCARE PROGRAM**

10. The Medicaid Program, enacted under title XIX of the Social Security Act of 1965, 42 U.S.C. § 1396 et seq., provides funding for medical and health-related services for certain individuals and families with low incomes. Those eligible for Medicaid include pregnant women, children, and persons who are blind or suffer from other disabilities and who cannot afford the cost of

healthcare. 42 U.S.C. § 1396d. The Medicaid program is a joint federal–state program. 42 U.S.C. § 1396b. If a state elects to participate in the program, the costs of Medicaid are shared between the state and the federal government. 42 U.S.C. § 1396a(a)(2). In order to receive federal funding, a participating state must comply with requirements imposed by the Social Security Act and regulations promulgated thereunder.

11. The State of Tennessee participates in the Medicaid program pursuant to Tenn. Code Ann. §§ 71-5-101 to -199. The federal government, through the Centers for Medicare & Medicaid Services (CMS), provides approximately 65% of the funds used by TennCare to provide medical assistance to TennCare beneficiaries.

12. In return for receipt of federal subsidies, the State of Tennessee is required to administer TennCare in conformity with a state plan that satisfies the requirements of the Social Security Act and accompanying regulations. 42 U.S.C. §§ 1396–1396vj; Tenn. Code Ann. § 71-5-102.

13. In Tennessee, the Department of Finance & Administration (F&A) administers TennCare through the Bureau of TennCare. Tenn. Code Ann. § 71-5-104. TennCare operates as a special demonstration project authorized by the Secretary of the Department of Health and Human Services under the waiver authority conferred by 42 U.S.C. § 1315. F&A supervises TennCare’s administration of medical assistance for eligible recipients. Tenn. Code Ann. §§ 71-5-105 to -107. F&A is authorized to promulgate rules and regulations to carry out the purposes of TennCare. Tenn. Code Ann. §§ 71-5-124 to -134.

14. The Bureau of TennCare contracts with private managed care contractors (MCCs)<sup>1</sup> through contracts known as Contractor Risk Agreements (CRAs), which must conform to the requirements of 42 U.S.C. § 1395mm, along with any related federal rules and regulations. Tenn.

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<sup>1</sup> MCCs are sometimes referred to as Managed Care Organizations (MCOs).

Code Ann. § 71-5-128. The MCCs contract directly with healthcare providers to provide services to eligible TennCare beneficiaries. Providers who have entered into such a contract with an MCC are known as Participating Providers. Tenn. Comp. R. & Regs. § 1200-13-13-.01(89).

15. TennCare distributes the combined state and federal Medicaid funding to the MCCs based on a capitation model. Under the capitation model, TennCare pays each MCC a set amount each year for each TennCare member enrolled with that MCC. The MCCs, in turn, use the capitated payments to pay Participating Providers for treatment of TennCare beneficiaries. TennCare-eligible persons seeking medical assistance enroll with an MCC to receive healthcare services from a Participating Provider. The MCCs provide claims data to TennCare on a regular basis and, based on that data, TennCare adjusts the capitation rate annually. Calculation of the capitation rate is a complicated process, but generally speaking, the Bureau of TennCare pays a higher capitation rate when there has been an increase in MCC claims. Payment of fraudulent claims by TennCare MCCs wrongfully inflates future capitation payments by TennCare.

#### **TENNCARE REIMBURSEMENT REQUIREMENTS**

16. TennCare supervises and regulates the administration of medical assistance for eligible recipients. Tenn. Code Ann. § 71-5-105(a)(1). The term “medical assistance,” defined at 42 U.S.C. § 1396d and Tenn. Code Ann. § 71-5-103(7), includes payment for the cost of provision of medical services by qualified, licensed practitioners to an eligible person.

17. In order to be reimbursed for services provided to TennCare enrollees, a Participating Provider must submit claims to a TennCare MCC using a standardized process that includes standard claims forms and standardized coding to identify diagnoses and services provided. Tenn. Code Ann. § 71-5-191. Participating Providers submit claims for reimbursement for outpatient services to MCCs through either paper or electronic forms, though most are submitted electronically.

