Viceroy’s MiMedx Greatest Hits

A thorough walkthrough of Viceroy’s investigations into MiMedx

Over the past eight months, Viceroy have conducted an investigation into MiMedx Group, Inc (NASDAQ:MDXG) (Company). We have presented our research over the course of 20+ reports which can be on our website:

www.viceroyresearch.org

In the interest of those who have only recently begun following the story, Viceroy have decided to consolidate the major aspects of all 20+ reports into one document, organized by topic.

This is still a lengthy document however readers should be conscious that it is a combination of over 20 separate reports, which collectively is still small sample of the hoard of data Viceroy have provided to regulators.

When we began our investigation into MiMedx, we were shocked by the sheer volume, brazenness, extent, and historic precedence of the fraud being perpetrated by the Company. MiMedx management has yet to acknowledge any wrongdoing, remaining unrepentant despite the existence of several federal investigations into the company.

We reiterate our opinion that due to the overwhelming nature and amount of evidence against the company we believe MiMedx is a robust fraud, entirely uninvestable, and worth $0.00.

We encourage any persons with further evidence of fraud within MiMedx’s operations to lodge an anonymous report with regulators through the following channel.

https://www.sec.gov/whistleblower/submit-a-tip

Alternatively, Viceroy are happy to take the heat on publishing more evidence of malpractice at MiMedx, which we will treat with the utmost level of confidentiality. You can reach us at viceroyresearch@gmail.com.

Further reading on MiMedx’s criminal activity can also be found on:

www.petiteparkerthebarker.com
www.aureliusvalue.com
Important Disclaimer – Please read before continuing

This report has been prepared for educational purposes only and expresses our opinions. This report and any statements made in connection with it are the authors’ opinions, which have been based upon publicly available facts, field research, information, and analysis through our due diligence process, and are not statements of fact. All expressions of opinion are subject to change without notice, and we do not undertake to update or supplement any reports or any of the information, analysis and opinion contained in them. We believe that the publication of our opinions about public companies that we research is in the public interest. We are entitled to our opinions and to the right to express such opinions in a public forum. You can access any information or evidence cited in this report or that we relied on to write this report from information in the public domain.

To the best of our ability and belief, all information contained herein is accurate and reliable, and has been obtained from public sources we believe to be accurate and reliable, and who are not insiders or connected persons of the stock covered herein or who may otherwise owe any fiduciary duty or duty of confidentiality to the issuer. We have a good-faith belief in everything we write; however, all such information is presented “as is,” without warranty of any kind – whether express or implied.

In no event will we be liable for any direct or indirect trading losses caused by any information available on this report. Think critically about our opinions and do your own research and analysis before making any investment decisions. We are not registered as an investment advisor in any jurisdiction. By downloading, reading or otherwise using this report, you agree to do your own research and due diligence before making any investment decision with respect to securities discussed herein, and by doing so, you represent to us that you have sufficient investment sophistication to critically assess the information, analysis and opinions in this report. You should seek the advice of a security professional regarding your stock transactions.

This document or any information herein should not be interpreted as an offer, a solicitation of an offer, invitation, marketing of services or products, advertisement, inducement, or representation of any kind, nor as investment advice or a recommendation to buy or sell any investment products or to make any type of investment, or as an opinion on the merits or otherwise of any particular investment or investment strategy.

Any examples or interpretations of investments and investment strategies or trade ideas are intended for illustrative and educational purposes only and are not indicative of the historical or future performance or the chances of success of any particular investment and/or strategy.

As of the publication date of this report, you should assume that the authors have a direct or indirect interest/position in all stocks (and/or options, swaps, and other derivative securities related to the stock) and bonds covered herein, and therefore stand to realize monetary gains in the event that the price of either declines.

The authors may continue transacting directly and/or indirectly in the securities of issuers covered on this report for an indefinite period and may be long, short, or neutral at any time hereafter regardless of their initial recommendation.

Contents

<table>
<thead>
<tr>
<th>Contents</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Contents</td>
<td>2</td>
</tr>
<tr>
<td>1. Ongoing federal investigations</td>
<td>3</td>
</tr>
<tr>
<td>2. Channel Stuffing</td>
<td>6</td>
</tr>
<tr>
<td>3. Circumvention of government regulations</td>
<td>22</td>
</tr>
<tr>
<td>4. Managerial Incompetence</td>
<td>37</td>
</tr>
<tr>
<td>5. Aggressive anti-whistleblower retaliation</td>
<td>46</td>
</tr>
<tr>
<td>6. Conclusion</td>
<td>51</td>
</tr>
</tbody>
</table>
1. Ongoing federal investigations

Viceroy submitted several Freedom of Information Act (“FOIA”) requests to several government departments during the course of our due diligence process. In the normal course of business, FOIA requests are answered with the relevant documents. In some instances, the requested information is withheld, in which case the justification is disclosed.

SEC investigation

Viceroy understands that MiMedx was the subject of a Securities and Exchange Commission (“SEC”) investigation before the release of our reports. This was corroborated by a release by the Capital Forum showing that a FOIA request was withheld in a manner suggesting the company to be the subject of an SEC investigation and enforcement process.

![Figure 1 Extract from SEC response to FOIA request](https://www.law.cornell.edu/uscode/text/5/552)

_A FOIA request made by Viceroy regarding MiMedx was withheld under 5 U.S. Code § 552(b)(7)(A). This exemption applies to documentation that could reasonably be expected to interfere with enforcement proceedings._

![Figure 2 Extract from 5 U.S. Code § 552](https://www.prnewswire.com/news-releases/mimedix-provides-information-on-its-interaction-with-the-sec-300523565.html)

A day after the release of Viceroy’s first report, MiMedx confirmed it was complying with an SEC subpoena, which it had received over a month prior.

The company claimed it was unaware as to the motivation of the subpoena but nonetheless failed to inform investors through a formal 8-K.

---

1 https://www.law.cornell.edu/uscode/text/5/552
VA investigation

FOIA requests to the Department of Veteran’s Affairs (“VA”) have also been withheld. Below is an extract from the response.

Accordingly, we believe MiMedx to be also under investigation by the Department of Veteran’s Affairs.

DOJ investigation

FOIA requests to the Department of Justice (“DOJ”) were withheld. Below is an extract from the response.

Accordingly, we believe MiMedx to be under investigation by the Department of Justice.

Running Indictments

On May 8, 2018, two doctors and one nurse practitioner were indicted by Grand Jury for healthcare fraud, specifically involving the use of MiMedx products. Dr Marcella Dolores Farrer, Dr Carol Colon Guardiola and Donna Becker were charged with receiving benefits from MiMedx in exchange for the “excessive” use and promotion of MiMedx products.

The indicted VA practitioners operated out of a South Carolina VA facility: the William Jennings Bryant Dorn VA Medical Center (“Dorn VAMC”). Farrer and Becker had previously spoke for MiMedx, specifically on the efficacy of MiMedx products.

Running Indictments

On May 8, 2018, two doctors and one nurse practitioner were indicted by Grand Jury for healthcare fraud, specifically involving the use of MiMedx products. Dr Marcella Dolores Farrer, Dr Carol Colon Guardiola and Donna Becker were charged with receiving benefits from MiMedx in exchange for the “excessive” use and promotion of MiMedx products.

The indicted VA practitioners operated out of a South Carolina VA facility: the William Jennings Bryant Dorn VA Medical Center (“Dorn VAMC”). Farrer and Becker had previously spoke for MiMedx, specifically on the efficacy of MiMedx products.
Further at least two of MiMedx’s clinical trials were or are conducted in part at the Dorn VAMC:

<table>
<thead>
<tr>
<th>Trial of Dehydrated Human Amnion/Chorion Membrane (dHACM) in the Management of Diabetic Foot Ulcers</th>
</tr>
</thead>
<tbody>
<tr>
<td>The safety and scientific validity of this study is the responsibility of the study sponsor and investigators. Listing a study does not mean it has been evaluated by the U.S. Federal Government. A technology may be experimental and/or investigational. Read our disclaimer for details.</td>
</tr>
<tr>
<td>ClinicalTrials.gov Identifier: NCT01693133</td>
</tr>
<tr>
<td>Recruitment Status: Recruiting</td>
</tr>
<tr>
<td>First posted: September 26, 2012</td>
</tr>
<tr>
<td>Last update posted: February 23, 2017</td>
</tr>
<tr>
<td>See Additional Information</td>
</tr>
<tr>
<td>Completed</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Use of dHACM in the Treatment of Venous Leg Ulcers</th>
</tr>
</thead>
<tbody>
<tr>
<td>The safety and scientific validity of this study is the responsibility of the study sponsor and investigators. Listing a study does not mean it has been evaluated by the U.S. Federal Government. Read our disclaimer for details.</td>
</tr>
<tr>
<td>ClinicalTrials.gov Identifier: NCT02011503</td>
</tr>
<tr>
<td>Recruitment Status: Active, not recruiting</td>
</tr>
<tr>
<td>First posted: December 15, 2013</td>
</tr>
<tr>
<td>Last update posted: March 23, 2017</td>
</tr>
</tbody>
</table>

Figures 7 & 8 Composite extracts from clinicaltrials.gov

---

We do not believe the FDA considers bribery of physicians at clinical trial sites as best practice.

