

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”), MedStar Health, Inc. (“MedStar Health”), The Union Memorial Hospital d/b/a MedStar Union Memorial Hospital (“Union Memorial”), Franklin Square Hospital Center, Inc. d/b/a MedStar Franklin Square Medical Center (“Franklin Square”) (collectively, the “Defendants”), and Stephen D. Lincoln, M.D., Peter Hornefer, M.D., Garth McDonald, M.D., Jay Miller, Kathleen D. Griffin, as Personal Representative of the Estate of Catherine M. Griffin, Carven Farmer, and James Galliano (collectively, the “Relators”) (hereafter collectively referred to as “the Parties”), through their authorized representatives.

RECITALS

A. Defendant MedStar Health is a not-for-profit, tax-exempt healthcare system. Headquartered in Columbia, Maryland, MedStar Health is the largest healthcare system in the Baltimore-Washington metropolitan area, operating multiple sites of care, including ten hospitals.

B. Defendant Union Memorial is a not-for-profit, tax-exempt hospital located at 201 E. University Parkway in Baltimore Maryland. At all relevant times, MedStar Health was the sole member of Union Memorial.

C. Defendant Franklin Square is a not-for-profit, tax-exempt hospital located at 9000 Franklin Square Drive, Baltimore, Maryland 21237. At all relevant times, MedStar Health was the sole member of Franklin Square.

D. On or about June 18, 2010, Relators Stephen D. Lincoln, M.D., Peter Hornefer, M.D., and Garth McDonald, M.D. (“Lincoln Relators”) filed a qui tam action in the United States District Court for the District of Maryland captioned *United States ex rel. Lincoln, et al., v.*

Midatlantic Cardiovascular Associates, P.A., et al., Case No. MJG-10-1632, pursuant to the qui tam provisions of the False Claims Act, 31 U.S.C. § 3730(b) (the “Lincoln Civil Action”). The Lincoln Relators amended the Lincoln Civil Action twice, and all references to the Lincoln Civil Action in this Agreement shall mean the qui tam action in its entirety, i.e., including both amendments. The Lincoln Civil Action alleged that various hospitals, including Union Memorial and Franklin Square, offered remuneration to Midatlantic Cardiovascular Associates, P.A. (“MAC”), a medical practice comprised of cardiologists and cardiovascular surgeons, with a purpose of inducing cardiology and cardiovascular surgery referrals to their respective sites of care. The Lincoln Civil Action further alleged that those hospitals made false statements and claims for reimbursement from the Medicare program, Title XVIII of the Social Security Act, 42 U.S.C. §§ 1395-1395kkk-1 (“Medicare Program”).

E. On or about December 28, 2012, Relators Jay Miller, Catherine Griffin, Carven Farmer, and James Galliano (“Miller Relators”) filed a qui tam action in the United States District Court for the District of Maryland captioned *United States ex rel. Miller, et al., v. MedStar Health, Inc., et al.*, Case No. JKB-12-3816, pursuant to the qui tam provisions of the False Claims Act, 31 U.S.C. § 3730(b) (the “Miller Civil Action”). The Miller Civil Action alleged that the defendants in that action, which include Union Memorial and MedStar Health, presented or caused the presentation of claims to the Medicare Program and the Medicaid Program, Title XIX of the Social Security Act, 42 U.S.C. §§ 1396 et seq. (“Medicaid Program”) arising out of a pattern and practice of performing medically unnecessary percutaneous transluminal coronary angioplasty with stent placement procedures (commonly referred to as “cardiac stent procedures”).

F. The United States contends that Defendants submitted or caused to be submitted claims for payment to the Medicare Program, Title XVIII of the Social Security Act, 42 U.S.C. §§

1395-1395kkk-1 in violation of the Stark Law, 42 U.S.C. § 1395nn, the Anti-Kickback Statute, 42 U.S.C. § 1320a-7b(b), and the False Claims Act, 31 U.S.C. § 3729 *et seq.*

G. The United States contends that it has certain civil claims against Defendants for engaging in the following conduct, (hereinafter referred to as the “Covered Conduct”):

1. From January 1, 2006 through July 31, 2011, Defendants submitted claims to Medicare for services, including designated health services, referred by physicians: (1) with whom the Defendants had financial relationships that did not satisfy any exception to the Stark law, 42 U.S.C. § 1395nn *et seq.*, and/or (2) with whom Defendants had remunerative arrangements that violated the Anti-Kickback Statute, 42 U.S.C. § 1320a-7b(b). The circumstances that gave rise to these violations are as follows:

In the early and mid-2000s, MAC was the largest cardiology practice group in the Baltimore area. MAC employed general cardiologists, interventional cardiologists, and cardiovascular surgeons, some of whom held ownership interests in MAC. Under its business plan, MAC only referred patients to other MAC physicians. In an effort to increase their referrals for cardiology procedures, the Defendants sought to expand their relationship with MAC and MAC cardiologists.

