

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is entered into among the United States of America, acting through the United States Department of Justice and the United States Attorney’s Office for the District of New Jersey, 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 New Jersey, acting through the Department of Law and Public Safety, New Jersey Attorney General’s Office (“New Jersey”), Nicholas L. DePace (“Relator”), The Cooper Health System Inc., and The Cooper University Hospital (hereafter collectively referred to as “the Parties”), through their authorized representatives.

RECITALS

A. The Cooper Health System, a New Jersey Non-Profit Corporation (“Cooper”), d/b/a Cooper University Hospital (“Cooper Hospital”) is located at One Cooper Plaza, Camden, New Jersey 08103. Cooper operates an integrated healthcare-delivery system, including Cooper Hospital, The Children’s Regional Hospital, and a network of satellite offices in New Jersey and Pennsylvania.

B. On November 12, 2008, Relator filed a *qui tam* action in the United States District Court for the District of New Jersey captioned *United States ex rel. Nicholas M. Depace v. The Cooper Health System, Cooper University Hospital, and Cardiovascular Associates of the Delaware Valley, P.A.*, 08-cv-5626 (JEI), pursuant to the *qui tam* provisions of the False Claims Act, 31 U.S.C. § 3730(b) and the New Jersey False Claims Act, N.J. Stat. Ann. § 2A:32C-1, *et seq.*, (the “Civil Action”). In the Civil Action, Relator alleged, in general, that Defendants violated state, N.J.S.A. 30:4D-17(c), and federal, 42 U.S.C. § 1320a-7b(b), anti-kickback law as well as the state physician self-referral law, N.J.S.A. 45:9-22.4 *et seq.* (the “Codey Law”), and

the federal Physician Self-Referral Law, 42 U.S.C. § 1395nn (the “Stark Law”). Relator further alleged that these violations in turn resulted in false claims being submitted to, and paid by, the state and federal government.

C. The United States and New Jersey contend that Cooper submitted or caused to be submitted claims for payment to: (a) the Medicare Program (“Medicare”), Title XVIII of the Social Security Act, 42 U.S.C. §§ 1395-1395kkk-1; and (b) the Medicaid Program, Title XIX of the Social Security Act, 42 U.S.C. §§ 1396 - 1396w-5, and N.J. Stat. Ann. § 30:4D-1, *et seq.*, (collectively, “Medicaid”).

D. The United States and New Jersey contend that they have certain civil claims against Cooper arising from Cooper’s monetary payments to certain Cooper Heart Institute Advisory Board (“CHIAB”) member physicians during the period from October 1, 2004, through December 31, 2010. The United States and New Jersey allege that at least one purpose of the above payments was to induce the referral of patients to Cooper, that the payments induced such referrals to Cooper, and that Cooper’s subsequent billing of the Medicare and Medicaid programs for services resulting from those tainted referrals were in violation of state and federal anti-kickback and self-referral laws and thus false claims. The foregoing conduct is referred to below as the “Covered Conduct.”

E. Relator claims entitlement under 31 U.S.C. § 3730(d), N.J. Stat. Ann. § 2A:32C-7, and N.J. Stat. Ann. § 2A:32C-8 to a share of the proceeds of this Settlement Agreement and to Relator’s reasonable expenses, attorneys’ fees and costs.

F. This Settlement Agreement and the payment described herein are neither an admission of liability by Cooper nor a concession by the United States and New Jersey that their claims are not well founded or a concession by the Relator that his 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. Cooper shall pay to the United States Ten Million Two Hundred Sixty-Nine Thousand dollars (\$10,269,000) and interest on the Settlement Amount at a rate of 1.25% from September 28, 2012, by electronic funds transfer, no later than 15 days after the Effective Date of this Agreement, pursuant to written instructions to be provided by the Office of the United States Attorney for the District of New Jersey.

2. Cooper shall pay to the State of New Jersey Two Million Three Hundred Thirty-One Thousand dollars (\$2,331,000) and interest on the Settlement Amount at a rate of 1.25% from September 28, 2012, by electronic funds transfer, no later than 15 days after the Effective Date of this Agreement, pursuant to written instructions to be provided by the Office of the Attorney General for the State of New Jersey.

3. Conditioned upon the United States and New Jersey receiving their respective Settlement Amounts (together, the "Settlement Amount") from Cooper and as soon as feasible after receipt, the United States shall pay \$1,951,110 and New Jersey shall pay \$442,890 to Relator by electronic funds transfer pursuant to written instructions provided by Relator's Counsel.

4. Cooper agrees to pay Relator's Counsel, and Realtor's Counsel agree to accept as full payment, \$430,000 for expenses, and attorney's fees and costs in accordance with subsection 3730(d)(1).

