

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

UNITED STATES OF AMERICA and NEW YORK  
STATE *ex rel.* MARK A. FAVORS,

Plaintiff,

v.

QIN MEDICAL P.C. and DR. FENG QIN, M.D.,

Defendants.

No. 16 Civ. 4647 (LTS)

UNITED STATES OF AMERICA and NEW YORK  
STATE,

Plaintiffs-Intervenors,

v.

QIN MEDICAL P.C. and DR. FENG QIN, M.D.,

Defendants.

**STIPULATION AND ORDER  
OF SETTLEMENT AND  
DISMISSAL BETWEEN THE  
UNITED STATES AND  
DEFENDANTS**

WHEREAS, this Stipulation and Order of Settlement and Dismissal (“Stipulation”) is entered into by and among plaintiff the United States of America (the “United States” or “Government”), by its attorney, Audrey Strauss, Acting United States Attorney for the Southern District of New York; the relator Mark A. Favors (the “Relator”), by his authorized representatives; and defendants Qin Medical P.C. (“Qin Medical”) and Dr. Feng Qin, M.D. (“Dr. Qin,” and together with Qin Medical, “Defendants,” and collectively with the Government and Relator, the “Parties”), by their authorized representatives;

***The AV Care Case***

WHEREAS, on March 23, 2012, a whistleblower filed a complaint pursuant to the *qui tam* provisions of False Claims Act, 31 U.S.C. § 3729 *et seq.* (“FCA”), against Mattoo & Bhat

Medical Associates, P.C. (“MBPC”), which operated office-based surgery facilities that were managed by Ambulatory Vascular Care Management, LLC (known as the AV Care Centers), Dr. Qin (one of the physicians employed at the AV Care Centers) and others, in a case captioned *United States et al. ex rel. Integrity Advocates LLC v. Comprehensive Anesthesia Specialists, P.C., et al.*, No. 12 Civ. 2327 (LLS) (S.D.N.Y.) (the “AV Care Case”), and the United States intervened in that case on April 30, 2015, as against MBPC and Dr. Qin;

WHEREAS, in its complaint-in-intervention in the AV Care case, filed on April 13, 2015, the United States alleged that MBPC and Dr. Qin (a vascular surgeon licensed in New York State) had violated the FCA, by performing and billing Medicare from 2010 to 2012 for certain vascular surgery procedures known as fistulagrams and angioplasties on patients with end-stage renal disease (“ESRD”) without having the necessary clinical findings to support such billing and performed such procedures on a routine basis for screening purposes rather than because of a clinical need;

WHEREAS, as the Government’s complaint-in-intervention explained, ESRD patients often receive hemodialysis treatment for their condition, and in order for such treatment to be successful, their blood vessels must not be obstructed or narrowed; when obstruction or stenosis (narrowing) is suspected clinically, two common vascular surgery procedures used are fistulagrams (a radiological procedure in which dye is injected into blood vessels in order to visualize any stenosis) and percutaneous transluminal angioplasties (in which wires and balloons are inserted into damaged vessels in order to restore blood flow);

WHEREAS, ESRD patients are covered by Medicare, regardless of their age;

WHEREAS, under the Medicare statute, “[n]otwithstanding any other provision of this subchapter, no payment may be made under [Medicare] for any expenses incurred for items or

services . . . which are not reasonable and necessary for the prevention of illness,” 42 U.S.C. § 1395y(a)(1)(B);

WHEREAS, as a general matter, Medicare does not offer coverage for “[e]xaminations performed for a purpose other than treatment or diagnosis of a specific illness, symptoms, complaint, or injury,” 42 C.F.R. § 411.15(a)(1);

WHEREAS, from June 1, 2010, until March 1, 2012, National Government Services Inc. (“NGS”), the Medicare Part B Medicare Administrative Contractor for New York, had in place a Local Coverage Determination regarding vascular surgery procedures for ESRD patients, *see* National Government Services, Inc., Local Coverage Determination L30737, *Dialysis Access Maintenance* (the “LCD”);

WHEREAS, the LCD provided that for providers to seek reimbursement from Medicare for performing a fistulagram, angioplasty or related services on an ESRD patient, the patient should have previously undergone a clinical examination that documented diagnostically specific and appropriate clinical findings demonstrating a need for therapies to re-establish physiologically appropriate flow (and specifically that angioplasties may be billed only “if there is documentation supporting the presence of residual, hemodynamically significant stenosis, generally >/50 percent of the vessel diameter”), and that Medicare will not pay for such services that are screening in nature;

