

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"); Garden State Cardiovascular Specialists, P.C., doing business as NJ MedCare/NJ Heart, and its principals, Jasjit Walia, M.D. and Preet Randhawa, M.D. (collectively, "Garden State"); and Cheryl Mazurek (the "Relator"). The United States, Garden State, and the Relator, through their authorized representatives, are collectively referred to as the "Parties."

RECITALS

As a preamble to this Agreement, the Parties agree to the following:

A. Garden State Cardiovascular Specialists, P.C. is a New Jersey corporation located at 240 Williamson St., Suite 402, Elizabeth, New Jersey 07202. Garden State owns and operates several facilities located in the State of New Jersey that provide cardiology services under the name NJ Medcare/NJ Heart.

B. Garden State submitted claims for payment to, among other payors, the Medicare program, established under Title XVIII of the Social Security Act, 42 U.S.C. §§ 1395-1395ggg, which is administered by the Health Care Financing Administration of HHS.

C. Relator Cheryl Mazurek is an individual resident of the State of Texas. On September 3, 2010, the Relator filed a *qui tam* action in the United States District Court for the District of New Jersey captioned *United States of America, ex rel. Cheryl Mazurek v. Garden State Cardiovascular Specialists, P.C., et al.*, Civil Action No. 10-4734, under

the *qui tam* provisions of the False Claims Act, 31 U.S.C. § 3730(b) (the “Civil Action”). The *qui tam* complaint alleged, among other things, that Garden State improperly billed Medicare for medically unnecessary cardiology diagnostic tests and procedures.

D. Covered Conduct. The United States contends that it has certain civil claims against Garden State and its principals, Jasjit Walia, M.D. and Preet Randhawa, M.D., under the False Claims Act, 31 U.S.C. §§ 3729-3733, other federal statutes, or common law doctrines, for engaging in the following conduct from October 16, 2005, through October 7, 2010:

(1) Submitting to Medicare claims for medically unnecessary cardiology diagnostic tests and procedures as follows:

- a. cardiovascular stress test (Current Procedural Terminology (“CPT”) Code 93015);
- b. transthoracic echocardiography (CPT 93306);
- c. cardiac catheterization (also known as coronary angiography) (CPT 93510);
- d. diagnostic catheterization, injection for left ventricular/atrial angiography (CPT 93543);
- e. duplex scan of extracranial arteries; complete bilateral study (CPT 93880);
- f. duplex scan of extremity veins (CPT 93970);
- g. duplex scan of aorta, inferior vena cava, iliac vasculature, or bypass grafts (CPT 93978);

- h. cardiovascular nuclear medicine; myocardial perfusion imaging studies (CPT 78452);
- i. administration of technetium tc-99m tetrofosmin, diagnostic, per study dose (CPT A9502);
- j. external counterpulsation (CPT G0166);
- k. myocardial perfusion imaging (CPT 78465); and
- l. cardiology ultrasound (CPT 93307).

The conduct described in this Paragraph D is referred to below as the "Covered Conduct."

E. This Agreement is neither an admission of any wrongdoing or any liability by Garden State, nor a concession by the United States that its claims are not well founded.

F. The Relator claims entitlement under 31 U.S.C. § 3730(d) to a share of the proceeds of this Agreement and to the Relator's reasonable expenses, attorneys' fees, and costs.

G. 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. Garden State shall pay to the United States three million and six hundred thousand dollars (\$3,600,000.00) (the "Settlement Amount"), plus interest on the Settlement Amount at a rate of 2.125% per annum from November 7, 2014, no later than 15 business days after the Effective Date of this Agreement by electronic funds transfer

pursuant to written instructions to be provided by the United States Attorney's Office for the District of New Jersey.

2. Conditioned upon the United States receiving the Settlement Amount from Garden State and as soon as feasible after receipt, the United States shall pay to the Relator, through her legal counsel and by electronic funds transfer to an escrow account, eighteen percent (18%) of the Settlement Amount actually recovered under this Agreement.

3. Garden State agrees to pay counsel for the Relator, and counsel for the Relator agrees to accept as full payment, sixty thousand dollars (\$60,000.00) for expenses, attorneys' fees and costs in accordance with 31 U.S.C. § 3730(d)(1).

