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FILED

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CLERK, US DISTRICT COURT  
MIDDLE DISTRICT OF FL  
JACKSONVILLE, FLORIDA

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF FLORIDA  
*Jacksonville Division*

UNITED STATES OF AMERICA, *ex rel.*  
DONNA NICHOLS  
5152 Camellia Circle  
Jacksonville, FL 32207

*Plaintiff,*

v.

THE SLEEP MEDICINE CENTER  
310 S. Palm Avenue  
Palatka, Florida 32177

Serve: Hubert Michael Zachary  
310 S. Palm Avenue  
Palatka, Florida 32177

HUBERT MICHAEL ZACHARY  
7835 Chase Meadows Drive  
Jacksonville, Florida 32256

GEORGE MORRISON YOUNG  
8761 Perimeter Park Blvd., Suite 101  
Jacksonville, Florida 32177

GEORGE LIVIU RESTEA  
132 E. Madison Street  
Starke, Florida 32216

JOHN DECERCE  
107 Edwards Road, Suite F  
Starke, Florida 32091

*Defendants.*

3:12-cv-1080-J-25TM

Case No. 0:00-cv-00000

Complaint for Violations of the  
Federal False Claims Act, 31  
U.S.C. §§ 3729 et seq. and the  
Florida False Claims Act, Fla.  
Stat. § 68.081 et seq.

FILED UNDER SEAL

Jury Trial Demanded

CONFIDENTIAL AND UNDER SEAL—*QUI TAM* COMPLAINT  
*United States ex rel. Nichols v. Sleep Medicine Center, et al.*

## INTRODUCTION

1. Qui tam relator Donna Nichols (“Nichols” or “Relator”), by her attorneys, individually and on behalf of the United States of America, files this complaint against Defendants Sleep Medicine Center (“SMC”), Hubert Michael Zachary (“Zachary”), George Morrison Young (“Young”), George Liviu Restea (“Restea”), and John DeCerce (“DeCerce”) (collectively, “Defendants”) to recover damages, penalties, and attorneys’ fees for violations of the federal False Claims Act, 31 U.S.C. §§ 3729 et seq., (“FCA” or “False Claims Act”), and the Florida False Claims Act, Fla. Stat. § 68.081 et seq. (“Florida FCA” or “Florida False Claims Act”) (Collectively “FCAs” or “False Claims Acts”). Nichols also seeks damages and attorneys’ fees for unlawful retaliation in violation of 31 U.S.C § 3730(h).

2. The Defendants’ violations of the Federal and Florida False Claims Acts arise from fraudulent claims that SMC made to Medicare and Florida’s Medicaid program when the Defendants billed for services that they did not provide because it either did not have access to the equipment required to conduct the services or the equipment used to provide the services did not function properly.

3. The Defendants’ violations of the Federal and Florida False Claims Acts arise from fraudulent claims that SMC made to Medicare and Florida’s Medicaid program when the Defendants billed Medicare and Medicaid for office visits that never occurred, or billed for office visits when patients simply came into the office to pick up equipment.

4. Defendants also violated the Federal and Florida False Claims Acts when they billed for services provided by unlicensed physicians. While licensed physicians’ names appear on many

CONFIDENTIAL AND UNDER SEAL—*QUI TAM* COMPLAINT  
*United States ex rel. Nichols v. Sleep Medicine Center, et al.*

documents, relator alleges that these doctors did not actually review these documents. Indeed, it would have been impossible for the signing doctors, Young, Restea, and DeCerce to review much of this information, because the data they claimed to review did not exist.

5. Defendants also violated the False Claims Act anti-kickback statute, 42 U.S.C. § 1320a-7b(b) when they maintained a structured system of compensation for outside physicians in return for those physicians referring patients to SMC.

### JURISDICTION AND VENUE

6. This Court has subject matter jurisdiction over this action under 28 U.S.C. § 1331 and 31 U.S.C. §§ 3732(a). Nichols's federal cause of action for unlawful retaliation is authorized by 31 U.S.C. § 3730(h).

7. This Court has personal jurisdiction over Defendants pursuant to 31 U.S.C. § 3732(a) because the corporate Defendants are headquartered in and the individual Defendants reside in this judicial district.

