

BACKGROUND OF THE INVESTIGATION

November 15, 2019

In 2017, MiMedx Group was highlighted as the fifth fastest growing public company in America by Fortune magazine. This growth had taken place over the previous eight years as the Company grew from near bankruptcy to approximately 1,000 employees under the leadership of a very experienced serial healthcare entrepreneur, Parker H. "Pete" Petit and a group of executives that had worked with "Pete" at his previously successful companies. The business and philanthropic history of Mr. Petit is available at www.petepetit.com.

MiMedx developed a very clinically effective and cost-effective product line for the healing of wounds, such as diabetic foot ulcers and venous leg ulcers, and for use with certain surgical procedures. The Company's product lines were protected by over 106 issued patents and 120 pending patents. The Company was conducting approximately 30 different clinical studies at notable research facilities across the country and in certain foreign countries.

The Company's financial performance had been stellar, as it had managed to meet or exceed all of its quarterly revenue estimates that had been provided to shareholders for 29 out of 30 quarters. In addition, its cash flows had been very strong because it was able to repurchase over \$130 million of its common stock. MiMedx provided shareholders revenue guidance of \$325 million for calendar year 2017 and over \$400 million for calendar year 2018. By August of 2017, the Company's market capitalization had climbed to approximately \$2 billion, which was certainly reasonable considering the MiMedx revenues, their profitability and their growth rates.

In the fall of 2017, MiMedx was about to experience numerous events, most of which were beyond their control, that would cause significant problems, including reducing the market capitalization from approximately \$2 billion to around \$100 million. Briefly, these events began during 2016 with a few of their over 400 sales personnel selling competitive products "on the side" while they were full-time MiMedx employees. A few of those individuals were terminated for cause and lawsuits were filed against them. They responded by countersuing with charges that channel stuffing and other financial irregularities were occurring at the Company. Their attorney demanded a \$14 million extortion payment from the Company, which was denied. Unfortunately, illegal short sellers connected with these terminated individuals in the ensuing months, and a bizarre and destructive series of events followed.

In September of 2017, Marc Cohodes, a notorious short seller, began a concerted and focused attack on MiMedx. He began his attack verbally at a meeting, and then continued with the publication of fraudulent documents, lies and innuendo, most of which followed the allegations of the terminated sales employees. The Company

easily refuted the Cohodes' allegations with facts that were placed on their website. Cohodes' initial attacks pushed the Company's stock from approximately \$18 a share down to \$12 during the fall of 2017. The Company's stock moved back to \$18 in late January 2018, as the Company's documents that refuted the Cohodes allegations were published on their website.

MiMedx had utilized Cherry Bekaert, a well-respected large regional accounting firm, as their auditors since 2010. In the spring of 2017, the Audit Committee decided that the Company should retain one of the big four auditors. The Audit Committee Chairman, Terry Dewberry, instructed Pete Petit to interview the big four auditors and come back with a recommendation to the Audit Committee. Mr. Petit came back with a recommendation to utilize Ernst & Young (E&Y) for numerous reasons. However, he recommended not starting E&Y until after the close out of the 2017 fiscal year. The Audit Committee disagreed, and they wanted the new auditors to begin with a review of the third quarter of 2017. Thus, E&Y began their due diligence during the spring of 2017, and they subsequently told the Board they were excited about becoming MiMedx auditors. E&Y completed the third quarter review of 2017 with accolades to the Board of Directors about the Company's performance and records.

During the fall of 2017, Marc Cohodes continued to publish allegations and lies about the Company in social media and through some of his paid journalistic skills. His group also started writing letters to senators and congressmen making allegations. He published a fraudulent email from a so-called "MiMedx employee" and sent it to numerous law firms, news outlets and competitors. This group created a false email address for Petit and sent messages to a very respected Wall Street analyst who was covering the Company.

After witnessing this bizarre behavior, in November Mr. Petit told Andy Brock, the Ernst & Young managing partner, that Marc Cohodes was like no other short seller that he had ever encountered. Petit stated that he expected Cohodes to write E&Y a threatening letter in the near future. Mr. Brock retorted, "Ernst & Young is used to this kind of stuff." Petit emphasized again that he thought Brock should work with the Company's Audit Committee Chairman, Terry Dewberry, and confer with his New York partners to decide what would happen if Cohodes wrote such a letter. Apparently, that conference never took place.