4. Subject to the exceptions in Paragraph 7 (concerning excluded claims) below, and conditioned upon Garden State's full payment of the Settlement Amount, the United States releases Garden State and its principals, Jasjit Walia, M.D., and Preet Randhawa, M.D., 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 penalty provisions of the Physician Self-Referral Law, 42 U.S.C. §§ 1395nn(g)(3); any statutory provision for which the Civil Division of the Department of Justice or the United States Attorney's Office for the District of New Jersey has actual and present authority to assert and compromise pursuant to 28 C.F.R., Part O, Subpart I, Section 0.45(d); or the common law theories of payment by mistake, unjust enrichment, and fraud.

5. Subject to the exceptions in Paragraph 7 below, and conditioned upon Garden State's full payment of the Settlement Amount, the Relator, for herself and for her heirs, successors, attorneys, agents, and assigns, releases Garden State and its principals, Jasjit Walia, M.D. and Preet Randhawa, M.D., from any civil monetary claim that the Relator has on behalf of the United States for the Covered Conduct under the False Claims Act, 31 U.S.C. §§ 3729-3733.

6. In consideration of the obligations of Garden State in this Agreement and the Corporate Integrity Agreement ("CIA"), entered into between OIG-HHS and Garden State, Preet Randhawa, M.D. and Jasjit Walia, M.D., and conditioned upon Garden State's full payment of the Settlement Amount, OIG-HHS agrees to release and refrain from instituting, directing, or maintaining any administrative action seeking exclusion from Medicare, Medicaid, and other federal health care programs (as defined in 42 U.S.C. § 1320a-7b(f)) against Garden State, Preet Randhawa, M.D., and Jasjit Walia, M.D. under 42 U.S.C. § 1320a-7a (Civil Monetary Penalties Law) or 42 U.S.C. § 1320a-7(b)(7) (permissive exclusion for fraud, kickbacks, and other prohibited activities) for the Covered Conduct, except as reserved in Paragraph 7 (concerning excluded claims), below, and as reserved in this Paragraph. OIG-HHS expressly reserves all rights to comply with any statutory obligations to exclude Garden State, Preet Randhawa, M.D., and Jasjit Walia, M.D. from Medicare, Medicaid, and other federal health care programs under 42 U.S.C. § 1320a-7(a) (mandatory exclusion) based upon the Covered Conduct. Nothing in this Paragraph precludes OIG-HHS from taking action against entities or persons, or for conduct and practices, for which claims have been reserved in Paragraph 7, below.

7. Notwithstanding the releases given in Paragraphs 4, 5, and 6 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; and
- h. Any liability for personal injury or property damage or for other consequential damages arising from the Covered Conduct.

8. The Relator and her heirs, successors, attorneys, agents, and assigns shall not object to this Agreement and agree and confirm that this Agreement is fair, adequate, and reasonable under all the circumstances, pursuant to 31 U.S.C. § 3730(c)(2)(B). Conditioned upon the Relator's receipt of the payment described in Paragraph 2, the

Relator and her 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 claims in the Civil Action against Garden State and its principals, Jasjit Walia, M.D. and Preet Randhawa, M.D., or under 31 U.S.C. § 3730, and from any claims to a share of the proceeds of this Agreement or the Civil Action against Garden State and its principals, Jasjit Walia, M.D. and Preet Randhawa, M.D.

9. Conditioned upon the Relator's receipt of the payment described in Paragraph 2, the Relator, for herself, and for her heirs, successors, attorneys, agents and assigns, releases Garden State and its officers, agents, and employees, from any and all actions, claims, causes of action, suits, charges, demands, debts, liabilities, past, present or future obligations, damages, judgments, executions, accounts, sums of money, reckonings, controversies, losses, actions and causes of action of every kind and nature whatsoever, including, but not limited to, any liability to the Relator arising from the filing of the Civil Action, or under 31 U.S.C. §3730(d) for expenses or attorneys' fees and costs, whether or not known or suspected at this time.

10. Garden State, and its principals, officers, employees, attorneys, agents, and assigns, release the Relator from any and all actions, claims, causes of action, suits, charges, demands, debts, liabilities, past, present or future obligations, damages, judgments, executions, accounts, sums of money, reckonings, controversies, losses, actions and causes of action of every kind and nature whatsoever, including, but not limited to, any liability to Garden State arising from the filing of the Civil Action, or

under 31 U.S.C. §3730(d) for expenses or attorneys' fees and costs, whether or not known or suspected at this time.