18. On these claims forms, Participating Providers use the Healthcare Common Procedural Coding System (HCPCS)<sup>2</sup> to identify the services that were rendered or supplies that were used in the treatment of a patient. CMS oversees the definitions and uses of HCPCS codes. TennCare and the MCCs have adopted the use of the codes as set forth in the applicable manuals. In their contracts with providers, the MCCs assign reimbursement amounts to many of the codes. There are two levels of HCPCS codes, and each has a manual, published by the American Medical Association, that lists the codes and describes the corresponding services or supplies. Level I codes are commonly referred to as CPT codes – without reference to HCPCS - because they are maintained in the “Current Procedural Terminology (CPT), Professional Edition” publication (often referred to as “the CPT Manual”).

19. HCPCS Level II codes are used primarily to identify healthcare products, supplies, and services that are not included in the CPT codes. Level II codes are usually referred to as “HCPCS codes” without reference to Level II. HCPCS codes are listed and defined in the “HCPCS Level II Professional” manual.

20. A Participating Provider must properly document in the patient’s medical record the services that were performed in order to justify reimbursement. 42 C.F.R. § 431.107(b)(1).

21. This action involves the following codes:

- a. HCPCS code L8679 which is described as “Implantable neurostimulator, pulse generator, any type”
- b. HCPCS code S8930 which is described as “Electrical stimulation of auricular acupuncture points...”

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<sup>2</sup> Services rendered in a hospital can also include other types of codes, but those are not at issue in this case.

- c. CPT Code 63650 which is described as “Percutaneous implantation of neurostimulator electrode array, epidural”
- d. CPT Code 64553 which is described as “Percutaneous implantation of neurostimulator electrode array, cranial nerve”

22. Typically, a Participating Provider does not include medical records when submitting a claim for payment to an MCC. The TennCare program, through the MCCs, processes approximately two million claims for payment per month, totaling over twelve billion dollars in payments per year to over 30,000 Participating Providers. Because most Participating Providers are honest, and because of the enormous volume of claims being processed every day, TennCare’s reimbursement of providers has historically focused on prompt payment. In fact, MCCs are required by contract and statute to pay claims quickly. Tenn. Code Ann. § 56-32-126. In return, providers are required by law to file true and correct claims. Tenn. Code Ann. § 71-5-182. While prompt pay requirements benefit honest providers, they make it difficult for TennCare and the MCCs to identify fraudulent billing before making payment. Thus, fraud detection and recovery efforts usually arise after payment.

#### **TENNESSEE MEDICAID FALSE CLAIMS ACT**

23. The TMFCA creates a cause of action for the State of Tennessee against any person who:

- (A) Knowingly presents, or causes to be presented, a false or fraudulent claim for payment or approval under the medicaid program;
- (B) Knowingly makes, uses, or causes to be made or used, a false record or statement material to a false or fraudulent claim under the medicaid program;
- (C) Conspires to commit a violation of subdivision (a)(1)(A), (a)(1)(B), or

(a)(1)(D); or

- (D) Knowingly makes, uses, or causes to be made or used, a false record or statement material to an obligation to pay or transmit money, or property to the state, or knowingly conceals, or knowingly and improperly, avoids, or decreases an obligation to pay or transmit money or property to the state, relative to the medicaid program.

Tenn. Code Ann. § 71-5-182(a)(1). Any such person is liable to the State of Tennessee for both treble damages and civil penalties “of not less than five thousand dollars (\$5,000) and not more than twenty-five thousand dollars (\$25,000)” per violation, subject to adjustment for inflation. *Id.*

24. The TMFCA defines “knowingly” to mean that a person, with respect to information:

- (1) Has actual knowledge of the information;
- (2) Acts in deliberate ignorance of the truth or falsity of the information; or
- (3) Acts in reckless disregard of the truth or falsity of the information, and no proof of specific intent to defraud is required.

Tenn. Code Ann. § 71-5-182(b). Accordingly, an individual who did not have actual, contemporaneous knowledge of the falsity of claims or statements may nevertheless be liable under the TMFCA if the individual acted either in deliberate ignorance of or with reckless disregard to the claims’ or statements’ truth or falsity.

25. In this Complaint, whenever the State of Tennessee alleges that a Defendant acted “knowingly,” it also alleges, in the alternative, that the Defendant acted with “deliberate ignorance” or “reckless disregard” as those terms are used in the TMFCA.

