

SETTLEMENT AGREEMENT

This Settlement Agreement (Agreement) is entered into among the United States of America, acting through the United States Department of Justice and on behalf of the Office of Inspector General (OIG-HHS) of the Department of Health and Human Services (HHS), (collectively, the "United States"); the State of Georgia; Michael Fenster, M.D.; and HCA Holdings, Inc. and Fairview Park Hospital (hereafter collectively referred to as "the Parties"), through their authorized representatives.

RECITALS

- A. HCA Holdings, Inc. (HCA) is a Delaware Corporation and the largest operator of health care facilities in the United States. Through its affiliates HCA operates over 275 hospitals and freestanding surgery centers in more than twenty states and England, including Fairview Park Hospital (FPH), a 175-bed acute care hospital in Dublin, Georgia.
- B. Dr. Michael Fenster is a board-certified cardiologist who served as the Executive Medical Director of Cardiovascular Services at FPH from July 2008 to December 2009.
- C. On or about April 10, 2010, Michael Fenster, M.D., filed a *qui tam* action in the United States District Court for the Southern District of Georgia captioned *United States ex rel. Dr. Michael Fenster v. Hospital Corporation of America, Fairview Park Hospital, Dublin-Macon Cardiology, P.C., Dr. Manuel Vega and Dr. Joseph DeJunco*, CV-3-10-33(S.D. Ga.), pursuant to the *qui tam* provisions of the False Claims Act, 31 U.S.C. § 3730(b) (the Civil Action) and the Georgia False Medicaid Claims Act, O.C.G.A. § 49-4-168.2(c). Relator Dr. Fenster alleged that the defendants submitted claims to Medicare and Georgia Medicaid for cardiac procedures and related hospital services that were not medically necessary and/or of substandard quality. The case was transferred to the United States District Court for the Southern District of Florida in 2013 and re-captioned *United States ex rel. Fenster v. Hospital*

Corporation of America, Fairview Park Hospital, Dublin-Macon Cardiology, PC, Dr. Joseph DeJunco and Dr. Manuel Vega, No. 13-24018-CIV-Cooke. On September 4, 2015, the United States declined to intervene in the Civil Action, and on or about September 26, 2015, the Court entered an order directing that Dr. Fenster's Complaint be unsealed.

C. The United States and the State of Georgia contend that defendants HCA and FPH submitted or caused to be submitted claims for payment to the Medicare Program, Title XVIII of the Social Security Act, 42 U.S.C. §§ 1395-1395kkk-1 ("Medicare") and the Medicaid Program, 42 U.S.C. §§ 1396-1396w-5 ("Medicaid").

D. The United States and the State of Georgia contend that they have certain civil claims against defendants HCA and FPH arising from the submission of, and causing the submission of, claims for coronary angiograms, angioplasties and stent placements performed by Dr. Manuel Vega at FPH from 2004 through 2014 that were not medically necessary. That conduct is referred to below as the "Covered Conduct."

E. This Settlement Agreement is neither an admission of liability by HCA or FPH, nor a concession by the United States and the State of Georgia that their claims are not well founded.

F. Relator claims entitlement under 31 U.S.C. § 3730(d) and O.C.G.A. § 49-4-168.2(i)(2) to a share of the proceeds of this Settlement Agreement and to Relator's reasonable expenses, attorney's fees and costs.

To avoid the delay, uncertainty, inconvenience, and expense of protracted litigation of the above claims, and in consideration of the mutual promises and obligations of this Settlement Agreement, the Parties agree and covenant as follows:

TERMS AND CONDITIONS

- 1a. FPH shall pay to the United States \$1,934,590.34 ("Federal Settlement Amount") no later than 15 business days after the Effective Date of this Agreement by electronic funds transfer pursuant to written instructions to be provided by the Office of the United States Attorney for the Southern District of Florida.
- 1b. FPH shall pay to the State of Georgia \$65,409.66 ("State Settlement Amount") no later than 15 business days after the Effective Date of this Agreement by electronic funds transfer pursuant to written instructions to be provided by the Georgia Medicaid Fraud Control Unit.
- 2a. Conditioned upon the United States receiving the Federal Settlement Amount from FPH and as soon as feasible after receipt, the United States shall pay \$541,685.30 to Relator by electronic funds transfer.
- 2b. Conditioned upon the State of Georgia receiving the State Settlement Amount from FPH and as soon as feasible after receipt, the State of Georgia shall pay \$18,314.70 to Relator by electronic funds transfer.
3. FPH shall pay to counsel for Relator \$625,000 for attorney's fees, costs, and expenses ("Attorney's Fees and Expenses Payment") as provided for in 31 U.S.C. § 3730(d) and O.C.G.A. § 49-4-168.2(i)(2). This payment shall be made no later than 15 business days after the Effective Date of this Agreement by electronic funds transfer pursuant to written instructions to be provided by Phillips & Cohen LLP, lead counsel for Relator.
4. Subject to the exceptions in Paragraph 7 (concerning excluded claims) below, and conditioned upon FPH's full payment of the Federal Settlement Amount, the United States releases HCA and FPH, together with their current or former respective parents, subsidiaries, and affiliates, from any civil or administrative monetary claim the United States has for the Covered

Conduct under the False Claims Act, 31 U.S.C. §§ 3729-3733; the Civil Monetary Penalties Law, 42 U.S.C. § 1320a-7a; the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801-3812; or the common law theories of payment by mistake, unjust enrichment, and fraud.

5. Subject to the exceptions in Paragraph 7 below, and conditioned upon FPH's full payment of the Settlement Amount and full payment of the Attorney's Fees and Expenses Payment, Relator, for himself and for his heirs, successors, attorneys, agents, and assigns, releases HCA and FPH, together with their current or former respective officers, directors, employees, agents, parents, subsidiaries, affiliates, successors and assignees of any of them, from any civil monetary claim the relator has on behalf of the United States for: (1) the Covered Conduct and (2) any civil monetary claim Relator has on behalf of the United States arising from the submission of, and causing the submission of, claims for endoscopies, implantation of pacemakers, or implantation of automatic implantable cardioverter defibrillators, performed by Dr. Manuel Vega or Dr. Joseph DeJunco at FPH from 2004 through 2014 that were not medically necessary, under the False Claims Act, 31 U.S.C. §§ 3729-3733 or on behalf of the State of Georgia for the Covered Conduct under the Georgia False Medicaid Claims Act, O.C.G.A. § 49-4-168 *et seq.*

6. Subject to the exceptions in Paragraph 7 (concerning excluded claims) below, and conditioned upon FPH's full payment of the State Settlement Amount, the State of Georgia releases HCA and FPH, together with their current or former respective officers, directors, employees, agents, parents, subsidiaries, affiliates, successors and assignees of any of them, from any civil or administrative monetary claim the State of Georgia has for the Covered Conduct under the Georgia False Medicaid Claims Act, O.C.G.A § 49-4-168 *et seq.*; the Georgia Medical Assistance Act, O.C.G.A § 49-4-146.1(c.1, d); or the common law theories of payment by mistake, unjust enrichment, and fraud.

7. Notwithstanding the releases given in paragraphs 4 and 6 of this Agreement, or any other term of this Agreement, the following claims of the United States and State of Georgia are specifically reserved and are not released:

- a. Any liability arising under Title 26, U.S. Code (Internal Revenue Code), or the Georgia Revenue and Taxation Code, O.C.G.A. §§ 48-1-1 *et seq*;
- b. Any criminal liability;
- c. Except as explicitly stated in this Agreement, any administrative liability, including mandatory or permissive exclusion from Federal health care programs;
- d. Any liability to the United States and the State of Georgia (or their agencies) for any conduct other than the Covered Conduct;
- e. Any liability based upon obligations created by this Agreement;
- f. Any liability of individuals, including but not limited to liability of Dr. Manuel Vega and Dr. Joseph DeJunco;
- g. Any liability for express or implied warranty claims or other claims for defective or deficient products or services, including quality of goods and services;
- h. Any liability for failure to deliver goods or services due; and
- i. Any liability for personal injury or property damage or for other consequential damages arising from the Covered Conduct;