8. Venue is proper in this Court under 28 U.S.C. §§ 1391(c) and 1395(a) 31 U.S.C. § 3732(a) because the complained of illegal acts occurred within this judicial district and because corporate Defendants are headquartered in and the individual Defendants reside in this judicial district..

### THE PARTIES

9. Relator Nichols is a citizen of the United States and a resident of Jacksonville, Florida.

CONFIDENTIAL AND UNDER SEAL—*QUI TAM* COMPLAINT  
*United States ex rel. Nichols v. Sleep Medicine Center, et al.*

10. Nichols worked for Defendant as administrative personnel from February 6, 2012 until June 6, 2012.

11. Defendant SMC is a Florida corporation incorporated in July, 2002.

12. SMC is a medical provider under Medicare and Medicaid, and purports to provide sleep studies, tests, analyses, and treatment to patients referred from other medical providers.

13. Hubert Michael Zachary is the owner and manager of the Sleep Medicine Center, and oversees all of its staff and operations.

14. George Young is a licensed physician who signs prescriptions, billing documents, and other key documents for SMC in exchange for compensation from SMC.

15. George Restea is a licensed physician who signs patient analyses and other important medical documents for SMC. Restea also refers patients to SMC, all in exchange for compensation from SMC.

16. John DeCerce is a licensed physician who signs prescriptions, billing documents, and other key documents for SMC in exchange for compensation from SMC.

## FACTUAL ALLEGATIONS

### SMC BILLS MEDICAID AND MEDICARE FOR SERVICES IT DOES NOT PERFORM

17. SMC violated the False Claims Act by billing Medicare and Medicaid for electroencephalography (EEG) tests it never provided.

18. SMC bills every patient that walks through its doors for at least two EEG tests.

19. In the course of training Nichols, Zachary told Nichols to bill every patient for two EEG tests, and to alter dates in the patients' files to make it appear as if one of the EEG tests took place the day before a sleep study.

CONFIDENTIAL AND UNDER SEAL—*QUI TAM* COMPLAINT  
*United States ex rel. Nichols v. Sleep Medicine Center, et al.*

20. SMC does not possess or have access to any of the equipment required to conduct an EEG test.

21. None of the technicians who purportedly conducted EEG tests ever actually administered EEG tests because they lacked the equipment to do so.

22. Nichols reviewed patient files often in the course of her job duties, and never saw any of the printouts or raw data that an EEG test produces.

23. Approximately 80 percent of SMC's patients are insured either by Medicaid or Medicare, and thus nearly every fraudulent EEG test was submitted as a claim for payment to either the Federal Government or the State Government of Florida.

24. SMC has fraudulently billed Medicare and Medicaid for thousands of EEG tests that were never performed.

25. For instance, SMC billed Medicaid for EEG tests for patient Medicaid ID 22182350; The EEG tests were purportedly conducted on March 13 and March 20, 2012, but neither could have been performed because SMC did not have EEG equipment.

26. SMC also billed Medicaid for EEG tests for patient Medicaid ID 16785043; At least one EEG test was purportedly conducted on February 23, 2012, but it could not have been performed because SMC did not have EEG equipment.

27. SMC also billed Medicare for EEG tests for patient J.P., born February 1, 1942; At least one EEG test was purportedly conducted on March 5, 2012, but it could not have been performed because SMC did not have EEG equipment.

CONFIDENTIAL AND UNDER SEAL.—*QUI TAM* COMPLAINT  
*United States ex rel. Nichols v. Sleep Medicine Center, et al.*

28. SMC also billed Medicare for EEG tests for patient Medicare ID 262908689A; At least two EEG tests were purportedly conducted on March 16 and March 26, 2012, but they could not have been performed because SMC did not have EEG equipment.

29. SMC conducted a polysomnography study on almost all of its patients.

30. The sleep technicians who administered polysomnography studies regularly complained to Nichols that their equipment—primarily a data-recording item called a “Stardust Unit”—did not function.

31. When technicians made Zachary aware of malfunctioning equipment, he did not make efforts to replace or repair the equipment. Rather, he became hostile and angry with the technician who raised the issue.