## **DEFENDANTS FRAUDULENT ACTIVITY**

### **FACTUAL BACKGROUND**

26. When non-surgical treatments fail to adequately relieve chronic pain, a physician sometimes recommends that a patient try spinal cord stimulation. In the HCPCS manual, a spinal cord

stimulator is referred to as an “Implantable neurostimulator, pulse generator, any type,” and is assigned HCPCS code L8679. The device consists of a small battery pack (the generator) and some thin wires (electrodes). It creates small electrical impulses that are transmitted to the electrodes which are implanted in the patient’s epidural space (between the spinal cord and the vertebrae).

27. A candidate for a neurostimulator first undergoes a trial period of several days during which one end of a temporary electrode or electrode array is inserted into the epidural space of the patient and the other end connects to a temporary pulse generator which is left outside of the body, usually secured by a belt. If the trial successfully reduces pain, the temporary device is replaced with a permanent electrode or electrode array, again inserted in the epidural space, and a small incision is made to place the pulse generator under the skin near the buttocks or abdomen.

28. When a physician attaches a temporary generator to a patient, it is appropriate for him to bill payers (e.g. insurance companies, Medicare, Medicaid) for the procedure, but there would be no separate charge for the temporary neurostimulator. Examples of appropriate procedure codes for a trial process are CPT codes 63650 or 64553. If a trial is successful and the provider permanently implants a neurostimulator, in addition to a procedure code, he can also bill for HCPCS code L8679 to obtain reimbursement for the neurostimulator.

29. In late 2016, Anderson began purchasing electronic auricular devices (EADs) branded with the name Neuro-Stim from a chiropractor named Charles Spencer. According to the FDA, “The EAD is an electro acupuncture device for use in the practice of acupuncture by qualified practitioners of acupuncture.” Anderson paid Spencer with checks from Anderson and his wife’s personal bank account, not from Affiliated Neurologists’ account. Spencer did not provide Anderson with a receipt or invoice for his Neuro-Stim purchases.



30. Spencer purchased the devices from Brilliant Medical Solutions. Spencer's Brilliant Medical Solutions invoices described the devices as "NSS Electronic Auricular Device." Brilliant Medical Solutions on-line marketing materials indicate that NSS is an acronym for the Neuro-Stim System.

31. A Neuro-Stim EAD consists of a small electronic stimulator and three wires with small acupuncture needles on the end. The electronic stimulator is placed behind a patient's ear and the acupuncture needles slightly pierce the skin on the front side of the ear and are taped in place. The device operates for five days. Then the patient throws it away and may have another one applied. No part of a Neuro-Stim EAD is ever implanted in a patient's epidural space. No part of a Neuro-Stim EAD is ever permanently implanted. The Neuro-Stim EAD is intended to be affixed to a patient by a licensed acupuncturist.

32. From May 1, 2017 to December 31, 2018, Anderson and Affiliated Neurologists, submitted numerous claims to TennCare MCCs seeking reimbursement for Neuro-Stim EAD services rendered at Affiliated Neurologists, by Anderson and, under his supervision, nurse practitioner, Susan Bracey (Bracey), to patients who were TennCare beneficiaries.

33. The claims for payment submitted by James Anderson and Affiliated Neurologists to TennCare MCCs identified the Neuro-Stim EAD with HCPCS code L8679 and the related services rendered using, at first, the CPT codes 63650 and 64553, and later the code for a basic office visit, CPT code 99213. Sometimes they submitted HCPCS code L8679 without a surgical procedure code.

34. In the relevant time period, Neither Anderson nor Susan Bracey ever used an actual neurostimulator on a patient.

35. Neither Anderson nor Susan Bracey ever implanted a Neuro-Stim EAD in a patient.

36. TennCare MCCs never paid Anderson or Affiliated Neurologists for CPT codes 63650 or 64553 because each time those codes were used, the TennCare beneficiary had other coverage that was primary and TennCare coverage was secondary.

37. During the relevant time period, TennCare paid \$702,797.00 to Anderson and Affiliated Neurologists for HCPCS code L8679.

**Claims submitted by Anderson and Affiliated Neurologists  
Using HCPCS code L8679 were false because the Neuro-Stim EAD  
is an acupuncture device, not a neurostimulator**

38. Each time Anderson and Affiliated Neurologists submitted a claim with HCPCS code L8679, they were representing to TennCare MCCs that he, or Susan Bracey at his direction<sup>3</sup>, had treated a patient with an implantable neurostimulator.

