

## **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"), and Manoa Fire Company (MFC) (hereafter collectively referred to as "the Parties"), through their authorized representatives.

### **RECITALS**

A. In operation since 1925, MFC is a private, not-for-profit company located in Haverford Township, Pennsylvania, that provides fire suppression, rescue operations, and emergency medical services (including ambulance transportation services) to residents of Haverford Township. MFC volunteers staff two Basic Life Support Ambulances, with assistance from the career staff of the Haverford Township Paramedics Department.

B. This settlement follows an investigation and audit initiated by the United States and jointly conducted by the Parties.

C. The United States contends that MFC submitted or caused to be submitted certain limited claims for payment which were improper (as a result of the "Covered Conduct" described in paragraph E below) to the Medicare Program (Medicare), Title XVIII of the Social Security Act, 42 U.S.C. §§ 1395-1395kkk-1 because at least four MFC volunteers allegedly had lapsed advanced first aid certifications or otherwise failed to timely receive such certifications.

D. MFC disputes the United States' contention.

**E. Medicare Billing Requirements for Ambulance Services**

The United States contends that it has certain civil claims against MFC arising from MFC's submission of claims for payment for ambulance services. For such services to be properly billed, they must meet four principal criteria: (1) they must be medically necessary; (2) they must be provided by an ambulance company that is licensed in accordance with federal regulations and the regulations of the state in which the services are provided; (3) they must be provided in an ambulance that is properly equipped and functions in accordance with federal regulations and the regulations of the state in which the services are provided; and (4) they must be rendered by personnel who are properly licensed and trained in accordance with federal regulations and the regulations of the state in which the services are provided.

Of these, only the last criterion is at issue in this instance.

For the services in question, at least four MFC personnel allegedly did not meet the qualifications required. Specifically, pursuant to 28 Pa. Code § 1005.10(d)(1)(i), the Commonwealth of Pennsylvania mandates that each ambulance rendering Basic Life Support (BLS) services be staffed with at least two people. One of these individuals must be a licensed Emergency Medical Technician (EMT). The other, who is called an "Ambulance Attendant," must be actively certified in advanced first aid and have a CPR certification that is less than two years old. On the occasions in question between July 23, 2007 and September 30, 2013, due to an absence of administrative oversight, MFC billed for services rendered by at least four ambulance attendants whose advanced first aid certifications had lapsed or who had not timely received such certifications in the first instance. That conduct is referred to below as the "Covered Conduct."

Ambulance companies such as MFC are required to maintain records of their staffing and to ensure that only those ambulance services provided in accordance with federal and state law, including those regulations relating to staffing, are billed to Medicare.

**F. Covered Conduct**

Between July 23, 2007 and September 30, 2013, the United States contends that MFC improperly billed Medicare for at least 30 BLS runs that were not staffed by the individuals required under Pennsylvania law. On these occasions, although MFC ambulances consistently were staffed by EMTs with current certifications, the second individual present in the ambulance, a volunteer, was not a qualified "Ambulance Attendant," either because her/his advanced first aid certification had lapsed or because that individual had not timely completed the required advanced first aid class.

**G. MFC's Remedial/Corrective Actions**

When it was notified of the United States' investigation, MFC immediately retained outside counsel and an auditor. MFC undertook efforts to determine whether the allegations were justified, and it cooperated fully in the United States' investigation. When MFC ultimately determined that the foregoing Covered Conduct might have occurred, it accepted responsibility for its actions and those of its volunteers.

In order to ensure that the problems do not recur, MFC took several remedial measures. First, it immediately stopped any volunteer whose certifications were not current from serving as the Ambulance Attendant on its BLS runs. Second, it arranged training for those individuals to ensure that its volunteer staff was trained and certified in accordance with Pennsylvania law. Finally, it purchased a software system and arranged

for its volunteers' certification and training records to be placed into the system. This system contains a certification management module: it can be queried regarding volunteer certification and training, and it provides for periodic alerts to MFC administration when an MFC volunteer's certification is about to lapse.