Cohodes is an individual who his friends say is mentally ill. He threatened Mr. Petit's life on his Twitter account. That resulted in the FBI visiting his house. He has been recently charged with assault and battery in a restaurant in San Francisco. Cohodes has even filed an action against Senator Johnny Isaakson, who is Chairman of the Senate's Ethics Committee, for violations relative to MiMedx because he assisted the Company with resolving a matter with the Veteran's Administration. The result was that the VA sent the Company an apology letter. Senator Isaakson's honesty and integrity are impeccable, but that did not keep Cohodes from making ridiculous accusations.

In February 2018, just weeks before the 2017 audit was to be completed, Marc Cohodes did write a very long letter threatening Ernst & Young. E&Y advised the MiMedx Board that they would not complete the 2017 audit that was due at the end of February until the Company thoroughly investigated all the Cohodes allegations. From that point forward, MiMedx's future was negatively altered very significantly.

At that February meeting, Andy Brock also told the Board that he did not believe the Audit Committee did a satisfactory investigation of the allegations in early 2017 because there was not an expensive forensic audit. However, he and other Ernst & Young staff reviewed that investigation report written by the Troutman Sanders law firm during their due diligence of the Company in the summer of 2017, and they had no concerns until they were threatened by Marc Cohodes. That E&Y comment put the Audit Committee Chairman in a state of paranoia. Instead of simply disagreeing with Andy Brock, the Audit Committee Chair, Terry Dewberry, started down a path of protecting himself and doing Brock's bidding. He finally convinced the majority of the Board to stay with E&Y and do the investigation requested by E&Y.

Mr. Petit advised the Board that he was very frustrated by the Ernst & Young refusal to complete the 2017 audit due to the Cohodes' allegations because he had warned Andy Brock in November that Cohodes would write E&Y a letter of that nature. Nothing was done to prepare for the eventuality. Petit also told the Board that he firmly believed that E&Y would never finish the audit because, once the current allegations were investigated, Cohodes would have even more allegations that E&Y would want to investigate. As Petit predicted, E&Y stayed involved only until November 7, 2018, and then resigned. At that point, they had probably billed the Company five times the original estimate for the audit without completing it.

As the allegations from Marc Cohodes increased during the fall of 2017, Mr. Petit received phone calls from some other public company executives and others who had experienced Cohodes' attacks in the past. One of these individuals orchestrated a meeting at the DOJ offices in New York City with Petit, Bill Taylor, the Company's Chief Operating Officer, and Lexi Haden, the Company's General Counsel, with two agents, and a DOJ criminal investigator. This meeting took place in January 2018.

The DOJ staff disclosed that they knew a great deal about Marc Cohodes. They indicated they were collaborating with Canadian and European authorities, and they were pursuing a number of his illegal and fraudulent activities. MiMedx was asked to forward to the agents all fraudulent activities that Marc Cohodes was conducting against the Company. The staff stated that they did not know when the Cohodes investigation would be completed and action taken.

Mr. Petit retained Washington counsel to assist the Company with other contacts with federal agencies relative to these illegal short selling activities. Mr. Petit had this counsel draft a very lengthy letter with supporting documents to Mr. Jay Clayton, the SEC Commissioner, on January 3, 2018, which clearly described Mr.

Cohodes' "short and distort" campaign and his related illegal short selling that was occurring against MiMedx. These documents clearly showed the standard pattern of creating false allegations in some media format and front running the publication date by hedge funds and involved individuals setting up their trades. On the publication date, these funds all participate in trading with market manipulation, such as "spoofing" and "layering." This is a standard process for illegal short selling. In addition, many of these traders create "naked" or "counterfeit" shares by taking extended periods of time to close out their short contract or position. Those contract/positions are supposed to be closed within three days; however, MiMedx had averaged short contracts on their shares out as far as 40 days without closure.

The Company notified FINRA with supporting documents of these and other trading abnormalities, such as "naked" or "counterfeit" shorting. The Company never received responses from either the SEC or FINRA relative to their letters and inquiries prior to Mr. Petit's departure. In addition, numerous MiMedx shareholders formally contacted the SEC and disclosed these illegal short selling activities with no responses as far as Petit knows.

At the February meeting, Mr. Petit's recommendation to the Board was to terminate Ernst & Young and bring Cherry Bekaert back to complete the 2017 audit, since they had already reviewed the first two of those quarters. The Company could then retain another big four auditor for 2018. Any additional investigations that the Board felt required to accomplish could be completed during 2018. Mr. Dewberry disagreed because he claimed this approach would "look bad." Mr. Petit replied that his approach would look bad for 60 days while the audit was completed, but then it would be over. He stated that Mr. Dewberry's solution with E&Y had no closure date because Cohodes would continue to make allegations.

