

## 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 McKesson Corporation ("McKesson") (hereafter collectively referred to as "the Parties"), through their authorized representatives.

### RECITALS

A. McKesson is a corporation organized under the laws of Delaware with its principal place of business in San Francisco, California. At all relevant times, McKesson was, among other things, a wholesaler of pharmaceuticals products.

B. On or about March 28, 2005, Relator David Morgan ("Relator") filed a *qui tam* action in the United States District Court for the District of New Jersey captioned *United States ex rel. Morgan v. Express Scripts, Inc., et al.*, Civil Action No. 05-1714, pursuant to the *qui tam* provisions of the False Claims Act, 31 U.S.C. § 3730(b) (the "Civil Action"). Relator filed amended complaints on or about May 26, 2006, November 30, 2006, and January 26, 2009. McKesson was named as a defendant only in Relator's second and third amended complaints.

C. The United States contends that McKesson caused to be submitted claims for payment to the Medicaid Program (Medicaid), 42 U.S.C. §§ 1396-1396w-5.

D. The United States contends that it has certain civil claims against McKesson for engaging in the following alleged conduct (hereafter referred to as the "Covered Conduct"): During the period from August 1, 2001 through March 31, 2005, McKesson knowingly increased, to 25% over Wholesale Acquisition Cost ("WAC") or over Direct Price ("DP"), the markups it reported to First DataBank ("FDB") for all brand name, self-administered,

prescription pharmaceuticals, without regard to the lower markups suggested by drug manufacturers for such drugs, and knowingly reported such 25% markups to FDB, when in fact (1) prices with such markups did not accurately reflect the prices that McKesson actually charged its customers for such drugs; (2) McKesson knew that reporting such false and inflated markups to FDB would cause FDB to publish false and inflated Average Wholesale Prices ("AWPs") for such drugs; (3) McKesson knew that FDB described its published AWPs as being the product of wholesaler surveys and as reflecting actual prices that wholesalers charged their customers; and (4) McKesson knew that state Medicaid programs would and did use those published AWPs to reimburse providers for such drugs. The drugs covered by this Agreement ("the Covered Drugs") are all brand name, self-administered, prescription pharmaceuticals for which FDB published AWPs equal to 25% over the drugs' respective WACs or DPs. The United States further contends that McKesson's conduct caused the United States and states relying on FDB AWPs, or relying on AWPs published by Medi-Span that were derived from FDB AWPs, to pay artificially inflated reimbursements for the Covered Drugs for Medicaid claims submitted during the period from August 1, 2001 through December 31, 2009.

E. This Agreement is neither an admission of liability by McKesson nor a concession by the United States that its contentions and claims are not well founded. McKesson expressly denies the contentions of the United States set forth herein and all contentions of Relator in the Civil Action, and further denies any liability or wrongdoing related to those contentions. Neither this Agreement, its execution, nor the performance of any obligations under it, nor the fact of settlement, is intended to be an admission of liability or wrongdoing by McKesson.

F. 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. McKesson shall pay to the United States the sum of \$187,000,000 plus simple interest accrued thereon at a rate of 2.50% per annum from June 22, 2011, to and including the Effective Date of this Agreement (the "Settlement Amount"). McKesson shall pay the Settlement Amount to the United States by electronic funds transfer pursuant to written instructions to be provided by the United States by the Effective Date of this Agreement. McKesson agrees to make this electronic funds transfer no later than five business days after the Effective Date of this Agreement.

2. Subject to the exceptions in Paragraph 4 (concerning excluded claims) below, and conditioned upon McKesson's full payment of the Settlement Amount, the United States (on behalf of itself, its officers, agents, agencies, and departments) releases McKesson, its current and former parents, directors, officers and employees, direct and indirect subsidiaries, divisions, predecessors, and the successors and assigns of any of them, from any civil or administrative monetary claim the United States has or may have 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; any other statute creating causes of action for civil damages or civil penalties which the Civil Division of the United States Department of Justice has authority to assert and compromise pursuant to 28 C.F.R. Part 0, Subpart I, § 0.45(d); or the common law theories of fraud, misrepresentation, payment by mistake, unjust enrichment, and disgorgement.

3. OIG-HHS expressly reserves all rights to institute, direct, or to maintain any administrative action seeking exclusion against McKesson 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).

4. Notwithstanding the releases given in paragraph 2 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 or permissive 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; or
- h. Any liability for personal injury or property damage or for such other consequential damages arising from the Covered Conduct.

5. McKesson waives and shall not assert any defenses McKesson 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.

6. McKesson 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 McKesson has asserted, could have asserted, or may assert in the future against the United States, its agencies, officers, agents, employees, and servants related to the Covered Conduct and the United States' investigation and prosecution thereof.

7. The Settlement Amount shall not be decreased as a result of the denial of claims for payment now being withheld from payment by any Medicaid program or any other federal or state payer related to the Covered Conduct; and McKesson agrees not to resubmit to any Medicaid program or any other federal or state payer any previously denied claims related to the Covered Conduct, and agrees not to appeal any such denials of claims.

