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Blowing the Whistle, Many Times

By MARY WILLIAMS WALSH Published: November 18, 2007

WHEN Cynthia Fitzgerald started out in pharmaceutical sales 20 years ago, she received ample training on the right and wrong ways to sell medical products.



Brian Harkin for The New York Times

Cynthia Fitzgerald has filed what may become one of the largest whistle-blower lawsuits.

“There were pretty stringent rules back then,” recalls Ms. Fitzgerald, now 50 and a grandmother living in Dallas. “It was really clinically driven.”

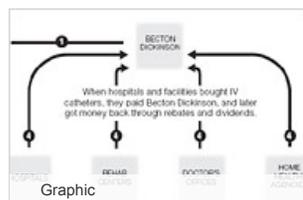
But she says those early lessons didn't serve her so well when she went to work on the other side of the table in 1998, in health care purchasing.

Eventually, Ms. Fitzgerald decided to file what could become one of the largest whistle-blower lawsuits on record. And her case, which names more than a dozen companies as defendants — some with well-known names like Johnson & Johnson, Becton Dickinson and Merck — offers a window onto a little-known world, where billions of dollars' worth of medical products are sold each year to institutional buyers like hospitals.

The suit, filed in 2003 in federal court in Dallas, and unsealed this year, argues that improper sales practices, together with erroneous accounting, are invisibly draining millions of dollars out of vital public programs like Medicare through overcharges or unauthorized uses. While whistle-blower cases typically involve, at most, a handful of companies, Ms. Fitzgerald's alleges systemic fraud across a whole network of companies and more than 7,000 health care institutions.

Her contentions are set against a complex backdrop:

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Brian Harkin for The New York Times
Cynthia Fitzgerald calls medical-supply fraud "systemic."

spiraling health care costs and debates about Medicare. State and federal authorities in Texas are investigating Ms. Fitzgerald's allegations, and any decision by them to join her case may give the suit momentum in the courts. But her corporate adversaries dispute her accusations.

"Cynthia Fitzgerald is rehashing old rumors and suspicions," said Jody Hatcher, senior vice president of Novation, the company in Irving, Tex., at the heart of her lawsuit. "These allegations have been examined in depth by a variety of different authorities, and no one has proven any of them to be true. The simple fact is that Ms. Fitzgerald's allegations are false."

Video

[More Video »](#) For her part, Ms. Fitzgerald bristles at the idea that her lawsuit is without merit or, in response to common critiques of whistle-blower cases, about easy money. "I thought they were really nice people," she says. "I was so grateful and thankful to have a steady income again. I wouldn't have rocked the boat for any small thing to save my life."

So why did she rock the boat?

"It was wrong," she says of the behavior she asserts she has witnessed. "And I knew it was wrong."

NINE years ago, while still recovering from a financially ruinous divorce, Ms. Fitzgerald decided to move to Dallas

from her native Omaha. She knew almost no one in her new city. She graduated from the [University of Nebraska](#) 13 years earlier with a communications degree, then worked in sales and marketing in the food, pharmaceutical and insurance industries.

When she moved to Texas, she says, "It was pretty bleak." She adds, "I went from having Thanksgiving dinners in a house with my family to living in an apartment that was so small that every time I turned around I ran into myself."

More than anything, she said, she wanted stability — a steady job at a company where she could climb the ladder and work until she retired. After months of looking, she joined Novation. The company helped thousands of hospitals, rehabilitation centers, home health agencies and doctors' offices nationwide negotiate prices for medical supplies — a wide range of items as diverse as saline solution and huge imaging machines.

Novation assigned her a portfolio of medical and surgical products for which its member hospitals were spending an estimated \$240 million a year: rubber gloves, surgical tools and so forth. The company sent her to a training class where, among other things, she says she learned once again about ethical purchasing procedures.

"I cannot overemphasize in the beginning how excited I was and really feeling blessed," she says. "I felt like I got a second chance. Even though it was on the other side of sales,

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it was still sales.”

But as she settled in, she says, not everything in her new workplace squared with what she had been told in training, a situation that came to a head one day in 1998, when she was still just a few months into the job. According to her complaint, she and her boss met with a Johnson & Johnson sales team that was vying for an exclusive, three-year contract to sell \$130 million worth of IV equipment to Novation’s clients. It was a valuable contract, and Ms. Fitzgerald had the power to decide who would get it.

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