Viceroy believes these indictments, at a minimum, have eliminated any chance of MiMedx products progressing through to further trials.

Former employees have informed Viceroy that this practice of essentially bribing doctors and other medical staff is widespread at MiMedx. Given the historical precedent set by Advanced BioHealing staff, many of which are now MiMedx employees, we believe further indictments are to come.

10. A “sales training” event was a specific agreement in which a company paid a VA clinician up to $3,000 to train company personnel how to sell to VA facilities. The “sales training” required the VA clinician to travel to company headquarters, or other locations, to deliver a presentation on how to navigate VA facilities, how to avoid impediments to sales, and on how to reach the people who controlled purchasing in VA facilities.

Figure 9 United States of America v. Todd Clawson

---

3 https://clinicaltrials.gov/ct2/show/study/NCT01693133#contacts
4 https://clinicaltrials.gov/ct2/show/study/NCT02011503
5 Case 2:16-cr-00075-RSL

Viceroy Research Group 5 viceroyresearch.org
The events that unfolded at Advanced BioHealing are almost the same as those currently playing out at MiMedx and are addressed in Section 4.

2. Channel Stuffing

Channel stuffing is the act of inflating sales and earnings figures by deliberately sending more products through the distribution channel than can be used. Generally, the product is then funneled back to the company in the next quarter. Viceroy does not believe it is an exaggeration to say that channel-stuffing is a key component of MiMedx’s operations.

The company has used several methods to stuff the channel and fraudulently induce sales including:

1. Assisting and coordinating the creation of physician-owned distributors who can hold stock at the end of quarter.
2. Assisting and coordinating the creation of employee-owned distributors who can hold stock at the end of quarter.
3. Placing unordered products on commercial and federal facility shelves and calming it as a sale.
4. Sending unordered products to commercial and federal facilities.
5. Instructing physicians on how to manipulate reimbursement systems to increase reimbursements from MiMedx products.

Points 1 and 2 are discussed in this section, while points 3, 4 and 5 are discussed in Section 3 below.

Channel stuffing at MiMedx was first brought to light in court documents regarding the company’s legal actions against former employees and whistleblowers Jess Kruchoski and Luke Tornquist. The severity, frequency and the company’s attitude to these activities has since been corroborated by other whistleblowers and further research.

This arrangement was facilitated previously through MiMedx distributor AvKare and later through Physician- and employee-owned distributors. Following our first report several former MiMedx employees came forward with evidence of channel-stuffing practices: these were passed on the SEC.

![Figure 10 Photo of MiMedx products used channel stuffed at VA facility](image)

6 Note: We have blurred serial numbers, barcodes, and expiry dates to avoid identification of former employees by MiMedx.
Viceroy’s enquiries to the VA facility specified by the above image’s EXIF data confirmed that at any one time they would expect to have only US$20,000 worth of MiMedx products on hand. The image above represents almost 10 times that amount.

**Employee Owned Distributors**

**SLR Consulting: A Jerry Morrison/MiMedx Production**

Former MiMedx employee Jerry Morrison acted as President and CEO of Texas company SLR Medical Consulting LLC ("SLR") during his time at MiMedx. SLR was named in the Kruchoski whistleblower statement as a vehicle for the company’s channel-stuffing activities.

73. SLR Medical Consulting is a medical distributor that also had a stock and bill arrangement with MiMedx. Upon information and belief, MiMedx entered into an agreement with SLR Medical Consulting whereby SLR Medical Consulting would make end of the quarter order of MiMedx products at MiMedx’s request on highly favorable financing terms.

74. As of June 2016, SLR Consulting carried a 60 day past due balance of over $3 million with MiMedx. Only one MiMedx account carried a higher past due balance at the time, and that account was also a “house account” directly under Mike Carlton’s control.

**Figure 11 Extract from MiMedx v. Kruchoski**

MiMedx 2016 sales documents obtained by Viceroy research showed clearly that two entities under the names “SLR Distributor” and SLR Medical Consulting LLC were by far the largest accounts.

<table>
<thead>
<tr>
<th>Name</th>
<th>Item Number</th>
<th>Number</th>
<th>Unit price</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>EpiFix 7 x 7</td>
<td>GS-5770</td>
<td>22</td>
<td>$6,685.00</td>
<td>$147,070.00</td>
</tr>
<tr>
<td>Unknown</td>
<td>Unknown</td>
<td>unknown</td>
<td>unknown</td>
<td>$35,000.00</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th></th>
<th>Q1 ORTHO</th>
<th>Q2 ORTHO</th>
<th>Q2/Q1 GROWTH</th>
<th>Q3 ORTHO</th>
<th>Q3/Q2 GROWTH</th>
<th>Q4 QTD ACTUAL</th>
<th>Q4/Q3 GROWTH</th>
</tr>
</thead>
<tbody>
<tr>
<td>ORTHO TOTAL</td>
<td>$1,173,642</td>
<td>$2,581,291</td>
<td>120%</td>
<td>$3,105,279</td>
<td>20%</td>
<td>$4,320,577</td>
<td>39%</td>
</tr>
<tr>
<td>FRANK BRALY</td>
<td>$136,757</td>
<td>$1,450,258</td>
<td>97%</td>
<td>$1,794,145</td>
<td>19%</td>
<td>$2,233,103</td>
<td>27%</td>
</tr>
<tr>
<td>SLR DISTRIBUTOR</td>
<td></td>
<td>$665,156</td>
<td></td>
<td>$1,022,963</td>
<td>20%</td>
<td>$1,486,562</td>
<td>20%</td>
</tr>
<tr>
<td>SLR MEDICAL CONSULTING LLC</td>
<td>$119,014</td>
<td>$240,242</td>
<td>17%</td>
<td>$281,669</td>
<td>18%</td>
<td>$396,1587</td>
<td>30%</td>
</tr>
<tr>
<td>TODD MARSHALL</td>
<td>$207,791</td>
<td>$236,275</td>
<td>4%</td>
<td>$250,221</td>
<td>16%</td>
<td>$359,568</td>
<td>58%</td>
</tr>
</tbody>
</table>

**Figure 12 Extract from MiMedx sales document**

**Frank Braly**

**StreamLogix**

StreamLogix, LLC is a company owned by now-former MiMedx employee Frank Braly. SpineLogix, LLC is a co-owner of StreamLogix LLC. SpineLogix operates a sales platform on which it sells only a large variety of MiMedx products. Note that the below screenshot was take on May 4, 2018.

---

7 Case No: 50-2016-CA-031806
SpineLogix was formed in 2011 by a Corey Heinz, currently a Stryker Pharmaceutical employee. However, a 2016 filing obtained by Viceroy Research shows that ownership and control over the business was Braly and StreamLogix.

MiMedx’s response dated 29 September 2017 claims that the company has never sold product to them.

---

8 https://spinelogixllc.com/shop/
The company’s distinction between customers and Sales Agents is important as they claim that Sales agents do not purchase product.

1. Viceroy Claim:
“Viceroy has obtained documents from former MiMedx employees detailing sales targets and historical figures broken down by distributor.”

MiMedx: This is FALSE. The spreadsheet attached and ‘detailed’ in the Viceroy fabrication is, in fact, a CONFIDENTIAL MiMedx document. However, it does not detail “Distributors,” it details “Sales Agents”.

For the education of all involved (but mostly Viceroy), distributors are customers of a company. They purchase and hold inventory, then re-sell that inventory to an end user. Sales Agents are just that, a sales person, and they do not take title to any product. Sales Agents are not customers of a company as they do not purchase product, nor hold any inventory. They do receive a commission on sales that they broker. The company receives orders from and ships product directly to the end user customers.

This was directly contradicted by a 2016 MiMedx sales document obtained by Viceroy Research.

Note as well that the above accounts are sales figures from Frank Braly himself: indicating he is selling to his own company. Clearly MiMedx’s claims are self-contradictory viewed in context of the company’s own sales figures, as SpineLogix would not show up as on a sales figure document.

**Braly Holdings LLC aka Streamline Medical Device Consultants**

Braly was also principal of Braly Holdings LLC, trading as Streamline Medical Device Consultants
While Braly claims to have worked for Streamline Medical Consultants from January 2013 to September 2014, Braly Holdings LLC’s document of name change is dated July 31, 2014 and the company is currently active. In addition to SpineLogix LLC, Braly was also owner of Streamline Medical Device Consultants throughout his time at MiMedx.

**Hal Purdy: Recon Medical Devices**

Another former MiMedx employee Hal Purdy operated another employee-owned distributor, Recon Medical Devices. Note that Recon was formed in 2015, during which time Purdy was employed in and winning awards at MiMedx.

---

https://mycpa.cpa.state.tx.us/coa/
Purdy also used his Recon Medical Devices email to communicate with the Jesse Brown VAMC detailed in Section 3, another clear indicator that MiMedx knew about, and did business with employee owned distributors.

Donovan Schmidt
*Bio-tech Enterprises & BioHealth Associates*

Viceroy were informed that MiMedx employee Donovan Schmidt was not only working for Orthofix as well as MiMedx, but was also setting up distributorships.