39. The device that Anderson used in conjunction with HCPCS code L8679 was the Neuro-Stim EAD, not an actual neurostimulator. On information and belief, the manufacturer or distributor of the device called it Neuro-Stim to deceive payers into thinking that it was an actual neurostimulator. For example, when Anderson or personnel from his office would tell TennCare MCC representatives that Anderson was going to use a Neuro-Stim, it was natural for the representatives to assume they were talking about a neurostimulator that would stimulate the spinal cord.

40. The parties may dispute when Anderson knew that the Neuro-Stim EAD that he used was an acupuncture device, and not a neurostimulator, but he testified in his examination under oath on March 6, 2020 that he now knows that it is an acupuncture device.

41. Because the Neuro-Stim EAD that Anderson used was an acupuncture device and not a neurostimulator, HCPCS code L8679 should not have been used by Anderson and Affiliated Neurologist on claims for payment for the Neuro-Stim EAD, and all claims with that HCPCS code were

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<sup>3</sup> When Bracey used a Neuro-Stim device on a patient, Anderson or Affiliated Neurologists billed TennCare for the service listing Anderson as the rendering provider.

false.

42. All the claims that TennCare MCCs paid for Anderson's use of HCPCS code L8679 were subject to pre-certification by the MCCs. Pre-certification is a process by which providers gain approval from a payer of a procedure and/or device prior to performing the procedure or using the device.

43. If Anderson or his office personnel had told the TennCare MCCs during the pre-certification process that he and Bracey were using acupuncture devices, the TennCare MCCs would not have approved nor paid for those devices.

44. The correct HCPCS code for the device that Anderson used was HCPCS code S8930, "electrical stimulation of auricular acupuncture points."

45. If Anderson and Affiliated Neurologists had submitted claims to TennCare MCCs with HCPCS code S8930 instead of HCPCS code L8679, TennCare MCCs would not have paid for any of those claims.

**Anderson knew that the claims he and Affiliated Neurologists submitted to TennCare MCCs using HCPCS code L8679 were false because he knew that the Neuro-Stim EAD was not the neurostimulator for which L8679 is appropriate**

46. As a physician and owner of his practice, Anderson was responsible for making sure his billing submissions to TennCare were accurate and true.

47. As a board-certified neurologist who had performed the real neurostimulation procedure in the past, Anderson knew that the Neuro-Stim EAD acupuncture device that he used did not justify using HCPCS code L8679 because the electrodes were not implanted in the epidural space, the generator was never implanted, and the device did not stimulate the spinal cord.

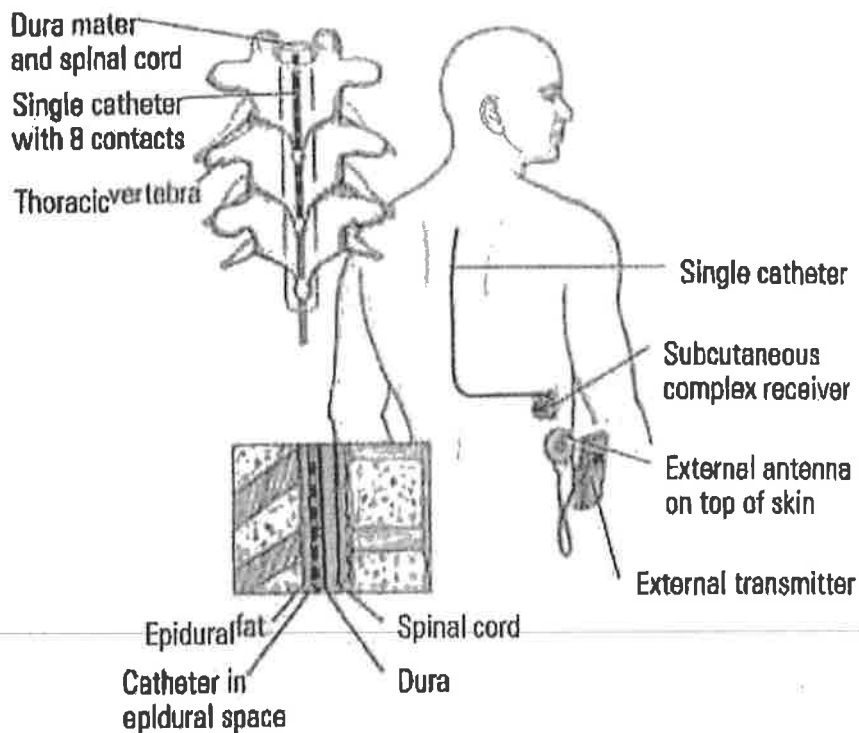
48. Anderson sometimes used CPT code 63650 in conjunction with HCPCS code L8679. If Anderson had merely looked that procedure code up in the CPT Manual, he would have seen a

