

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 Florida, acting through the Florida Office of the Attorney General (“State of Florida”); and Southeast Florida Hematology and Oncology Group, P.A., (“SEFHOG”) (hereafter collectively referred to as “the Parties”), through their authorized representatives.

RECITALS

A. SEFHOG was a hematology and oncology practice based in Fort Lauderdale, Florida. As of January 21, 2021, SEFHOG is no longer in business.

B. Cardinal Health, Inc. (“Cardinal Health”) is a wholesaler and distributor of pharmaceutical products. Its specialty pharmacy distribution arm contracts directly with physician practices to sell physician-administered drugs for which those practices seek reimbursement from the federal health care program.

C. The United States and the State of Florida contend that they have certain civil claims against SEFHOG for submitting false claims for payment to the Medicare Program, Title XVIII of the Social Security Act, 42 U.S.C. § 1395-1395lll (“Medicare”), and the Medicaid Program, 42 U.S.C. § 1396-1396w-5 (“Medicaid”), in violation of the Anti-Kickback Statute, 42 U.S.C. § 1320a-7b(b)(1).

D. SEFHOG admits, acknowledges, and accepts responsibility for the following facts. On May 30, 2013, SEFHOG signed a letter of commitment with Cardinal Health in which SEFHOG agreed to purchase 90% of all branded and generic pharmaceuticals from Cardinal Health for a period of 36 months in exchange for a \$60,000.00 “Transition Rebate” from Cardinal

Health. The transition rebate was not attributable to identifiable sales of pharmaceutical products from Cardinal Health. On June 24, 2016, Cardinal Health agreed to pay SEFHOG an additional \$5,000.00 “rebate” on the next \$50,000.00 in branded and generic pharmaceuticals purchased from Cardinal Health if SEFHOG agreed to use Cardinal Health’s practice management software in its facilities and pay a \$5,000.00 licensing fee. From July 1, 2013, until SEFHOG ceased treating patients at close of business on January 21, 2021, SEFHOG knowingly received the “transition rebates” and licensing fee “rebates” in the form of a credit on its account with Cardinal in advance of SEFHOG’s purchase of pharmaceuticals from Cardinal Health, and not in connection with specific purchases that SEFHOG made from Cardinal. SEFHOG then almost exclusively purchased pharmaceuticals from Cardinal Health, instead of Cardinal Health’s competitors, some of which were billed to federal health care programs. As a result of the foregoing conduct, the United States and the State of Florida contend that SEFHOG caused false claims to be submitted to Medicare and Medicaid. That conduct is referred to below as the “Covered Conduct.

In consideration of the mutual promises and obligations of this Settlement Agreement, the Parties agree and covenant as follows:

TERMS AND CONDITIONS

1. SEFHOG shall pay to the United States a total of \$65,000.00 (“Federal Settlement Amount”), none of which is restitution, 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 District of Massachusetts.

2. SEFHOG shall pay to the State of Florida a total of \$65,000.00 (“State Settlement Amount”), none of which is restitution, 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 State of Florida.

3. Subject to the exceptions in Paragraphs 5 (concerning reserved claims) below, and upon the United States' receipt of the Federal Settlement Amount, the United States releases SEFHOG and its corporate predecessors, its current and former parents, divisions, affiliates, subsidiaries, successors, and assigns, from any civil or administrative monetary claim the United States 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.

4. Subject to the exceptions in Paragraph 6 below (concerning reserved claims), and upon the State of Florida's receipt of the State Settlement Amount, the State of Florida releases SEFHOG, including any parent, subsidiary or affiliated corporate entities, from any civil or administrative monetary claim the State of Florida has for any claims submitted or caused to be submitted by the state Medicaid Program or its contracted Managed Care Organizations as a result of the Covered Conduct described in Paragraph D. Nothing in this Agreement precludes the State of Florida from taking any action against entities or persons, or for conduct and practices, for which claims have been reserved in Paragraph 7.