“There is a MiMedx employee his name is Donovan Schmidt, he is an employee and also a distributor and also works for Orthofix” – Former MiMedx Employee

---

10 https://www.linkedin.com/in/hal-purdy-1a982811/
11 https://www.linkedin.com/in/donovan-schmidt-59887234/
Schmidt was the authorized member of Florida company Bio-Tech Enterprises LLC, whose only other principal was Mary Ellen Haid, whose LinkedIn profile shows her being an “Independent Territory Manager” in Atlanta Georgia.

On the same day, April 12, 2017, Mary Ellen Haid and her husband, prominent Atlanta neurosurgeon Dr Regis W Haid Jr set up BioHealth Associates LLC with the same address and agent.

---

12 [https://www.facebook.com/donovan.schmidt.3?ref=br_rs](https://www.facebook.com/donovan.schmidt.3?ref=br_rs)

13 Note: As of May 10, 2018 Mary Ellen Haid’s LinkedIn profile cannot be found

14
**Advanced BioMaterials LLC**

Donovan Schmidt also appears to be operating Georgia company Advanced BioMaterials LLC which as of the time of writing is still in active/compliant status:

![Figure 28 Extract from Advanced BioMaterials’ Georgia Corporations Division profile](https://ecorp.sos.ga.gov/BusinessSearch/BusinessInformation?businessId=1454767&businessType=Domestic%20Limited%20Liability%20Company)

**SRS Orthopedic**

Donovan Schmidt’s wife, Shannon Renee Schmidt also appears to operate a medical supplier, SRS Orthopedic LLC. Considering that Shannon’s education and prior workplace experience is in advertising, we find it suspicious for her to own and maintain an orthopedics-related business. Viceroy finds it more likely that Donovan Schmidt created the business under his wife’s name.

![Figure 29 Extract from Shannon Schmidt’s Facebook profile](https://www.facebook.com/shannon.schmidt.104)

Further both businesses have the same residential Georgia address registered as their Principal Office Location.

![Figure 30 Extract from SRS Orthopedic’s Georgia Corporations Division profile](https://ecorp.sos.ga.gov/BusinessSearch/BusinessInformation?businessId=1789557&businessType=Domestic%20Limited%20Liability%20Company)

---


16 [https://www.facebook.com/shannon.schmidt.104](https://www.facebook.com/shannon.schmidt.104)

Ricky Palmer

MiMedx employee Richard “Ricky” Palmer listed himself as an employee of Southwest Medical Systems Inc, an Arizona-based medical supplier. According to government payment data aggregator govtribe.com, Southwest Medical Systems made a total of three sales from 2011 to 2014, one of which is named as EpiFix and the rest matching its description.

Palmer’s automatically generated radaris.com resume lists Palmer working as a member of Southwest Medical Systems.

---

18 [www.govtribe.com](http://www.govtribe.com)
Radaris.com automatically generates an individual’s resume based on their LinkedIn profile: refreshing every 12 months. Palmer’s generated resume shows that he historically listed himself as an independent distributor at Southwest Medical Systems since August 2012.

His now-updated LinkedIn shows that during this time he worked at MiMedx as a regional sales director. Note that Southwest Medical Systems lists its location as well within Palmer’s sales territory.

---

19 [www.linkedin.com](http://www.linkedin.com)
Physician Owned Distributors

Numerous whistleblowers detailed Frank Braly’s role in setting up physician-owned distributors (“PODs”) as part of a covert and illegal kickback scheme. MiMedx also did business with several other physician-owned distributors.

RedMed

Also listed on the MiMedx sales document obtained by Viceroy is RedMed, Inc (“RedMed”), a Texas entity owned by Jeff Hannes located at 320 N McColl Suite C McAllen TX 78501. At the time of our publication of a report into RedMed, it was involved in a legal action due to its alleged use of kick-back payments to doctors and staff of the South Texas Health System.

In addition to the above allegations, RedMed’s principal Jeff Hannes is involved in several businesses with physicians, often as owner of manager. RedMed’s address is shared by almost all these entities.

<table>
<thead>
<tr>
<th>Company Name</th>
<th>MDs involved</th>
<th>Office Address</th>
<th>Texas company ID</th>
</tr>
</thead>
<tbody>
<tr>
<td>Jam Ranch LLC</td>
<td>Alejandro J Betancourt</td>
<td>320 N McColl Rd</td>
<td>32040945456</td>
</tr>
<tr>
<td>Jarr Ranch LLC</td>
<td>Ricardo Rene Veda</td>
<td>2876 Fleet St</td>
<td>32019363111</td>
</tr>
<tr>
<td>PRN Neuro Monitoring Services Management LLC</td>
<td>Alejandro J Betancourt</td>
<td>320 N McColl Rd</td>
<td>32018151747</td>
</tr>
<tr>
<td>Free Run Neuro-Monitoring</td>
<td>Reuben D Pechero, Guillermo Pechero</td>
<td>320 N McColl Rd</td>
<td>32018042591</td>
</tr>
<tr>
<td>Southwest Medical LLC</td>
<td>Derek Holland</td>
<td>320 N McColl Rd</td>
<td>32038116474</td>
</tr>
<tr>
<td>363622 LLC</td>
<td>Jose Dones</td>
<td>320 N McColl Rd</td>
<td>32027490435</td>
</tr>
<tr>
<td>Jhmlag LLC</td>
<td>Michael Lagrange</td>
<td>2319 Devries</td>
<td>32058755508</td>
</tr>
</tbody>
</table>

To reiterate: at the time of our publication on RedMed, MiMedx claimed that it absolutely does not sell to physician-owned distributors. Considering:

- MiMedx has admitted RedMed is (at least) a sales agent.
- RedMed’s principal, Jeff Hannes, is clearly in business with physicians at the same address as the RedMed facility.
- RedMed has been alleged to provide kickbacks to physicians in the past.
Viceroy find it difficult to believe MiMedx are unaware they are doing business with PODs; such a lack of disclosure implies management are either extremely inattentive to their customers or MiMedx is lying to investors.

**CPM Medical/Forrest Park**

CPM Medical (“CPM”) was a Texas distributor previously used by MiMedx. Jerry Morrison’s SLR Consulting later took over CPM’s role, we believe due to discovery of serious fraud at CPM customer Forest Park Medical Center (“FPMC”). MiMedx neglects to mention CPM or FPMC in their disclosure in their response dated 29 September 2017:

All of the founders at FPMC, including Toussaint and co-defendants Beauchamp, Burt, Barker, and the other founders knew that FPMC would pay surgeons marketing checks in exchange for bringing surgeries, especially lucrative out-of-network surgeries, to FPMC as opposed to other facilities. Beauchamp discussed the details of the payments with each doctor, and he kept tabs on how many surgeries they brought to FPMC. Beauchamp used a metric to calculate the payments based on the surgeons anticipated case volume at FPMC. The payments quickly grew from $500,000 a month to $1.5 million a month. Beauchamp would update Toussaint and Barker on the bribe payments. Toussaint would often be copied on emails where Barker would ask Beauchamp how much certain doctors were being paid.

To include patients with both in-network and out-of-network benefits to come to FPMC, and to facilitate the bribe and kickback payments, FPMC systematically waived co-insurance or reduced it to in-network levels. According to Toussaint, this practice was concealed or misrepresented to insurance carriers so they would not refuse to reimburse the hospital. Everyone associated with FPMC, including Beauchamp, Burt, Toussaint, Barker, and the surgeons receiving bribes and kickback payments, knew that FPMC guaranteed patients prior to surgery that they would not pay or would pay only the equivalent of in-network patient-responsibility payments.

Documents from bankruptcy proceedings show that CPM Medical were FPMC’s fourth largest creditor, owed US$519,254. Further, the creditor list also lists MiMedx employee Jerry Morrison’s SLR Consulting as a creditor.

**Figure 39 Extract from MiMedx response “MiMedx Exposes False, Misleading and Fabricated Allegations by Short Sellers” dated 29 September, 2017**

**Figure 40 Extract from DOJ press release dated March 17, 2017**

**Figure 41 Extract from University of Tennessee case study**

**Figure 42 Extract from FPMC Bankruptcy proceedings**


Shortly after, CPM defaulted on its line of credit. Viceroy believes that this was due to the businesses overwhelming reliance on FPMC and its fraudulent activities.

71. Upon information and belief, CPM Medical defaulted on its line of credit thereafter, causing MiMedx to shift more of its channel stuffing efforts to AvKARE and to SLR Medical Consulting.

Figure 43 Extract from MiMedx v. Kruchoski

“...significant product discounts as well as exclusive territory rights within Texas, in exchange for CPM Medical placing large orders for MiMedx products at the end of quarters CPM24”

Forest Park’s involvement with the story goes further: CPM Medical is controlled by Mark Brooks, an individual with several entities in various stated of activity all of which have registered at least one MiMedx product.