WHEREAS, on May 4, 2015, this Court entered a Stipulation and Order of Settlement and Dismissal (the “Prior Stipulation”) among Dr. Qin, the United States, and the U.S. Department of Health and Human Services’ Office of Inspector General (“HHS-OIG”) resolving the FCA claims against Dr. Qin; in the Prior Stipulation, Dr. Qin agreed to pay the sum of \$150,000 to the United States and agreed to enter into a three-year Integrity Agreement with

HHS-OIG (the “Integrity Agreement”), pursuant to which Dr. Qin’s practice regarding ESRD patients was monitored by two Independent Review Organizations (“IROs”);

WHEREAS, as part of the Prior Stipulation, Dr. Qin “admit[ted], acknowledge[d], and accept[ed] responsibility” for the fact that AV Care, his employer at the time, had “routinely scheduled patients for fistulagrams and angioplasties as many as three months in advance,” and that he specifically had “performed these fistulagrams as a matter of routine even if the patient presented without a clinical reason for the fistulagram, such as indications of difficulty with dialysis”; Dr. Qin also admitted in the Prior Stipulation that “[f]rom time to time, [he] performed angioplasties on MBPC patients where the patient information and records did not support ‘the presence of residual, hemodynamically significant stenosis, generally >/50 percent of the vessel diameter’”;

***The Current Case***

WHEREAS, on June 6, 2012, Dr. Qin opened his own solo vascular surgery practice, Qin Medical, which operates offices in Downtown Manhattan and in Far Rockaway, Queens;

WHEREAS, on or about June 20, 2016, the Relator filed a complaint under the *qui tam* provisions of the FCA against Defendants alleging, *inter alia*, that they violated the FCA by billing Medicare for medically unnecessary fistulagrams and angioplasties on ESRD patients (the “Relator Complaint”);

WHEREAS, NGS continued to direct providers during the period from March 1, 2012, through December 31, 2016, that fistulagrams and angioplasties should not be performed absent demonstrated clinical justification and that Medicare will not pay for such services if they are “screening in nature or that are not providing clinically relevant information,” and further that angioplasties are “not necessary for all poorly functioning AV dialysis accesses” but rather

should be billed to Medicare only “if there is documentation supporting the presence of residual, hemodynamically significant stenosis, generally >/50 percent of the vessel diameter,” *see* National Government Services Inc., Medical Policy Article A51630, *Dialysis Access Maintenance*;

WHEREAS, the IROs who were hired to monitor Dr. Qin’s practice as part of the Integrity Agreement found the procedures Dr. Qin performed from May 2015 to May 2018 to be in accordance with Medicare guidelines;

WHEREAS, on December 3, 2018, the Government filed a Notice of Election to Intervene and Complaint-In-Intervention in the above-referenced *qui tam* action (the “Government Complaint”), in which it is asserted claims against Defendants under the FCA and common law for the Covered Conduct (defined below);

WHEREAS, the Government alleges that from January 1, 2015, to December 31, 2016 (the “Covered Period”), Defendants violated the FCA by billing Medicare for certain fistulagrams and angioplasties in ESRD patients that were performed without clinical justification and for screening purposes and without documented evidence of clinical need; the conduct described in this Paragraph is the “Covered Conduct” for purposes of this Stipulation;

WHEREAS on February 25, 2021, Dr. Qin entered into a Voluntary Exclusion Agreement (the “Voluntary Exclusion Agreement”) with HHS-OIG, according to which Dr. Qin agreed to be excluded from participation in Medicare and other federal healthcare programs for a period of four (4) years from the date of the agreement, which is attached hereto as Exhibit A;

***The Criminal Action Against Dr. Qin***

WHEREAS, on November 29, 2018, a federal grand jury in the Southern District of New York issued a criminal indictment against Dr. Qin, charging him with one count of health care

fraud, in violation of 18 U.S.C. §§ 1347 and 2, for engaging in an unlawful scheme to fraudulently bill Medicare for fistulagrams and angioplasties without having the required clinical findings to support such billing;

WHEREAS, the criminal case against Dr. Qin is being resolved simultaneously with the current case through a Deferred Prosecution Agreement;

\* \* \*

WHEREAS, in connection with settlement discussions and in order to allow the Government to assess Defendants' ability to make payments to resolve this matter, Defendants have submitted information concerning their financial condition to the Government, including but not limited to information relating to their assets, liabilities, expenses, and incomes (the "Qin Financial Information");

