

CIVIL AND ADMINISTRATIVE SETTLEMENT AGREEMENT

I. PARTIES

This Civil and Administrative Settlement Agreement (“Agreement”) is entered into between the following (hereinafter “the Parties”) through their authorized representatives: 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), through the United States Attorney’s Office for the District of Columbia; (collectively the “United States”); HCA Inc. (formerly known as HCA - The Healthcare Company and also formerly known as Columbia/HCA Healthcare Corporation), on behalf of its predecessors and current and former affiliates, divisions and subsidiaries (collectively “HCA”); MileStone Healthcare, Inc. (“MileStone”), on behalf of its predecessors and current and former affiliates, divisions and subsidiaries; Relator Clint McCready; and his attorneys.

II. PREAMBLE

As a preamble to this Agreement, the Parties agree to the following:

- A. HCA Health Services of Louisiana, Inc., an indirect subsidiary of HCA Inc., is a Delaware corporation that operates North Monroe Hospital.
- B. MileStone is a Delaware corporation that operated a rehabilitation unit within North Monroe Hospital;
- C. Clint McCready (“Relator”) filed a qui tam action in United States District Court for the Western District of Louisiana , and which was transferred to the District Court for the District of Columbia, United States of America ex rel. Clint McCready, M.D. v. Columbia/HCA Healthcare Corp., et al., No. 00cv1846 (RCL) (hereinafter “First Amended Complaint”). The United States declined to intervene in that action.

D. HCA Health Services of Louisiana, Inc. submitted or caused to be submitted claims for payment to the Medicare Program, Title XVIII of the Social Security Act, 42 U.S.C. §§ 1395-1395ggg ("the government health care programs").

E. Relator, on behalf of the United States, contends that he has certain civil claims under the False Claims Act, 31 U.S.C. § 3729-33, and other federal statutes and/or common law doctrines, against HCA and/or MileStone, for the period of October 1, 1998, to October 1, 2000, for HCA and Milestone improperly delaying the transfer of patients from North Monroe Hospital's acute care unit to North Monroe Hospital's rehabilitation unit, managed by Milestone, in order to maximize Medicare reimbursement for those patient stays. These allegations as contained in the First Amended Complaint are hereinafter referred to as the "Covered Conduct". (The First Amended Complaint generally alleges that patients were improperly transferred from rehabilitation units at other Columbia hospitals to other MileStone facilities, but such allegations are not "Covered Conduct" for purposes of this Agreement.)

F. The United States also contends that it has certain administrative claims against HCA and Milestone under the provisions for permissive exclusion from the Medicare, Medicaid, and other Federal health care programs, 42 U.S.C. § 1320a-7(b), and the provisions for civil monetary penalties, 42 U.S.C. § 1320a-7a, for the Covered Conduct.

G. On March 31, 2004, the United States District Court for the District of Columbia dismissed the First Amended Complaint as settled without prejudice, subject to reinstatement if the settlement agreed upon by the parties is not effectuated.

H. This Agreement does not constitute evidence or an admission by any party of any liability or wrongful conduct.

I. To avoid the delay, uncertainty, inconvenience, and expense of protracted litigation of the claims set forth above, the Parties hereby reach a full and final settlement of the claims against HCA and MileStone pursuant to the Terms and Conditions set forth below.

III. TERMS AND CONDITIONS

NOW, THEREFORE, in reliance upon the representations contained herein, in consideration of the mutual promises, covenants, and obligations set forth below, and for good and valuable consideration as stated herein, the Parties agree as follows:

1. HCA and MileStone agree to collectively pay to the United States the total amount of \$30,000.00 (the "Settlement Amount"). The Payment Date shall be within five (5) days of execution of this Agreement. HCA and MileStone agree to pay the Settlement Amount as follows:
 - a. HCA agrees to pay \$15,000.00 to the United States by electronic funds transfer pursuant to written instructions to be provided by the Commercial Litigation Branch, Civil Division, United States Department of Justice.
 - b. MileStone agrees to pay \$15,000.00 to the United States by electronic funds transfer pursuant to written instructions to be provided by the Commercial Litigation Branch, Civil Division, United States Department of Justice.
2. Subject to the exceptions in Paragraph 7 below, in consideration of the obligations of HCA and MileStone set forth in this Agreement, conditioned upon HCA's and MileStone's payment in full of the Settlement Amount, the United States (on behalf of itself, its officers, agents, agencies, and departments) agrees to release HCA and MileStone together with their current and former parent corporations, each of their direct and indirect subsidiaries, brother or sister corporations, divisions, current or former owners and affiliates, and the successors and assigns of any of them, from any

civil or administrative monetary claim the United States has or may have 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, breach of contract, and fraud, for the Covered Conduct.

