

**Stephen E. Donahue
John O'Halloran
Harry B. Roback
Attorneys for the Plaintiff
U.S. Securities and Exchange Commission
950 East Paces Ferry Road, NE, Suite 900
Atlanta, GA 30326
Tel:(404) 942-0690 (Roback)**

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

**UNITED STATES SECURITIES AND
EXCHANGE COMMISSION,**

Plaintiff,

v.

SAVERIO J. BARBERA,

Defendant.

**Civil Action Number
2018-cv-_____**

Jury Trial Demanded

COMPLAINT

Plaintiff United States Securities and Exchange Commission (“SEC” or “Commission”) alleges as follows:

NATURE OF ACTION

1. This case involves insider trading in the securities of Medical Action Industries, Inc. (“Medical Action”). In 2014, Defendant Saverio J. Barbera (“Barbera” or “Defendant”) was close friends with Medical Action’s Chief

Executive officer (“Medical Action’s CEO”). Medical Action’s CEO told Barbera that Owens & Minor, Inc. (“Owens & Minor”) was going to acquire Medical Action. Barbera then told his father (“Barbera’s Father”) and brother (“Barbera’s Brother”) that they should purchase Medical Action stock in advance of the acquisition so that they could profit from the deal.

2. Barbera’s Father and Brother traded in Medical Action securities based on the material, nonpublic information that Barbera had provided to them. Specifically, between June 20 and June 23, 2014, Barbera’s Father and Brother purchased 22,000 shares of Medical Action stock for approximately \$150,000.

3. On June 25, 2014, before the markets opened, Medical Action and Owens & Minor announced that they had signed a definitive merger agreement (the “Agreement”). Under the terms of the Agreement, Owens & Minor agreed to acquire all of the outstanding shares of Medical Action for \$13.80 per share. This per share price was a significant increase from the price at which Medical Action had recently been trading. Indeed, just days earlier, Barbera’s Father and Brother had purchased 22,000 shares of Medical Action for around \$7 per share.

4. Barbera’s Father and Brother sold all of their Medical Action shares on June 25, 2014, shortly after the Agreement was publicly announced. Even though Barbera’s Father and Brother only held their positions in Medical Action for just a few days, they realized combined trading profits of around \$145,000.

5. Defendant engaged in insider trading in violation of the federal securities laws by telling his Father and Brother to purchase Medical Action securities in advance of the Owens & Minor acquisition so that they could profit from the deal.

6. Defendant engaged in and, unless restrained and enjoined by this Court, will continue to engage in acts and practices that constitute and will constitute violations of Section 10(b) of the Securities Exchange Act of 1934 (“Exchange Act”) [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5].

JURISDICTION AND VENUE

7. The Commission brings this action pursuant to Sections 21(d) and 21(e) of the Exchange Act [15 U.S.C. §§ 78u(d) and 78u(e)] to enjoin Defendant from engaging in the transactions, acts, practices, and courses of business alleged in this complaint, and transactions, acts, practices, and courses of business of similar purport and object, for civil penalties, disgorgement, and for other equitable relief that the Court deems appropriate.

8. This Court has jurisdiction over this action pursuant to Sections 21(d), 21(e), and 27 of the Exchange Act [15 U.S.C. §§ 78u(d), 78u(e), and 78aa].

9. Venue is proper in this District pursuant to Section 27(a) of the Exchange Act [15 U.S.C. § 78aa]. Certain of the transactions, acts, practices, and

courses of business constituting violations of the Exchange Act alleged in this Complaint occurred within the jurisdiction of the United States District Court for the Eastern District of New York. In addition, Defendant resides in this judicial district.

10. Defendant, directly and indirectly, made use of the mails, and the means and instrumentalities of interstate commerce in connection with the transactions, acts, practices, and courses of business alleged in this complaint.

11. Defendant, unless restrained and enjoined by this Court, will continue to engage in the transactions, acts, practices, and courses of business alleged in this Complaint, and in transactions, acts, practices, and courses of business of similar purport and object.

DEFENDANT

12. **Saverio J. Barbera** resides in this judicial district. During the relevant time period, Barbera was close friends with Medical Action's CEO. Medical Action's CEO also served on the company's board of directors during the relevant time period.

