

Breaking Legal NEWS
Pharmacy Whistleblower
False Claims Act
For Immediate Release

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**OMNICARE PAYS \$49.5 MILLION TO SETTLE FEDERAL AND STATE
CHARGES OF GENERIC DRUG SWITCHING IN NURSING HOMES**

CHICAGO, November 14, 2006 – Omnicare, Inc., which calls itself “the nation’s leading provider of pharmaceutical care for seniors,” paid \$49.5 million to settle charges that it illegally switched the drugs of senior citizens in nursing homes and other facilities. The charges primarily involved the generic forms of the popular drugs Zantac® and Prozac®.

Omnicare was charged with switching dosage forms – which are different drugs -- to garner huge profits by evading federal and state price limits. Ranitidine, the generic form of Zantac®, typically came in tablets. Given its popularity, the government set maximum prices that Medicaid would pay for the tablets. Ranitidine capsules were infrequently prescribed, and had no maximum prices. Allegedly, Omnicare switched patients’ prescriptions for ranitidine tablets to the expensive capsules -- costing taxpayers up to four times as much. For Prozac®, Omnicare allegedly switched prescribed capsules to tablets.

This case was pursued for over five years by Illinois pharmacist Bernard Lisitza and his Chicago attorney Michael I. Behn, under federal and state False Claims Acts. “Bernie’s your old-fashioned corner pharmacist, who was shocked by a profits over patients approach,” said Behn.

“This was the first case targeting generic drug switching under the False Claims Act, to help protect both patients and taxpayers,” Behn added. “The switching covered by this settlement affected the most vulnerable segment of our population – the elderly, the sick and the poor. Doctors should be selecting their medications, not a Fortune 500 company.”

“This case underscores the new era of joint state and federal prosecutions of healthcare cases,” said Behn. “The feds and the states worked together fist in glove. These prosecutors wrote the book on how it should be done.”

This is yet another successful whistleblower case brought by Behn. Last year, he represented the plaintiffs in the largest settlement in Illinois and the largest whistleblower case ever in Chicago, which resulted in Northrop Grumman paying \$134 million to resolve claims involving the B-2 "Stealth" bomber. Behn also represented the American Association of Retired Persons in upholding the constitutionality of Illinois' False Claims Act before the state Supreme Court.

Federal and state False Claims Acts allows private citizens with knowledge of fraud to help the Government recover ill-gotten gains and additional civil penalties. These statutes allows the government to collect up to three times the amount it was defrauded, in addition to civil penalties of \$5,500 to \$11,000 per false claim. Behn noted that whistleblowers can receive between 15 and 30 percent of the governments' recovery.

The settlement was achieved through the efforts of Assistant U.S. Attorney Linda A. Wawzenski, Deputy Chief of the Civil Division of the U.S. Attorney's Office for the Northern District of Illinois; Assistant Attorney General Patrick Keenan, Director of the Illinois Medicaid Fraud Bureau; John Guthrie, Chief Deputy Attorney General in charge of the Criminal Justice Division for the State of Ohio, and several other state prosecutors working with the National Association of Medicaid Fraud Control Units.

In executing the Settlement Agreement, Omnicare denied liability, wrongdoing or improper conduct.

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