3. Within ten (10) days of the execution of this Agreement and the receipt of the Settlement Amount (whichever is later), the Relator, United States, HCA and MileStone will move the United States District Court for the District of Columbia for dismissal of the First Amended Complaint, as follows: (a) dismissal of the First Amended Complaint in its entirety with respect to the Relator, (b) dismissal with prejudice to the United States of the claims of the First Amended Complaint only as they pertain to conduct occurring at North Monroe Hospital, and (c) dismissal without prejudice to the United States of the claims of the First Amended Complaint as they pertain to conduct occurring at hospitals other than North Monroe Hospital. The motion to dismiss will be conditioned upon receipt by the United States of the Settlement Amount. The parties agree that they reserve the right to seek to dismiss any claim of any relator other than McCready on the grounds they are coextensive with the Covered Conduct or are otherwise barred.
4. In consideration of the obligations of HCA and MileStone set forth in this Agreement, and conditioned upon HCA's and MileStone's payment in full of the Settlement Amount, Relator agrees to release HCA and MileStone together with their current and former parent corporations, each of their direct and indirect subsidiaries, brother or sister corporations, divisions, current or former owners and affiliates, and the

successors and assigns of any of them, from any civil or administrative monetary claim Relator has or may have arising from or relating to the allegations of the First Amended Complaint, including without limitation any claims to pay Relator's or Relator's Counsel attorneys' fees, expenses and costs.

5. Conditioned on the payment in full of the Settlement Amount, Relator shall receive from the United States a payment amounting to \$7,500. The United States shall pay Relator this amount within a reasonable time after receipt by the United States of the Settlement Amount. It is expressly understood and agreed that the United States in no way promises or guarantees nor is liable to Relator for the collection or payment of any funds pursuant to this Agreement or the payment or any Relator's share payments except as provided herein for funds actually collected and received by the United States.
6. On receipt of the payment described in Paragraph 6 above, Relator, for itself and its heirs, successors, attorneys, agents, and assigns, agrees to release the United States, its officers, agents, and employees, from any claims arising from or relating to 31 U.S.C. § 3730 in connection with the claims in this Civil Action against HCA or MileStone, or arising from the filing of the Civil Action against HCA and MileStone, including 31 U.S.C. §§ 3730(b), (c), (c)(5), (d), and (d)(1) in connection with this Civil Action. The Relator agrees and confirms that this Agreement is fair, adequate, and reasonable under all the circumstances, pursuant to 31 U.S.C. § 3730(c)(2)(B).
7. Notwithstanding any term of this Agreement, specifically reserved and excluded from the scope and terms of this Agreement as to any entity or person (including HCA, MileStone and Relator) are any and all of the following claims of the United States:

- a. Any civil, criminal or administrative liability to the United States arising under Title 26, U.S. Code (Internal Revenue Code);
- b. Any criminal liability;
- c. All rights to institute, direct, or to maintain any administrative action seeking exclusion against HCA and Milestone from Medicare, Medicaid, or other Federal health care programs (as defined in 42 U.S.C. §1320a-7b(f) under 42 U.S.C. § 1320a-7(a) (mandatory exclusion), or 42 U.S.C. § 1320a-7(b) (permissive exclusion);
- d. Any liability to the United States (or its agencies) for any conduct other than the Covered Conduct;

- e. Any claims of the United States based upon such obligations as are created by this Agreement;
- f. Any claims by the United States or the States relating to the Medicaid Program;
- g. Any express or implied warranty claims or other claims for defective or deficient products or services, including quality of goods and services, provided by HCA or MileStone;
- h. Any claims for personal injury or property damage or for other similar consequential damages arising from the Covered Conduct;
- i. Any claims of the United States based on a failure to deliver items or services due;
- j. Any civil or administrative claims of the United States against individuals (including current or former directors, officers, employees, agents, or shareholders of HCA or MileStone).