H. This Settlement Agreement is neither an admission of liability by MFC nor a concession by the United States that the claims are not well founded.

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

1. MFC shall pay to the United States \$36,912.46 ("Settlement Amount") no later than 30 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 Eastern District of Pennsylvania.

2. On or before December 31, 2014, December 31, 2015, and December 31, 2016, MFC shall transmit to undersigned counsel for the United States a document showing each BLS ambulance run for which Medicare was billed in the preceding year. The document shall include the last name of the patient transported, date of service, and the names of all MFC volunteers, employees, or contractors who performed the run. For each such individual, MFC shall also provide documentation of the current training, certification or licensure substantiating such billing as of the date of service. This document may be in any form mutually acceptable to the Parties, and an appropriate officer of MFC shall certify its accuracy. The parties mutually agree that no such

reporting will be required if MFC does not provide any BLS ambulance service in a particular calendar year.

3. Subject to the exceptions in Paragraph 5 (concerning excluded claims) below, and conditioned upon MFC's full payment of the Settlement Amount, the United States releases MFC from any civil or administrative monetary claim the United States has for the Covered Conduct under the common law theories of payment by mistake, unjust enrichment, and fraud or pursuant to the statutory penalties provided by 31 U.S.C. §§ 3729-3733; 42 U.S.C. § 1320a-7a; or 31 U.S.C. §§ 3801-3812.

4. OIG-HHS expressly reserves all rights to institute, direct, or to maintain any administrative action seeking exclusion against MFC and/or its officers, directors, and employees from Medicare, Medicaid, and all 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) or 42 U.S.C. § 1320a-7a (permissive exclusion).

5. Notwithstanding the release given in paragraph 3 of this Agreement, or any other term of this Agreement, the following claims of the United States are specifically reserved and are not released:

- a. Any liability arising under Title 26, U.S. Code (Internal Revenue Code);
- b. Any criminal liability;
- c. Except as explicitly stated in this Agreement, any administrative liability, including mandatory exclusion from Federal health care programs;

- d. Any liability to the United States (or its agencies) for any conduct other than the Covered Conduct;
- e. Any liability based upon obligations created by this Agreement;
- f. Any liability for express or implied warranty claims or other claims for defective or deficient products or services, including quality of goods and services;
- g. Any liability for failure to deliver goods or services due;
- h. Any liability for personal injury or property damage or for other consequential damages arising from the Covered Conduct; or
- i. Any liability of individuals.

6. MFC waives and shall not assert any defenses MFC 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 concerning the characterization of the Settlement Amount for purposes of the Internal Revenue laws, Title 26 of the United States Code.

7. MFC fully and finally releases the United States, its agencies, officers, agents, employees, and servants, from any claims (including attorney's fees, costs, and expenses of every kind and however denominated) that MFC has asserted, could have asserted, or may assert in the future against the United States, and its agencies,

employees, servants, and agents, related to the Covered Conduct and the United States' investigation and prosecution thereof.

8. 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 MFC agrees not to resubmit to any Medicare contractor or any state payer any previously denied claims related to the Covered Conduct, and agrees not to appeal any such denials of claims.

9. MFC agrees 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 MFC, its present or former officers, directors, 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) MFC'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 MFC makes to the United States pursuant to this Agreement.

are unallowable costs for government contracting purposes and under the Medicare Program and/or Medicaid Program (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 MFC, and MFC 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 MFC or any of its subsidiaries or affiliates to the Medicare and/or Medicaid programs.

c. Treatment of Unallowable Costs Previously Submitted for Payment: MFC further agrees that within 90 days of the Effective Date of this Agreement it shall identify to applicable Medicare 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 MFC or any of its 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. MFC agrees that the United States, at a minimum, shall be entitled to recoup from MFC 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 MFC or any of its subsidiaries or affiliates on the effect of inclusion of Unallowable Costs (as defined in this Paragraph) on MFC or any of its 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 MFC's books and records to determine that no Unallowable Costs have been claimed in accordance with the provisions of this Paragraph.**

**10. This Agreement is intended to be for the benefit of the Parties only. The Parties do not release any claims against any other person or entity, except to the extent provided for in Paragraph 11 (waiver for beneficiaries paragraph), below.**

**11. MFC agrees that it waives 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.**

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

**13. 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.**

14. 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 Eastern District of Pennsylvania. 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.