5. Notwithstanding the releases given in Paragraphs 3 and 4 of this Agreement, or any other term of this Agreement, the following claims and rights 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 or enforcement right, 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 of individuals;

6. Notwithstanding the releases given in Paragraph 4 of this Agreement, or any other term of this Agreement, the following claims and rights of the State of Florida are specifically reserved and are not released:

- a. Any criminal, civil or administrative liability arising under the state revenue codes;
- b. Any criminal liability;
- c. Any civil administrative liability that any person or entity, including SEFHOG, have or may have to the State of Florida or to the individual consumers or state program payors under any statute, regulation, or rule not expressly covered by the release in paragraph 4 above, including by not limited to, any and all of the following claims: (i) State of Florida or federal antitrust violations and (ii) claims involving unfair and/or deceptive acts and practices and/or violations of consumer protection laws;
- d. Except as expressly stated in this Agreement, any administrative liability, including mandatory and permissive exclusion from Florida's Medicaid program;
- e. Any liability to the State of Florida (or its agencies) for any conduct other than the Covered Conduct;
- f. Any liability based upon obligations created by this Agreement;
- g. Any liability of individuals for the Covered Conduct.;

h. Any liability for expressed or implied warranty claims or other claims for defective or deficient products and services, including quality of goods and services;

i. Any liability for personal injury or property damage or for other consequential damages arising under the Covered Conduct; and

j. Any liability for failure to deliver goods or services due.

7. SEFHOG waives and shall not assert any defenses SEFHOG 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.

8. SEFHOG fully and finally releases the United States, the State of Florida, their agencies, officers, agents, employees, and servants, from any claims (including attorneys' fees, costs, and expenses of every kind and however denominated) that SEFHOG has asserted, could have asserted, or may assert in the future against the United States, their agencies, officers, agents, employees, and servants, related to the Covered Conduct or the United States' investigation or prosecution thereof.

9. 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 SEFHOG agrees 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.

10. SEFHOG 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. §§ 1395-1395lll and 1396-1396w-5; and the regulations and official program directives promulgated thereunder) incurred by or on behalf of SEFHOG, 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 investigation(s) of the matters covered by this Agreement;
- (3) SEFHOG'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 attorneys' fees);
- (4) the negotiation and performance of this Agreement; and
- (5) the payment SEFHOG makes to the United States pursuant to this Agreement and any payments that SEFHOG may make to Relators, including costs and attorneys fees; are unallowable costs for government contracting purposes and under the Medicare Program and Medicaid Program (hereinafter referred to as Unallowable Costs).

b. Future Treatment of Unallowable Costs: Unallowable Costs shall be separately determined and accounted for by SEFHOG, and SEFHOG 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 SEFHOG or any of its subsidiaries or affiliates to the Medicare or Medicaid Programs.

c. Treatment of Unallowable Costs Previously Submitted for Payment:

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

11. SEFHOG agrees to cooperate fully and truthfully with the United States' investigation of individuals and entities not released in this Agreement. Upon reasonable notice, SEFHOG shall encourage, and agrees not to impair, the cooperation of its directors, officers, and employees, and shall use its 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. SEFHOG further agrees to furnish to the United States, upon request, complete and unredacted copies of all non-privileged documents, reports, memoranda of interviews, and records in its possession, custody, or control concerning any investigation of the Covered Conduct that it has undertaken, or that has been performed by another on its behalf.

12. 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 21 (waiver for beneficiaries paragraph), below.

13. SEFHOG 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.

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

15. 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.

16. 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 Massachusetts. 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.

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

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

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 SEFHOG's successors, transferees, heirs, and assigns.

21. This Agreement is binding on Relators' successors, transferees, heirs, and assigns.

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

23. 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.

SIGNATURES ON NEXT PAGE

THE UNITED STATES OF AMERICA


DATED: _____

BY: _____

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Date: 2022.09.17 13:46:57
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EVAN D. PANICH
LINDSEY ROSS
Assistant United States Attorneys
United States Attorney's Office
District of Massachusetts

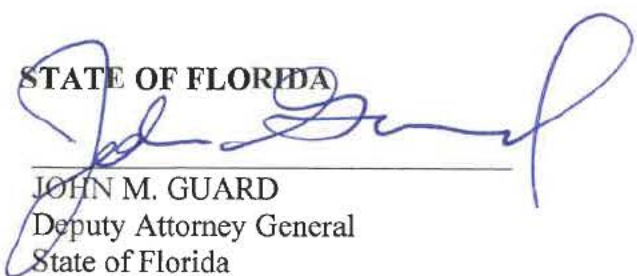
DATED: 09/16/2022 BY: _____


LISA M. RE
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

DATED: 9/21/22

BY:

STATE OF FLORIDA



JOHN M. GUARD
Deputy Attorney General
State of Florida

SOUTHEAST FLORIDA HEMATOLOGY and ONCOLOGY GROUP

DATED: 9/15/22

BY: 

Joseph A. DeMaria
Fox Rothschild LLP
Authorized representative for Southeast Florida
Hematology and Oncology Group, P.A.

DATED: 9/15/22

BY: 

Joseph A. DeMaria
Fox Rothschild LLP
Counsel for Southeast Florida Hematology and Oncology
Group, P.A.