<table>
<thead>
<tr>
<th>Entity Name</th>
<th>FDA Listed Address</th>
<th>Status</th>
<th>Last registration year</th>
<th>FDA Human Cell &amp; Tissue Establishment - Product Listing</th>
</tr>
</thead>
<tbody>
<tr>
<td>A-Gen</td>
<td>1565 N. Central, 2nd floor, 75080</td>
<td>Inactive 2014</td>
<td>Amniotic Membrane, Amnioclear, AmbioDry2, Ambio5, EpiFix, BioCover, Amnioclear, AmbioChoice Plus, and Ovation</td>
<td></td>
</tr>
<tr>
<td>Allegheny Medical Supply, LLC</td>
<td>1660 Dunaway Crossing 75089</td>
<td>Inactive 2014</td>
<td>AmbioDry2, Ambio5, EpiFix, BioCover, Amnioclear, AmbioChoice Plus, Ovation, Grafix Core, Grafix Prime</td>
<td></td>
</tr>
<tr>
<td>CPM Medical</td>
<td>1565 N. Central, Ste 150, 75080</td>
<td>Active 2017</td>
<td>AmbioChoice, AmBioChoice Plus, AmnioFix, Epi XL, Allogen, Allogen-Li, Cygnus, Bio Dry Flex and Via Form</td>
<td></td>
</tr>
<tr>
<td>Palm Springs Partners, LLC (dba Maxim Surgical)</td>
<td>1565 N. Central, Suite 200-A, 75080</td>
<td>Active 2017</td>
<td>Amniofix, AmbioChoice, AmbioChoice Plus, Ovation, Grafix Core/Prime, AmnioFix</td>
<td></td>
</tr>
<tr>
<td>Tempus Medical Management, LLC</td>
<td>1565 Central Expy 75080</td>
<td>Inactive 2014</td>
<td>AmbioDry2, Ambio5, EpiFix, Amnioclear, AmbioChoice, AmbioChoice Plus, Ovation, Grafix Core, Grafix Prime</td>
<td></td>
</tr>
</tbody>
</table>

Figure 44 Table of Mark Brooks-associated entities

Mark Brooks is also principal of Texas company Medtech of the Americas LLC, doing business as, Medtech ASC Division LLC. National Provider Identifier records show that indicted FPMC member Iris Kathleen Forest is the authorized official for Medtech ASC Division LLC.

MiMedx also does business with another indicted FPMC individual: Israel Ortiz, through his Texas company IO Orthopedic Systems LLC.

---

23 Case No: 50-2016-CA-031806
24 Palm Beach County Case No: 50-2016-CA-013806-XXXX-MB
Kickback, bribery

As detailed in Section 2 above, MiMedx is associated with several PODs.

---

25. https://mycpa.cpa.state.tx.us/coa/

In effect, this scheme benefits both the physician and the sales agent:

1. The physician and distribution representative (sales representative, sales agent, or other company rep) will setup a Limited Liability Company (“LLC”).
2. The LLC would sell products to hospitals for physician procedures, including the physician acting as an agent for MiMedx products.
3. The physicians would get paid twice this way: once with the reimbursement from the hospital and then again through the LLC for the sale of the product (i.e. commission).

We have notified the SEC/DOJ of these concerns as we were informed local invoices will prove MiMedx is conducting this activity.

Repercussions
Various documents obtained by Viceroy show that individual VA facilities have caught on to MiMedx’s practices, which violate facility and policy regulations. This was corroborated by whistleblowers and former employees who claimed MiMedx had been evicted from several VA facilities.

The following is an extract from court documents regarding a case between former MiMedx employee Harold “Hal” Purdy and MiMedx.

Based on information and belief, as a result of a channel stuffing scheme allegedly carried out by MiMedx resulting in investors being defrauded, and numerous publications discussing this particular tactic on December 15 and 16, 2016, the South Texas Veteran’s Health Care System in San Antonio, Texas no longer allowed representatives selling products to market their products to podiatry in the facility, which ultimately went hospital wide and is still enforced today. This is evidenced by an email exchange between RK Simon and Kevin Lilly which discusses being shut out of the facility on December 21, 2016. As a result, Purdy lost the ability to perform his job with respect to roughly ninety-seven percent of his volume. The channel stuffing actions and

Figure 48 Extract from MiMedx v. Purdy & Recon Medical Devices

This was corroborated by whistleblower 11, who claimed the company had been shut out from doing business with the Atlanta VA facility due to their activities with Jeffrey Frenchman, DPM

27 CAUSE NO. DC-16-16478
Figure 49 Partial transcript of whistleblower account

WHISTLEBLOWER 11 [edited to remove possible identifying comments] [MiMedx] shot themselves in the foot because they've lost all that business. I don't think they've gotten it back. I don't know how they're hitting their numbers that's what's blowing me away. What is going on? How are they supposedly hitting these numbers? I want to know.

INTERVIEWER Well apparently the market believes them. Yeah

WHISTLEBLOWER 11 Well yeah, because they... most of these big VA's they've been kicked out of so I don't know... I don't know.

INTERVIEWER Oh wow,

WHISTLEBLOWER 11 I don't know, this is crazy.

INTERVIEWER So, you know where they've been kicked out of the big VA's? Is there-

WHISTLEBLOWER 11 Atlanta VA would be a big one.

INTERVIEWER Yeah?

WHISTLEBLOWER 11 And numerous ones around the country -

 - Break - Other conversation

INTERVIEWER Yeah so, the Atlanta VA right so why were they kicked out of there?

WHISTLEBLOWER 11 Well uh they were channel stuffing I believe number one and uh number two they were using a ridiculous- they were using and reselling a lot of product through one doctor there. And they eventually just shut him down because I think he was abusing it. He was a speaker for us Frenchman is his last name. I think its Jeff Frenchman and we were doing hundreds of thousands probably a month with him. And um

INTERVIEWER Wow

WHISTLEBLOWER 11 There may have been some illegal activity but I don't know what.

Figure 50 Extract from Jeffrey Frenchman VA.gov profile

Jeffrey Frenchman

Occupation: Podiatrist
Service Line: Medicine
Gender: MALE

Parent Facility: Atlanta VA (508)
1670 Clairmont Road
Decatur, Georgia, 30033

Location of Medical Training:
ATLANTA VA

Professional Degree From:
BARRY UNIVERSITY SCHOOL OF PODIATRIC MEDICINE

Figure 51 Extract from MiMedx PR Newswire release "Advances In Regenerative Medicine With MiMedx EpiFix® And AmnioFix® To Be Presented At SAWC Fall Meeting" dated October 6, 2016

MiMedx will sponsor a Breakfast Symposium entitled “Addressing Complex and Chronic Wounds with EpiFix dehydrated Human Amnion/Chorion Membrane (HACM) Allografts and New Amniotic Products” on Friday, October 7th from 7:30am to 9:00am in the Millani III and IV Ballroom. The list of faculty and their respective topics presented during the breakfast symposium include Jeffrey Frenchman, DPM, presenting an introduction to EpiFix, clinical data overview and case examples, James Stavelsky, DPM, imparting his experience with MiMedx products in pediatric applications; Susan Hagem, MD, discussing complex wound healing and treatment with MiMedx products; and Michele Masseer, Manager of Biomedical Research at MiMedx, providing an overview of published scientific data with key focus on diabetic patients’ cellular proliferation experience.

28 https://www.accesstocare.va.gov/ourproviders/Main/SearchResults#!/f=6&n=Frenchman&e=0&p=10&s=428
3. Circumvention of government regulations

MiMedx gas repeatedly shown a complete disregard for several government regulations especially those governing kickbacks and reimbursement.

FDA

MiMedx claims their products are defined as Human Cells, Tissues and Cellular and Tissue-Based Products ("HCT/Ps") and refers to them in its annual reports as 361 HCT/Ps. Products regulated under section 361 do not need, amongst other things, a Biologics License Application ("BLA") or an Investigational New Drug Application ("IND").

The FDA did not agree with this definition and issued the company an Untitled Letter in 2013 informing the company that it would be and was marketing several of their products illegally including AmnioFix Injectable.

![Figure 52 Extract from MiMedx Annual Report 2016](https://www.sec.gov/Archives/edgar/data/1376339/000137633917000042/mdxg-20161231x10k.htm)

Despite this, MiMedx continued to market AmnioFix Injectable, claiming it was working out a transition plan with the FDA.

![Figure 53 Extract of Gladowski v MiMedx et al](https://www.sec.gov/Archives/edgar/data/1376339/000137633917000042/mdxg-20161231x10k.htm)

As it turns out, MiMedx’s faith in their transition plan was misplaced. In March 2018, the FDA designated MiMedx’s AmnioFix Injectable as Regenerative Medicine Advanced Therapy ("RMAT") which notably is not regulated under section 361. RMAT products undergo expedited clinical trials during which the product cannot be marketed.

30 [https://www.sec.gov/Archives/edgar/data/1376339/000137633917000042/mdxg-20161231x10k.htm](https://www.sec.gov/Archives/edgar/data/1376339/000137633917000042/mdxg-20161231x10k.htm)
31 Case 1:13-cv-03074-TWT
Despite the positive spin put on this news by MiMedx press releases what this essentially meant is that they could no longer, as of March 2018, sell AmnioFix Injectable.

No explicit mention of this was ever made to the market even though MiMedx had been selling AmnioFix Injectable since 2012. Viceroy estimates that AmnioFix Injectable accounted for a significant portion of revenue per year and the clinical trial is still in its early stages.

