

Tenet Healthcare Pays \$4 Million to Settle False Claims Case Shrouded in Secrecy

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In December 2013, **Tenet Healthcare agreed to pay \$4 million** to settle a False Claims Act case.

But the government, the whistleblower's lawyer and lawyers for Tenet didn't want you to know about it.

In 2009, a Florida whistleblower by the name of Marc Osherhoff filed a **False Claims Act lawsuit** against Tenet alleging that Tenet leased space to doctors at below market value in order to get their hospital business.

Nicolas Bonrepos, a Tenet vice president for real estate development, is quoted in the lawsuit saying that the company buys buildings and leases them to doctors because "we want what happens because of the real estate."

"We're asking the CEO to schmooze the doctors to bring them to the [hospital] campus, then in the next minute we're asking the CEO to go knock on the door and collect rent," Bonrepos says. "One of those things is not going to get done. . .It's too much to ask."

In the lawsuit, Osheroff claims that Tenet "offered remuneration to physician-tenants in their medical office buildings by providing free office space, below-market rent and related benefits."

"Such remuneration created a 'financial relationship' with such physicians in violation of the Stark Law, which prohibits defendants from submitting claims for payment to Medicare and Medicaid based on referrals from such physicians."

In December of 2013, Tenet, Osheroff, and the U.S. Department of Justice signed a **Joint Stipulation of Dismissal**, which noted that all parties had "entered into a settlement agreement that resolves all claims brought in this action."

Okay, but where's the settlement agreement? How come it wasn't filed with the court? How come the Justice Department didn't release it? How come there's no press release?

"It is extremely unusual for the U.S. Department of Justice to not put out a press

release on a False Claims Act settlement, and it is more than passing strange when the company is Tenet Healthcare, which has a long track record of very serious violations going back more than fifteen years,” says Patrick Burns of Taxpayers Against Fraud. “Settlements amounts should be public information as a matter of public policy.”

We rang up Tenet and asked for a copy of the settlement.

Tenet’s spokesperson Steven Campanini said the settlement would not be made public.

“The settlement was not made public as part of the court record,” Campanini said. “In order to avoid the expense and uncertainty of litigation, in December of 2013 we entered into a voluntary civil settlement with the relator Marc Osheroff, the United States Department of Justice and the U.S. Attorney’s Office for the Southern District of Florida. It’s important to note that the government declined to intervene in this case. The settlement resolved a non-intervened qui tam action regarding fair market value of lease arrangements with physicians in medical office buildings.”

We next rang up Osheroff’s attorney, Jonathan Kroner of Miami Beach, Florida.

Kroner called and said that the settlement is not a public document.

We rang up the attorneys for Tenet at Latham & Watkins in San Diego. No answer.

We rang another set of Tenet attorneys at Haynes & Boone in Dallas, Texas. No answer.

We rang up the Justice Department. And just before we were about to go to press, Justice Department spokesperson Allison Price sends over **the settlement agreement**.

Tenet will pay \$4 million to the federal government. Osheroff will get \$1 million, with another \$1 million to cover attorneys fees and costs.

We asked Price whether there was an agreement between the parties not to publicize the agreement.

“We did not agree to keep the settlement confidential, if that is what you are asking,” Price says. “The court didn’t require a copy of the settlement.”

Burns of Taxpayers Against Fraud says he remembers only one other such secret False Claims Act settlement – **a nursing home case from Virginia.**

“As a matter of public policy, it’s important for Department of Justice to announce False Claims Act settlements, and for the courts to make such settlements public,” Burns said.

“Tenet has a long track record of Medicare and Medicaid violations, with settlements totaling in excess of a billion dollars. The public needs to know how Tenet has been ripping off Medicare and Medicaid so that additional frauds can be looked for, reported on, and averted.”

“In addition, making these settlements public is an important learning tool for managers within Tenet.”

“Finally, it’s important for the Department of Justice to note that vast sums of money have been recovered under the False Claims Act in cases initiated by whistleblowers and pursued by private lawyers with very little, or very late, participation by the federal government,” Burns said. “That’s not a flaw of the system – that’s how the system is designed to work. In a world of unending fraud and limited government resources, the public-private fraud-fighting partnership that is the False Claims Act is something that can and should be applauded by all sides.”

In January 2014, **the South Florida Business Journal reported** that “an affiliate of Tenet Healthcare Corp. paid \$48 million for a medical office building adjacent to its Palmetto General Hospital in Hialeah.”

“North Miami Beach-based Pal-Med Holdings, which is managed by Marc Osheroff and Alan Gross, sold the building at 7160 West 20th Ave. to Tenet affiliate Lifemark Hospitals.”

“Tenet previously had a ground lease on the property. Much of the 454,785-square-foot building is used for outpatient services, medical offices and parking. The building was last purchased for \$37 million in 2008.”