32. When technicians made Zachary aware of malfunctioning equipment, Zachary made the technicians continue with the study anyway.

33. Often technicians were afraid to report malfunctioning equipment out of fear of enraging Zachary.

34. The “Stardust Unit” is a critical piece of equipment that is supposed to record a number of important data points about a patient’s sleep cycle, including breath rate, pulse, oxygen saturation, chest/abdominal movement, body positioning, and other factors.

35. By conducting polysomnography studies on patients without a functioning Stardust Unit, SMC failed to actually record most of the data the polysomnography study is supposed to capture.

36. Nichols reviewed patient files often, and never saw any printouts, measurements, or other raw data that the Stardust Unit is supposed to record.

CONFIDENTIAL AND UNDER SEAL—*QUI TAM* COMPLAINT  
*United States ex rel. Nichols v. Sleep Medicine Center, et al.*

37. Because the Stardust Unit did not work, SMC's polysomnography studies were little more than technicians watching patients sleep, noting basic information such as when the patient moves, snores, or other phenomena observable by a layperson.

38. SMC consistently billed Medicare and Medicaid for virtually useless polysomnography studies.

39. For instance, SMC billed Medicaid for polysomnography studies for patient Medicaid ID 22182350; The studies tests were conducted on March 13 and March 20, 2012.

40. SMC also billed Medicaid for at least one polysomnography study for patient Medicaid ID 16785043; The study was conducted on February 23, 2012.

41. SMC also billed Medicare for a polysomnography study for patient J.P., born February 1, 1942; At least one study was conducted on March 5, 2012.

42. SMC also billed Medicare for polysomnography studies for patient Medicare ID 262908689A; At least two such studies were conducted on March 16 and March 26, 2012.

43. Because SMC's purported EEG and polysomnography studies resulted in virtually no actual patient sleep data, Zachary invented test results on which to base SMC patient analyses.

44. SMC based nearly all of its analyses, recommendations, and prescriptions for patient treatment, medication, and equipment on made up data.

45. Zachary directed Nichols and other administrative staff to bill Medicaid and Medicare for office visits that never occurred.

46. When patients called SMC, Zachary directed Nichols and other SMC billing staff to bill the patient's insurance, most often Medicare or Medicaid, for a full office visit.

CONFIDENTIAL AND UNDER SEAL—*QUI TAM* COMPLAINT  
*United States ex rel. Nichols v. Sleep Medicine Center, et al.*



47. When patients came to the office to pick up continuous positive airway pressure (CPAP) machines or other equipment, Zachary directed Nichols and other SMC billing staff to bill the patient's insurance, most often Medicare or Medicaid, for a full office visit.

48. When patients came into the office to pick up equipment, they never saw a doctor or practitioner; they simply came in the door, received equipment from administrative staff, and left in the course of a few minutes at most.

#### **SMC BILLS FOR SERVICES PERFORMED BY UNLICENSED PRACTITIONERS**

49. Hubert Michael Zachary is not licensed to practice Medicine in Florida.

50. Zachary performed all of the analyses of patient data at SMC.

51. Zachary made all advice and recommendations for patient prescriptions and courses of treatment at SMC.

52. In order to hide his unlicensed practice of medicine, Zachary employed licensed physicians to sign patient prescriptions, documents, recommendations, analyses, and other documents that require a license to practice medicine.

53. The doctors who signed these documents did not see patients, review any patient data, or supervise Zachary's practice of medicine in any way.

54. The licensed physicians who signed SMC medical documents included George Restea, George Young, and John DeCerco.

55. These doctors could not have reviewed any patient test data, because non-existent or malfunctioning equipment ensured that no such data existed.

56. Nearly always, Restea's, and DeCerco's "signatures" are represented in typeface rather than a handwritten signature.

CONFIDENTIAL AND UNDER SEAL—*QUI TAM* COMPLAINT  
*United States ex rel. Nichols v. Sleep Medicine Center, et al.*

57. Young, Restea, and DeCerco often did not even see the documents that bared their “signatures.”

58. Many of SMC’s billing documents feature the name and provider information of George Restea, with Restea’s name marked through and replaced with that of George Young.