RELEVANT INDIVIDUALS AND ENTITIES

13. **Barbera's Father** resides in this judicial district.

14. **Barbera's Brother** resides in this judicial district.

15. **Medical Action Industries, Inc.**, is a Delaware corporation headquartered in Brentwood, New York. Medical Action's common stock was

registered with the Commission pursuant to Section 12(b) of the Exchange Act and was traded on the NASDAQ Global Select Stock Market under the symbol “MDCI.” In the three months prior to the Agreement being publicly announced, Medical Action’s stock traded in the range of \$6.32 to \$7.38 per share.

16. **Medical Action’s Chief Executive Officer** resides in this judicial district.

17. **Owens & Minor, Inc.**, a Virginia corporation headquartered in Mechanicsville, Virginia, is a healthcare logistics company. Owens & Minor’s common stock is registered with the Commission pursuant to Section 12(b) of the Exchange Act and is traded on the New York Stock Exchange under the symbol “OMI.”

STATEMENT OF FACTS

A. Medical Action Is Acquired By Owens & Minor

18. In early 2014, Medical Action’s board of directors discussed selling the company.

19. Medical Action’s CEO, who also sat on the company’s board, was aware of these discussions.

20. With the assistance of an investment banking firm, Medical Action identified three potential purchasers.

21. Owens & Minor was one of those companies.

22. On March 14, 2014, Owens & Minor submitted its first offer to purchase Medical Action for \$175 million, or \$11.50 per share. At that time, Medical Action stock was trading at around \$7.66 per share.

23. Over the next two months, competing offers were submitted by the other two potential buyers while Medical Action's senior management, including Medical Action's CEO, sought to determine the best offer to accept on behalf of Medical Action's shareholders.

24. By early June 2014, Medical Action's CEO knew that a deal with Owens & Minor was imminent.

25. On June 4, 2014, Owens & Minor revised its offer to purchase Medical Action, moving its purchase price up to \$13.80 per share. On that day, Medical Action's shares traded between \$6.69 and \$6.84.

26. At that time, Medical Action's board agreed to enter into an "exclusivity period" with Owens & Minor.

27. On June, 24, 2014, Medical Action's CEO attended a board meeting at which time the board unanimously decided to approve the merger with Owens & Minor.

28. On June 25, 2014, before the markets opened, Medical Action and Owens & Minor publicly announced the execution of a definitive merger agreement.

29. Under the terms of that agreement, Owens & Minor would acquire all of the outstanding shares of Medical Action for \$13.80 per share.

30. After the merger announcement, Medical Action's per share stock price closed at \$13.68, which was an increase of approximately 94% from the previous day's closing price of \$7.07.

31. Medical Action's shareholders approved the merger and the transaction closed on October 1, 2014.

B. Medical Action's CEO Tells Defendant About The Owens & Minor Acquisition Before It Is Publicly Announced

32. At all relevant times, Defendant was close friends with Medical Action's CEO.

33. Defendant met Medical Action's CEO in approximately 2011.

34. From 2011 until at least 2014, Defendant and Medical Action's CEO socialized extensively.

35. Defendant and Medical Action's CEO belonged to the same Country Club.

36. Defendant and Medical Action's CEO frequently communicated by phone and text messaging.

37. They also regularly saw each other in person.

38. In June 2014, before the deal was announced publicly, Medical Action's CEO told Defendant about the upcoming Owens & Minor acquisition

with the expectation that Defendant would either trade based on that information or keep it in confidence.

39. As described below, Defendant impermissibly used the information about the acquisition.

C. Defendant Tells His Father And Brother About The Upcoming Acquisition

40. Defendant has a close relationship with his Father and Brother.

41. Defendant's Father and Brother knew that Defendant was good friends with Medical Action's CEO.

42. After learning about the imminent acquisition from Medical Action's CEO in June 2014, Defendant told his Father and Brother to purchase Medical Action securities so that they could profit from the deal.

D. Defendant's Father and Brother Invest Around \$150,000 In Medical Action

43. On June 20, 2014 – three business days before the deal was publicly announced – Defendant's Brother transferred \$80,000 in cash from his bank account to his brokerage account at TD Ameritrade, Inc. ("TD Ameritrade").