Viceroy believe that MiMedx should have informed the market of its inability to market AmnioFix Injectable and in particular their actions in defiance of the FDA leading up to that event.

Undisclosed payments to doctors
We’ve previously raised concern that MiMedx does not report payments it makes to physicians as required per the Sunshine Act.

33 https://www.fda.gov/BiologicsBloodVaccines/CellularGeneTherapyProducts/ucm537670.htm
36 You can conduct your own searches on www.cms.gov
In response to the Wall Street Journal to this issue, MiMedx advised that it doesn’t have to report payments to physicians because its products are classified as tissues under Section 361 of the Public Health Services Act.

The CMS website shows no record of stock grants, speakers’ fees and research support provided by MiMedx to doctors and their hospitals in recent years, though its financial relationships with at least 20 doctors appear in public disclosures that were reviewed by the Journal.

Executives at MiMedx contend the company doesn’t have to report its payments to physicians because its products are classified as tissues under Section 361 of the Public Health Service Act and it is therefore not a “applicable manufacturer.”

**Figure 57 WSJ Article - MiMedx, Fast-Growing Developer of Tissue Graft Products, Didn’t Report Payments to Doctors**

MiMedx further states that it received an opinion from CMS that confirms MiMedx does not need to report payments to physicians, despite CMS definitively stating it does not offer such opinions.

MiMedx’s website states that it has “received an opinion from CMS which confirms that MiMedx does not have a need to report at this time.”

But Tony Salter, a CMS spokesman, said the agency doesn’t provide such opinions. Outside of a compliance action, he said in an email, the agency doesn’t give individual determinations, in writing or otherwise; rather, it provides general guidance that companies can consider.

Asked how MiMedx could have received an opinion from an agency that says it doesn’t provide them, Parker H. “Pete” Pettit, MiMedx’s chief executive, referred questions to Andy Rusk, at Morgan, Lewis & Bockius in Washington, D.C., MiMedx’s regulatory lawyer.

Mr. Rusk declined to discuss specifics about MiMedx’s discussions with CMS. In general, he said, “how you act on the feedback you are getting from the government is going to be the same irrespective of whether the government labels what they issue an opinion or labels it as guidance or does not provide any label whatsoever.”

**Figure 58 WSJ Article - MiMedx, Fast-Growing Developer of Tissue Graft Products, Didn’t Report Payments to Doctors**

Even if this opinion from CMS did in fact exist, MiMedx no longer falls strictly within Section 361 for its product line and, to our knowledge, has not commenced reporting payments to physicians and has not retrospectively reported payments to physicians.

**AvKare**

MiMedx previously sold product to government entities through AvKare, an entity acting ostensibly as a distributor. This was corroborated by a 2014 investigation by the Veteran Administration’s Office of the Inspector General ("VA OIG") concluding that AvKare did not meet the criteria of possessing the product.

AvKare’s outstanding RFMs. AR Tab 173 at 20954–55. First, the OIG reported, AvKARE was considered a “distributor of the offered products, not the manufacturer” because “[t]he offered products are never in the possession of AvKARE throughout the process.” Id. at 20954. Instead, the products were “shipped in bulk containers from the

**Figure 59 Extract from AvKare v. The United States of America Bid Protest 15-1015C**

---

Despite MiMedx and AvKare’s insistence otherwise, this arrangement was corroborated in a deposition by MiMedx Vice President of Global Sales Mike Carlton.

> A we -- Avkare didn’t sell the product. They didn’t do anything. They just made it easier to sell.

*Figure 60 Extract from Deposition of Mike Carlton*

AvKare played a prominent role in MiMedx’s channel stuffing activities, as the company use AvKare’s Federal Supply Schedule (“FSS”) to sell to government entities. MiMedx decided to obtain their own FSS in 2014 allowing it to sell directly to government entities, the company elected to extend its agreement with AvKare until June 30, 2017.

Until June 30, 2017 AvKare acted as a front for MiMedx, as shown in the invoice obtained by Viceroy below.

![Figure 61 Extract from AvKare invoice](image_url)

Note several inconsistencies:

1. The fax number above is MiMedx’s fax number, not AvKare’s: invoices would be faxed.
2. The phone number is AvKare’s phone number.
3. The contact person, Luke Tornquist was a MiMedx employee, not an AvKare employee.
4. The FSS number is AvKare’s.

Clearly AvKare was acting as a front: enquiries would go by phone to AvKare however all relevant billing and orders would go directly to MiMedx.

Note also that the channel-stuffing activities by no means stopped when the company’s agreement with AvKare expired, as we will show further in this document.

---

39 Extract from Case 2:17-cv-02028-JTF-egb Document 43-3 Filed 12/04/17
This was corroborated by a leaked email from MiMedx’s Director of Sales Operations Lou Roselli showing the company was unable to reconcile its federal inventory stating:

“the CEO of AvKare is involved which means Pete is involved”.

Roselli’s part as messenger from management spreading the message of channel stuffing was corroborated in several whistleblower court documents:
Figure 63 Extract from Kruchoski v. MiMedx & Petit

Viceroy Research Group

Circumvention of VA Regulations

Figure 64 Photo of MiMedx products used channel stuffed at VA facility

<table>
<thead>
<tr>
<th>Name</th>
<th>Item Number</th>
<th>Number</th>
<th>Unit price</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>EpiFix 7 x 7</td>
<td>GS-5770</td>
<td>22</td>
<td>$6,685.00</td>
<td>$147,070.00</td>
</tr>
<tr>
<td>Unknown</td>
<td>Unknown</td>
<td>unknown</td>
<td>unknown</td>
<td>$35,000.00</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>$182,070.00</td>
</tr>
</tbody>
</table>

Viceroy’s enquiries to the VA facility specified by the above image’s EXIF data confirmed that at any one time they would expect to have only US$20,000 worth of MiMedx products on hand. The image above represents almost 10 times that amount.

MiMedx announced in 2014 that it had begun work on obtaining an FSS, and the process of moving customers from doing business with AvKare to dealing directly with the company.

41 Case No.: 50-2016-CA-013806-XXXX-MB
42 Note: We have blurred serial numbers, barcodes, and expiry dates to avoid identification of former employees by MiMedx.
On May 9, 2016 the following email was sent to MiMedx’s Southwest Regional Sales Directors from MiMedx Southwest Area Director Ricky Palmer. The email details the supposed ins-and-outs of the VA’s new policy regarding reimbursement. Note that the subject matter is largely centered around:

1. Consignment agreements – which allow product to be shipped to a facility without need so that the facility has it on hand.
2. Avoiding the need for prior authorization (“prior-auth”) for MiMedx products in medical facilities.

![Email from Ricky Palmer](image)

The rush to get consignment agreements is suspicious, as is the push to clarify the need for pre-authorization and whistleblower court documents claim the company exploits the consignment system to place excess stock on shelves.

The scheme was alleged to have occurred in the following manner:

1. Sometime prior to the end of the fiscal quarter sales representatives would be pressured by management to stock shelves at VA hospitals with MiMedx products.
2. MiMedx sales representatives would take it upon themselves to manage inventory control of MiMedx products at VA hospitals, without knowledge or consent of the VA hospital.
3. MiMedx sales reps would place orders for EpiFix and other products on behalf of VA hospitals – without consent of the VA hospitals – even if there was an existing oversupply.
4. At some point later, the product is feathered back to MiMedx, the losses from returns concealed by future revenues.

or

5. The hospital is billed for procedures using MiMedx products that either never happened or were unnecessary.

Note that consignment agreements on inventory are essential to the company’s channel stuffing activities as it allows representatives to place inventory on the shelf directly. Due to the relatively small size of MiMedx products, hundreds of thousands of dollars worth of inventory can only comprise of several stacks of small boxes as shown in figure 64.

In response to this, VA employees questioned both the source of the information and clarify that the VA facility still has a "no consignment" policy.

Understandably the VA employees don’t take MiMedx at their word, and further reiterate their position on the consignment issue in these emails.

This comes to a head as MiMedx appears to have jumped the gun and assumed that the VA would either fail to notice or care about a box of AmnioFix. Note that the following email is sent to Purdy’s personal email account, not his company account.

Understandably the VA employees don’t take MiMedx at their word, and further reiterate their position on the consignment issue in these emails.

This comes to a head as MiMedx appears to have jumped the gun and assumed that the VA would either fail to notice or care about a box of AmnioFix. Note that the following email is sent to Purdy’s personal email account, not his company account.
Note that these events occurred half a year prior to Purdy leaving MiMedx and the ensuing legal action between the two. The legal action did not involve breaches of VA regulations leading us to believe that MiMedx was aware of this behavior. Further, the email in figure 66 sent by Palmer regarding consignment inventory suggests that similar events played out at VA facilities all over the country.

Emails between MiMedx employees and a VA Medical Facility obtained by Viceroy show:

1. MiMedx sales employees insisting on a consignment agreement and being told repeatedly that this is against facility policy.
2. Details into MiMedx’s relationship with AvKare and other distributors, notably using them as a “front” for drop-shipped products.
3. Several cases wherein product was ordered or billed with no record of patients using the product.
4. Fabrication or post-dated creation of 2237 and 1081 forms to justify the above.

