

Health Care Fraud NEWS

For Immediate Release

Thursday March 11, 2004

Law Office of Kenneth J. Nolan, P.A.
Kenneth J. Nolan, Esq.
350 East Las Olas Boulevard, Suite 1270
Fort Lauderdale, Florida 33301
Office: 954-779-3943

McInnis Law
Timothy J. McInnis, Esq.
521 Fifth Avenue, 17th Floor
New York, New York 10175-0038
212-292-4573 – 917-903-9424
www.WhistleblowerLegal.com
TMcInnis@McInnis-Law.com

One Of America's Oldest Academic Medical Centers Settles Whistleblower- Initiated Allegations That For Six Years It Hid And Failed To Repay More Than \$10 Million In Medicare Overpayments It Received In Error

Montefiore Medical Center Simply Erased A \$5.6 Million Debt And Stopped Paying Another, According To Federal Complaint; Montefiore Will Pay \$12 Million To U.S. Within 10 Days

NEW YORK CITY - One of America's largest academic medical centers, Montefiore Medical Center ("Montefiore"), received in error more than \$13 million in two Medicare payments from Empire Blue Cross and Blue Shield ("Empire") then failed to disclose them as required by law. For six years Montefiore concealed and then summarily wiped its internal books clean of one payment. When Empire stopped sending statements to collect the second overpayment, Montefiore stopped repaying it as it had agreed, according to a federal Complaint and a Settlement Agreement resolving the matter that were filed simultaneously today by the federal Government. In addition, the Government filed a Notice to Intervene and joined in a related whistleblower suit that had been filed under seal by Attorneys Kenneth J. Nolan in Florida and Timothy J. McInnis in New York.

Montefiore, the academic medical center for the Albert Einstein College of Medicine, Bronx, New York, operates two divisions training more than 800 residents and fellows per year. It serves primarily 1.3 million residents of the Bronx and southern Westchester County, according to the institution's Web site.

The alleged False Claims Act ("FCA") violations settled today originated from mismanaged accounting by Empire, which is not charged in the Complaint or a party to the settlement. Empire was acting on behalf of the federal Government as Montefiore's "Fiscal Intermediary," auditing so-called Graduate Medical Education ("GME") and other expenses reimbursed by Medicare.

(More)

Also visit <http://www.PRforLAW.com> where related documents and information may be available. If a password is required please contact Attorneys Nolan or McInnis.

Under the Stipulation and Order of Settlement and Dismissal filed today Montefiore has agreed to pay, via electronic funds transfer within 10 days, approximately \$12 million to the federal Government.

In the first overpayment instance Montefiore, "...knew that the \$5.6 million constituted an overpayment to which it was not entitled." In the second it failed to repay \$4.2 million in remaining installment payments it owed to Medicare, according to the Government's Complaint.

The federal Government's required annual Medicare Cost Report process allows Fiscal Intermediaries, such as Empire, to make full audits that include field visits to provider hospitals. But such audits are rare. Because of the volume of Cost Reports submitted to intermediaries only some reports receive a full audit, McInnis said. "Most Cost Reports receive only cursory review," Nolan said.

The whistleblower in the Montefiore case, Benjamin V. Climaco, known legally as the "relator," will receive a percentage of the proceeds, according to Nolan, whose Fort Lauderdale, Florida law office focuses on qui tam whistleblower representation. Formerly employed by Montefiore for 14 years, Climaco is a New Jersey resident who served as Montefiore's Associate Director for Reimbursement from 1989 to 2000.

The amount awarded to Climaco for initiating the federal investigation into possible FCA violations and bringing evidence of alleged wrongdoing to the U.S. Government will be resolved between Climaco and the Government. Whistleblowers usually have received rewards representing 15 to 25 percent of qui tam recoveries, according to McInnis, a New York City-based former federal prosecutor who also specializes in representing whistleblowers.

Under Medicare Part A, provider hospitals may be reimbursed for a portion of costs attributed to educating physicians, interns, residents, and fellows in medicine, podiatry, dentistry, and osteopathy. Such payments are audited by Fiscal Intermediaries who issue interim reports allowing institutions to receive advance payments to maintain cash flow during the fiscal year. A year-end Cost Report final accounting determines whether a provider institution receives additional funds or a demand for repayment, the Complaint states.

As a Medicare provider hospital, Montefiore had an obligation to disclose the overpayments to Empire, the Fiscal Intermediary. Montefiore filed annual Cost Reports with Empire during the period in question, all of which were certified by a responsible provider official who stated that those reports were, truthful, correct and complete, according to McInnis.

(More)

Also visit <http://www.PRforLAW.com> where related documents and information may be available. If a password is required please contact Attorneys Nolan or McInnis.

The first payment in error, \$8.1 million, was mistakenly issued to cover estimated 1988 GME expenses. This total later was reduced to \$5,655,431, “to account for future reimbursement Montefiore was likely to receive as a result of the GME expense recalculations,” according to the Government’s Complaint. Later, after “new methodology for calculating GME expense reimbursement” was applied, the amount owed to the Government was set at \$5.6 million, the Complaint states.