11. Garden State waives and shall not assert any defenses it 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.

12. Garden State fully and finally releases the United States, its agencies, officers, agents, employees, and servants, from any claims (including attorneys' fees, costs, and expenses of every kind and however denominated) that Garden State 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.

13. 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.*, a Medicare Administrative Contractor, fiscal intermediary, or carrier); TRICARE fiscal intermediary, carrier, or contractor; Federal Employees Health Benefits Program ("FEHBP") carrier or payer; or any state payer, related to the Covered Conduct; and Garden State agrees not to resubmit to any Medicare carrier or intermediary; TRICARE

fiscal intermediary, carrier, and/or contractor; FEHBP fiscal agent; or any state payer any previously denied claims related to the Covered Conduct, and agrees not to appeal any such denials of claims.

14. Garden State 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 Garden State, its present or former officers, directors, employees, shareholders, and agents in connection with:

- 1) the matters covered by this Agreement and any related plea agreement;
- 2) the United States' audit(s) and civil and any criminal investigation(s) of the matters covered by this Agreement;
- 3) Garden State's investigation, defense, and corrective actions undertaken in response to the United States' audit(s) and civil and any criminal investigation(s) in connection with the matters covered by this Agreement (including attorneys' fees);
- 4) the negotiation and performance of this Agreement and any plea agreement; and
- 5) the payment Garden State makes to the United States pursuant to this Agreement and any payments that Garden State may make to the Relator, including costs and attorneys' fees;

are unallowable costs for government contracting purposes and under the Medicare Program, Medicaid Program, TRICARE Program, and FEHBP (hereinafter referred to as "Unallowable Costs").

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

c. Treatment of Unallowable Costs Previously Submitted for Payment: Garden State further agrees that within 90 days of the Effective Date of this Agreement it shall identify to applicable Medicare and TRICARE fiscal intermediaries, carriers, 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 Garden State 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. Garden State agrees that the United States, at a minimum, shall be entitled to recoup from Garden State 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 or the affected agencies. The United States reserves its rights to disagree with any calculations submitted by Garden State or any of its subsidiaries or affiliates on the effect of inclusion of Unallowable Costs (as defined in this Paragraph) on Garden State 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 Garden State's books and records to determine that no Unallowable Costs have been claimed in accordance with the provisions of this Paragraph.

15. Garden State agrees to cooperate fully and truthfully with the United States' investigation of individuals and entities not released in this Agreement. Upon reasonable notice, Garden State 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 employees for interviews and testimony, consistent with the rights and privileges of such individuals.

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 Paragraph 17 (waiver for beneficiaries paragraph), below.

17. Garden State 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.

18. Upon receipt of the payments described in Paragraphs 1 and 2 above, the United States and the Relator shall promptly sign and file in the Civil Action a Joint Stipulation of Dismissal of the Civil Action pursuant to Fed. R. Civ. P. 41(a)(1) as to the claims asserted in that action against Garden State. Such dismissal shall be with prejudice to the Relator and the United States as to the Covered Conduct; and with prejudice to the Relator, and without prejudice to the United States, as to all other claims or allegations in the Complaint and as to all defendants other than Garden State.

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 in to this Agreement without any degree of duress or compulsion.

21. 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.

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 counsel 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 Garden State's successors, transferees, heirs, and assigns.

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

27. All parties consent to the United States' 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 (the "Effective Date of this Agreement"). Facsimiles of signatures shall constitute acceptable, binding signatures for purposes of this Agreement.

ON BEHALF OF THE UNITED STATES OF AMERICA

DATED: 5/28/2015

BY: Bernard J. Cooney
BERNARD J. COONEY
Assistant U.S. Attorney
Office of the United States Attorney
for the District of New Jersey

DATED: 5/27/15

BY: Robert K. DeConti
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

**ON BEHALF OF GARDEN STATE CARDIOVASCULAR SPECIALISTS
D/B/A NJ MEDCARE/ NJ HEART**

DATED:

5/8/15

BY:

JASJIT WALIA, M.D.

*Garden State Cardiovascular Specialists, P.C.
d/b/a NJ MedCare/NJ Heart*

DATED:

5/8/15

BY:

PREET RANDHAWA, M.D.

