

**IN THE CIRCUIT COURT OF THE STATE OF FLORIDA, SECOND CIRCUIT
LEON COUNTY, FLORIDA**

THE STATE OF FLORIDA, et al.)	
)	CASE NO. 03 CA 64
PLAINTIFFS,)	
)	QUI TAM LAWSUIT
v.)	JURY TRIAL DEMANDED
)	
CAREMARK Rx, INC., et al.)	
)	
DEFENDANTS.)	

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BOB ZEPER
CLERK CIRCUIT COURT
LEON COUNTY FLORIDA

NOTICE OF FILING

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PLEASE TAKE NOTICE that on April 2, 2004, we caused to be filed with the Circuit Court of the State of Florida, Second Circuit, Leon County, Florida, PLAINTIFFS' THIRD AMENDED COMPLANT, a copy of which is attached hereto and hereby served upon you.

By: [Signature]
Respectfully Submitted,
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CERTIFICATE OF SERVICE

The undersigned, an attorney, hereby certify that a true and correct copy of the above referenced document was served to all counsel via U.S. Mail on April 1, 2004 before the hour of 5:00 p.m.

[Signature]
Michael I. Leonard

IN THE CIRCUIT COURT OF THE STATE OF FLORIDA, SECOND CIRCUIT LEON COUNTY, FLORIDA

THE STATE OF FLORIDA,)
EX. REL. FLORIDA ATTORNEY)
GENERAL CHARLIE CRIST)
AND THROUGH RELATORS)
MICHAEL FOWLER AND PEPI)
FOWLER, INDIVIDUALS AND)
RESIDENTS OF THE STATE OF FLORIDA,)
AS RELATORS UNDER THE FLORIDA)
FALSE CLAIMS ACT,)

PLAINTIFFS)

v.)

CAREMARK Rx, INC., A DELAWARE)
CORPORATION, AND CAREMARK, INC.)
A DELAWARE CORPORATION,)

DEFENDANTS.)

CASE NO. 03 CA 64

QUI TAM LAWSUIT

JURY TRIAL DEMANDED

PLAINTIFFS' THIRD AMENDED STATE FALSE CLAIMS ACT COMPLAINT

Plaintiffs, Michael Fowler and Peppi Fowler, by and through their undersigned counsel, state as follows as their Third Amended Complaint under the Florida False Claims Act or *qui tam* statute, 68.081, *et. seq.*, against Defendant Caremark Rx, Inc. ("Caremark Rx") and Defendant Caremark, Inc. ("Caremark").

I. The Parties

1. Plaintiffs, Michael Fowler and Peppi Fowler, reside in the State of Florida and have been employed by Defendants as licensed pharmacists in the State of Florida at all times relevant to this action. At all relevant times, Plaintiffs have been employed at Defendants' facility located at 3250 Meridian Parkway in Fort Lauderdale, Florida (hereinafter "The Fort Lauderdale Facility").

Plaintiffs are experienced, highly-trained, and highly-skilled professionals who have at all times been employees in good standing with Defendants. Plaintiffs are intimately familiar with, and possess first-hand knowledge of, Defendants' business activities, operations, procedures, and practices, including those at The Fort Lauderdale Facility. In addition, Michael Fowler possesses the same with regard certain policies, practices, and procedures employed by Caremark during the relevant time period at Caremark's prescription drug processing facility located in San Antonio, Texas.

2. Defendant, Caremark Rx, Inc. ("Caremark Rx") is a Delaware corporation with its corporate headquarters located in Tennessee. Caremark Rx conducts business and has conducted business in the State of Florida on a regular and continuous basis since at least calendar year 2000, and at all times relevant to this action. Caremark Rx is one of the largest pharmaceutical services companies in the United States, with annual net revenues of approximately eight billion dollars (\$8,000,000,000), including, according to Defendants, "record" third quarter 2003 revenue of \$2,300,000,000. Caremark Rx is the parent corporation of Defendant Caremark, Inc.

3. Defendant Caremark Inc. ("Caremark"), is a Delaware corporation through which Defendant Caremark Rx conducts its business operations. Caremark conducts business and has conducted business in the State of Florida on a regular and continuous basis at all times since at least calendar year 2000, and at all times relevant to this action.

4. Caremark provides pharmacy benefit management services and therapeutic pharmaceutical services. Caremark markets and sells those services to corporations, insurance companies, unions, government employee groups, and managed care organizations throughout the United States to deliver prescription drugs to the members of those entities' health insurance plans.