8. Relator and his heirs, successors, attorneys, agents, and assigns shall not object to this Agreement but agree and confirm that this Agreement is fair, adequate, and reasonable under all the circumstances, pursuant to 31 U.S.C. § 3730(c)(2)(B) and O.C.G.A. § 49-4-168.2(d)(3). Conditioned upon Relator's receipt of the payments described in Paragraphs 2 and 3, Relator and

his heirs, successors, attorneys, agents, and assigns fully and finally release, waive, and forever discharge the United States and the State of Georgia, and their agencies, officers, agents, employees, and servants, from any claims arising from the filing of the Civil Action or under 31 U.S.C. § 3730 or O.C.G.A. § 49-4-168, and from any claims to a share of the proceeds of this Agreement and/or the Civil Action.

9. Conditioned upon FPH's payment of the amounts described in Paragraphs 1 and 3, Relator, for himself, and for his heirs, successors, attorneys, agents, and assigns, releases HCA and FPH, and their current or former respective officers, directors, agents, employees, parents, subsidiaries, affiliates, successors and assignees of any of them from any liability to Relator arising from the filing of the Civil Action, or under 31 U.S.C. § 3730(d) for expenses or attorney's fees and costs.

10. HCA and FPH waive and shall not assert any defenses they may have to any criminal prosecution or administrative action relating to the Covered Conduct that may be based in whole or in part on a contention that, under the Double Jeopardy Clause in the Fifth Amendment of the Constitution, or under the Excessive Fines Clause in the Eighth Amendment of the Constitution, this Agreement bars a remedy sought in such criminal prosecution or administrative action. Nothing in this paragraph or any other provision of this Agreement constitutes an agreement by the United States or the State of Georgia concerning the characterization of the Settlement Amount for purposes of the Internal Revenue laws, Title 26 of the United States Code.

11. HCA and FPH fully and finally release the United States and the State of Georgia, and their agencies, officers, agents, employees, and servants, from any claims (including attorney's fees, costs, and expenses of every kind and however denominated) that either HCA or FPH has asserted, could have asserted, or may assert in the future against the United States or the

State of Georgia, their agencies, officers, agents, employees, and servants, related to the Covered Conduct and the United States and the State of Georgia's investigation and prosecution thereof.

12. HCA and FPH fully and finally release the Relator from any claims (including attorney's fees, costs, and expenses of every kind and however denominated) that either HCA or FPH has asserted, could have asserted, or may assert in the future against the Relator, related to the Covered Conduct and the Relator's investigation and prosecution thereof.

13. The Settlement Amount shall not be decreased as a result of the denial of claims for payment now being withheld from payment by any Medicare contractor (*e.g.*, Medicare Administrative Contractor, fiscal intermediary, carrier) or any state payer, related to the Covered Conduct; and HCA and FPH agree not to resubmit to any Medicare contractor or any state payer any previously denied claims related to the Covered Conduct, agrees not to appeal any such denials of claims, and agrees to withdraw any such pending appeals.

14. HCA and FPH agree to the following:

a. Unallowable Costs Defined: All costs (as defined in the Federal Acquisition Regulation, 48 C.F.R. § 31.205-47; and in Titles XVIII and XIX of the Social Security Act, 42 U.S.C. §§ 1395-1395kkk-1 and 1396-1396w-5; and the regulations and official program directives promulgated thereunder) incurred by or on behalf of HCA and FPH, their present or former officers, directors, employees, shareholders, and agents in connection with:

- (1) the matters covered by this Agreement;
- (2) the United States' audit(s) and civil investigation(s) of the matters covered by this Agreement;
- (3) HCA and FPH's investigation, defense, and corrective actions undertaken in response to the United States' audit(s) and civil investigation(s) in

connection with the matters covered by this Agreement (including attorney's fees);

- (4) the negotiation and performance of this Agreement; and
- (5) the payment FPH makes to the United States pursuant to this Agreement and any payments that FPH may make to Relator, including costs and attorney's fees.

are unallowable costs for government contracting purposes and under the Medicare Program, Medicaid Program, TRICARE Program, and Federal Employees Health Benefits Program (FEHBP) (hereinafter referred to as Unallowable Costs).