As things progressed, Mr. Petit was absolutely correct. As of today, the Company has stated that they should have audited financial statements in December, which is almost two years from the original due date for the 2017 audit.

With the continuing DOJ investigation, Petit, Taylor and Senken now face the fact that the Audit Committee paid King & Spalding, a large national law firm, \$40 million to conduct the investigation. The investigation lasted 15 months. In addition, the Company probably spent another \$30 million on Sidley Austin and other attorneys and auditors.

Those expenditures were absolutely ridiculous for a company of the size of MiMedx, but were allowed in order to exploit the Audit Committee's CYA syndrome and the "takeover" of MiMedx by the inexperienced Board. Of course, this approach followed the Sally Yates Doctrine, which was published by DOJ in 2015. Yates was fired by President Trump in 2017, and she returned to King & Spalding, her previous law firm.

In addition to the KPMG opinion on the AvKare contract and the proposed revenue restatement to a cash versus accrual basis, the investigation turned up several distributor transactions in 2015 that King & Spalding has brought into question. The King & Spalding investigation was headed by a career prosecutor, who had no practical business experience. These transactions that have been highlighted as problematic were nothing more than normal distributor negotiations. There was one situation, with a distributor by the name of CPM in Dallas, Texas, where the Company had actually fired the distributor once, and the distributor asked to be reinstated. In those negotiations, the Company reinstated a consulting contract that had been lost when the distributor was fired. As it turned out, Petit had some concerns about the business practices of this distributor, and he ended up firing him for the second time within about three months. All of these issues should not have affected the Company's accounting treatment of these accounts in 2015.

Over the Petit/Taylor years, the Company basically collected in cash all of their approximately \$1 billion in reported revenue. The Company's accounts receivables never got out of a reasonable range without executives taking action to bring it quickly back into range. When Petit and Taylor left the Company on June 30, 2018, the accounts receivable were in the 65 day range, which is excellent for most healthcare organizations.

The Audit Committee consisting of Dewberry, Evans and Bleser, actually orchestrated a takeover of the Company by using the chaos created by the illegal short selling activities. There were two motivations for this takeover action. First, Mr. Dewberry was attempting to find a way to cover the Audit Committee for the "opinion" of Ernst & Young that they had not conducted a sufficient investigation of the terminated sales employees' accusations in early 2017. Dewberry was paranoid on this issue. Subsequently, Mr. Evans, who was unemployed at the time, saw an opportunity to become the Chairman of the Board of this Company, which was going to be a very prestigious position for him. Mr. Evans had never served on a public board until one of the large MiMedx shareholders asked Mr. Petit to consider placing Evans on the Board. Thus, this takeover process started with the goal of finding ways to have the top executives forced out of the Company.

Very simply, this relatively inexperienced Board took control of the Company and terminated the CFO and Controller because the majority of the Board had decided to restate five years of revenues, and three weeks later asked the CEO and COO to step down because they wanted "to take the Company in a different direction." From that point forward, a series of very destructive and irrational business decisions were made that were extremely destructive to the Company and extremely disturbing to the shareholders.

The Board first hired a temporary CEO who had no healthcare experience! They expected him to run a very complicated and sophisticated biotechnology company, which he was incapable of doing. They did not allow any transition communications with Petit and Taylor. They promoted a short-term employee into the temporary

CFO role, and he became solely focused on attempting to have the Board elect him as the new CEO. They also promoted someone who had been a staff person to Mr. Petit, the CEO, into a line role with significant responsibilities for over 80 employees. That promotion began to cause significant problems. He was later terminated!

With those decisions, the Company's new revenue growth dropped from 30% annual rates to actually little to no growth. With the unmanaged legal and accounting expenses, the Board thought they had to terminate 24% of the workforce, which took place on December 5th in spite of Mr. Petit's communications asking them to examine the facts much more carefully. Those layoffs devastated employee morale. Sales plunged even further because they terminated 24% of the 400+ sales force.

Also, the temporary CFO went to NASDAQ in mid-September to convince them they would have the 2017 audit finished by the end of February of 2019. The temporary CFO and several lawyers from Sidley Austin were allowed to do that presentation without any Board oversight, even though Charlie Evans, Chairman of the Board, was given specific advice from Petit, while he was on the Board, not to do so. Evans claimed it was a "management prerogative," and Petit explained that, if this was not managed with Board oversight, it could result in the Company's stock being delisted. Well, that is exactly what happened on November 7th when the Company had to go back and tell NASDAQ that the information the temporary CFO provided on September 13th was incorrect when he made the presentation.