WHEREAS, the Parties have, through this Stipulation, reached a mutually agreeable resolution addressing the claims asserted against Defendants in the Government Complaint and the Relator Complaint, for the Covered Conduct;

WHEREAS, Defendants intend to enter into a separate settlement agreement (the "State Settlement") with the State of New York (the "State") to resolve claims asserted by the State under the New York False Claims Act for the Covered Conduct, and have agreed to pay a total of sixteen thousand eight hundred dollars (\$16,800) to the State pursuant to the State Settlement;

WHEREAS, the Relator's claim to a share of the proceeds from the settlement between the Parties will be the subject of a separate agreement between Relator and the United States;

NOW, THEREFORE, upon the Parties' agreement IT IS HEREBY ORDERED that:

**TERMS AND CONDITIONS**

1. The Parties agree that this Court has subject matter jurisdiction over this action and consent to this Court's exercise of personal jurisdiction over each of them.
2. Defendants admit, acknowledge and accept responsibility for the following conduct:
  - a. Dr. Qin was aware that Medicare would pay for fistulagram and angioplasty procedures for ESRD patients only if they were done due to a genuine clinical indication, and would not pay for such procedures if they had been performed for monitoring purposes only.
  - b. By submitting reimbursement claims to Medicare for these procedures, Defendants were certifying that the procedures comported with all applicable Medicare billing guidelines.
  - c. A large portion of Dr. Qin's patient base at Qin Medical consisted of ESRD patients who were covered by Medicare.
  - d. Dr. Qin often routinely scheduled, and actually saw, ESRD patients approximately every three months, regardless of their medical need.
  - e. Dr. Qin treated many of his ESRD patients with fistulagrams and angioplasties. The symptoms documented in the medical records, including the records of the dialysis center and the treating nephrologist, are insufficient to justify these treatments for numerous ESRD patients.
  - f. Though the absence of such a notation is not dispositive as to the lack of medical necessity, for numerous visits of Dr. Qin with ESRD patients, there was no specific notation in the records of the dialysis center or the treating nephrologist that a referral to a vascular surgeon (or to Dr. Qin in particular) had been made, but Dr. Qin nonetheless performed fistulagrams and angioplasties on these patients.
  - g. Though the absence of such a notation is not dispositive as to the lack of medical necessity, for numerous visits of Dr. Qin with ESRD patients, there was no specific notation in the records of the dialysis center or the treating nephrologist that a referral to a vascular surgeon was necessary or appropriate given the patient's symptoms and ability to undergo hemodialysis treatment successfully, but Dr. Qin nonetheless performed fistulagrams and angioplasties on these patients.

- h. Many of the angioplasties that Dr. Qin performed were based on medical records that did not clearly establish “the presence of residual, hemodynamically significant stenosis, generally >/50 percent of the vessel diameter.”
- i. Dr. Qin knew that in the absence of a documented clinical justification, Medicare would not pay for fistulagrams or angioplasties. Nevertheless, on numerous occasions, Qin Medical sought and received reimbursement from Medicare for these treatments without the required documented clinical justification.

3. Defendants shall pay to the United States the sum of seven hundred eighty-three thousand two hundred dollars (\$783,200) (the “Settlement Amount”), to be paid in installments according to the schedule set forth below. Defendants shall make the below-referenced payments in accordance with instructions to be provided by the Financial Litigation Unit of the United States Attorney’s Office for the Southern District of New York. The full Settlement Amount constitutes restitution to the United States. Defendants agree that they shall not seek indemnification from any source with respect to any portion of the Settlement Amount.

- a. Within 30 days of the Effective Date of this Stipulation, Defendants shall pay the sum of one hundred forty-six thousand eight hundred fifty dollars (\$146,850);
- b. On or before December 31, 2021, Defendants shall pay the sum of ninety-seven thousand nine hundred dollars (\$97,900);
- c. On or before December 31, 2022, Defendants shall pay the sum of forty-eight thousand nine hundred fifty dollars (\$48,950);
- d. On or before December 31, 2023, Defendants shall pay the sum of ninety-seven thousand nine hundred dollars (\$97,900);
- e. On or before December 31, 2024, Defendants shall pay the sum of ninety-seven thousand nine hundred dollars (\$97,900); and
- f. On or before December 31, 2025, Defendants shall pay the sum of two hundred ninety-three thousand seven hundred dollars (\$293,700).

4. Defendants shall execute and agree to the entry of a consent judgment in favor of the Government and against Defendants in the amount of three million five hundred five



thousand seven hundred fifty-eight dollars (\$3,505,758), a copy of which is attached hereto as Exhibit B (the "Consent Judgment"). The Government may use the Consent Judgment to obtain a security interest in any asset or property of the Defendants, but shall not engage in other collection activity with respect to the Consent Judgment so long as Defendants fully comply with the terms of this Stipulation.