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

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

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

18. This Agreement is binding on MFC's successors, transferees, heirs, and assigns.

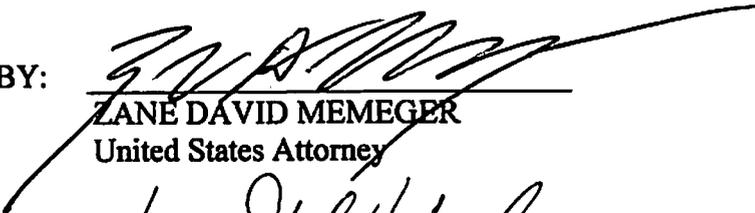
19. All Parties consent to the United States' disclosure of this Agreement, and information about this Agreement, to the public.

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

THE UNITED STATES OF AMERICA

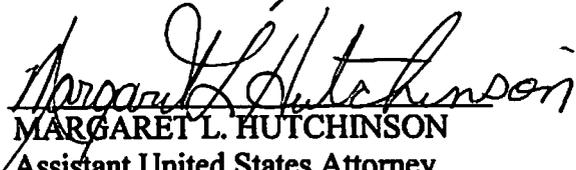
DATED: 12/1/14

BY:

  
LANE DAVID MEMEGER  
United States Attorney

DATED: 12/1/14

BY:

  
MARGARET L. HUTCHINSON  
Assistant United States Attorney  
Chief, Civil Division

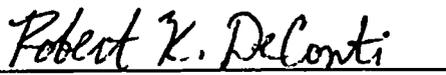
DATED: 12/1/2014

BY:

  
PAUL W. KAUFMAN  
Assistant United States Attorney  
Eastern District of Pennsylvania

DATED: 10/16/14

BY:

  
ROBERT K. DECONTI  
Assistant Inspector General for Legal Affairs  
Office of Counsel to the Inspector General  
Office of Inspector General  
United States Department of Health and Human Services

MANOA FIRE COMPANY

DATED: \_\_\_\_\_

BY:

\_\_\_\_\_  
ANTHONY KNEAFSEY  
Acting President  
Manoa Fire Company

DATED: \_\_\_\_\_

BY:

\_\_\_\_\_  
GEORGE BOCHETTO, ESQUIRE  
JEFFREY W. OGREN, ESQUIRE  
Bochetto & Lentz, P.C.  
1524 Locust Street,  
Philadelphia, PA 19102

THE UNITED STATES OF AMERICA

DATED: \_\_\_\_\_

BY: \_\_\_\_\_  
ZANE DAVID MEMEGER  
United States Attorney

DATED: \_\_\_\_\_

BY: \_\_\_\_\_  
MARGARET L. HUTCHINSON  
Assistant United States Attorney  
Chief, Civil Division

DATED: \_\_\_\_\_

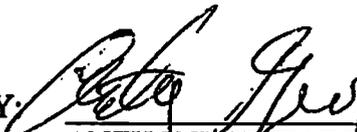
BY: \_\_\_\_\_  
PAUL W. KAUFMAN  
Assistant United States Attorney  
Eastern District of Pennsylvania

DATED: \_\_\_\_\_

BY: \_\_\_\_\_  
ROBERT K. DECONTI  
Assistant Inspector General for Legal Affairs  
Office of Counsel to the Inspector General  
Office of Inspector General  
United States Department of Health and Human Services

MANOA FIRE COMPANY

DATED: 11/11/14

BY:  \_\_\_\_\_  
ANTHONY KNEAFSEY  
Acting President  
Manoa Fire Company

DATED: 11/19/14

BY:  \_\_\_\_\_  
GEORGE BOCHETTO, ESQUIRE  
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