

AGA Medical Corporation

Case ID:

ST-16

Case Cluster :

AGA Medical Corporation

Jurisdiction of Settlement:

United States

Jurisdiction of Settlement / Enforcement Agency:

Department of Justice

Jurisdiction of Foreign Public Official(s) :

China

Year of Settlement:

2008

Month/Day of Settlement (or Notes):

06/03

Other Jurisdictions of Settlement:

Unknown

Settlement with Individual or Legal Person?:

Legal Person

Type of Settlement:

Criminal

Legal Form of Settlement:

Deferred Prosecution Agreement

Monetary Sanctions (Types):

Criminal Fine

Total Monetary Sanctions (US\$):

\$2,000,000.00

Criminal Fine/Penalty (US\$) :

\$2,000,000

Monetary Sanctions Returned / Ordered Returned (US\$):

\$0

UNCAC Articles(s) Implicated:

Art.16

Art.26

OECD Anti-Bribery Convention Articles Implicated:

Art. 1, Art. 2

Offenses - Alleged:

Conspiracy to bribe foreign officials, bribery of foreign officials

Offenses - Settled:

Conspiracy to bribe foreign officials; bribery of foreign officials

Public Procurement Contract / SOE Involved?:

Yes

Summary:

According to the US Department of Justice Press Release (June 3, 2008), there is no mention of an enforcement action by the Securities and Exchange Commission. (Source: US

Department of Justice Press Release, "AGA Medical Corporation Agrees to Pay \$2 Million Penalty and Enter Deferred Prosecution Agreement for FCPA Violations," June 3, 2008.). The June 30, 2008 Deferrred Prosecution Agreement outlines terms of the agreement, including: continued cooperation in investigations by DOJ and other domestic and foreign law enforcement authorities (para 5); Requirement on company not to withhold from DOJ any information, document, records, facilities and/or employees on the basis of attorney-client privilege or work product claim (para 5.c); Company consent to DOJ disclosures to other (domestic and foreign) governmental authorities; and Agreement does not cover past or future misconduct. (Source: US v. AGA Medical Corporation, Case no. 08-cr-00172 (D.C. Minn, 2008), Deferred Prosecution Agreement filed June 3, 2008.). According to DOJ Report to Congress, "Appendix C: Summaries of Foreign Corrupt Practices Act Enforcement Actions by the United States, January 1, 1998 - September 30, 2010," Location and Time Period of Misconduct is China, 1997-2005, specifically corrupt payments by AGA, a high-ranking officer of AGA and other AGA employees to doctors in China who were employed at government-owned hospitals. Payments were made through AGA's local Chinese distributor. In exchange for the payments, the doctors directed government-owned hospitals to purchase AGA products rather than those of the company's competitors. The Criminal Information also alleged that from 2000 through 2002, SGA sought patents on several products from the PRC State Intellectual Property Office, and as part of this effort made payments through their local Chinese distributor to government officials employed at the State Intellectual Property Office. AGA Medical admitted and accepted the allegations as part of its Deferred Prosecution Agreement with the Department of Justice. (Source: US v. AGA Medical Corporation, Case No. 08-cr-00172 (D.D.C.), Deferred Prosecution Agreement filed on June 3, 2008.)

Sources :

US Department of Justice Report to Congress, "Appendix C: Summaries of Foreign Corrupt Practices Act Enforcement Actions by the United States, January 1, 1998 - September 30, 2010," AGA Medical Corporation, at 59-60, accessed at <http://www.justice.gov/criminal/fraud/fcpa/docs/response-appx-c/pdf>;
www.justice.gov/criminal/fraud/fcpa/docs/response3-appx-c.pdf: US Department of Justice Press Release, "AGA Medical Corporation Agrees to Pay \$2 Million Penalty and Enter Deferred Prosecution Agreement for FCPA Violations," June 3, 2008, accessed at <http://www.justice.gov/opa/pr/2008/June/08-crm-491.html> (accessed on September 14, 2011).
US v. AGA Medical Corporation, Case no. 08-cr-00172 (D.C. Minn, 2008), Information and Deferred Prosecution Agreement (including Attachment A: Statement of Facts and other attachments), filed June 3, 2008.