5. Should Defendants comply fully with the payment schedule set forth in paragraph 3 above as well as the other terms of this Stipulation, the Consent Judgment shall be deemed to be satisfied in full and, upon Defendants' request, the Government shall file with the Clerk of the Court and deliver to Defendants a Full Satisfaction of Judgment. In the event that Defendants fully pay the Settlement Amount faster than as provided in the payment schedule set forth in Paragraph 3 above, and fully comply with all other terms of the Stipulation, the Consent Judgment shall be deemed to be satisfied in full and, upon Defendants' request, the Government shall file with the Clerk of the Court and deliver to Defendants a Full Satisfaction of Judgment. Should Defendants fail to comply fully with the payment schedule set forth in Paragraph 3 above or any other term of this Stipulation, they shall be in default of this stipulation, in which case the Government may take any of the actions set forth in Paragraph 12 below.

6. Defendants agree to cooperate fully and truthfully with the United States' investigation of individuals and entities not released in this Stipulation. Upon reasonable notice, Defendants shall encourage, and agree not to impair, the cooperation of their 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. 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 their possession, custody, or control concerning any investigation of the Covered Conduct that they have undertaken, or that has been performed by another on their behalf.

7. Subject to the exceptions in Paragraphs 11 and 17 below (concerning excluded claims and bankruptcy proceedings), and conditioned upon Defendants' full compliance with the terms of this Stipulation, including full payment of the Settlement Amount to the United States pursuant to Paragraph 3 above, the United States releases Defendants, including their subsidiaries and corporate predecessors, successors and assigns, from any civil or administrative monetary claim that the United States has for the Covered Conduct under the FCA, the Civil Monetary Penalties Law, 42 U.S.C. § 1320a-7a, the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801-3812, and the common law theories of fraud, payment by mistake, and unjust enrichment. For avoidance of doubt, this Stipulation does not release any current or former officer, director, employee, or agent of Defendants other than Dr. Qin from liability of any kind.

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

9. Conditioned on Defendants' timely payment of the full Settlement Amount pursuant to Paragraph 3 above, the Relator, for himself and his heirs, successors, attorneys, agents, and assigns, releases Defendants, including their subsidiaries and corporate predecessors, successors and assigns, as well as all of their current and former officers, directors, employees,

attorneys, and other agents, from any and all manner of claims, proceedings, liens, and causes of action of any kind or description that the Relator has against Defendants related to or arising from the Relator Complaint; provided, however, that nothing in this Stipulation shall preclude Relator from seeking to recover his reasonable expenses and attorneys' fees and costs pursuant to 31 U.S.C. § 3730(d).

10. In consideration of the execution of this Stipulation by the Relator and the Relator's release as set forth in Paragraph 9 above, Defendants, including their subsidiaries, predecessors, and corporate successors and assigns, as well as all of their current and former officers, directors, employees, attorneys, and other agents, release the Relator and his successors, heirs, assigns, attorneys, and other agents, from any and all manner of claims, proceedings, liens, and causes of action of any kind or description that Defendants have against Relator related to or arising from the Relator Complaint.

11. Notwithstanding the releases given in Paragraph 7 above, or any other term of this Stipulation, the following claims of the Government are specifically reserved and are not released by this Stipulation:

- a. any liability arising under Title 26, United States Code (Internal Revenue Code);
- b. any criminal liability;
- c. except as explicitly stated in this Stipulation or in the Voluntary Exclusion Agreement,, any administrative liability, including but not limited to the mandatory or permissive exclusion from 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) (permissive exclusion);
- 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 Stipulation; and
- f. any liability of individuals except Dr. Qin.