8. HCA and MileStone waive and will not assert any defenses they may have to any criminal prosecution or administrative action relating to the Covered Conduct, which defenses 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 Settlement bars a remedy sought in such criminal prosecution or administrative action. HCA and MileStone agree that this settlement is not punitive in purpose or effect. Nothing in this Paragraph or any other provision of this Agreement constitutes an agreement by the United States concerning the characterization of the Settlement Amount for purposes of the Internal Revenue Laws, Title 26 of the United States Code.

9. HCA and MileStone fully and finally release the United States, its agencies, employees, servants, and agents from any claims (including attorneys fees, costs, and expenses of every kind and however denominated) which HCA and MileStone has asserted, could have asserted, or may assert in the future against the United States, its agencies, employees, servants, and agents, related to the Covered Conduct and the United States' investigation and prosecution thereof.
10. The Settlement Amount will not be decreased as a result of the denial of claims for payment now being withheld from payment by any Medicare carrier or intermediary or by FEHBP or TRICARE or any State payer, related to the Covered Conduct; and HCA and MileStone agree not to resubmit to any Medicare carrier or intermediary or to FEHBP or TRICARE or any State payer any previously denied claims related to the Covered Conduct, and agree not to appeal any such denials of claims.
11. HCA and MileStone agree to the following:

a. Unallowable Costs Defined: HCA and MileStone agree that all costs (as defined in the Federal Acquisition Regulations (FAR) 48 C.F.R. § 31.205-47 and in Titles XVIII and XIX of the Social Security Act, 42 U.S.C. §§ 1395-1395ggg and 1396-1396v, and the regulations promulgated thereunder) incurred by or on behalf of HCA or MileStone, 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 and any criminal

investigation(s) of the matters covered by this Agreement,

- (3) HCA's and MileStone's investigation, defense, and

corrective actions undertaken in response to the United States' audit(s) and civil and any criminal

investigation(s) in connection with the matters covered by this Agreement (including attorney's fees and the obligations undertaken pursuant to HCA's CIA),

- (4) the negotiation and performance of this Agreement, and
- (5) the payment HCA and MileStone make to the United

States pursuant to this Agreement and any payments that HCA and MileStone may make to relators, are unallowable costs on Government contracts and under the Medicare Program, Medicaid Program, TRICARE Program, and Federal Employees Health Benefits Program (FEHBP). (All costs described or set forth in this Paragraph 12(a) are hereafter, "unallowable costs").

b. Future Treatment of Unallowable Costs: These unallowable costs will be separately estimated and accounted for by HCA and MileStone, and HCA and MileStone will 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 MileStone or any of their subsidiaries to the Medicare, Medicaid, TRICARE, or FEHBP Programs.

- c. Treatment of Unallowable Costs Previously Sought: HCA and MileStone further agree that within 60 days of the effective date of this Agreement they will identify to applicable Medicare and TRICARE fiscal intermediaries, carriers, and/or contractors, and Medicaid, VA and FEHBP fiscal agents, any unallowable costs (as defined in this Paragraph) 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 MileStone or any of its subsidiaries, and will 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 MileStone agree that the United States will be entitled to recoup from HCA or MileStone (whichever party received the payment) any overpayment 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 and MileStone or any of their subsidiaries on the effect of inclusion of

unallowable costs (as defined in this Paragraph) on HCA and MileStone or any of their subsidiaries' cost reports, cost statements, or information reports.

Nothing in this Agreement shall constitute a waiver of the rights of the United States to examine or reexamine the unallowable costs described in this Paragraph.

12. HCA and MileStone agree to cooperate fully and completely with the United States in any criminal, civil and/or administrative investigations and proceedings of any present and former officers, directors, employees and agents, and of any parties with whom they had or have a business or professional relationship with respect to the Covered Conduct. HCA and MileStone will themselves provide information through testimony and/or oral briefings by competent corporate representatives upon request of the United States in connection with any investigation relating to the Covered Conduct.

HCA and MileStone will furnish to the United States, upon reasonable request, complete and un-redacted copies of all non-privileged documents, reports, memoranda of interviews, and records in their possession, custody, or control concerning any investigation of the Covered Conduct which it has undertaken, or which has been performed by others on its behalf, and agrees that it will not assert any claim of privilege with respect to information requested by the United States to establish the authenticity or evidentiary foundation for the non-privileged information it has provided.

HCA and MileStone agree not to impair, and, upon reasonable notice, will encourage, the cooperation of their directors, officers, employees and agents in any investigation of the Covered Conduct. HCA and MileStone also agree to use their best efforts to make available, and encourage

the cooperation of, former directors, officers and employees for interviews and testimony, consistent with the rights and privileges of such individuals in Covered Conduct. The obligations shall in no way limit HCA's or MileStone's obligations under any other agreement with the United States, or limit HCA's or MileStone's rights in connection with any such investigation.