In addition to this the MiMedx representative appears to be actively attempting to make sure the stock for the Jesse Brown VAMC does not go through the Great Lakes Acquisition Centre, a fact noticed by a MiMedx distributor: Kreisers, MMS and Seneca Medical.

As a work-around the MiMedx representative later gives their word to monitor the stock.
This assurance is later proven false, as phantom patients and orders begin to appear in the system to justify the “uses” of MiMedx product. Further, with little in the way of inventory control, getting paid for the channel-stuffed inventory appears to have become a problem. Viceroy believes as there are no actual patients requiring MiMedx products: there is nothing in the way of patient records to justify payment.
For clarity: if there were no consultations made on the day, or consultations were incomplete then it seems as though payment is not collectable. Note that on February 2, 2017 the hospital system had no patient of that name for a reimbursement claim.

**FARS & DFARS**

Federal Acquisition Regulation and Defense Federal Acquisition Regulation (“FAR & DFARS”) forms are a requirement for any company who wishes to sell their product, even through a third party, to a federal entity.

Prior to the release of Viceroy’s first report, FAR & DFARS forms submitted by MiMedx appear to have been submitted by an employee no longer working for the company at the time: Don Ayers.
Even stranger is that Ayers is listed as the Vice President of Market Access at Next Science in Next Science releases dating as far back as 2015, almost 2 years before he left MiMedx, while simultaneously being employed at MiMedx:

Inquiries:
Don Ayers
Vice President, Market Access
855-594-2762
sales@nextscience.com

Following the first Viceroy Report, MiMedx retroactively edited its FAR & DFARS reports, changing the MiMedx representative from Don Ayers to Kimberly Dugan. Below is the report after Viceroy’s publication.

Note that the above FAR & DFARS report dated March 27, 2017 was authorized by Brent Miller despite Miller’s LinkedIn stating he had retired in May 2017.

---

Note: As of May 11, 2018, the Next Science press release cannot be found

Viceroy Research Group
Thus, we question how the change of representative from Ayers to Durgan could have been authorized by him. MiMedx backdated FAR & DFARS reports dating back to 2013 to include Durgan as signatory however Durgan’s employment with the company did not commence until 2014: again, throwing a temporal spanner into the works.

Clearly MiMedx had attempted to quickly and quietly backdate the facts in order to mislead investors as to the validity of Viceroy’s report.

We note that MiMedx will likely have to complete FAR & DFARS once more given the recent events, where VA physicians, who are alleged to concurrently have been acting as MiMedx employees, have been indicted for bribery.

As a result, Viceroy are contacting the General Services Administration OIG today to point out where the FAR & DFARS compliance needs to be reviewed in order to ensure compliance.

Up-Coding and Reimbursement fraud

How does MiMedx market its product? By guaranteeing reimbursement from insurance programs, often in illegal or fraudulent ways. One of these ways is through a process referred to as up-coding, entering a code into a reimbursement system for a more expensive procedure than was performed.

The codes in question are from the Healthcare Common Procedure Coding System (“HCPCS”) which determine reimbursement based on the procedure performed. Viceroy obtained MiMedx emails from Regional Sales Director for Western Washington & Alaska Aaron Rosenberger to Vascular Surgical Service Sales Manager Pat Racanelli. The email attachment below shows the calculation of benefits for EpiFix use:
MiMedx claims that they have a team which deals with reimbursement related questions: yet fail to answer why two members of a sales team are sending and receiving this email.

Former employees and physicians have corroborated that the reason for these documents is that MiMedx’s surgical line is not covered for reimbursement. EpiFix, however, is covered.

MiMedx makes liberal use of guarantees of reimbursement as shown in the supporting documents in their legal action against Mad River Community Hospital ("Mad River").
Mad River stopped paying MiMedx for product around November 2014 but **continued to order and receive product through to March 2015**, as stated in MiMedx’s claim below. Compared to alleged turnover the amount owing is small at $240,062.

![Figure 80 Extract from MiMedx v. Mad River](image)

We believe MiMedx aggressively “markets the spread”: their greatest selling point is the above-cost amount of reimbursement their products entail, not the quality of such products. As such, full payment for MiMedx products is only due once reimbursement has been paid to the buys by the patient’s insurer.

In what must’ve been “good business acumen” at work, MiMedx representatives allegedly went to the Mad River facility in surgical scrubs and told physicians and other employees that MiMedx products had been approved for use.

![Figure 81 Extract from MiMedx v. Mad River](image)

Note that these products were considered experimental and **un-reimbursable** by several insurers.

---

44 Case 4:16-cv-02039-HSG Document 1 Filed 04/18/16
When the reimbursement rates are not “as advertised” by MiMedx, the company sent several “billing specialists”, which Mad River alleges were sent to stall while more invoices piled up.

4. Managerial Incompetence

Change of Auditors

Cherry Beckaert identification of material weakness in financial controls

MiMedx’s auditors, Cherry Bakaert, identified a material weakness in the company’s financial controls in the period ending 31 December 2016:

```
Material weakness: In reviewing the Company’s tax accounting in preparation for filing this Form 10-K, our management identified a deficiency in our internal controls over financial reporting that is described below in Management’s Annual Report on Internal Control over Financial Reporting. Our management has concluded that this deficiency constitutes a material weakness in our internal controls over financial reporting related to our accounting for income taxes. This material weakness did not result in a material misstatement of the Company’s annual financial statements for the year ended December 31, 2016. However, management concluded that this material weakness, if unremediated, could have resulted in a material misstatement of the Company’s annual or interim consolidated financial statements that would not have been prevented or detected by our internal controls. Accordingly, management determined that this control deficiency constituted a material weakness. We have developed a remediation plan for this material weakness, which is described below.
```

Fortunately for MiMedx, this material weakness was picked up by auditors. Viceroy believes that material weaknesses in financial controls are a major red flag and significantly increase audit risk. This is especially the case when after six months, MiMedx had still not remediated its material weakness in internal controls:

45 FY 2016 financial statements – pg. 80
Viceroy Research Group

Figure 86 Q2 2017 – Evaluation of disclosure controls and procedures\(^{46}\)

Viceroy finds it concerning that MiMedx proceeded to replace its auditors in the midst of this internal control issue

<table>
<thead>
<tr>
<th>Item 4.01</th>
<th>Changes in Registrant’s Certifying Accountant</th>
</tr>
</thead>
</table>

(a) The Audit Committee (the “Committee”) of the Board of Directors of MiMedx Group, Inc. (the “Company”) recently conducted a competitive selection process to determine the Company’s independent registered public accounting firm for the fiscal year ending December 31, 2017. The Committee invited several public accounting firms to participate in this process. As a result of this process, the Committee approved the appointment of Ernst & Young LLP (“Ernst & Young”) as the Company’s independent registered public accounting firm for the fiscal year ending December 31, 2017 effective August 4, 2017. This action effectively dismissed Cherry Bekaert LLP (“Cherry Bekaert”) the Company’s independent registered public accounting firm for the fiscal year ended December 31, 2016, as the Company’s independent registered public accounting firm as of August 4, 2017.

Figure 87 Change in MiMedx accountant – Form 8-K\(^{47}\)

Cherry Bekaert had audited MiMedx since 2008.

Subsequent internal investigations

On 20 February 2018, MiMedx announced that it would not be able to present its annual filings for FY 2017 in time and engaged KPMG and King & Spalding to commence an independent internal investigation into MiMedx sales practices\(^{48}\).

We believe this is clear indication that newly appointed auditors EY were not prepared to sign off on MiMedx’s accounts.

Interestingly, this investigation had already been conducted by Parker H. Petit’s fraternity brother and independent director, Terry Dewberry, in March 2017\(^{49}\). MiMedx were given the all clear in this entirely non-independent investigation.

Sales Distributors vs Agents

MiMedx makes an obscure distinction between sales agents and distributors; the deciding factor appearing to be whether or not the third-party physically holds & distributes MiMedx product.

For the education of all involved (but mostly Viceroy), **distributors** are customers of a company. They purchase and hold inventory, then resell the inventory to an end user. **Sales Agents** are just that, a sales person, and they do not take title to any product. **Sales Agents** are not customers of a company as they do not purchase product, nor hold any inventory; they do receive a commission on sales that they broker. The company receives orders from and ships products directly to the end use customer.

Figure 88 Change in MiMedx accountant – Form 8-K\(^{50}\)

\(^{46}\) Q2 2017 financial statements – pg.32

\(^{47}\) MiMedx Group Form 8-K – August 4, 2017 – Changes in Registrant’s Certifying Accountant pg. 2


\(^{50}\) MiMedx Group Form 8-K – August 4, 2017 – Changes in Registrant’s Certifying Accountant pg. 2
Viceroy had sourced data directly from the FDA’s Human Cell & Tissue Establishment register, which clearly show sales are being made to (or through) entities that are registered as both distributing and storing MiMedx product.

Our earlier reports include extracts from the FDA showing 2016 “sales agents” were registered as holders and distributors of, specifically MiMedx stock. There are numerous other entities in the 2016 MiMedx sales document which are registered to store and distribute amniotic membrane products, however manufacturers are unspecified.