In 1994, Montefiore’s internal financial worksheets identified the \$5.6 million as an outstanding balance due Medicare,” according to the Complaint which stated that the financial worksheets included notations that the amount due was a “real liability.”

In January 1996, Montefiore’s internal worksheets continued to carry the \$5.6 million as a “real liability,” according to the Complaint, but Montefiore, “did not repay that amount to the Medicare program.”

Later in 1996, Montefiore removed the liability from its “internal books and records, thus effectively writing off the \$5.6 million amount that Montefiore owed the Medicare program and reducing it to zero,”

In the second instance, the institution had received an \$8.5 million overpayment in connection with GME for the 1990 cost year. The Government did not seek to recover the entire amount at once, establishing a four-year, four-installment plan to recoup the overpayment, according to the Complaint.

While Montefiore paid the first and second year’s \$2.1 million installments it, “did not pay either of the last two installments due Medicare in 1998 or 1998, or subsequently,” the Complaint states. “Approximately \$4.2 million of Montefiore’s original liability to the Medicare program remains due and owing,” according to the Complaint.

In the Complaint, the Government sought trial on four claims:

- Violation of the False Claims Act, in that, “... defendant Montefiore knowingly, with deliberate ignorance or in reckless disregard of the truth, made, used, or caused to be made false records and statements to conceal, avoid or decrease an obligation to pay or transmit money to the Government.”;
- Common Law Fraud, in that Montefiore made material misrepresentations to the Government or aided and abetted making material misrepresentations to the United States;
- Conversion, in that Montefiore, ...“ converted to its own use monies rightfully belonging to the United States.”; and

(More)

Also visit <http://www.PRforLAW.com/quitam/> where related documents and information may be available. If a password is required please contact Attorneys Nolan or McInnis.

- Unjust Enrichment, in that Montefiore's failure to repay monies to the Government allowed the medical center, "...to be unjustly enriched to the detriment of the United States in an amount to be determined at trial;".

The Government sought treble damages for conviction of the False Claims Act violations; for each of the remaining claims an amount to be determined at trial along with costs and interest; and any additional relief as proper, the Complaint states.

Under the separately filed Stipulation and Order of Settlement and Dismissal with the federal Government Montefiore did not admit wrongdoing. In 2001, during which the non-payment schemes alleged in the Complaint were conducted, the institution said it blazed a new trail to become "the first medical center in the nation to develop a Code of Ethics," according to Montefiore's Web site.

Under the FCA, so-called "qui tam" actions, a term derived from English Common Law meaning "he who sues on behalf of the king as well as himself," allow private citizens with knowledge of fraud to help the Government recover ill-gotten gains and additional civil penalties. The FCA allows the Government to collect up to three times the amount it was defrauded, in addition to civil penalties of between \$5,500 to \$11,000 per false claim.

McInnis and Nolan initiated the case on behalf of Climaco by filing the matter under seal and then providing it to the U.S. Department of Justice and the United States Attorney's Office for the Southern District of New York for investigation and possible joining. (Out of 2,467 qui tam cases offered to the Government in the 2001 fiscal year, federal authorities agreed to join 550 cases and declined 1,917 others. More than 50 percent of these False Claims Act actions were health-care related, according to U.S. Department of Justice statistics.)

After evaluating the allegations provided under seal by McInnis and Nolan the federal Government filed a notice of intention to intervene in the case and the matter moved forward, according to documents filed today.

Qui tam suits have become increasingly more common since the 1986 revision of the FCA "gave whistleblowers more incentive to come forward with facts of fraud against the Government and provided more protection for those who choose to disclose illegal activity," Nolan said.

"Today's business pages and court dockets are full of corporate financial wrongdoings and shenanigans. It's inspiring to see the integrity and high standards that Benjamin Climaco has shown by coming forward. Mr. Climaco could have quietly wiped clean

(More)

Also visit <http://www.PRforLAW.com/quitam/> where related documents and information may be available. If a password is required please contact Attorneys Nolan or McInnis.

those debts as he was instructed and let the matter fade into possible obscurity,” McInnis said.

“Instead he acted with the highest of principles, righting two wrongs and helping the Government to recover \$5.6 million it might never have known was missing and the \$4.2 million for which billing had stopped,” McInnis said

Also today, U.S. District Judge Shira Scheindlin signed an order of unsealing and approved the settlement agreement with Montefiore.

The United States is represented in the Climaco case by U.S. Attorney's Office for the Southern District of New York, David N. Kelley United States Attorney, and Assistant U.S. Attorney Beth E. Goldman, of the office's Civil Division.

Montefiore is represented in the settlement by William E. Lawler, Esq., of Vison & Elkins LLP, Washington, D.C..

###

Timothy J. McInnis, Esq.
Law Office of Timothy J. McInnis
512 Fifth Avenue, Suite 1700
New York, New York, 10175-0038.
(212) 292-4573. Fax (212) 292-4574
<http://www.whistleblowerlegal.com>
McInnisEsq@aol.com

Kenneth J. Nolan, Esq.
Law Offices of Kenneth J. Nolan, P.A.
350 E. Las Olas Boulevard, Suite 1270
Fort Lauderdale, FL 33301
(954) 779-3943. Fax (954) 779-3937
<http://www.whistleblowerfirm.com>
knolan@gate.net