diagram of the real trial neurostimulator process, including the implantation of the electrodes in the patient's epidural space. The procedure and device depicted in that diagram (see below) could not possibly be mistaken for the Neuro-Stim device that Anderson was placing behind his patients' ears.

CPT 2018

## Percutaneous Implantation of Neurostimulator Electrodes 63650

Single catheter electrode array is inserted percutaneously into the epidural space. A simple or complex receiver is subcutaneously implanted.



49. Anderson should have known when TennCare reimbursed him between \$3,000.00 and \$6,000.00 for Neuro-Stim EADs that cost him \$520.00 that he had not billed for it correctly. If he did not already know that Neuro-Stim EADs were not neurostimulators, reasonable inquiry after seeing the rate of reimbursement would have informed him.

50. Anderson made misrepresentations to TennCare MCCs Volunteer State Health Plan (VSHP) and Amerigroup to deceive them into thinking that he was performing the real neurostimulator procedure.

51. VSHP and Amerigroup required Anderson and Affiliated Neurologists to pre-certify neurostimulation procedures. Those MCCs would not pay for the device unless it was pre-certified.

52. On at least two occasions, Anderson talked to personnel at VSHP and Amerigroup during the pre-certification process and intentionally misled them about the nature of the procedure to deceive them into thinking that he was using a real neurostimulator instead of the Neuro-Stim EAD.

53. Often, Anderson's office submitted pre-certification requests to TennCare MCCs misrepresenting that they sought approval for "trial neurostimulators." Anderson did this because he knew that the real neurostimulator is first tried on a trial basis, then, if successful, it is permanently implanted.

54. Anderson and Bracey never used a Neuro-Stim EAD on a patient on a trial basis, followed by permanent implantation.

55. Defendant's misrepresentations about what they were doing were material because if they had used the correct code with MCCs or told that they were using an acupuncture device, the MCCs would not have paid for the Neuro-Stim EADs.

## Specific claims submitted and paid under this scheme of fraud

### Patient A<sup>4</sup>

56. On December 6, 2017 Affiliated Neurologists submitted a pre-certification request to Amerigroup seeking approval to use “L8679 x 4,” or four neurostimulators on Patient A. On December 19, 2018, Anderson had a phone conversation with a representative of Amerigroup to discuss the request. The Amerigroup representative made this record of the call:

I called and spoke with Dr. Anderson. I told him I needed the request clarified. He said it is for SCS [spinal cord stimulation] of the lumbar area. I told him we need a Psych eval and more clinical info. He said he is a Psychiatrist and completed a Psych eval on the member. I told im [sic] it needed to specifically address the SCS. He said it would and Christi with his office will send additional clinical info.

57. Anderson deceived the Amerigroup representative. He intended to use the Neuro-Stim EAD on Patient A, not a spinal cord stimulator. The Neuro-Stim EAD is placed on a patient’s ear; no part of it is implanted near the lumbar area of a patient’s spine. Anderson and Bracey never put any part of a Neuro-Stim EAD in or near the lumbar area of a patient’s spine.

58. Because of Anderson’s misrepresentations, Amerigroup pre-certified the procedure and later paid \$11,829.00 for what it believed were three neurostimulators.

59. Anderson’s misrepresentations show that he knew that if he were honest about what he intended to do, and the device he was using, Amerigroup would not have paid for the device.

### Patient B

60. On April 18, 2018, Affiliated Neurologists submitted a pre-certification request to VSHP for four neurostimulators (“L8679 x 4”) for Patient B.