Beginning in early 2006, MAC and the Defendants negotiated a series of clinical, administrative, and coverage contracts wherein new positions would be created and awarded to MAC or MAC physicians, and existing positions would be filled by MAC or MAC physicians. The negotiations resulted in the execution of the following 16 contracts in the fall of 2006 and in 2007:

- 1) Cardiology Clinical Administrative Services Agreement
- 2) Cardiovascular Research Clinical Administrative Services Agreement
- 3) Women’s Cardiac Services Clinical Administrative Agreement
- 4) Letter Agreement regarding Women’s Cardiac Services
- 5) Cardiac Catheterization Laboratories Clinical Administrative Services Agreement
- 6) Franklin Square Hospital Center Cardiac Catheterization Laboratories Coverage Agreement
- 7) Union Memorial Hospital Cardiac Catheterization Laboratories Coverage Agreement
- 8) Echocardiography Services Clinical Administrative Services Agreement
- 9) Electrophysiology Laboratory Clinical Administrative Services Agreement
- 10) Professional Education Agreement
- 11) Cardiac Evaluation Unit Services Clinical Administrative Services Agreement
- 12) Charity Care Services Agreement
- 13) Cardiology Management Services Master Agreement
- 14) Union Memorial Hospital Emergency Department Coverage Agreement
- 15) Professional Echocardiogram, Electrocardiogram and Stress Test Procedures Agreement
- 16) Services Agreement regarding Nurse Practitioners and Physician’s Assistant

The compensation paid to MAC and its physicians by the Defendants under these contracts exceeded the fair market value of the services that were provided and/or, in some instances, compensated MAC and its physicians for services that were not provided, and the Defendants paid said compensation in exchange for referrals for cardiac procedures, which constitute designated health services.

2. From January 1, 2006 through December 28, 2012, Defendant Union Memorial submitted or caused to be submitted false claims to the Medicare Program for medically unnecessary cardiac stent procedures performed by John Wang, M.D. at Union Memorial.

H. Defendants deny the allegations in the Lincoln Civil Action, the Miller Civil Action, and in Paragraphs F and G above.

I. This Settlement Agreement is made in compromise of disputed claims. It is neither an admission of liability by Defendants nor a concession by the United States that its claims are not well founded.

J. Relators claim entitlement under 31 U.S.C. § 3730(d) to a share of the proceeds of this Agreement and to Relators' reasonable expenses, attorneys' fees and costs.

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 Agreement, the Parties agree and covenant as follows:

TERMS AND CONDITIONS

1. Defendants shall pay to the United States Thirty-Five Million Dollars (**\$35,000,000.00**) ("Settlement Amount") and interest on the Settlement Amount at rate of 2.75% from January 28, 2019, of which \$17,500,000 is restitution, no later than 10 days after the Effective Date of this Agreement by electronic funds transfer pursuant to written instructions to be provided by the U.S. Attorney's Office for the District of Maryland.

2. Conditioned upon the United States receiving the Settlement Amount from Defendants and as soon as feasible after receipt, the United States shall pay \$5,180,000.00 to the Lincoln Relators and \$420,000.00 to the Miller Relators by electronic funds transfer.

3. Defendants shall pay \$95,000.00 to the Lincoln Relators and \$139,250.00 to the Miller Relators, through their respective legal counsel, in full satisfaction of any attorney's fees, costs, expenses allowable under 31 U.S.C. § 3730(d). Such payments shall be made by electronic funds transfer pursuant to written instructions from Relators' counsel. The payment to the Lincoln Relators shall be made no later than 10 days after the Lincoln Relators dismiss the Lincoln Civil Action in its entirety and with prejudice as to the Lincoln Relators in compliance with Paragraph 17 of this Agreement. The payment to the Miller Relators shall be made no later than 10 days after the Miller Relators dismiss the Miller Civil Action in its entirety and with prejudice as to the Miller Relators in compliance with Paragraph 17 of this Agreement. Other than the amounts specified in this Paragraph 3, Defendants shall have no obligation to make any additional payments to Relators or to their attorneys with respect to the matters covered by this Agreement or otherwise.

