

ings now. The Court has expressed its concerns regarding the dual prosecution of this crime, the infringement of Montana's State sovereignty, and the manner in which the United States Attorney's Office handled these proceedings. There is no need to belabor these points further.

### III. Conclusion

Accordingly, in accordance with this Court's July 14, 2006 Order, the Defendant's motion to dismiss is DENIED.



UNITED STATES of America,  
Plaintiff,

v.

R.D. PRABHU, M.D. and R.D. Prabhu-  
Lata Shete, M.D.'s, Ltd.,  
Defendants.

No. 2:04-CV-0589-RCJ-LRL.

United States District Court,  
D. Nevada.

July 20, 2006.

**Background:** In False Claims Act (FCA) suit, government alleged that Medicare services provider knowingly submitted false claims to the government by billing for simple pulmonary stress tests and by claiming that his medical services were medically necessary. Provider filed motion for summary judgment.

**Holdings:** The District Court, Robert C. Jones, J., held that:

(1) government failed to demonstrate that Medicare services provider's claims for pulmonary rehabilitation services and

simple pulmonary stress tests were false;

- (2) government failed to show that provider "knowingly" submitted a false claim;
- (3) government failed to establish that provider furnished "false" claims regarding the medical necessity of the services provided; and
- (4) provider could not be found to have "knowingly" submitted any "false" claim to the government regarding the medical necessity of his claims.

Motion granted.

#### 1. United States ⇌ 120.1

To establish False Claims Act (FCA) liability, government must prove: (1) a false or fraudulent claim; (2) which was presented, or caused to be presented, by the defendant to the United States for payment or approval; (3) with knowledge that the claim was false. 31 U.S.C.A. §§ 3729-3733.

#### 2. United States ⇌ 120.1

Claims are not "false" under the False Claims Act (FCA) unless they are furnished in violation of some controlling rule, regulation, or standard. 31 U.S.C.A. §§ 3729-3733.

#### 3. United States ⇌ 120.1

Claims are not "false" under the False Claims Act (FCA) when reasonable persons can disagree regarding whether the service was properly billed to the government. 31 U.S.C.A. §§ 3729-3733.

#### 4. United States ⇌ 120.1

Government failed to demonstrate that Medicare services provider's claims for pulmonary rehabilitation services and simple pulmonary stress tests were false for purposes of False Claims Act (FCA) liability; government failed to prove that provider violated a controlling rule, regula-