*Garden State Cardiovascular Specialists, P.C.
d/b/a NJ MedCare/NJ Heart*

DATED: _____

BY: _____

BRUCE A. LEVY, ESQ.

Gibbons P.C.

One Gateway Center

Newark, NJ 07102-5310

*Counsel for Garden State Cardiovascular
Specialists, P.C.*

d/b/a NJ MedCare/NJ Heart

ON BEHALF OF PREET RANDHAWA, M.D

DATED:

5/8/15

BY:

PREET RANDHAWA, M.D.

DATED: _____

BY: _____

BRUCE A. LEVY, ESQ.

Gibbons P.C.

One Gateway Center

Newark, NJ 07102-5310

Counsel for Preet Randhawa, M.D.

**ON BEHALF OF GARDEN STATE CARDIOVASCULAR SPECIALISTS
D/B/A NJ MEDCARE/ NJ HEART**

DATED: _____

BY: _____

JASJIT WALIA, M.D.

Garden State Cardiovascular Specialists, P.C.

d/b/a NJ MedCare/NJ Heart

DATED: _____

BY: _____

PREET RANDHAWA, M.D.

Garden State Cardiovascular Specialists, P.C.

d/b/a NJ MedCare/NJ Heart

DATED: 5/6/15

BY: _____

BRUCE A. LEVY, ESQ.

Gibbons P.C.

One Gateway Center

Newark, NJ 07102-5310

*Counsel for Garden State Cardiovascular
Specialists, P.C.*

d/b/a NJ MedCare/NJ Heart

ON BEHALF OF PREET RANDHAWA, M.D

DATED: _____

BY: _____

PREET RANDHAWA, M.D.

DATED: 5/6/15

BY: _____

BRUCE A. LEVY, ESQ.

Gibbons P.C.

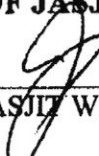
One Gateway Center

Newark, NJ 07102-5310

Counsel for Preet Randhawa, M.D.

ON BEHALF OF JASJIT WALIA, M.D.

DATED: 5/8/15

BY: 
JASJIT WALIA, M.D.

DATED: _____

BY: _____
BRUCE A. LEVY, ESQ.
Gibbons P.C.
One Gateway Center
Newark, NJ 07102-5310
Counsel for Jasjit Walia, M.D.

ON BEHALF OF THE RELATOR CHERYL MAZUREK

DATED: _____

BY: _____
CHERYL MAZUREK, Relator

DATED: _____


BY: _____
ROSS BEGELMAN, ESQ.
Begelman, Orlow & Melletz
Attorneys at Law
411 Route 70 East
Suite 245
Cherry Hill, New Jersey 08034
Counsel for Relator Cheryl Mazurek

ON BEHALF OF JASJIT WALIA, M.D.

DATED: _____

BY: _____
JASJIT WALIA, M.D.

DATED: 5/6/15

BY: 

BRUCE A. LEVY, ESQ.
Gibbons P.C.
One Gateway Center
Newark, NJ 07102-5310
Counsel for Jasjit Walia, M.D.

ON BEHALF OF THE RELATOR CHERYL MAZUREK

DATED: _____

BY: _____
CHERYL MAZUREK, Relator

DATED: _____


BY: _____
ROSS BEGELMAN, ESQ.
Begelman, Orlow & Melletz
Attorneys at Law
411 Route 70 East
Suite 245
Cherry Hill, New Jersey 08034
Counsel for Relator Cheryl Mazurek


ON BEHALF OF JASJIT WALIA, M.D.

DATED: _____ BY: _____
JASJIT WALIA, M.D.

DATED: _____ BY: _____
BRUCE A. LEVY, ESQ.
Gibbons P.C.
One Gateway Center
Newark, NJ 07102-5310
Counsel for Jasjit Walia, M.D.

ON BEHALF OF THE RELATOR CHERYL MAZUREK

DATED: 5/27/2015 BY: 
CHERYL MAZUREK, Relator

DATED: 5/26/15 BY: 
ROSS BEGELMAN, ESQ.
Begelman, Orlow & Melletz
Attorneys at Law
411 Route 70 East
Suite 245
Cherry Hill, New Jersey 08034
Counsel for Relator Cheryl Mazurek