4. Subject to the exceptions in Paragraph 6 (concerning excluded claims) below, and conditioned upon Defendants' full payment of the Settlement Amount, the United States releases Defendants, together with their current and former parent corporations; direct and indirect subsidiaries; brother or sister corporations; divisions; current or former corporate owners; and the corporate successors and assigns of any of them, from any civil or administrative monetary claim the United States 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 Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801-3812; the civil monetary provisions of the Stark Law at 42 U.S.C. § 1395nn(g)(3) and (4), any statutory provisions creating a cause of action for civil damages or civil penalties which the Civil Division of the Department of Justice has actual and present

authority to assert and compromise pursuant to 28 C.F.R. Pt. O, Subpart I, § 0.45(d); or the common law theories of payment by mistake, unjust enrichment, and fraud.

5. In addition to the releases set forth in Paragraph 8 below, and conditioned upon Defendants' full payment of the Settlement Amount, Relators, for themselves and for their heirs, successors, attorneys, agents, representatives, and assigns, fully and finally release Defendants and their respective predecessors and their current and former parent, direct and indirect subsidiary and affiliated companies, brother and sister corporations and divisions, and all of their respective directors, officers, employees, heirs, successors, attorneys, agents, representatives and assigns, as applicable (the "Released Parties") from any civil monetary claim the Relators have on behalf of the United States for the Covered Conduct under the False Claims Act, 31 U.S.C. §§ 3729-3733.

6. Notwithstanding the releases given in Paragraphs 4 and 5 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 of individuals;

- g. Any liability for express or implied warranty claims or other claims for defective or deficient products or services, including quality of goods and services;
- h. Any liability for failure to deliver goods or services due;
- i. Any liability for personal injury or property damage or for other consequential damages arising from the Covered Conduct.

7. Relators and their heirs, successors, attorneys, agents, and assigns agree and confirm that they do not and shall not object to this Agreement and that this Agreement is fair, adequate, and reasonable under all the circumstances, pursuant to 31 U.S.C. § 3730(c)(2)(B). Conditioned upon Relators' receipt of the payment described in Paragraph 2 above, Relators and their heirs, successors, attorneys, agents, and assigns fully and finally release, waive, and forever discharge the United States, its agencies, officers, agents, employees, and servants, from any claims arising from the filing of the Lincoln and Miller Civil Actions or under 31 U.S.C. § 3730, and from any claims to a share of the proceeds of this Agreement and/or the Lincoln and Miller Civil Actions.

8. In addition to the releases set forth in Paragraph 5 above, and conditioned on Defendants' full payment of the Settlement Amount, Relators, for themselves and for their heirs, successors, attorneys, agents, representatives and assigns, fully and finally release, waive, and forever discharge Defendants, and their respective predecessors and their current and former parent, direct and indirect subsidiary and affiliated companies, brother and sister corporations and divisions and all of their respective directors, officers, employees, agents, representatives, attorneys, heirs, successors and assigns, from any and all claims for damages, fines, penalties, attorney's fees, costs, and expenses of every kind and however denominated (collectively, "Claims") that any of them has asserted, could have asserted, or may assert in the future, for

themselves or on behalf of the United States, against any of the Released Parties including, but not limited to any Claims arising from or relating to (i) the filing of the Lincoln and Miller Civil Actions, (ii) any of the allegations set forth in either or both of the Lincoln and Miller Civil Actions, (iii) expenses or attorney's fees and costs whether under 31 U.S.C. § 3730(d) or otherwise, or (iv) any other action or inaction of the Released Parties through the date of this Agreement. The provisions of this Paragraph 8 shall not apply to Defendants' payment obligations under Paragraph 3 of this Agreement.

9. Defendants waive and shall not assert any defenses Defendants 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.

10. Defendants fully and finally release 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 Defendants have 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.

11. Defendants fully and finally release the Relators, their heirs, agents, personal representatives, attorneys, successors and assigns from any claims (including attorney's fees, costs, and expenses of every kind and however denominated) that Defendants have asserted, could have asserted, or may assert in the future against the Relators, related to the Covered Conduct and the Relators' investigation and prosecution thereof.

12. 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) related to the Covered Conduct; and Defendants agree not to resubmit to any Medicare contractor any previously denied claims related to the Covered Conduct, agree not to appeal any such denials of claims, and agree to withdraw any such pending appeals.

13. Defendants agree 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 Defendants, 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) Defendants' 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 Defendants make to the United States pursuant to this Agreement and any payments that Defendants 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 by Defendants, and Defendants 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 Defendants or any of its subsidiaries or affiliates to the Medicare, Medicaid, TRICARE, or FEHBP Programs.