8. McKesson 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 and 1396-1396w-5; and the regulations and official program directives

promulgated thereunder) incurred by or on behalf of McKesson and/or its 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/or criminal investigations of the matters covered by this Agreement;
- (3) McKesson's investigation, defense, and corrective actions undertaken in response to the United States' audit(s) and civil and/or criminal investigations 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 McKesson makes to the United States pursuant to this Agreement and any payments that McKesson 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) (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 McKesson, and McKesson 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 McKesson or any of its subsidiaries or affiliates to the Medicare, Medicaid, TRICARE, or FEHBP Programs.

c. Treatment of Unallowable Costs Previously Submitted for Payment: McKesson 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 McKesson 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. McKesson agrees that the United States, at a minimum, shall be entitled to recoup from McKesson 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 McKesson or any of its subsidiaries or affiliates on the effect of inclusion of Unallowable Costs (as defined in this Paragraph) on McKesson 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 McKesson's books and records to determine that no Unallowable Costs have been claimed in accordance with the provisions of this Paragraph.

9. 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 10 (waiver for beneficiaries paragraph), below.

10. McKesson 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.

11. Upon receipt of the payment described in Paragraph 1, above, the United States shall promptly file in the Civil Action a Notice requesting that all claims asserted in the Civil Action against McKesson for the Covered Conduct be dismissed with prejudice.

12. Should this Agreement be challenged by Relator as not fair, adequate and reasonable pursuant to 31 U.S.C. § 3730(c)(2)(B), the Parties agree to take all reasonable and necessary steps to defend this Agreement, including through any appeals. If a court of competent jurisdiction sets aside this Agreement, and such decision is not vacated or reversed on appeal, all amounts paid by McKesson pursuant to Paragraph 1 above shall be returned, and McKesson agrees that it will not plead, argue, or otherwise assert any defenses under the statute of limitations, laches, estoppel, or similar theories, to any civil or administrative claims filed, joined, or otherwise asserted by the United States for the Covered Conduct within ninety (90) days after a final judgment setting aside this Agreement and the exhaustion or expiration of any rights to appeal, except to the extent that such defenses were available to McKesson on the Effective Date of this Agreement, giving effect to the Amended Tolling Agreement between McKesson and the United States dated February 15, 2012 and any subsequent amendments



thereto. Nothing in this Agreement has any impact on the extent to which any such time-related defense is precluded, limited, or otherwise affected by the pendency of the Civil Action.

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

14. 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.

15. 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 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.

16. This Agreement constitutes the complete agreement between the Parties, and supersedes any and all prior agreements, negotiations, correspondence, understandings and communications between the Parties, whether written or oral, with respect to the matters addressed herein. This Agreement may not be amended except by written consent of the Parties.

17. Notwithstanding any other provision in this Agreement, the Amended Tolling Agreement between McKesson and the United States dated February 15, 2012, shall remain in effect according to its terms.

18. The individuals signing this Agreement on behalf of McKesson represent and warrant that they are authorized by McKesson to execute this Agreement. The United States signatories represent that they are signing this Agreement in their official capacities and that they are authorized to execute this Agreement.

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

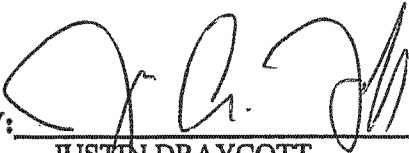
20. This Agreement is binding on McKesson's successors, transferees, heirs, and assigns.

21. McKesson consents to the United States' disclosure of this Agreement, and information about this Agreement, to the public.


22. This Agreement is effective on the date of signature of the last signatory to the Agreement (Effective Date of this Agreement). Facsimiles of signatures and/or electronic signatures in portable document format (.pdf) shall constitute acceptable, binding signatures for purposes of this Agreement.

**THE UNITED STATES OF AMERICA**

DATED: 4/3/12

BY:   
JUSTIN DRAYCOTT  
JEFFREY A. TOLL  
Trial Attorneys  
Commercial Litigation Branch  
Civil Division  
United States Department of Justice

DATED: 3/29/12

BY:   
ALEX KRIEGSMAN  
Assistant United States Attorney  
United States Attorney's Office for the  
District of New Jersey

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

BY: \_\_\_\_\_  
GREGORY E. DEMSKE  
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

THE UNITED STATES OF AMERICA

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

BY: \_\_\_\_\_

JUSTIN DRAYCOTT  
JEFFREY A. TOLL  
Trial Attorneys  
Commercial Litigation Branch  
Civil Division  
United States Department of Justice

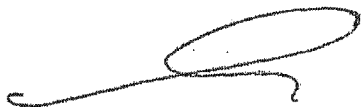
DATED: \_\_\_\_\_

BY: \_\_\_\_\_

ALEX KRIEGSMAN  
Assistant United States Attorney  
United States Attorney's Office for the  
District of New Jersey

DATED: 4/3/12

BY: \_\_\_\_\_



GREGORY E. DEMSKE  
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

**MCKESSON CORPORATION**

DATED: 3/29/12

BY: Willie C. Bogan  
WILLIE C. BOGAN  
Secretary  
McKesson Corporation  
One Post Street  
San Francisco, CA 94104

DATED: 3/29/12

BY: R. G. Hassanein  
RYAN G. HASSANEIN  
Morrison & Foerster  
425 Market Street  
San Francisco, CA 94105  
Counsel for McKesson Corporation