12. Defendants shall be in default of this Stipulation if they fail to make any of the required payments set forth in Paragraph 3 above on or before the due date for such payment, or if they fail to comply materially with any other term of this Stipulation that applies to them (“Default”). The Government shall provide written notice to Defendants of any Default in the manner set forth in Paragraph 31 below. Defendants shall then have an opportunity to cure the Default within ten calendar days from the date of delivery of the notice of Default. In the event that a Default is not fully cured within ten calendar days of the delivery of the notice of Default (“Uncured Default”), interest shall accrue at the rate of 12% per annum compounded daily on the remaining unpaid principal balance of the Settlement Amount, beginning ten calendar days after mailing of the notice of Default. In the event of an Uncured Default, the United States may initiate a collection action or take any other action with respect to the unpaid portion of the amount specified in the consent judgment attached hereto as Exhibit B. The United States may also, at its option, (a) rescind this Stipulation and reinstate the claims asserted against Defendants in the Government Complaint; (b) seek specific performance of this Stipulation; (c) offset the remaining unpaid balance of the Settlement Amount from any amounts due and owing Defendants by any department, agency, or agent of the United States; or (d) exercise any other rights granted by law, or under the terms of this Stipulation, or recognizable at common law or in equity. Defendants shall not contest any offset imposed or any collection undertaken by the Government pursuant to this Paragraph, either administratively or in any Federal or State court. In addition, Defendants shall pay the Government all reasonable costs of collection and enforcement under this Paragraph, including attorneys’ fees and expenses. In the event that the United States opts to rescind this Stipulation pursuant to this Paragraph, Defendants shall not plead, argue, or otherwise raise any defenses under the theories of statute of limitations, laches,

estoppel, or similar theories, to any civil or administrative claims that relate to the Covered Conduct, except to the extent these defenses were available on June 20, 2016.

13. Defendants, having truthfully admitted to the conduct set forth in Paragraph 2 hereof (the “Admitted Conduct”), agree they shall not, through their attorneys, agents, officers, or employees, make any public statement, including but not limited to, any statement in a press release, social media forum, or website, that contradicts or is inconsistent with the Admitted Conduct or suggests that the Admitted Conduct is not wrongful (a “Contradictory Statement”). Any Contradictory Statement by Defendants, their attorneys, agents, officers, or employees, shall constitute a violation of this Stipulation, thereby authorizing the Government to pursue any of the remedies set forth in Paragraph 12 hereof, or seek other appropriate relief from the Court. Before pursuing any remedy, the Government shall notify Defendants that it has determined that Defendants have made a Contradictory Statement. Upon receiving notice from the Government, Defendants may cure the violation by repudiating the Contradictory Statement in a press release or other public statement within four business days. If Defendants learn of a potential Contradictory Statement by its attorneys, agents, officers, or employees, Defendants must notify the Government of the statement within 24 hours. The decision as to whether any statement constitutes a Contradictory Statement or will be imputed to Defendants for the purpose of this Stipulation, or whether Defendants adequately repudiated a Contradictory Statement to cure a violation of this Stipulation, shall be within the sole discretion of the Government. Consistent with this provision, Defendants may raise defenses and/or assert affirmative claims or defenses in any proceeding brought by private and/or public parties, so long as doing so would not contradict or be inconsistent with the Admitted conduct.

14. The Relator and his heirs, successors, attorneys, agents, and assigns shall not object to this Stipulation; Relator agrees and confirms that the terms of this Stipulation are fair, adequate, and reasonable under all the circumstances, pursuant to 31 U.S.C. § 3730(c)(2)(B).

15. Defendants agree that they waive and shall not seek payment for any of the health care billings covered by this Stipulation from any health care beneficiaries or their parents, sponsors, legally responsible individuals, or third-party payors based upon the claims defined as Covered Conduct.

16. Defendants waive and shall not assert any defenses they 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 Stipulation bars a remedy sought in such criminal prosecution or administrative action.

17. Defendants represent and warrant that they have reviewed their financial situation, that they are currently not insolvent as such term is defined in 11 U.S.C. § 101(32) and that they reasonably believe that they shall remain solvent following payment to the Government of the Settlement Amount. Further, the Parties warrant that, in evaluating whether to execute this Stipulation, they (a) have intended that the mutual promises, covenants, and obligations set forth constitute a contemporaneous exchange for new value given to Defendants, within the meaning of 11 U.S.C. § 547(c)(1); and (b) have concluded that these mutual promises, covenants, and obligations do, in fact, constitute such a contemporaneous exchange. Further, the Parties warrant that the mutual promises, covenants, and obligations set forth herein are intended to and do, in fact, represent a reasonably equivalent exchange of value that is not intended to hinder, delay, or

defraud any entity to which Defendants were or became indebted to on or after the date of this Stipulation, within the meaning of 11 U.S.C. § 548(a)(1).

