

**optionsXpress**  
Online Options, Stock & Futures Brokers

**FREE** Day & Evening Trading  
Workshops & Seminars.

Hear new trading strategies to help make you a more informed investor.

**REGISTER NOW!**

Print  Close 
**INVESTORS** BETA.com  
POWERED BY INVESTOR'S BUSINESS DAILY™
**BUSINESS**

## Attorney: Whistle-blowers Not Just Whistling "Dixie"

By PETER BENESH

Posted 09/05/2006 03:00 AM ET

On June 29, Tenet Healthcare, the nation's second largest hospital chain, made a deal to pay the U.S. government more than \$900 million for fraudulent Medicare billings. Tenet might not have been caught if not for a whistle-blower. A whistle-blower also sparked a \$14 million settlement unveiled in mid-August between the University Hospitals Health System in Cleveland and the federal government. The hospital group admitted no wrongdoing in the Medicare abuse case. In recent years, the former Columbia/HCA, now Hospital Corp. of America, paid \$1.4 billion to settle multiple allegations. The former Vencor, now Kindred Healthcare, paid almost \$105 million to settle nine cases. These and other actions were launched by private citizens acting on behalf of the federal government. Using the False Claims Act, individuals can sue on behalf of Washington if they have evidence of fraud against a government department. The government can then choose to take over the case, says Kenneth Nolan, a Fort Lauderdale, Fla., attorney whose firm specializes in medical fraud cases. If the government declines, a whistle-blower can press on alone in a civil action. The legal principle is called "qui tam," short for "Qui tam pro domino rege quam pro seipso." Translation: "He who sues for the king as for himself." The False Claims Act became law during the Civil War. It was designed to nail horse dealers selling the Union Army worthless nags. The law has had a new lease on life, largely because of Medicare fraud, Nolan says. He spoke with IBD. IBD: What's the reward for whistleblowers whose action gets back money for Washington? Nolan: It's generally 15% to 25% if the government intervenes in the action. If the government declines intervention and the whistle-blower goes forward with a qui tam civil lawsuit, it's 25% to 30%. IBD: Why would the federal government decide not to take over a whistle-blower's Medicare fraud case? Nolan: The first and primary reason is the merits of the case. If the government believes the claim has no merit, it won't take it over. Or the government could decide the claim may be meritorious but that the whistle-blower has brought insufficient evidence. A related reason would be not enough evidence and not enough investigatory support from the federal agency involved. If the facts are there but the evidence is not open and shut and investigatory resources are insufficient, the government will not go forward. The decision makers in Washington have a fair amount of discretion. Sometimes they decline for policy reasons. IBD: What policy? Nolan: There's a push-pull going on between those in Washington solely interested in providing health care vs. those whose responsibility is to administer the False Claims Act. The Department of Justice's commercial litigation branch is responsible for qui tam cases. Historically under the False Claims Act, the government has not gone so far as to put health care providers out of business. IBD: In such cases, does the federal government get punitive damages too? Nolan: Under the False Claims Act there are no punitive damages allowed. However, the damages that are allowed, although not punitive, are three times the amount of damages suffered by the federal government. Plus there's a civil penalty of \$5,500 to \$11,000 for each false claim. The stakes are significant for a public health care provider who decides to take the case into court. IBD: So out-of-court settlements are possible? Nolan: Yes. Both the lawsuit itself and the whistle-blower's claim on behalf of the government could be settled by negotiation. If the U.S. government feels the claim has merit and it has enough information to go forward, it could work jointly with us, the attorneys for the whistle-blower. If there are negotiations, before a settlement there's a dialogue between government lawyers and us -- the whistle-blower's attorneys -- in which we discuss whether we feel the settlement is fair and adequate. Once the government's claim is settled, the whistle-blower has a claim against the government for his share, which is subject to income tax. IBD: How long would a Medicare fraud case take? Nolan: After the whistle-blower sues, the government has the opportunity to investigate the allegations. Investigations sometimes take two or three years but typically six to eight. Sometimes there's already an investigation under way when the whistle-blower sues. IBD: What in your estimation would motivate major hospital groups to risk the consequences of Medicare fraud? Nolan: I scratch my head every week over the new things

we learn about. Look at it this way: Are you surprised when you learn about fraud on the [IRS](#) by large corporations? If you're not surprised about IRS fraud, then why be surprised by Medicare fraud? It's not only Medicare. There are other federal health-care payers, including the Defense Department and the (Veterans Administration).

---

© 2009 Investor's Business Daily, Inc. All rights reserved. Investor's Business Daily, IBD and CAN SLIM and their corresponding logos are registered trademarks of Data Analysis Inc. [Copyright and Trademark Notice](#) | [Privacy Statement Terms](#) | [Conditions of Use](#)