

JUSTICE NEWS

Department of Justice

Office of Public Affairs

FOR IMMEDIATE RELEASE

Friday, March 29, 2019

Fresenius Medical Care Agrees to Pay \$231 Million in Criminal Penalties and Disgorgement to Resolve Foreign Corrupt Practices Act Charges

Fresenius Medical Care AG & Co. KGaA (Fresenius), a German-based provider of medical products and services, has agreed to pay approximately \$231 million to resolve investigations by the Department of Justice and the Securities and Exchange Commission (SEC) into violations of the Foreign Corrupt Practices Act (FCPA) in connection with Fresenius's participation in various corrupt schemes to obtain business in multiple foreign countries.

Assistant Attorney General Brian A. Benczkowski of the Justice Department's Criminal Division, U.S. Attorney Andrew E. Lelling of the District of Massachusetts, Assistant Director Robert Johnson of the FBI's Criminal Investigative Division and Special Agent in Charge Joseph R. Bonavolonta of the FBI Boston Field Division made the announcement.

According to Fresenius's admissions in connection with the resolution, between 2007 and 2016, Fresenius paid bribes to publicly employed health and/or government officials to obtain or retain business in Angola and Saudi Arabia. In Angola and Saudi Arabia, as well as in Morocco, Spain, Turkey and countries in West Africa, Fresenius knowingly and willfully failed to implement reasonable internal accounting controls over financial transactions and failed to maintain books and records that accurately and fairly reflected the transactions, the company admitted.

"Fresenius doled out millions of dollars in bribes across the globe to gain a competitive advantage in the medical services industry, profiting to the tune of over \$140 million," said Assistant Attorney General Benczkowski. "Today's resolution, under which Fresenius has agreed to retain an independent compliance monitor for at least two years, reflects the Department's firm commitment to both rooting out bribery and promoting the kind of effective corporate compliance programs that will prevent misconduct going forward."

"Bribery, in all forms, is corrosive and illegal," said U.S. Attorney Lelling. "As today's announcement makes clear, this Office will continue its long tradition of aggressively investigating companies and individuals who use bribes and kickbacks to gain an unfair and illicit business advantage, or who deliberately turn a blind eye to that conduct."

"This case shows the continued commitment of the FBI and our partners to investigate bribery and corruption worldwide," said FBI Assistant Director Robert Johnson. "The FBI's dedicated International Corruption Squads across the United States will continue to combat foreign corruption that reaches our shores and send a strong message that, no matter how long it takes, we will not wane in our efforts to uphold the law."

"This case shows the FBI will hold accountable those who treat corruption as the cost of doing business," said FBI Special Agent in Charge Bonavolonta. "Fresenius's admissions are incredibly concerning because no company should break the law by paying-off international partners to obtain or retain business. We will continue to work with our law enforcement partners to root out corrupt schemes and ensure they do not become common practice at the expense of other hard-working businesses."

In Angola, Fresenius offered or provided things of value to an Angolan military health officer who exercised authority over the Angolan state-owned military hospital in his role as an officer in the Medical Services Division of the Angolan Armed Forces and his family, as well as prominent Angolan government-employed nephrologists. Specifically, Fresenius offered these individuals shares in a joint venture in Fresenius's local subsidiary, specifically, 15 percent to the Angolan military health officer and 15 percent to a publicly employed doctor, storage contracts with a company

owned by the sons of the Angolan military health officer, to provide warehousing space, however, no Fresenius products were ever stored at the warehouse, and consultancy agreements with publicly employed doctors for which no services were ever performed, all for the purpose of securing an improper advantage and assisting Fresenius with obtaining and retaining business in Angola.

In Saudi Arabia, Fresenius offered or provided things of value to Saudi Arabian health officials and publicly employed doctors who directed or were employed by a Saudi medical organization and a governmental charity. Specifically, Fresenius engaged in a check-cashing scheme where employees were directed to cash checks that had been made payable in their names and return the cash to the general manager of Fresenius's distributor and agent where he [the agent] then arranged to have the cash delivered to Saudi government doctors and others. In addition, publicly employed doctors were awarded sham consulting and commission agreements for which no services were ever performed. Fresenius also entered into fake collection commission agreements, made payments to a government charity, and gave gifts and made payments to publicly employed doctors for travel with no business or educational justification, the company admitted.