18. If within 91 days of the Effective Date of this Stipulation or any payment made under this Stipulation, any Defendant commences any case, action, or other proceeding under any law relating to bankruptcy, insolvency, reorganization, or relief of debtors or a third party commences any case, action, or other proceeding under any law related to bankruptcy, insolvency, reorganization, or relief of debtors (a) seeking an order for relief of any Defendant's debts, or seeking to adjudicate the Defendant as bankrupt or insolvent; or (b) seeking appointment of a receiver, trustee, custodian, or other similar official for the Defendant or for all or part of the Defendant's assets, the Defendant agrees as follows:

- a. The Defendant's obligations under this Stipulation may not be avoided pursuant to 11 U.S.C. § 547, and the Defendant shall not argue or otherwise take the position in any such case, action, or proceeding that (i) the Defendant's obligations under this Stipulation may be avoided under 11 U.S.C. § 547; (ii) the Defendant was insolvent at the time this Stipulation was entered into; or (iii) the mutual promises, covenants, and obligations set forth in this Stipulation do not constitute a contemporaneous exchange for new value given to the Defendant.
- b. If any of the Defendant's obligations under this Stipulation are avoided for any reason, including, but not limited to, through the exercise of a trustee's avoidance powers under the Bankruptcy Code, the Government, at its option, may rescind the release in this Stipulation and bring any civil and/or administrative claim, action, or proceeding against the Defendant for the claims that would otherwise be covered by the release in Paragraph 7 above. The Defendant agrees that (i) any such claim, action, or proceeding brought by the Government would not be subject to an "automatic stay" pursuant to 11 U.S.C. § 362(a) as a result of the case, action, or proceeding described in the first sentence of this Paragraph, and the Defendant shall not argue or otherwise contend that the Government's claim, action, or proceeding is subject to an automatic stay; (ii) the Defendant shall not plead, argue, or otherwise raise any defenses under the theories of statute of limitations, laches, estoppel, or similar theories, to any claim, action, or proceeding that is brought by the Government within 60 calendar days of written notification to the Defendant that the release has been rescinded pursuant to this Paragraph, except to the extent such defenses were available on June 20, 2016; and (iii) the Government has an

undisputed, noncontingent, and liquidated allowed claim against the Defendant in the amount of the Consent Judgment set forth in Paragraph 3 above and the Government may pursue its claim in the case, action, or proceeding described in the first sentence of this Paragraph, as well as in any other case, action, or proceeding, and shall be allowed to offset the remaining unpaid balance of its claim from any amounts due and owing the Defendant by any department, agency, or agent of the United States without seeking further authorization from any court under 11 U.S.C. § 362(a)(7).

- c. The Defendant acknowledges that the agreements in this Paragraph are provided in exchange for valuable consideration provided in this Stipulation.

19. Defendants have provided the Qin Financial Information to the United States and the United States has relied on the accuracy and completeness of that information in reaching this Stipulation. Defendants warrant that the Qin Financial Information is complete, truthful, and accurate. If the United States learns of any misrepresentation or inaccuracy in the Qin Financial Information, or of assets in which Defendants had an interest at the time of this Stipulation that were not disclosed in the Qin Financial Information, and if such nondisclosure or misrepresentation changes any Defendant's net worth by 5% or more, the United States may at its option: (i) rescind this Stipulation and reinstate the claims asserted against Defendants in the Government Complaint, or (ii) let the Stipulation stand and collect the full Settlement Amount plus one hundred percent (100%) of the value of the income, assets, or expenses that were previously not disclosed or misrepresented. Defendants agree not to contest any collection action undertaken by the United States pursuant to this provision, and immediately to pay the United States all reasonable costs incurred in such an action, including attorneys' fees and expenses. In the event that the United States opts to rescind this Stipulation pursuant to this Paragraph, Defendants shall not plead, argue, or otherwise raise any defenses under the theories of statute of limitations, laches, estoppel, or similar theories, to any civil or administrative claims



that relate to the Covered Conduct, except to the extent these defenses were available on June 20, 2016.

20. 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 Defendants agree not to resubmit to any Medicare contractor or any state payer 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.

21. 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, including the present or former officers, directors, employees, and agents of Qin Medical in connection with:
  - (1) the matters covered by this Stipulation, the State Settlement, and the criminal deferred prosecution agreement;
  - (2) the United States' audits and civil and criminal investigations of matters covered by this Stipulation;
  - (3) Defendants' investigation, defense, and corrective actions undertaken in response to the United States' audits and civil and criminal investigations in connection with matters covered by this Stipulation (including attorneys' fees);
  - (4) the negotiation and performance of this Stipulation and the criminal deferred prosecution agreement; and
  - (5) any payment Defendants make to the United States pursuant to this Stipulation and any payment Defendants may make to the Relator, including expenses, costs and attorneys' fees;
  - (6) the negotiation of, and obligations undertaken in connection with Defendants' Voluntary Exclusion Agreement with HHS-OIG

