

# Department of Justice

United States Attorney Kathleen Mehlretter  
Western District of New York

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## **INDIANA AND ALABAMA HOSPITALS TO PAY U.S. OVER \$8 MILLION TO SETTLE FALSE CLAIMS ACT ALLEGATIONS**

WASHINGTON – Six hospitals in Indiana and Alabama have agreed to pay the United States more than \$8 million to settle allegations that the health care facilities submitted false claims to Medicare, the Department of Justice announced today.

The Indiana hospitals include St. Francis Hospital in Beech Grove, Deaconess Hospital in Evansville and St. John’s Hospital System in Anderson. The hospitals have agreed to pay the United States \$3,158,629, \$2,110,034 and \$826,256, respectively.

The Alabama hospitals include St. Vincent’s East Hospital and St. Vincent’s Birmingham Hospital, both located in Birmingham, and Providence Hospital, located in Mobile. These facilities have agreed to pay the United States \$1,459,395, \$422,748 and \$381,713, respectively.

The settlements resolve allegations that, from 2002 to 2008, the six hospitals overcharged Medicare each time they performed kyphoplasty, a minimally-invasive procedure used to treat certain spinal fractures that often are due to osteoporosis. In many cases, the procedure can be performed safely as an out-patient surgery, but the government contends that the hospitals performed the procedure on an in-patient basis in order to increase their Medicare billings.

“The Department of Justice is committed to preventing waste, fraud, and abuse in the Medicare program and ensuring that Medicare funds are not expended

for unnecessary services,” said Tony West, Assistant Attorney General for the Department’s Civil Division.

“Hospitals that overcharge Medicare drain critical funds from the Medicare program and increase health care costs,” said Daniel R. Levinson, Inspector General for the U.S. Department of Health and Human Services. “This settlement demonstrates the Federal government’s resolve to address this kind of fraudulent conduct.”

The settlements with these Indiana and Alabama facilities follow the government’s June 2009 settlement with three Minnesota hospitals for alleged kyphoplasty-related Medicare fraud claims, as well as the government’s May 2008 settlement with Medtronic Spine LLC, corporate successor to Kyphon Inc. Medtronic Spine paid \$75 million to settle allegations that the company defrauded Medicare by counseling hospital providers to perform kyphoplasty procedures as an in-patient procedure, even though in many cases the minimally-invasive procedure should have been done on an out-patient basis.

“By keeping patients overnight, without regard to medical necessity, hospitals could seek greater reimbursement from Medicare and make much larger profits on kyphoplasty,” said Kathy Mehlretter, U.S. Attorney for the Western District of New York in Buffalo.

This lawsuit was filed in 2008 in federal district court in Buffalo, N.Y., by Craig Patrick and Charles Bates under the *qui tam* or whistleblower provisions of the False Claim Act. Under those provisions, a private party, known as “relator,” can file an action on behalf of the United States and receive a portion of any recovery. Mr. Patrick, of Hudson, Wis., is a former reimbursement manager for Kyphon, and Mr. Bates is a former regional sales manager for Kyphon in Birmingham, Ala. The relators will receive approximately \$1.4 million as their share of the settlement proceeds.

Assistant Attorney General West acknowledged that these settlement are the result of a coordinated effort between the Commercial Litigation Branch of the

Justice Department's Civil Division, the U.S. Attorney's Office for the Western District of New York, and the Department of Health and Human Services' Office of Inspector General and Office of Counsel to the Inspector General.