b. Future Treatment of Unallowable Costs: Unallowable Costs shall be separately determined and accounted for in nonreimbursable cost centers by HCA and FPH, and HCA and FPH shall not charge such Unallowable Costs directly or indirectly to any contracts with the United States or any State Medicaid program, or seek payment for such Unallowable Costs through any cost report, cost statement, information statement, or payment request submitted by HCA or FPH or any of their subsidiaries or affiliates to the Medicare, Medicaid, TRICARE, or FEHBP Programs.

c. Treatment of Unallowable Costs Previously Submitted for Payment: HCA and FPH further agree that within 90 days of the Effective Date of this Agreement they shall identify to applicable Medicare and TRICARE fiscal intermediaries, carriers, and/or contractors, and Medicaid and FEHBP fiscal agents, any Unallowable Costs (as defined in this Paragraph) included in payments previously sought from the United States, or any State Medicaid program, including, but not limited to, payments sought in any cost reports, cost statements, information reports, or payment requests already submitted by HCA or FPH or any of their subsidiaries or affiliates, and shall request, and agree, that such cost reports, cost statements, information

reports, or payment requests, even if already settled, be adjusted to account for the effect of the inclusion of the Unallowable Costs. HCA and FPH agree that the United States, at a minimum, shall be entitled to recoup from HCA and FPH any overpayment plus applicable interest and penalties as a result of the inclusion of such Unallowable Costs on previously-submitted cost reports, information reports, cost statements, or requests for payment.

Any payments due after the adjustments have been made shall be paid to the United States pursuant to the direction of the Department of Justice and/or the affected agencies. The United States reserves its rights to disagree with any calculations submitted by HCA or FPH or any of their subsidiaries or affiliates on the effect of inclusion of Unallowable Costs (as defined in this Paragraph) on HCA or FPH or any of their subsidiaries or affiliates' cost reports, cost statements, or information reports.

d. Nothing in this Agreement shall constitute a waiver of the rights of the United States to audit, examine, or re-examine HCA or FPH's books and records to determine that no Unallowable Costs have been claimed in accordance with the provisions of this Paragraph.

15. This Agreement is intended to be for the benefit of the Parties and, only to the extent specified in Paragraphs 5 and 6, their current or former respective officers, directors, employees, agents, parents, subsidiaries, affiliates, successors and assignees of any of them. The Parties do not release any claims against any other person or entity, except to the extent provided for in Paragraph 16 (waiver for beneficiaries paragraph), below.

16. HCA and FPH agree that they waive and shall not seek payment for any of the health care billings covered by this Agreement from any health care beneficiaries or their parents, sponsors, legally responsible individuals, or third party payors based upon the claims defined as Covered Conduct.

17. Upon receipt of the payments described in Paragraph 1, above, the Parties shall promptly sign and file in the Civil Action a Joint Stipulation of Dismissal of the Civil Action pursuant to Rule 41(a)(1), which shall provide that as to the United States and the State of Georgia the Civil Action is dismissed with prejudice as to the Covered Conduct and without prejudice as to all other claims and that as to the Relator the Civil Action is dismissed with prejudice.

18. Each Party shall bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

19. Each party and signatory to this Agreement represents that it freely and voluntarily enters in to this Agreement without any degree of duress or compulsion.

20. This Agreement is governed by the laws of the United States. The exclusive jurisdiction and venue for any dispute relating to this Agreement is the United States District Court for the Southern District of Florida. For purposes of construing this Agreement, this Agreement shall be deemed to have been drafted by all Parties to this Agreement and shall not, therefore, be construed against any Party for that reason in any subsequent dispute.

21. This Agreement constitutes the complete agreement between the Parties. This Agreement may not be amended except by written consent of the Parties.

22. The undersigned counsel represent and warrant that they are fully authorized to execute this Agreement on behalf of the persons and entities indicated below.

23. This Agreement may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same Agreement.

24. This Agreement is binding on HCA and FPH's successors, transferees, heirs, and assigns.

25. This Agreement is binding on Relator's successors, transferees, heirs, and assigns.

26. All parties consent to disclosure of this Agreement, and information about this Agreement, to the public.

27. This Agreement is effective on the date of signature of the last signatory to the Agreement (Effective Date of this Agreement). Facsimiles and electronic transmissions of signatures shall constitute acceptable, binding signatures for purposes of this Agreement.