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.
- c. Treatment of Unallowable Costs Previously Submitted for Payment: Within 90 days of the Effective Date of this Stipulation, Defendants shall identify and repay by adjustment to future claims for payment or otherwise any Unallowable Costs (as defined in this Paragraph) included in payments previously sought by Defendants from the United States. 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 requests for payment. Any payments due shall be paid to the United States pursuant to the direction of the Department of Justice and/or the affected agencies. The United States, including the Department of Justice and/or the affected agencies, reserves its right to audit, examine, or re-examine Defendants’ books and records and to disagree with any calculation submitted by Defendants or any of the subsidiaries or affiliates of Qin Medical regarding any Unallowable Costs included in payments previously sought by Defendants, or the effect of any such Unallowable Costs on the amounts of such payments.
- d. Nothing in this Stipulation 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.

22. This Stipulation 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 as otherwise provided herein.

23. Each Party shall bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Stipulation; provided, however, nothing in this Stipulation shall preclude the Relator from seeking to recover his expenses or attorneys’ fees and costs from Defendants, pursuant to 31 U.S.C. § 3730(d).

24. Any failure by the Government to insist upon the full or material performance of any of the provisions of this Stipulation shall not be deemed a waiver of any of the provisions hereof, and the Government, notwithstanding that failure, shall have the right thereafter to insist upon the full or material performance of any and all of the provisions of this Stipulation.

25. This Stipulation is governed by the laws of the United States. The exclusive jurisdiction and venue for any dispute relating to this Stipulation is the United States District Court for the Southern District of New York. For purposes of construing this Stipulation, this Stipulation shall be deemed to have been drafted by all Parties to this Stipulation and shall not, therefore, be construed against any Party for that reason in any subsequent dispute.

26. This Stipulation constitutes the complete agreement between the Parties with respect to the subject matter hereof. This Stipulation may not be amended except by written consent of the Parties.

27. The undersigned counsel and other signatories represent and warrant that they are fully authorized to execute this Stipulation on behalf of the persons and the entities indicated below.

28. This Stipulation is binding on Defendants' successors, transferees, heirs, and assigns.

29. This Stipulation is binding on the Relator's successors, transferees, heirs, and assigns.

30. This Stipulation may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same Stipulation. E-mails that attach signatures in PDF form or facsimiles of signatures shall constitute acceptable, binding signatures for purposes of this Stipulation.

31. Any notice pursuant to this Stipulation shall be in writing and shall, unless expressly provided otherwise herein, be delivered by hand, express courier, or e-mail transmission followed by postage-prepaid mail, and shall be addressed as follows:

TO THE UNITED STATES:

Jean-David Barnea  
Assistant United States Attorney  
United States Attorney's Office  
Southern District of New York  
86 Chambers Street, Third Floor  
New York, NY 10007  
Email: Jean-David.Barnea@usdoj.gov

TO DEFENDANT:

Kenneth M. Abell, Esq.  
David Eskew, Esq.  
Abell Eskew Landau LLP  
11 Grace Avenue, Suite 309  
Great Neck, NY 11021  
Email: KAbell@aellaw.com  
DEskew@aellaw.com

TO RELATOR:

Konstantin Chelney, Esq.  
Chelney Law Group PLLC  
28 Liberty Street, 6th Floor  
New York, NY 10005  
Email: stan@chelneylaw.com

32. The effective date of this Stipulation is the date upon which the Stipulation is approved by the Court (the "Effective Date").

Agreed to by:

**THE UNITED STATES OF AMERICA**

Dated: New York, New York  
~~February~~, 2021  
March 4

AUDREY STRAUSS  
United States Attorney  
Southern District of New York

By:   
\_\_\_\_\_  
JEAN-DAVID BARNEA  
Assistant United States Attorney  
86 Chambers Street, Third Floor  
New York, New York 10007  
Tel.: (212) 637-2679  
Fax: (212) 637-2686

*Attorney for the United States of America*

**RELATOR**

Dated: New York, New York  
February \_\_, 2021



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MARK A. FAVORS  
*Relator*

Dated: New York, New York  
February \_\_, 2021

CHELNEY LAW GROUP PLLC

By: \_\_\_\_\_

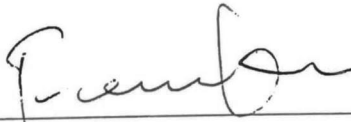
Konstantin Chelney, Esq.  
28 Liberty Street, 6th Floor  
New York, NY 10005  
Tel.: (212) 653-0024  
Fax: (212) 653-0020