61. VSHP initially denied the request with its representative making a record of a telephone

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<sup>4</sup> Patient names are omitted to protect their privacy. Defendants were provided with those names at Dr. Anderson’s examination under oath.

call with Anderson's pre-certification person, Christy on April 18, 2018:

Per Christy at Dr. Anderson's office, this neurostim will be placed on the skin and not implanted. No C codes or procedure code requested. She states that this will just be taped to the patient's skin and when the leads fall off they will be replaced. It is for external use only.

62. On April 20, 2018, a VSHP physician, denied Andersson's pre-certification request.

63. Then, on May 3, 2018, a second VSHP physician, reversed the denial after having a conversation with Anderson:

Provider clarified procedure process – temporary implantation of electrodes for a trial period of at least 7 days and reserve implantation of the stimulator until it is clear that member has or has not achieved satisfactory response. Electrodes are then removed if unsatisfactory or stimulator then permanently implanted.

64. Anderson intentionally deceived VSHP's physician. Anderson intended to use the Neuro-Stim EAD on Patient B and he knew that it did not require a trial period followed by permanent implantation. Anderson knew that no part of the Neuro-Stim EAD would ever be permanently implanted.

65. Because of Anderson's misrepresentations, VSHP pre-certified the procedure and later paid \$28,766.00 for what it thought were four neurostimulators.

**Even if Anderson did not originally know that HCPCS code L8679 was not an appropriate code for the Neuro-Stim EAD, he violated the TMFCA when, at least by October or November, 2018, he learned from CMS investigators and his own research that he should not have been paid for L8679, but he did not return his overpayments to the State of Tennessee**

66. The State alleges that Anderson knew from the beginning that the Neuro-Stim EAD was not a neurostimulator and therefore HCPCS code L8679 was not the correct code to use with it.

However, even if Anderson initially thought TennCare should reimburse him for L8679 when he used the Neuro-Stim EAD, he knew by October 25, 2018 that Medicaid did not pay for it.

67. On October 25, 2018, two investigators from CMS contractor SafeGuard Services (SGS) visited the main office of Affiliated Neurologists and asked Dr. Anderson about his use of the Neuro-Stim EAD and HCPCS code L8679.

68. That encounter led to Bracey obtaining a copy of the FDA form 501(k) for the EAD in late October or November, 2018. Anderson testified in his examination under oath that after the SGS visit and his discussions with Bracey about the EAD FDA document, he knew that the Neuro-Stim EAD was an acupuncture device and that Medicaid did not pay for it.

69. The TMFCA requires prompt repayment by providers who know they have been overpaid by TennCare. Anderson and Affiliated Neurologists knew in October of 2018 that they had been overpaid by TennCare for the Neuro-Stim EAD, yet in 2020 they have still not repaid any of the \$702,797.00 TennCare paid for the devices.

## **LEGAL CLAIMS**

### **COUNT ONE**

#### **Anderson knowingly presented and caused false claims to be presented to the TennCare program**

70. The State of Tennessee re-alleges by incorporating herein by reference the allegations in paragraphs 1 through 69 as if set forth herein.

71. By and through the acts described above, from March 1, 2017 to December 31, 2018, Defendant Anderson knowingly presented and caused false claims to be presented for payment under the TennCare program in violation of the TMFCA. Specifically, Anderson presented or caused false claims to be presented by instructing his staff and Affiliated Neurologists' billing office to present claims using HCPCS code L8679 to bill TennCare when the Neuro-Stim EAD that he used was not appropriate for that code.



72. Anderson knew the submitted claims were false, or he deliberately ignored or recklessly disregarded whether they were false.

73. As a result of the false or fraudulent claims presented, or caused to be presented, by Anderson, the State has suffered damages, in the amount of \$702,797.00, and is entitled to treble damages under the TMFCA, plus a civil penalty of \$5,000 to \$25,000 for each violation.

### **COUNT TWO**

#### **Anderson knowingly retained overpayments from the TennCare program in violation of the TMFCA**

74. The State of Tennessee realleges and incorporates by reference paragraphs 1 through 69 as if set forth herein.

75. Anderson knowingly and improperly avoided an obligation to pay money to the State, in violation of the TMFCA, Tenn. Code Ann. § 71-5-182(a)(1)(D), when he learned, at least by October or November of 2018 of the overpayment made by TennCare for the Neuro-Stim EADs that he used, and he failed to return the monies improperly paid for these false claims.