The distinction is important because in an attempt to dismiss the extent of any fraud at the third-party vendor level, MiMedx consistently claimed that sales distributors only made up 5% of total sales. While this may be true, it is semantics, as sales agents make up substantially more.

![Third Quarter 2017 Revenue Highlights](image)

**Matria Healthcare**

Petit and his managerial team were quick to bring up their track record of excellence. We believe it was the influence of Petit and his associates which led to a collapse of Matria Healthcare’s ("Matria") share price due to earnings downgrades and revisions of future performance.

Matria was also the subject of an Off Wall Street short report, and the company sold as well-below its peak 2008 price for a 50% haircut in 2014. In addition to this the company faced a shareholder class action and two whistleblower lawsuits.

The shareholder lawsuit filed against Petit and others alleged:

1. Information regarding Matria’s IT system’s shortcomings was withheld from shareholders
2. Petit controlled the company during a time in which he was in no position to do so: failing to disclose these facts to shareholders.
3. Petit ignored counsel from senior staff in favor of purchasing an inappropriate IT solution from a company in which he had an interest.
4. The above was done after consultation from another Petit-controlled entity
5. Petit and others conspired to artificially support and inflate Matria’s stock price to secure performance incentives including forgiveness of loans.

The shareholder class action and whistle-blower suits revolved around Matria’s IT operations and choice of IT solutions: both of which were allegedly sabotaged by Petit for the benefit of himself and his associates. The case revolves around the Confer, Emerge and Cloverleaf products.

According to statements from company employees, the Confer system was recommended to Matria by an “outside consultant” from Healthcare.com. Note that this decision was not supported by Matria personnel familiar with the problems it was supposed to fix.

---

51 MiMedx Group Form 8-K – October 11, 2017
Matria also acquired two other software solutions from HIE; CloverLeaf and Emerge. At least one of these solutions was not installed more than a year and a half after its purchase (if ever) due to problems in Cloverleaf.

Confer, together with Healthcare.com were subsequently acquired by X-care.net with Pete Petit becoming a substantial investor of X-care.net in early 2001 as a result:

These issues came to a head in early 2002 when Matria was forced to issue an earnings warning for Q4 of 2001: as a result, the share price declined 28%. Later, in June 2002 Matria announced a disappointing outlook for 2002 and 2003 citing IT system obsolescence and difficulty implementing IT systems. The stock price dropped from $12 to ~$4.

---

52 CIVIL ACTION FILE NO.1:03-CV-2007
The events above are pertinent as they not only involve Petit but also MiMedx board member Joseph G Bleser and Executive Vice President Debbie Dean.

Bleser was engaged in several high-level positions at the Healthcare.com/Confer entity Quovadx: CFO, director and executive vice president from 1995 to 2004, and an independent financial consultant from 1998 to 2004.

An HIE company release shows Dean as Senior Vice President of Research and Development on September 27, 1999. Petit was serving as Chairman of the Board of Directors at Healthcare.com during the time Emerge was being developed.

The above shows that Dean would have been at least aware of the dealings between Healthcare.com/HIE, Quovadx and Matria Healthcare. In addition to this, Petit and Bleser must both have known to some extent the capabilities & drawbacks of the Emerge system or easily been able to gauge them.

Misleading Shareholders

Stability Biologics

Stability was acquired in January 2016 for US$10m (US$6m in cash, US$4m in stock) plus an earn-out consideration.

According to the company’s 2016 accounts, the company would have contributed US$17m to sales on a pro-forma 2015 basis. This positive sentiment regarding the acquisition was echoed by management’s indication that revenue growth in 2016 was largely due to the Stability acquisition.

The relationship between the two companies appears to have soured around a US$3.5m return of expired/returned inventory and concerns about Stability’s manufacturing processes.
Also of concern to Viceroy were the extremely generous terms of Stability's earn-out agreement. Stability shareholders were entitled to the combined 2016 and 2017 gross profit of:

2. Stability products sold by MiMedx personnel.

Astute readers will point out that this leaves very little reason to acquire the business in the first place, considering the high margins of both MiMedx and Stability products.

This earn-out agreement, which we regard as the most generous of its kind we have seen was never paid out. MiMedx threatened to sue Stability shareholders regarding a breach of representation, agreeing to indemnify them if earn-out fees were offset against losses due to those breaches.

The Stability business was sold back to its founder Brian Martin for US$3.5m in promissory notes secured against Stability assets: almost entirely consisting of “Customer Relationships” and “Patents and Know-How”. At the time of Stability’s acquisition by MiMedx, it had a net tangible asset deficiency of US$1.9m.

Since the original publication of this information Osiris Therapeutics, for whom Stability used to sell product, has commenced legal action against MiMedx. Osiris allege that MiMedx did not honor substantial payables due to Osiris after the time of the acquisition and purposefully left remaining Osiris inventory to expire in their warehouse, essentially knee-capping the competition.
9. Due to MiMedx’s influence, the Distributor did not sell $2.2 million of Osiris’s products that it had acquired from Osiris before the merger, and those products subsequently expired in the Distributor’s warehouse. After the merger, MiMedx and the Distributor, under MiMedx’s direction, refused to reimburse Osiris for the expired products.

10. Before the merger, Osiris had pre-paid the Distributor $1.28 million in commissions for products the Distributor took possession of and was supposed to sell. However, after the merger, the Distributor—now under MiMedx’s control—did not sell Osiris’s products and did not repay the commissions it received for those products, causing an additional loss to Osiris of $1.28 million.

12. In March 2016, MiMedx also instructed the Distributor, its wholly owned subsidiary, to cease making payments it owed to Osiris under a September 2015 payment plan related to the sale of Osiris’s Ovation product to an entity related to the Distributor. As a result, Osiris suffered a loss of $2,950,075.

13. Osiris attempted to recover the money owed and negotiated in good faith with MiMedx and its wholly owned Distributor. However, due to MiMedx’s interference, Osiris was unable to recover its loss of $6,430,075.

Figures 97 & 98 Extract from Osiris Therapeutics v MiMedx

Further, whistleblowers have advised that MiMedx induced Stability to report Osiris’ misdeed to the regulators in return for financial compensation in the form of a takeover of their operations:

In January of 2015 there was a handshake deal that if Stability would come forward to the SEC about the Osiris misdeeds, that the Stability leadership would be paid off by the MDAX shareholders through a purchase of Stability. The agreement was that once Stability reported the Osiris fraud to the SEC, MDAX would agree to buy Stability in early 2016. This purchase would include millions paid to the Stability leadership.

Figures 99 Whistleblower correspondence in relation to MiMedx’s acquisition of Stability

Luis Aguilar

MiMedx’s 19 March 2017 PRNewswire release was boastful of Aguilar’s career & credentials, the entirety of which allegedly would be too long to list:

also served as the primary sponsor of the SEC’s first Investor Advisory Committee. Mr. Aguilar has received various honors and awards too long to list in this press release. Some of those distinctions include:

Figure 100 Extract from MiMedx PR Newswire release “MiMedx Announces The Addition Of Luis A. Aguilar To Its Board Of Directors” dated October 6, 2016

Viceroy’s investigation revealed Aguilar was involved in an investigation by the Securities and Exchange Commission Office of the Inspector General (“SEC OIG”) related to his communication of non-public information to Reuters reporter Sarah Lynch:

---

53 Case 1:18-cv-00950-CCB – Filed 2 April 2018
Aguilar also sent emails containing non-public information to his personal email account, claiming it was “not a problem” in his view.

In summary: despite having annual Security and Privacy Awareness Training just 12 days prior specifically with “the prohibition on sending nonpublic information to personal email accounts”, Aguilar did not view sending nonpublic SEC information to his personal email account as a problem.

The Advanced BioHealing hires

Advanced BioHealing operated a kickback and bribery sales inducement scheme which resulted in the largest settlement of a False Claims Act to date of $350m, and a $600m write down by Shire when it was later sold.

At least 54 Advanced BioHealing alumnus have been identified by Viceroy within MiMedx’s sales force, including at least 15 in senior employment positions. None of these employees, despite their seniority, appeared on public MiMedx documents prior to Viceroy’s first report.

---

56 CASE# OIG-601
57 Case 8:11-cv-00176-JSM-MAP Document 2
18. The various types of inducements provided by Advanced BioHealing to physicians include:

A. Providing free medical supplies to physicians;
B. Providing tickets to sports games and Cirque de Soleil performances to physicians;
C. Providing free weekends at expensive resort locations to physicians;
D. Providing free scrubs to physicians;
E. Providing cameras to physicians to use to take photos of patient wounds for use in case studies for which physicians could be paid by Advanced BioHealing;
F. Providing free mailers and postage to promote physician practices;
G. Providing liquor to physicians and their office staff;
H. Providing edible fruit arrangements to physicians and their office staff;
I. Providing gas cards to physicians and their office staff;
J. Providing Starbucks, Bonefish Grill, Applebees, 7-11 and other restaurant gift cards to physicians and their office staff;
K. Providing American Express, Visa and Blockbuster gift cards to physicians and their office staff;
L. Providing physicians with free insurance verification forms indicating the reimbursement available to physicians for application of Dermagraft to specific patients to encourage and motivate physicians to apply Dermagraft;
M. Providing a guarantee to physicians that they will not have to pay Advanced BioHealing for the full price of Dermagraft purchased if a patient’s insurer does not reimburse the physician at the amount predicted by Advanced BioHealing;
N. Providing physicians “scrap credits” or rebates for unused pieces of Dermagraft;
O. Providing physicians with ghost-written letters of medical necessity;
P. Providing physicians with draft dictation language and progress notes to be included in patient charts to justify using Dermagraft;
Q. Providing physicians with free business development kits, and
R. Providing physicians with free “case studies” which physicians use in marketing to referring physicians, home health agencies and assisted living facilities.