13. This Agreement is intended to be for the benefit of the Parties only, and by this instrument the Parties do not release any claims against any other person or entity, except to the extent specifically provided for in this Agreement.
14. Except as may be expressly provided to the contrary in this Agreement, each party to this Agreement will bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

15. This Agreement is governed by the laws of the United States. The Parties agree that the exclusive jurisdiction and venue for any dispute arising between and among the Parties under this Agreement will be the United States District Court for the District of Columbia.
16. This Agreement may not be amended except by written consent of the Parties.
17. The undersigned individuals signing this Agreement on behalf of HCA and MileStone represent and warrant that they are authorized by HCA to execute this Agreement. The undersigned United States signatories represent that they are signing this Agreement in their official capacities and that they are authorized to execute this Agreement.
18. This Agreement may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same agreement.
19. This Agreement is binding on Relator's or his attorneys', HCA's and MileStone's successors, transferees, heirs, and assigns.

20. This Agreement is effective on the date of signature of the last signatory to the Agreement. Facsimiles of signatures shall constitute acceptable, binding signatures for purposes of this Settlement Agreement.
21. HCA and MileStone deny the allegations with respect to the Covered Conduct and the contentions of the United States in Paragraphs E and F. Further, this Agreement is neither an admission of liability of HCA or MileStone, nor a concession by the United States or Relator that the claims being settled, dismissed and/or released were not well founded.

UNITED STATES OF AMERICA

DATED: 9/14/04

BY:


JAMIE YAVELBERG
Trial Attorney
Commercial Litigation Branch
Civil Division
U.S. Department of Justice

DATED: _____

BY: _____

LARRY J. GOLDBERG
Assistant Inspector for Legal Affairs
Office of Inspector General
United States Department of
Health and Human Services

UNITED STATES OF AMERICA

DATED: _____

BY: _____

JAMIE YAVELBERG
Trial Attorney
Commercial Litigation Branch
Civil Division
U.S. Department of Justice

DATED: 9/23/04

BY: Larry J. Goldberg

LARRY J. GOLDBERG
Assistant Inspector for Legal Affairs
Office of Inspector General
United States Department of
Health and Human Services

HCA Inc. and North Monroe Hospital

DATED: 9/20/04

BY:

Cathryn Sowers

Name: Cathryn L. Sowers

Title: Vice President

HCA Health Services of Louisiana, Inc.

ABD

DATED: 9/20/04

BY:

Cathryn Sowers

CATHRYN L. SOWERS

Vice President

Litigation

HCA Inc.

ABD

DATED: _____

BY:

JENNIFER C. ARCHIE

Latham & Watkins

Counsel for HCA Inc.

HCA Inc. and North Monroe Hospital

DATED: _____

BY: _____

Name: _____

Title: _____

HCA Health Services of Louisiana, Inc.

DATED: _____

BY: _____

CATHRYN L. SOWERS

Vice President

Litigation

HCA Inc.



DATED: _____

BY: _____

JENNIFER C. ARCHIE

Latham & Watkins

Counsel for HCA Inc.



CLINT MCCREADY – RELATOR

DATED: 9/17/09

BY: Clint M. McCready
CLINT MCCREADY
Relator

DATED: 9/20/09

BY: J.P. Panneton
C/BROOKS CUTTER
JOHN P. PANNETON
Counsel for Relator

MileStone Healthcare, Inc.

DATED: _____

BY: _____

CHARLIE ALLEN
President and Chief Executive
Officer
MileStone Healthcare, Inc.

DATED: September 30, 2004

BY: _____


ANDREW L. HURST
Reed Smith LLP
Counsel for MileStone Healthcare,
Inc.

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MileStone Healthcare, Inc.

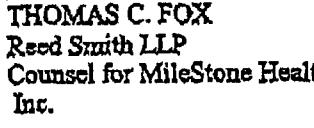
DATED: 9/30/04

BY:


CHARLIE ALLEN - ROGER T. JENKINS
President and Chief Executive
Officer
MileStone Healthcare, Inc.

DATED: _____

BY:


THOMAS C. FOX
Reed Smith LLP
Counsel for MileStone Healthcare,
Inc.

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