In Morocco, Fresenius paid bribes through a sham commission to a Moroccan state official for the purpose of obtaining contracts to develop kidney dialysis centers at Moroccan state-owned military hospitals. The sham commission would pay 10 percent of the value of the contract to the Moroccan state official and was disguised as a bonus payment to a Fresenius employee. In Spain, Fresenius entered into fictitious consulting agreements with publicly employed doctors or professionals who could influence or provide information about public tenders. For example, between 2008 and 2011, Fresenius paid a publicly employed doctor more than €81,000 without a consulting agreement or contract in place. This publicly employed doctor was the head of nephrology at a Spanish state-owned hospital that ultimately awarded Fresenius a tender in 2011. Further, Fresenius gave gifts or provided other benefits such as travel to medical conferences, and made donations to fund projects for the doctors, the company admitted. In Turkey, Fresenius entered into joint ventures with publicly employed doctors in exchange for those doctors directing business from their public employer to Fresenius clinics in Turkey. For example, in or around 2006, Fresenius entered into a joint venture with a publicly employed Turkish doctor, who received 35 percent of the joint venture shares (worth approximately \$74,000 at the time) at the time it was formed. In 2010, Fresenius purchased the doctor's shares and never required the doctor to pay for his shares in the joint venture resulting in \$356,000 profit to the doctor. In West Africa, Fresenius knowingly paid bribes to publicly employed health officials and government-employed doctors in numerous countries, including Benin, Burkina Faso, Cameroon, the Ivory Coast, Niger, Gabon, Chad and Senegal. For example, Fresenius employees met with representatives of a Gabon state-owned hospital and proposed a five-year agreement that would include the "prices plus the commission" that the officials would receive for each kit sold. A Fresenius employee responsible for sales in West Africa reported that the agreement would provide for a €12 commission for each kit sold, which was intended as a "commission for the three persons who sign the contract with us." Fresenius paid these bribes through a combination of direct payments, payments through third parties and payments through a third-party distributorship, all to obtain and retain business in those countries, the company admitted.

In total, Fresenius admitted to earning more than \$140 million in profits from the corrupt schemes.

To resolve the case, Fresenius entered into a nonprosecution agreement (NPA) with the Department and agreed to pay a total criminal penalty of \$84,715,273. As part of the NPA, Fresenius also agreed to continue to cooperate with the Department's investigation, enhance its compliance program, implement rigorous internal controls and retain an independent corporate compliance monitor for at least two years.

The Department reached this resolution based on a number of factors. Notably, although Fresenius voluntarily self-disclosed the misconduct in April 2012, the company did not timely respond to certain requests by the Department and, at times, did not provide fulsome responses to requests for information. In addition, misconduct occurred in 13 countries, yielded profits of more than \$140 million and continued in certain countries until 2016. Moreover, the company has not yet had the opportunity to test the effectiveness of its compliance enhancements. In light of all the factors, the company did not qualify for a declination under the Corporate Enforcement Policy; however, the company was afforded a reduction of 40 percent below the low end of the U.S. Sentencing Guidelines fine range. As part of the resolution, the company agreed to an independent compliance monitor for a term of two years, followed by an additional year of self-reporting to the Department.

Fresenius settled a related FCPA matter with the U.S. Securities and Exchange Commission (SEC) today, and will pay \$147 million in disgorgement and prejudgment interest to the SEC, which the Department credited in its resolution, bringing the total amount paid by Fresenius to over \$231 million.

This case is being investigated by the FBI's International Corruption Squad in New York and the FBI's Boston Field Office. Trial Attorneys Paul A. Hayden and Sonali D. Patel of the Criminal Division's Fraud Section and Assistant U.S. Attorney Jordi de Llano of the District of Massachusetts are prosecuting the case.

The Department appreciates the significant cooperation and assistance provided by the SEC in this matter.

The Fraud Section is responsible for investigating and prosecuting all FCPA matters. Additional information about the Justice Department's Fraud Section FCPA enforcement efforts can be found at www.justice.gov/criminal/fraud/fcpa.

Attachment(s):

[Download FMC Nonprosecution Agreement](#)

Topic(s):

Foreign Corruption

Health Care Fraud

Component(s):

[Criminal Division](#)

[Criminal - Criminal Fraud Section](#)

[Federal Bureau of Investigation \(FBI\)](#)

[Criminal Investigative Division \(FBI\)](#)

[USAO - Massachusetts](#)

Press Release Number:

19-290

Updated March 29, 2019