Caremark is one of the nation's leading prescription benefit managers or "PBMs." Accordingly, Caremark provides more than twenty million (20,000,000) plan participants with more than seventy million (70,000,000) prescriptions through Caremark's retail, mail service, and home delivery services. Thus, as a significant component of Caremark's prescription drug delivery sales and service, Caremark provides prescription drugs to health plan members through the use of the United States mail and other delivery services.

II. Jurisdiction

5. This Court has jurisdiction over this matter because the Plaintiffs are citizens and residents of the State of Florida, and Caremark Rx and Caremark have submitted to the jurisdiction of this State by conducting and transacting business in this State on a regular and continuous basis, by contracting with the State of Florida, and by committing acts within this State and against its residents that are in violation of the Florida False Claims Act or *qui tam* statute.

III. Venue

6. This Court has venue over this action pursuant to Florida Statutes, 68.081, because the present action is a False Claims or *qui tam* action that is statutorily required to be filed in this County.

IV. Facts

A. Caremark Rx's Contract With The State Of Florida To Provide Prescription Drug Benefit Management Services To Current State Of Florida Employees, Retirees, And Their Dependents

7. In or about August, 2000, Caremark Rx entered into a four-year contract with the State of Florida ("the Agreement"), effective January 1, 2001, pursuant to which it and Caremark agreed to provide prescription drug benefit management services to more than two hundred

thousand (200,000) State of Florida employees, retirees, and their eligible dependants who constitute the “participants” or “plan members” of the State’s self-insured State Employees Paid Provider Organization or “PPO” Plan. A copy of the Agreement is attached hereto as Exhibit 1. Under the terms of the Agreement, Caremark agreed to provide State of Florida plan members, in exchange for substantial monetary remuneration, with mail service and retail prescription drug plans as well as access to several clinical programs. According to Caremark’s public statements, the Agreement and associated prescription drug program would allow the State of Florida to better manage its increasing drug cost trend.

8. As the operating arm of Caremark Rx, Caremark has been purporting to carry out the terms of the Agreement between Caremark Rx and the State of Florida.

9. In practice, the Fort Lauderdale Facility has filled a significant percentage of the prescription drug orders placed by or for State of Florida plan members. Defendants also operate prescription drug processing facilities in at least the following locations: San Antonio, Texas (the “Texas Facility”); Mount Prospect, Illinois (the “Illinois Facility”); and Phoenix, Arizona (the “Arizona Facility”). Those other prescription drug processing facilities have also filled orders placed by or for Florida Plan Members. Indeed, Caremark’s Management has admitted that Caremark processed and dispensed thousands of prescriptions at facilities *other than* the Florida Facility.

10. The Agreement specifically provides, *inter alia*, that “[T]ime is of the essence in the Contractor’s [Defendants’] performance of this contract so as to allow DMS [State of Florida, Department of Management Services] to meet its responsibilities to provide insurance coverage and to prudently administer the State Group Insurance Program in accordance with Section

110.123, *Florida Statutes*. Failure by the Contractor [Defendants] to timely provide the services and commodities required by this contract shall be considered a material breach of this contract.”

See Agreement at p. 8, paragraph 8 (emphasis in original) (brackets added).

11. The Agreement provides that prescription drug orders filled from the Fort Lauderdale facility for State of Florida plan members, or from any of Caremark’s other facilities in the United States, are to be processed or “turned around” to the plan members within a particular “average” number of days from the date upon which Defendants first received the order for the prescription by or for the plan member. See Agreement at Attachment 1, page 2 of 4, section 6.

12. In the event that Defendants are unable to meet such average processing deadlines, Defendants are subject to monetary penalties. Id.

13. Furthermore, the Agreement specifically states that its imposition of penalties “is independent of the liability of the Contractor [Defendants] for any damages suffered by DMS due to the Contractor’s failure to satisfactorily provide the services required by this contract and imposition of such penalties shall not offset or reduce any such damages.” See Agreement at pp. 8-9, paragraph 10.

14. Moreover, the Agreement *does not* provide for the waiver or non-compliance by Defendants with the Florida False Claims Act, nor could it.

15. The Agreement further provides, *inter alia*, that Defendants are required to create and maintain accurate and truthful records regarding activities performed under the Agreement .