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

14. Defendants agree to cooperate fully and truthfully with the United States' investigation of individuals and entities not released in this Agreement. Upon reasonable notice, Defendants shall encourage, and agree not to impair, the cooperation of directors, officers, and employees, and shall use 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. Defendants further agree 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 Defendants' behalf.

15. 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 4, 5, 8, 10, 11, and 16 (waiver for beneficiaries paragraph), below.

16. Defendants agree to waive 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.

17. Upon receipt of the payment described in Paragraph 1, above, the Parties shall promptly sign and file in each of the Lincoln Civil Action and in the Miller Civil Action a Joint Stipulation of Dismissal of those respective actions in their entirety pursuant to Rule 41(a)(1). Relators' dismissals shall be with prejudice. The United States' dismissal shall be with prejudice as to the Covered Conduct only. The United States' dismissal is otherwise without prejudice.

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

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

20. 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 Maryland. 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.

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

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

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

24. This Agreement is binding on Defendants' successors, transferees, heirs, and assigns.

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

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

27. 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 the following pages]

THE UNITED STATES OF AMERICA


ROBERT K. HUR
UNITED STATES ATTORNEY

DATED: 3/15/19

BY: 

MATTHEW P. PHELPS
ROANN NICHOLS
Assistant United States Attorneys
District of Maryland

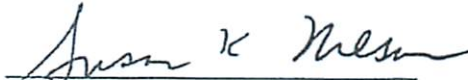
DATED: 3/14/19

BY: 

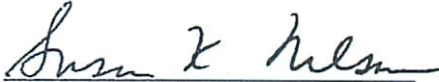
GREGORY E. DEMSKE
Chief Counsel to the Inspector General
Office of Counsel to the Inspector General
Office of Inspector General
United States Department of Health and Human Services

DEFENDANTS


DATED: 2/27/19

BY: 
Susan K. Nelson
MedStar Health, Inc.


DATED: 2/27/19

BY: 
Susan K. Nelson
The Union Memorial Hospital d/b/a
MedStar Union Memorial Hospital

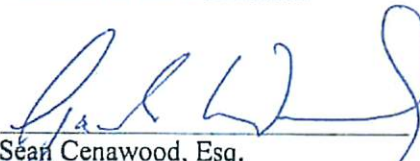
DATED: 2/27/19

BY: 
Susan K. Nelson
Franklin Square Hospital Center, Inc. d/b/a
MedStar Franklin Square Medical Center

DATED: 2/27/19

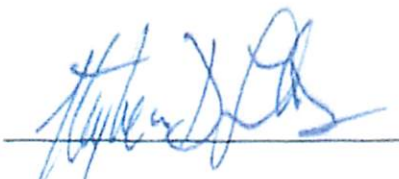
BY: 
Oliver M. Johnson, II, Esq.
MedStar Health, Inc.
Counsel for the Defendants

DATED: 2/27/19

BY: 
Sean Cenawood, Esq.
Gadi Weinreich, Esq.
Dentons US LLP
Counsel for the Defendants

LINCOLN RELATORS


DATED: 2/27/19

BY: 
Stephen D. Lincoln, M.D.

DATED: 2/28/19


BY: 
Peter Horneffer, M.D.

DATED: 2.28.2019

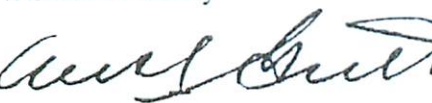
BY: 
Garth McDonald, M.D.

Counsel for Stephen D. Lincoln, M.D.,
Peter Horneffer, M.D., and Garth McDonald, M.D.


DATED: February 28, 2019

BY: 
William F. Gately

DATED: February 28, 2019

BY: 
Albert D. Brault

DATED: February 28, 2019

BY: 
J. Stephen Simms

MILLER RELATORS

DATED: 3/01/19

BY: 
Jay Miller

DATED: 2/28/19

BY: Kathleen Dawn Griffin
Kathleen D. Griffin, as Personal Representative
of the Estate of Catherine M. Griffin


DATED: 2-28-19

BY: Carven Q Farmer
Carven Farmer

DATED: 2-28-19

BY: James T. Galliano
James Galliano

DATED: 3/4/2019

BY: 
Jay P. Holland, Esq.
Counsel for Jay Miller, Kathleen D. Griffin, as Personal
Representative of the Estate of Catherine Griffin, Carven
Farmer, James Galliano