5. Subject to the exceptions in Paragraph 8 (concerning excluded claims) below, and

conditioned upon Cooper's full payment of the Settlement Amount, the United States and New Jersey fully and finally release, waive and forever discharge Cooper, including officers, trustees, current employees, and those who were employed at the time of the Covered Conduct, with its current and former parent corporations, direct and indirect subsidiaries, divisions, and the successors and assigns, from any civil or administrative monetary claim the United States or New Jersey 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 civil monetary penalties of the Stark Law, 42 U.S.C. § 1395nn(g)(3); the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801-3812; the New Jersey False Claims Act, N.J. Stat. Ann. § 2A:32C-1, *et seq.*; and the common law theories of payment by mistake, unjust enrichment, and fraud.

6. Subject to the exceptions in Paragraph 8 below, and conditioned upon Cooper's full payment of the Settlement Amount and the Settlement Amount for Relator's Attorneys' Fees and Expenses, Relator, for himself and for his heirs, successors, attorneys, agents and assigns, fully and finally release, waive and forever discharge Cooper, its officers, trustees, current employees and those who were employed at the time of the Covered Conduct, servants and agents, together with Cooper's current and former parent corporations, direct and indirect subsidiaries, divisions, and the successors and assigns from any civil monetary claim the Relator has on behalf of the United States and New Jersey for the Covered Conduct under the False Claims Act, 31 U.S.C. §§ 3729-3733, and the New Jersey False Claims Act, N.J. Stat. Ann. § 2A:32C-1, *et seq.*

7. OIG-HHS expressly reserves all rights to institute, direct, or to maintain any administrative action seeking exclusion against Cooper and/or its officers, trustees, 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).

8. Notwithstanding the releases given in paragraphs 5 and 6 of this Agreement, or any other term of this Agreement, the United States and New Jersey specifically reserve and do not release the following claims, to the extent each has such claims:

- a. Any liability arising under Title 26, U.S. Code (Internal Revenue Code) and any criminal, civil, or administrative liability arising under New Jersey's revenue codes;
- b. Any criminal liability;
- c. Except as explicitly stated in this Agreement, any administrative liability, including mandatory exclusion from Federal health care programs under 42 U.S.C. § 1320a-7(a);
- d. Any liability to the United States or New Jersey (or their respective agencies) for any conduct other than the Covered Conduct;
- e. Any liability based upon obligations created by this Agreement;
- f. Any liability for personal injury or property damage or for other consequential damages arising from the Covered Conduct; and
- g. Any claims against and liability of individuals except those released by the operation of Paragraph 5, above.

9. 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 under 31 U.S.C. § 3730(c)(2)(B) and N.J. Stat. Ann. § 2A:32C-6. 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 New Jersey, and their agencies, officers, agents, employees, and servants, from any claims against Cooper for the Covered Conduct arising from the filing of the Civil Action or under 31 U.S.C. § 3730, N.J. Stat. Ann. § 2A:32C-6, and N.J. Stat. Ann. § 2A:32C-7, and from any claims to a share of the proceeds of this Agreement.

10. Upon payment of the Settlement Amount and the Settlement Amount for Relator's Attorneys' Fees and Expenses, Relator, for himself, and for his heirs, successors, attorneys, agents, and assigns, releases Cooper, its officers, trustees, current employees and those who were employed at the time of the Covered Conduct, servants and agents, together with Cooper's current and former parent corporations, direct and indirect subsidiaries, divisions, and the successors and assigns, from any liability to Relator arising from the filing of the Civil Action, or under 31 U.S.C. § 3730(d) and N.J. Stat. Ann. § 2A:32C-8 for expenses or attorney's fees and costs arising from the filing of the Civil Action.

11. Cooper waives and shall not assert any defenses Cooper 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 U.S. Constitution, under the Excessive Fines Clause in the Eighth Amendment of the U.S. Constitution, or under the Double Jeopardy or Excessive Fine Clauses in Article I of the New Jersey 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 New Jersey concerning the characterization of the Settlement Amount for purposes of the Internal Revenue laws, Title 26 of the United States Code, or New Jersey's revenue codes.

12. Cooper fully and finally releases the United States and New Jersey, 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 Cooper has asserted, could have asserted, or may assert in the future against the United States and New Jersey and their agencies, officers, agents, employees, and servants, related to the Covered Conduct and the investigation and prosecution thereof.

13. Cooper fully and finally releases Relator, and his counsel, agents, employees, spouses, and heirs, from any claims (including attorney's fees, costs, and expenses of every kind and however denominated) that Cooper has asserted, could have asserted, or may assert in the future against Relator, and his counsel, agents, employees, spouses, and heirs, related to the Covered Conduct, the investigation and prosecution thereof, and the filing of the Civil Action.