44. Defendant's Brother used those funds to purchase 10,000 shares of Medical Action stock the same day. He had not previously invested in Medical Action.

45. The per share price of Medical Action stock was around \$7 at that

time.

46. After executing his trades, Defendant's Brother helped Defendant's Father access a dormant brokerage account at TD Ameritrade so that Defendant's Father could make his own purchases of Medical Action stock. Defendant's Father had not utilized his TD Ameritrade account during the previous five year period. Defendant's Father's TD Ameritrade account had a balance of 86 cents at that time.

47. With the assistance of Defendant's Brother, Defendant's Father wired \$52,000 into his TD Ameritrade account on June 20, 2014.

48. On June 23, 2014, Defendant's Father used those funds to purchase 7,000 shares of Medical Action stock. Defendant's Father had not previously invested in Medical Action.

49. That same day, Defendant's Brother purchased an additional 5,000 shares in Medical Action.

50. Medical Action's stock was still trading at around \$7 per share at that time.

E. Defendant's Father and Brother Make Around \$145,000 In Illicit Profits In Less Than One Week

51. On June 25, 2014, Owens & Minor publicly announced its acquisition of Medical Action.

52. After the announcement, Medical Action's stock price rose to around

\$13.75 per share.

53. Defendant's Brother sold his 15,000 shares of Medical Action stock that same day.

54. As a result, Defendant's Brother realized trading profits of around \$100,000.

55. Defendant's Father also sold his entire position in Medical Action (7,000 shares) on June 25, 2014.

56. Defendant's Father realized trading profits of around \$45,000.

57. Combined, Defendant's Father and Brother made around \$145,000 in trading profits in less than one week.

COUNT I – INSIDER TRADING

Violations of Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)(5)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5]

58. Paragraphs 1 through 57 are re-alleged and incorporated by reference herein.

59. In June 2014, Defendant, in connection with the purchase and sale of securities and by the use of any means or instrumentality of interstate commerce or by use of the mails or any facility of any national securities exchange, directly or indirectly, (a) employed a device, scheme, and artifice to defraud; (b) made untrue statements of material fact or omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were

made, not misleading; and (c) engaged in acts, practices, or a course of business which operated or would have operated as a fraud or deceit upon sellers, purchasers, or prospective purchasers of securities.

60. By engaging in the conduct described above, Defendant violated, and unless enjoined will continue to violate, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder [15 U.S.C. § 78j(b)(5), 17 C.F.R. § 240.10b-5].

PRAYER FOR RELIEF

The Commission respectfully requests that this Court:

1. Find that Defendant committed the violations alleged herein;
2. Permanently enjoin Defendant and each of his agents, employees, and attorneys from violating, directly or indirectly, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder [15 U.S.C. § 78j(b) and 17 C.F.R. § 240.10b-5];
3. Order Defendant to disgorge all ill-gotten gains or unjust enrichment in the form of any benefits of any kind derived from the illegal conduct alleged in this Complaint, including any benefit received by Defendant's Father and Brother, plus prejudgment interest, to effect the remedial purposes of the federal securities laws;
4. Order Defendant to pay civil penalties pursuant to Section 21A of the Exchange Act [15 U.S.C. § 78u-1] in an amount to be determined by the Court;

5. Retain jurisdiction of this action in accordance with the principles of equity and the Federal Rules of Civil Procedure in order to implement and carry out the terms of all order and decrees that may be entered, or to entertain any suitable application or motion by the Commission for additional relief within the jurisdiction of this Court; and

6. Order such other and further relief as this Court may deem just, equitable, and appropriate in connection with the enforcement of the federal securities laws and for the protection of investors.

JURY TRIAL DEMAND

The SEC demands a trial by jury as to all issues that may be so tried.

Dated: April 5, 2018

Respectfully submitted,

/s/ John O'Halloran

Stephen E. Donahue

John O'Halloran

Harry B. Roback*

U.S. Securities and Exchange Commission

950 East Paces Ferry Road, NE, Suite 900

Atlanta, GA 30326

Tel:(404) 942-0690 (Roback)

Facsimile: (404) 842-7679

RobackH@sec.gov

Attorneys for Plaintiff

** Pro hac vice motion being filed herewith*