THE UNITED STATES OF AMERICA

DATED: 12/14/15

BY: ASD
ARTHUR S. DI DIO
Trial Attorney
Commercial Litigation Branch
Civil Division
United States Department of Justice

THE UNITED STATES OF AMERICA

DATED: 2/14/15

BY:

Mark Lavine


MARK A. LAVINE

Assistant United States Attorney

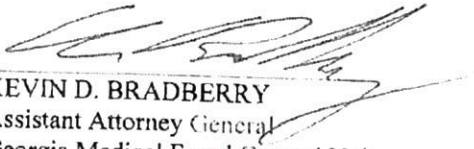
United States Attorney's Office for the Southern District of
Georgia

THE STATE OF GEORGIA

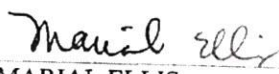
DATED: 12/15/15

BY: 
VAN PEARLBERG
Senior Assistant Attorney General
Director, Georgia Medicaid Fraud Control Unit
Office of the Georgia Attorney General

DATED: 12/15/15

BY: 
KEVIN D. BRADBERRY
Assistant Attorney General
Georgia Medical Fraud Control Unit
Office of the Georgia Attorney General

DATED: Dec 17, 2015

BY: 
MARIAL ELLIS
General Counsel
Georgia Department of Community Health

DEFENDANTS HOSPITAL CORPORATION OF AMERICA
AND FAIRVIEW PARK HOSPITAL

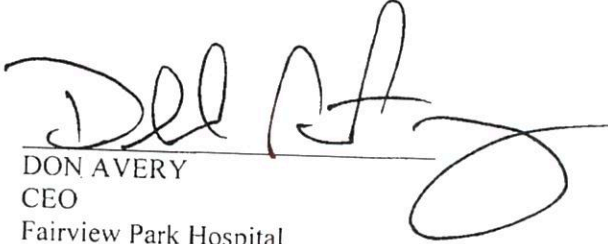
DATED: _____

BY: _____

ROBERT A. WATERMAN
Senior Vice President, General Counsel and Chief Labor
Relations Officer
HCA Holdings, Inc.

DATED: 12/15/15

BY: _____


DON AVERY
CEO
Fairview Park Hospital

DATED: _____

BY: _____

ABID R. QURESHI
Latham & Watkins LLP
Counsel for HCA and FPH

DEFENDANTS HOSPITAL CORPORATION OF AMERICA
AND FAIRVIEW PARK HOSPITAL

DATED: Dec. 16, 2015 BY: Robert A. Waterman
ROBERT A. WATERMAN
Senior Vice President, General Counsel and Chief Labor
Relations Officer
HCA Holdings, Inc.

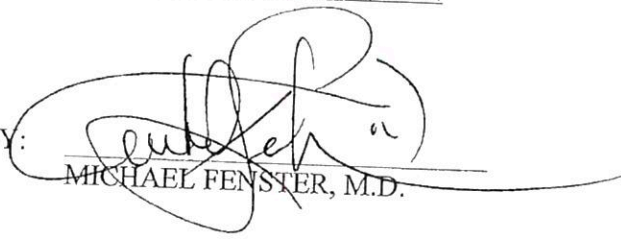
DATED: _____ BY: _____
DON AVERY
CEO
Fairview Park Hospital

DATED: 12/17/2015 BY: Abid R. Qureshi/kmg
ABID R. QURESHI
Latham & Watkins LLP
Counsel for HCA and FPH

RELATOR MICHAEL FENSTER, M.D.


DATED: 12/11/15

BY:


MICHAEL FENSTER, M.D.

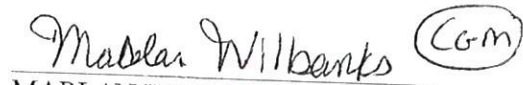
DATED: 12/14/15

BY:


COLETTE G. MATZZIE
Phillips & Cohen LLP
Lead Counsel for Michael Fenster, M.D.

DATED: 12/14/15

BY:


MARLAN WILBANKS
Wilbanks & Gouinlock, LLP
Local Counsel for Michael Fenster, M.D.