For example, the Agreement states, in part:

The Contractor shall maintain sufficient documentation to substantiate claims for payment under this contract and any records, papers and documents which were made in connection with the performance of this contract. Such records shall include magnetic tapes, CD-ROM diskettes, or other electronic media of files maintained by the Contractor for the

operation of the State account, including file labels, complete file layouts, data element descriptions and detailed processing logic to assist the State auditor in processing or utilizing files. The Contractor shall maintain these records for at least five (5) years from the termination of this contract . . . **The Contractor shall not destroy or make records inaccessible without the express written permission of DMS.**

See Agreement at p. 17, paragraph 24 (emphasis added).

B. Caremark's Actual And False And Fraudulent Practices In Carrying Out The Terms Of The Agreement With The Florida Plan

1. False Date-Stamping And Misrepresentations Regarding When Orders Have Actually Been Received, Filled, And Shipped By The Fort Lauderdale Facility, The Texas Facility, And Other Caremark Prescription Drug Processing Facilities

16. Since the inception of the Agreement and in fulfillment of their provisions, Caremark's Florida Facility, as well as its other facilities located within the United States, have been receiving on a daily basis anywhere from tens to thousands of requests to fill prescription drug orders for Florida Plan Members located throughout the country.

17. Accordingly, as noted above, even though a Florida Plan Member resides in Florida, his or her prescription drug order under the Agreement may actually be filled by the Illinois Facility, the Florida Facility, the Texas Facility, or the Arizona Facility.

18. The Florida Facility and Caremark's other prescription drug processing facilities also received and processed hundreds of thousands of other orders for prescription medications from plan participants residing in States throughout the United States, who were *not* plan participants of the Florida Plan.

19. Since its inception in late 1992 or early 1993, the Florida Facility has generally operated six to seven days per week, nearly twenty-four hours per day, to fill all those orders. Caremark's other drug processing facilities have been similarly busy.

20. Florida Plan Members (as patients), or physicians on their behalf, send those orders via United States mail or fax to the Florida Facility and/or to Caremark's other drug processing facilities within the United States. The prescription drug orders from Florida Plan Members received at the Florida Facility are processed by the mail room, sent to the main building for "translation," and inputted into the computer system.

21. Ultimately, those prescription drug orders are physically filled and checked by pharmacists for accuracy before being shipped from the Florida Facility or from some other Caremark drug processing facility.

22. However, pursuant to the established practices and procedures of the *Florida Facility* and in an attempt to evade the penalties associated with the average processing targets in the Agreement and in Caremark's agreements with hundreds of other plan, all prescription drug orders received by the *Florida Facility* on week-ends were *not* date-stamped and inputted into the computer system until the following Monday.

23. Likewise, pursuant to the established practices and procedures of the *Texas Facility* and in an attempt to evade the penalties associated with the average processing targets in The Agreement and in Caremark's agreements with hundreds of other plan, all prescription drug orders received by the *Texas Facility* on week-ends were *not* date-stamped and inputted into the computer system until the following Monday.

24. In addition, on a regular basis, the Florida Facility and Caremark's other prescription drug facilities became inundated with orders. In response, the Florida Facility shipped orders received at that location from Florida Plan Members and others to one of Caremark's other prescription drug processing facilities located outside the State of Florida, including the Texas

Facility, the Illinois Facility, and the Arizona Facility. Likewise, those other prescription drug processing facilities shipped orders received at those locations to the Florida Facility after becoming inundated with orders. In addition, Caremark would send prescription drug orders from one drug processing site to another for no reason other than to even out the workflow between its facilities, i.e., for its own business convenience or to even out workflow between its prescription drug processing sites.

25. On those occasions, and in a further attempt to evade the turnaround time targets for processing and filling prescription drug orders set forth in the Agreement, Caremark employees entered the date that the order had been received at the *second* facility as the date that the order was first received by Caremark in the State of Florida, or at one of its other facilities.

26. Likewise, Caremark's Florida Facility followed those same procedures when other facilities became inundated with orders, or for other reasons, forwarded those orders to the Florida Facility as the second recipient of those drug orders.

27. Further, on a regular basis and in accordance with Caremark's established practices and procedures, Caremark's employees at the Florida Facility manipulated Caremark's electronic and other records to indicate to the Florida Plan and others that the prescription drug orders received from them were filled on the date of receipt instead of on the date that the orders were actually filled and shipped.

28. Caremark followed and employed those same deceptive practices in processing prescription drug orders at its other drug processing facilities, including at the Illinois Facility and Texas Facility.