59. The National Provider Identifier (NPI) number in these billing documents is that of George Restea, and not that of George Young, despite the fact that the documents bare Young’s signature.

60. George Young rarely came into the SMC offices.

61. George Young almost never saw SMC patients.

62. George Young signed numerous documents related to patient care and treatment, including prescriptions and billing documents, with little or no knowledge of the underlying patient.

63. George Young knew that the documents he signed were false.

64. The purpose of having Young sign these documents was to help seek government payment for services performed by the unlicensed Zachary.

65. George Restea rarely came into the SMC offices.

66. George Restea almost never saw SMC patients.

67. George Restea signed numerous documents related to patient care and treatment, including prescriptions and billing documents, with little or no knowledge of the underlying patient.

68. George Restea knew that the documents he signed were false.

69. The purpose of having Restea sign these documents was to help seek government payment for services performed by the unlicensed Zachary.

70. John DeCerco rarely came into the SMC offices.

CONFIDENTIAL AND UNDER SEAL—*QUI TAM* COMPLAINT  
*United States ex rel. Nichols v. Sleep Medicine Center, et al.*

71. John DeCerce almost never saw SMC patients.

72. John DeCerce signed numerous documents related to patient care and treatment, including prescriptions and billing documents, with little or no knowledge of the underlying patient.

73. John DeCerce knew that the documents he signed were false.

74. The purpose of having DeCerce sign these documents was to help seek government payment for services performed by the unlicensed Zachary.

75. In many cases, Zachary's typeset "signature" is the only one on medical documents, indicating that he, alone and unlicensed, did the analysis and made the recommendations to the patient.

76. Zachary knew that the documents he signed were false.

77. Zachary often hired sleep technicians from the strip clubs he frequently visits.

78. Zachary intentionally hired unqualified strip club employees (all women) because he knew they would not challenge his illegal practices.

79. Almost none of Zachary's staff of sleep technicians has any degree or accreditation qualifying them to administer medical tests.

80. Some of Zachary's staff did not have high school-level or equivalent education.

81. Zachary did not provide any formal training to the SMC sleep technicians.

82. Any patient data recorded by SMC sleep technicians is the functional equivalent of a layperson's observation.

#### **SMC'S ISSUES KICKBACKS TO DOCTORS FOR REFERRALS**

83. SMC gets the vast majority of its business through referrals from outside physicians.

CONFIDENTIAL AND UNDER SEAL—*QUI TAM* COMPLAINT  
*United States ex rel. Nichols v. Sleep Medicine Center, et al.*

84. Zachary maintains a structured payment scheme that awards compensation to doctors who refer patients to SMC.

85. In at least one case, Zachary told Relator Nichols that Zachary was issuing a \$1,000 check to Dr. Charles Green for the referrals Green had given to SMC.

86. Zachary also indicated to Relator that SMC gives Dr. Green \$200 for every patient Green refers to SMC.

87. In addition to Green, SMC also issues kickbacks to Dr. George Restea for referring patients to SMC.

88. Restea also received compensation from SMC for his “signing” of patient analyses and other medical documents.

89. Restea elected not to “sign” analytical documents for patients where he is listed as the referring physician.

90. SMC receives nearly all of its business from the referrals generated by this kickback scheme.

#### **SMC TERMINATES RELATOR BECAUSE OF HER QUESTIONS ABOUT SMC'S PRACTICES**

91. During the months that Nichols worked for SMC, she became suspicious of the practices.

92. Nichols asked Zachary questions about whether SMC should be billing for EEG tests and other issues related to billing for questionable services.

93. Nichols also asked Zachary about fixing broken equipment, including Stardust Units

94. On June 7, 2012, Nichols took part of the day off to get an MRI.

CONFIDENTIAL AND UNDER SEAL—*QUI TAM* COMPLAINT  
*United States ex rel. Nichols v. Sleep Medicine Center, et al.*

95. On June 7, 2012, Zachary sent Nichols a text message telling her to take the rest of the day off.

96. Later, Zachary told Nichols not to come in the following weekend because he was closing the office.

97. After this, a colleague at SMC informed Nichols that Nichols no longer worked at SMC.

98. When Nichols finally got in touch with Zachary, Zachary said he planned to close down the Jacksonville office, and would no longer require Nichols's services.