Figures 104 & 105: Extracts of United States of America ex rel. Vinca & Sweeney v. Advanced BioHealing

Viceroy believes the similarity between the channel-stuffing activities at Advanced BioHealing and those being carried out at MiMedx highlight the significance of these hires. In particular the employment of Sean McCormack as Director of New Market Initiatives at MiMedx.

Figure 106: Extract from Sean McCormack LinkedIn profile

McCormack was named but never convicted of his role in Advanced BioHealing’s channel-stuffing initiatives, including providing to inducements to physicians:
...and conducted training along with others named in the proceedings:

![Figure 107](image1)

**Figure 107 Extract from United States of America ex rel. Vinca & Sweeney v. Advanced BioHealing**

---

5. Aggressive anti-whistleblower retaliation

MiMedx has proven time and time again that the company does not tolerate whistleblowers:

1. The company is extremely litigious against current and former employees who wish to blow the whistle on the company’s practices
2. The company Machiavellian approach to “Dear Pete” letters: often firing or reprimanding individuals who believe management should be informed of the illegality of their actions
3. The company enforces extremely aggressive non-compete agreements, effectively preventing employees from finding work elsewhere and discouraging raising issues.

MiMedx has repeatedly punished whistleblowers, both those who report internally and more damningly, to the SEC. Viceroy believes the company has a long list of scorned ex-employees who have potentially damaging information about the company and its fraudulent practices.

**Kruchoski/Tornquist saga**

Former MiMedx regional sales director, Jess Kruchoski, and his subordinate Luke Tornquist blew the whistle on MiMedx’s channel stuffing activities in late 2015 claiming that in the last month of 2015, US$10m of unordered and unneeded MiMedx product was on VA shelves.

![Figure 108](image2)

**Figure 108 Extract from United States of America ex rel. Harvey v. Advanced BioHealing**

Emails between Kruchoski and MiMedx management show that despite making his sales target, the company refused to pay his performance incentives. After expressing concerns regarding management calls to engage in aggressive channel stuffing activity, Kruchoski was informed he would not be considered for promotion.

In November 2016, Kruchoski and Tornquist submitted a joint report to MiMedx upper management and legal counsel regarding MiMedx’s fraudulent revenue recognition from channel stuffing activities. In effect, Kruchoski and Tornquist had just signed up for heavy and long retaliation from MiMedx.

What followed was a concerted attack by the company in which MiMedx and its upper management:

---

58 Case 8:16-cv-00303-JSM-TBM Document 1
59 Case 1:17-cv-00577-LMM Document 1
1. Asked Kruchoski and Tornquist to reconsider their submission, being told to “think about their families” and that “it would not be good for them” to submit their report.
2. Placed Kruchoski on an employee performance plan that threatened termination, against company protocols.
3. Took steps to replace Kruchoski with one of his subordinates
4. Removed a sizeable area of commissionable geography from Kruchoski
5. Asked other employees about any alleged misconduct by Kruchoski and Tornquist.
6. Terminated both Kruchoski and Tornquist, before filing a lawsuit against both the next day for allegedly publishing false information.

Mike Fox

Almost immediately after the company’s actions against Kruchoski and Tornquist above, MiMedx also fired and commenced proceedings against their supervisor Mike Fox, allegedly for sale of competing products while he was at MiMedx. Not only was Fox dismissed, but all or most of the staff he was supervising.

Fox was also subject to a retroactive pay downgrade to the state’s minimum wage of US$8.25 an hour and an effective revocation of vested options.

96. Kuntz informed Fox during this call that the Company was terminating his employment for cause. He further informed Fox that MiMedx was unilaterally and retroactively reducing Fox’s rate of pay for the last nine days of his employment to the Illinois minimum wage of $8.25 per hour

97. Kuntz also told Fox during this call that Fox would only have until the end of the day to exercise those vested options he had been awarded pursuant to the Plan. When Fox pointed out that it was past 6:00 p.m. on the East Coast and the stock market was closed, Kuntz replied: “Exactly.”

Figure 110 Extract from Fox v. MiMedx

Not content to fire Fox and deny him his share-based compensation, MiMedx began proceedings against Fox’s new employer CPN BioSciences for violation of MiMedx’s non-compete agreement in hiring Fox. After several months, CPN management was forced to dismiss Fox, possibly as well as other former MiMedx employees then working at CPN, allegedly out of fear of a lengthy litigation process.

55. On July 20, 2017, Taneja terminated Fox’s employment with CPN over the phone. Taneja stated that CPN and its lawyers could not handle any more of the MiMedx “legal drama.”

Figure 111 Extract from Fox v. MiMedx

Clearly MiMedx is willing to engage in widespread retaliation against employees and former employees.

Non-disclosure agreements

As can be seen in the figures below, the company conditioned their settlement of their civil litigation with Fox and other employees on the withdrawal of complaints to government entities claiming “we continue to be hampered by...you reaching out to government authorities concerning your client’s claims”.

Viceroy Research Group 47 viceroyresearch.org
Members of Fox’s team were offered severance packages on the condition that they would not bring claims against the company or assist in an investigation by any entity. Note that this appears to include enforcement agencies such as the SEC.

---

60 Case: 1:16-cv-11715
106. On December 29, 2016, MiMedx also terminated Veronica Loch, one of the sales representatives Fox managed for MiMedx. In an apparent attempt to prevent Loch from assisting law enforcement, including the SEC, as well as whistleblowers in bringing claims against the Company, MiMedx offered her a severance package that conditioned the receipt of severance pay and benefits on Loch waiving her right to “voluntarily assist other individuals or entities in bringing claims against [MiMedx].” (Exhibit 12.) By accepting the severance package, she would agree not to “provide any such assistance other than assistance in an investigation or proceeding conducted by the United States Equal Employment Opportunity Commission” except pursuant to a valid subpoena. (Id.) MiMedx further stated in an accompanying letter that the receipt of severance pay and benefits was conditioned on Loch not taking any action that would be adverse to the Company’s interests, including disclosing to any person sensitive or secret information acquired in connection with her employment. (Id.) MiMedx made no exception for communicating civil or criminal violations to law enforcement agencies, including the SEC. (Id.)

This is illegal as per the Code of Federal Regulations:
When viewed in the light of the extremely aggressive actions taken against whistleblowers Kruchoski, Tornquist and Fox, MiMedx is attempting to silence former employees and prevent them from speaking to the authorities.

**Harold “Hal” Purdy’s wild ride**

The most bizarre but revealing case by MiMedx against a former employee is that against Harold “Hal” Purdy and his employee-owned distributor: Recon Medical Devices LLC (“Recon Medical”).

Purdy was not dismissed due to this, but instead for breach of a non-compete agreement. MiMedx also seems to not care that Purdy was communicating, and presumably doing business with the VA with his Recon Medical Devices email address.

Purdy was dismissed for selling competing product Collagen. What the company failed to announce, was that Purdy did so in response to an Untitled FDA letter claiming that EpiFix was under further review.

---

**The MiMedx product (EpiFix) which Mr. Purdy had to substitute with a competitor product**

was the subject of an Untitled Letter publicly posted by the Food and Drug Administration (FDA) which questioned the stated nature of the product, and notified MiMedx that the product was under further review by the FDA. Because of this FDA letter, and MiMedx’s decision to no longer provide information brochures and publications with the product, the surgeons at the San Antonio VA Hospital chose to use a competitor product for the amnion solution to complement the MiMedx sheet dry graft, Epicord (which Purdy sold for every surgery that a substitute for EpiFix was used as the solution complement).

---

The South Texas Health Care System later evicted podiatry representatives based on reports on channel-stuffing by “numerous publications”.

---

Not only had MiMedx representatives been evicted from the South Texas Veteran’s Health Care System, but the company has yet to announce this to the market.

6. Conclusion

We reiterate our opinion that MiMedx is a robust fraudulent enterprise. Viceroy are of the opinion that evidence uncovered publicly only begins to scratch the surface of MiMedx’s fraudulent dealings.

Viceroy will continue to assist regulatory agencies, as we believe indictments of VA staff earlier this week will initiate an enormous wave of further indictments and office/clinic raids.

We encourage any persons with further evidence of fraud within MiMedx’s operations to lodge an anonymous report with regulators through the following channel.

https://www.sec.gov/whistleblower/submit-a-tip

Alternatively, Viceroy are happy to take the heat on publishing more evidence of malpractice at MiMedx, which we will treat with the utmost level of confidentiality. You can reach us at viceroyresearch@gmail.com.