29. Indeed, at the Illinois Facility, Caremark's intentionally and blatantly disregarded

actual received dates for prescription drug orders in favor of received dates that corresponded only with the dates that those employees physically entered the prescription drug orders into Caremark's computer system. Those employees regularly engaged in those practices in order to meet onerous and arbitrary "quotas" for data entry of prescription drug orders and to avoid disciplinary action by Caremark. These quota systems placed profits and expediency in front of patient safety, ethical and honest business practices, and false claims laws.

30. Moreover, Caremark set up its computer system so that, if an employee did not enter a received date at all, the computer would simply, by default, automatically provide a receive date that corresponded with the date that the employee was inputting the information into the computer, rather than its actual date of receipt at the facility. Alternatively, if a Caremark employee did not change the receive date each time he or she processed an order that was different than the last order inputted into the computer, the computer would enter the received date of the last order inputted.

2. Re-Stocking Of Returned Prescription Drugs At The Fort Lauderdale Facility And The Shipment Of Those Drugs To Illinois Without Disclosure Or Credit To The Florida Plan

31. The Florida Facility regularly received, on a daily basis and through the United States mail or otherwise, numerous "returns" of prescription drugs that had been already sent out by Caremark destined to Florida Plan Members and others. For example, a Florida Plan Member or the postal or other mailing or delivery service would return or re-ship to Caremark prescription drugs that had originally been processed, dispensed, and mailed by the Florida Facility or by some other Caremark prescription drug processing facility. These drugs were returned to Caremark because, *inter alia*, the order contained the wrong medication, the order was shipped in error, the

order was placed by the patient's doctor in error, the order contained a generic prescription drug that the patient could not or would not accept, the order went to the wrong address, or for a myriad of other reasons.

32. Pursuant to the regular practices and procedures of the Florida Facility, Caremark received returned drugs at its Florida Facility and *did not* destroy them.

33. Caremark *did not* destroy all of those returned drugs despite the fact that it could not ascertain the handling and storage of those drugs from the time they first left Caremark's prescription drug processing sites and prior to the time that they were eventually returned to Caremark, days or weeks later.

34. Instead, at the Florida Facility, a non-licensed employee or pharmacist of the Florida Facility simply viewed or physically "eyeballed" the returned prescription drugs and discarded or destroyed only those packages that he or she believed had been actually opened or damaged in the mail. At least for one to two years, that non-licensed pharmacist was not even supervised by a Caremark supervisor and pharmacist, and simply made destruction decisions on his or her own.

35. Those returned drugs were not subjected to any analysis, testing, or investigation that would have allowed Caremark's employees to ensure that those drugs had not been tampered with, altered, modified, or adulterated – after having been sent at least twice through the United States mail or by another mailing or delivery service.

36. In fact, according to at least one of the individuals (non-pharmacist) who was actually charged with initially handling and processing the returned drugs at the Florida Facility, Caremark did not have any idea if the returned drugs were safe; if they had maintained their

strength; if anyone had substituted or adulterated the drugs after they first left the Florida Facility and prior to the time they were returned to the Florida Facility.

37. Obviously, any Florida Plan Member or any other consumer of prescription drugs would refuse to receive or purchase Caremark's prescription drugs if they had known of those practices and procedures. Moreover, on at least one occasion, a Florida Plan Member has returned a prescription drug order sent to her in the mails by Caremark that was mislabeled, i.e., it contained a drug other than the one indicated on the label and for which the patient had sought a prescription. If that patient had not had the sophistication to notice that a difference drug was enclosed, and had that patient not notified Caremark that the wrong drug was enclosed when the patient returned that drug, that drug could have been re-stocked and sent out by Caremark to a less suspecting and savvy customer as the drug on its label.

38. Caremark's employees then used hot irons or steamers to remove the labels from those returned drugs, possibly even subjecting the returns to further damage.

39. Moreover, with respect to those returned drugs, Caremark created a fraudulent paper record, namely "RGM Memos" or "Returned Goods Memos" indicating that those returned drugs had actually been destroyed at the Florida Facility by circling the word "destroyed" on that record at the bottom of the document.

40. Thus, Caremark's employees created thousands of fraudulent records supporting their purported "destruction" returned drugs that had *not* been destroyed but had instead been re-stocked by Caremark.

41. Once Caremark first received notice of Mr. and Mrs. Fowler's Florida lawsuit, Caremark's employees gathered and boxed all of those fraudulent documents – from at least the