99. However, Zachary never closed down the Jacksonville office.

100. Zachary replaced Nichols with another woman—a woman with whom he claimed to want to play “naked twister.”

## COUNT I

### **Defendants Knowingly Presented False or Fraudulent Claims for Payment to the United States in Violation of the False Claims Act, 31 U.S.C. § 3729(a)(1)**

101. Nichols incorporates herein by reference and re-alleges the allegations stated in the foregoing paragraphs.

102. Defendants knowingly presented or caused to be presented to the United States, false or fraudulent claims, and knowingly failed to disclose material facts, in order to obtain payment or approval under the federally-funded Medicare and Medicaid programs in violation of 31 U.S.C. § 3729(a)(1).

CONFIDENTIAL AND UNDER SEAL—*QUI TAM* COMPLAINT  
*United States ex rel. Nichols v. Sleep Medicine Center, et al.*

103. The United States, unaware of the falsity of the claims and/or statements made by Defendant and in reliance on the accuracy thereof, paid Defendants for such false or fraudulent claims.

104. By reasons of the acts and conduct of Defendants in violation of 31 U.S.C. § 3729(a)(1), the United States has suffered actual damages, including the amounts paid in response to all such fraudulent claims for payment.

105. By reason of Defendants' failure to properly oversee the use of Medicare and Medicaid funds, the United States Government is and has been paying for unperformed medical tests and procedures and medical tests and procedures that were performed by unlicensed practitioners.

106. The United States is entitled to recover civil money penalties, and other monetary relief as deemed appropriate.

## COUNT II

### **Defendants Knowingly Presented False or Fraudulent Claims for Payment to the State of Florida in Violation of the Florida False Claims Act, Fla. Stat. § 68.081 et seq.**

107. Nichols incorporates herein by reference and re-alleges the allegations stated in the foregoing paragraphs.

108. The Defendants knowingly presented or caused to be presented to the State of Florida and Florida Medicaid program, false or fraudulent claims for payment and approval, and failed to disclose material facts, and/or concealed their actions to avoid or decrease an obligation to pay or transmit money to the District, all in violation of Fla. Stat. § 68.082.

CONFIDENTIAL AND UNDER SEAL—*QUI TAM* COMPLAINT  
*United States ex rel. Nichols v. Sleep Medicine Center, et al.*

109. The State of Florida, unaware of the falsity of the claims and/or statements made by Defendants and in reliance on the accuracy thereof, paid Defendants for said false or fraudulent claims.

110. By reasons of the acts and conduct of Defendants in violation of Fla. Stat. § 68.082, the State of Florida has suffered actual damages, including the amounts paid in response to all such fraudulent claims for payment.

111. By reason of Defendants' failure to properly oversee the use of Florida Medicaid funds, the State of Florida is and has been paying for unperformed medical tests and procedures and medical tests and procedures that were performed by unlicensed practitioners.

112. The State of Florida is entitled to recover civil money penalties, and other monetary relief as deemed appropriate.

### COUNT III

#### **Defendants Maintained a Structured System of Remuneration in Exchange for Referring Patients in Violation of 42 U.S.C. § 1320a-7b.**

113. Nichols incorporates herein by reference and re-alleges the allegations stated in the foregoing paragraphs.

114. Defendants knowingly and willfully engaged in a system of direct cash remuneration or kickbacks in exchange for medical providers referring patients to receive services from SMC.

115. The referrals constituting this kickback scheme involve services for which payment may be made in whole or in part by the United States Government.

CONFIDENTIAL AND UNDER SEAL—*QUI TAM* COMPLAINT  
*United States ex rel. Nichols v. Sleep Medicine Center, et al.*

116. 42 U.S.C. § 1320a-7b(g) provides that a claim that includes items or services resulting from a violation of this section constitutes a false or fraudulent claim for purposes of the Federal False claims act.