At that point, the Company's stock had been driven down to below \$1 per share with a \$100 million market cap. That price decline represented a 95% drop in the stock price. Shareholders were irate because there were absolutely no communications from the Company due to the Sidley communications lockdown memo.

In order to justify the out of control spending associated with the investigation and audits, the Board decided that they needed to create the impression of a massive fraudulent operation at MiMedx. Therefore, they eventually terminated 14 of the top 16 people that built the Company over the eight-year period into the fifth fastest growing public company in America. These were all extremely competent individuals, some of who had served with Petit and Taylor in their former organizations for many years. That decision further crippled the Company because, while subordinates were promoted, they did not have the experience, capabilities or business relationships of the former management team.

The previous MiMedx Board of Directors spent numerous hours and legal funds fighting the shareholders' request for a 2018 annual shareholders meeting. Litigation was filed in the state of Florida by Hialeah Municipal Fund and was supported by Petit and the largest shareholders of MiMedx Group. The Company fought having the 2018 meeting in every way possible, but it finally took place on June 17th as the result of a court order. This resulted in three unassociated Board

members being elected and appointed to the Board. In order to preclude Mr. Petit's slate of directors from being elected, the Company signed an agreement with an alternate slate of Board members. Petit's main goal was to get changes made to the Board to offset their lack of experience, incompetence and their "takeover" objective. At this point, only four of the original eight outside Board members remain.

Petit and Hialeah continue to campaign for the 2019 shareholders meeting to be held. However, the Board had always been "entrenched," and they fought continually in the Florida court to not hold the shareholders meetings and change Board members. The date for the 2019 meeting has still not been decided.

The Atlanta SEC case of insider trading against Mr. Petit that started in 2010 is a good example of the Commission filing charges against a successful business executive with no real evidence. They accused Mr. Petit of passing inside information to a friend, Earl Arrowood, who was a former Delta Airlines pilot and Vietnam fighter pilot. Petit and Arrowood flew together from time to time over the years. Mr. Petit was accused of passing inside information prior to the sale of Matria Healthcare because Mr. Arrowood purchased shares in Matria Healthcare on a day that Mr. Petit had two telephone conversations with him. However, Mr. Petit had one or two conversations a day with Mr. Arrowood for a week prior to that day, and he had the same conversation pattern with him for a week after that. This was because Mr. Arrowood was helping Mr. Petit purchase an airplane. Each one of them would talk to the seller, the lawyers, Cessna aircraft, etc. after each of those calls. After the purchase, the calls dropped to about one per month again.

Mr. Petit took a lie detector test to prove his innocence, and he passed it with "flying colors." However, that did not slow down the SEC investigation, and the SEC filed a lawsuit against Mr. Petit. The Commission carried this investigation and lawsuit on for a total of four and a half years.

One interesting aspect is that Mr. Arrowood purchased two tranches of stock, one four months before the acquisition of Matria Healthcare was announced which he told Mr. Petit about after he made the purchase, and the second one which occurred approximately a month before the acquisition was announced, which he did not tell Mr. Petit about. Mr. Arrowood held those shares for nine months and six months respectively. When he sold them, he made a profit of \$9,990. It is certainly acknowledged that, had Mr. Petit passed on inside information, it would not have mattered what the profit on the sale was. However, this a stark reminder of the SEC's motivation was more to denigrate and convict a successful Atlanta business person who had strong ties to Republican politicians than recovering fraudulent profits for the federal government. The SEC dropped the case two weeks before the trial.

Petit inherited members of the MiMedx Board when he stepped in to run the Company as CEO and Chairman in 2009. He left a few members in place because of

their shareholdings. He added some people that he had some previous experience with, such as Terry Dewberry and Joe Bleser, who were on the Audit Committee. He added two individuals at the request of two large shareholders. These were Charlie Evans and Dr. Neil Yeston. However, Mr. Petit never had the time to build the strength in this Board that he had in his previous Boards at Matria Healthcare and Healthdyne. In those cases, he had CEOs and entrepreneurial CEOs who would have understood what was happening with this Company and had the courage to do the right things for the Company and its shareholders rather than worrying about CYA issues.

Regardless of the ineptitude of this Board and their corporate takeover, the Company would not have been forced to go through these unnecessary trials and tribulations had it not been for the illegal short selling orchestrated by Marc Cohodes.