76. Because of Anderson's acts, the State has suffered damages in the amount of \$702,797.00 and is entitled to and requests treble damages under the TMFCA, plus a civil monetary penalty of \$5,000 to \$25,000 for each violation.

### **COUNT THREE**

#### **Affiliated Neurologists, PLC knowingly presented false claims for payment under the TennCare program**

77. The State of Tennessee re-alleges by incorporating herein by reference the allegations in paragraphs 1 through 69 as if set forth herein.

78. By and through the acts described above, from March 1, 2017 to December 31, 2018, Affiliated Neurologists, through its employees and agents in its billing office, who were acting

within the scope of their employment or agency, knowingly presented false or fraudulent claims for payment under the TennCare program in violation of the TMFCA or caused such false claims to be presented. Specifically, Affiliated Neurologists, presented false claims to TennCare MCCs when its billing personnel used HCPCS code L8679 to bill TennCare when the Neuro-Stim EAD that Anderson and Bracey used was not appropriate for that code.

79. As a result of Affiliated Neurologists knowingly presenting false claims for payment to the TennCare program or causing false claims to be presented, the State has suffered damages in the amount of \$702,797.00, and is entitled to a civil penalty of \$5,000 to \$25,000 for each violation, plus treble damages.

#### **COUNT FOUR**

##### **Affiliated Neurologists knowingly retained an Overpayment in Violation of the TMFCA (T.C.A. § 71-5-182(a)(1)(D))**

80. The State of Tennessee realleges and incorporates by reference paragraphs 1 through 69 as if set forth herein.

81. Affiliated Neurologists knowingly and improperly avoided an obligation to pay money to the State, in violation of the TMFCA, Tenn. Code Ann. § 71-5-182(a)(1)(D), when it learned, at least by October or November of 2018 of the overpayment made by TennCare for the Neuro-Stim EADs that Anderson and Bracey used, and failed to return the monies improperly paid for these false claims.

82. Because of the Defendant's acts, the State has suffered damages in the amount of \$702,797.00 and is entitled to and requests treble damages under the TMFCA, plus a civil monetary penalty of \$5,000 to \$25,000 for each violation.

## **COUNT FIVE**

### **Unjust Enrichment**

83. The State of Tennessee re-alleges by incorporating herein by reference the allegations in paragraphs 1 through 69 as if set forth herein.

84. By and through the acts described above, from March 1, 2017 to December 31, 2018, Defendants wrongfully received and retained the benefit of government monies paid from the TennCare program for devices that were not used.

85. Defendants were unjustly enriched with those government monies from the TennCare program, which Defendants should not in equity and good conscience be permitted to retain, and which Defendants should account for and disgorge to Tennessee, in an amount to be determined at trial.

## **COUNT SIX**

### **Payment Under Mistake of Fact**

86. The State of Tennessee re-alleges and incorporates by reference paragraphs 1 through 69 as if set forth herein.

87. As a result of the conduct from March 1, 2017 to December 31, 2018, described in this Complaint, the State of Tennessee paid claims submitted by the Defendants under the erroneous belief that such claims for payment were based upon representations that were factually accurate and represented reimbursable services.

88. At the time such payments were made, the State of Tennessee was unaware of the wrongful conduct of the Defendants. Had the State known that the Defendants were not entitled to receive reimbursement or payment, the State would not have paid such claims.

89. The State's erroneous belief was material to the payments made by the State through the TennCare program to the Defendants.

90. Because of these mistakes of fact, the Defendants received monies to which they were not entitled.

91. By reason of the overpayments described above, the State of Tennessee is entitled to and requests damages of \$702,797.00 exclusive of interest and costs.

**PRAYER FOR RELIEF**

**WHEREFORE**, the State of Tennessee respectfully requests this Court grant the following relief against the defendants:

- a) Damages of \$702,797.00, to be trebled as required by Tenn. Code Ann. § 71-5-182(a) for a total of \$2,108,391.00;
- b) Civil penalties up to the statutory amount as provided by Tenn. Code Ann. § 71-5-182(a) for each violation;
- c) Pre-judgment and post-judgment interest; and
- d) Any additional remedies the Court finds fair and just.

The State of Tennessee further respectfully requests a jury trial.

Respectfully submitted,



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**HERBERT H. SLATTERY III (BPR #009077)**  
**Attorney General and Reporter**

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