14. 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 or Medicaid carrier or intermediary or any state payer, related to the Covered Conduct; and Cooper agrees not to resubmit to any Medicare or Medicaid carrier or intermediary or any state payer any previously denied claims related to the Covered Conduct, and agrees not to appeal any such denials of claims.

15. Cooper 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 Cooper, its present or former officers, directors, employees, shareholders, and agents in connection with:

- (1) the matters covered by this Agreement
 - (2) the audit(s) and civil investigation(s) of the matters covered by this Agreement;
 - (3) Cooper's investigation, defense, and corrective actions undertaken in response to the 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;
 - (5) the payment of the Settlement Amount by Cooper, and any payments that Cooper may make to Relator, including costs and attorneys fees;
- are,

“Unallowable Costs” for government contracting purposes and under the Medicare Program, Medicaid Program, TRICARE Program, and Federal Employees Health Benefits Program (“FEHBP”).

b. Future Treatment of Unallowable Costs: Unallowable Costs shall be separately determined and accounted for in nonreimbursable cost centers by Cooper, and Cooper 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 Cooper or any of its subsidiaries or affiliates to the Medicare, Medicaid, TRICARE, or FEHBP Programs.

c. Treatment of Unallowable Costs Previously Submitted for Payment: Cooper further agrees that within 90 days of the Effective Date of this Agreement it 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 Cooper 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. Cooper agrees that the United States or any State Medicaid program, at a minimum, shall be entitled to recoup from Cooper 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 and/or New Jersey pursuant to their direction or the direction of the affected agencies. The United States and New Jersey reserve their right to disagree with any calculations submitted by Cooper or any of its subsidiaries or affiliates on the effect of inclusion of Unallowable Costs (as defined in this Paragraph) on Cooper 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 or New Jersey to audit, examine, or re-examine Cooper's books and records to determine that no Unallowable Costs have been claimed in accordance with the provisions of this Paragraph.

16. 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 Paragraphs 5, 6, and 17 (waiver for beneficiaries paragraph).

17. Cooper agrees that it waives and shall not seek hereafter 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.

18. Upon receipt of the payments described in Paragraphs 1, 2, and 4, above, the United States, New Jersey, and Relator shall promptly sign and file in the Civil Action pursuant to Rule 41(a)(1) a Joint Stipulation of Dismissal with prejudice of the Civil Action in so far as it relates to Cooper and the Covered Conduct. With respect to the Cardiovascular Associates of the Delaware Valley the Joint Stipulation of Dismissal Shall be with prejudice as to the Relator and without prejudice as to the United States.

19. Except as otherwise provided in this Agreement, each Party shall bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

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

21. This Agreement is governed by the laws of the United States and New Jersey. The exclusive jurisdiction and venue for any dispute relating to this Agreement is the United States District Court for the District of New Jersey. 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.

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

23. The undersigned represent and warrant that they are fully authorized to execute

this Agreement on behalf of the persons and entities indicated below.

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

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


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

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


28. 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: 1/17/13

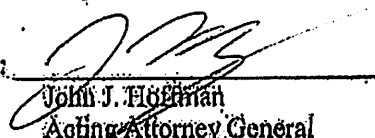
BY: 
David E. Dauheimer
Assistant United States Attorney
District of New Jersey

DATED: 1/16/13

BY: 
Robert K. DeConti
Assistant Inspector General for Legal Affairs
Office of Inspector General
United States Department of
Health and Human Services

THE STATE OF NEW JERSEY

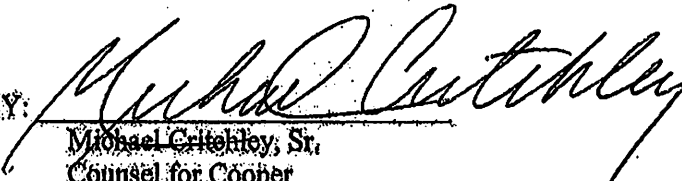
DATED: 1/17/13

BY: 

John J. Fighman
Acting Attorney General
Office of the Attorney General of New Jersey


COOPER DEFENDANT


DATED: 1/11/13 BY: 
John P. Sheridan Jr.
President and CEO Cooper

DATED: 1/11/13 BY: 
Michael Critchley, Sr.
Counsel for Cooper

DATED: 1/11/13 BY: 
John M. Vazquez
Counsel for Cooper

Nicholas L. DePace - Relator

DATED: 1-10-13 BY: 
Nicholas L. DePace
Relator

DATED: 1-10-13 BY: 
Marc S. Raspanti
Michael A. Morse
Pamela C. Brecht
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Counsel for Relator