#### COUNT IV

#### **Defendants Retaliated Against Nichols for Engaging in Acts Protected by the False Claims Act, 31 U.S.C. § 3730(h)**

117. Nichols incorporates herein by reference and re-alleges the allegations stated in the foregoing paragraphs.

118. As set forth above, and in connection with the foregoing scheme, Defendants conspired to get false or fraudulent claims paid or approved by the United States in violation of the False Claims Act

119. Nichols is an “employee” and defendants SMC and Zachary are “employers” as the terms are defined by the False Claims Act

120. Nichols was terminated as a result of her voluntarily performing lawful acts to investigate one or more violations of the False Claims Act, including questioning SMC’s business model and billing practices. At all relevant times, Nichols was engaging in activity protected by the False Claims Act. Defendants, knowing that Nichols was engaging in such activity, terminated her because of her protected conduct.

121. To redress harms she suffered as a result of the acts and conduct of defendants in violation of 31 U.S.C. § 3730(h), Nichols is entitled to damages including two times the amount of back, interest on back pay, and compensation for any special damages, including emotional distress and any other damages available by law including litigation costs and reasonable attorneys’ fees.

CONFIDENTIAL AND UNDER SEAL—*QUI TAM* COMPLAINT  
*United States ex rel. Nichols v. Sleep Medicine Center, et al.*



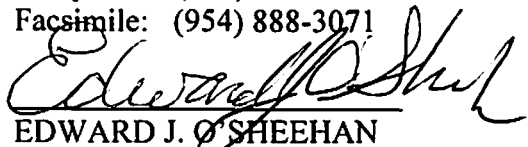
### PRAYER FOR RELIEF

WHEREFORE, Relator Donna Nichols, acting on behalf of and in the name of the United States of America, the State of Florida, and on his own behalf, demands and prays that judgment be entered against the Defendants for violations of the federal False Claims Act counts and the Florida False Claims Act counts:

- (a) In favor of the United States against the Defendants for treble the amount of damages to the federal Medicare and Medicaid programs from the submission of false claims plus the maximum civil penalties for each violation of the Federal False Claims Act;
- (b) In favor of the Relator for the maximum amount pursuant to 31 U.S.C. § 3730(d) to include reasonable expenses, attorney fees and costs incurred by Relator;
- (c) For all costs of the federal False Claims Act civil action;
- (d) In favor of the Relator for all compensatory and punitive damages, including personal injury damages for pain and suffering and loss of reputation, back pay, and interest, and attorneys' fees and costs to which he is entitled pursuant to 31 U.S.C. § 3730(h)
- (e) In favor of the Relator and the United States for further relief as this court deems to be just and equitable;
- (f) In favor of the Relator and the State of Florida for treble the amount of damages sustained by the State of Florida as a result of the Defendants' actions, as well as the maximum statutory civil penalty for each violation of the Florida False Claims Act;
- (g) In favor of the Relator and the State of Florida for further relief as this court deems to be just and equitable;
- (h) Such other relief as this Court deems just and appropriate.

CONFIDENTIAL AND UNDER SEAL—*QUI TAM* COMPLAINT  
*United States ex rel. Nichols v. Sleep Medicine Center, et al.*

Respectfully Submitted,

	<p>Respectfully submitted,</p> <p><b>SHUTTS &amp; BOWEN LLP</b> <i>Counsel for Plaintiff</i> PNC Center, Suite 2100 200 East Broward Boulevard Fort Lauderdale, Florida 33301 Telephone: (954) 524-5505 Facsimile: (954) 888-3071</p> <p>By:  EDWARD J. O'SHEEHAN Florida Bar No. 0056790 <a href="mailto:eosheehan@shutts.com">eosheehan@shutts.com</a></p>

David Scher, *Pro Hac Vice to be filed*  
R. Scott Oswald, *Pro Hac Vice to be filed*  
*Counsel for the Plaintiff*

The Employment Law Group, P.C.  
888 17th Street, NW, Suite 900  
Washington, D.C. 20006  
(202) 261-2803  
(202) 261-2835 (facsimile)  
[dscher@employmentlawgroup.com](mailto:dscher@employmentlawgroup.com)  
[soswald@employmentlawgroup.com](mailto:soswald@employmentlawgroup.com)

### JURY DEMAND

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Nichols hereby demands a jury trial.

CONFIDENTIAL AND UNDER SEAL—*QUI TAM* COMPLAINT  
*United States ex rel. Nichols v. Sleep Medicine Center, et al.*