*Attorney for Relator*

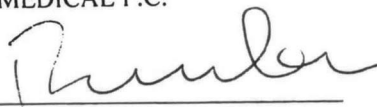


**DEFENDANTS**

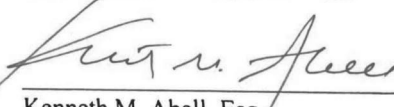
Dated: New York, New York  
~~February~~, 2021  
March 4

  
\_\_\_\_\_  
FENG QIN, M.D.  
*Defendant*

Dated: New York, New York  
~~February~~, 2021  
March 4

QIN MEDICAL P.C.  
  
By:   
\_\_\_\_\_  
FENG QIN, M.D.  
Medical Director  
*Defendant*

Dated: New York New York  
~~February~~, 2021  
March 4

ABELL ESKEW LANDAU LLP  
  
By:   
\_\_\_\_\_  
Kenneth M. Abell, Esq.  
David Eskew, Esq.  
11 Grace Avenue, Suite 309  
Great Neck, NY 11021  
Tel.: (646) 970-7341/7342  
Fax: (646) 970-7345  
  
*Attorneys for Defendants*



SO ORDERED:

/s/ Laura Taylor Swain  
HON. LAURA TAYLOR SWAIN  
UNITED STATES DISTRICT JUDGE

Dated: March 5, 2021

## EXCLUSION AGREEMENT

I hereby agree to be excluded from participation in Medicare, Medicaid, and all Federal health care programs as defined in 42 U.S.C. § 1320a-7b(f), for a period of 4 years, based on OIG's allegations that during the period of January 1, 2015, through December 31, 2016, ("the covered conduct period") I performed medical procedures that lacked medical necessity as required under the Social Security Act ("Act") to bill Medicare for reimbursement. Specifically, during the covered conduct period, OIG alleges that I performed fistulagrams and angioplasties on Medicare beneficiaries which were not supported by clinical evidence of need, and therefore were not reasonable and necessary for diagnosis or treatment as required by section 1862(a)(1)(A) of the Act.

I understand that this exclusion shall have national effect. Federal health care programs shall not pay anyone for items or services, including administrative and management services, furnished, ordered, or prescribed by me in any capacity while I am excluded. This payment prohibition applies to me and all other individuals and entities (including, for example, anyone who employs or contracts with me, and any hospital or other provider where I provide services). The exclusion applies regardless of who submits the claim or other request for payment. I shall not submit or cause to be submitted to any Federal health care program any claim or request for payment for items or services, including administrative and management services, furnished, ordered, or prescribed by me during the exclusion. I consent to OIG's disclosure of this Agreement, and information about this Agreement, to the public.

Violation of the conditions of the exclusion may result in criminal prosecution, the imposition of civil monetary penalties and assessments, and an additional period of exclusion. I further agree to hold the Federal health care programs, and all federal beneficiaries and/or sponsors, harmless from any financial responsibility for items or services furnished, ordered, or prescribed to such beneficiaries or sponsors after the effective date of the exclusion. I understand and acknowledge that this exclusion is authorized under 42 U.S.C. § 1320a-7(b)(7). I waive any further notice of the exclusion and agree not to contest such exclusion either administratively or in any state or federal court. This Agreement is freely and voluntarily entered into without any duress or compulsion whatsoever and with the assistance and advice of legal counsel.

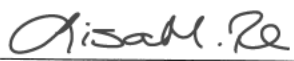
I understand that reinstatement to program participation is not automatic. If I wish to be reinstated, I must submit a written request for reinstatement to the OIG in accordance with the provisions of 42 C.F.R. §§ 1001.3001-.3005. Such request may be made to the OIG no earlier than 90 days prior to the expiration of the period of exclusion set forth above. Reinstatement becomes effective only upon notice of reinstatement by the OIG after OIG approval of my application. Obtaining another license, moving to another state, or obtaining a provider number from a Medicare contractor, a state agency, or a

Federal health care program does not reinstate my eligibility to participate in these programs.

The exclusion is effective on the date of the last signature on this agreement.

  
\_\_\_\_\_  
Dr. Feng Qin  
127 Lafayette St, New York, NY10013

01/05/2021  
Date

  
\_\_\_\_\_  
Lisa M. Re  
Assistant I.G. for Legal Affairs  
Office of Counsel to the Inspector General  
Office of Inspector General  
U.S. Department of Health & Human Services

02/25/2021  
Date