

SETTLEMENT AGREEMENT

This Settlement Agreement (Agreement) is entered into among the United States of America, acting through the United States Department of Justice and on behalf of the Office of Inspector General (OIG-HHS) of the Department of Health and Human Services (HHS) (collectively the "United States"); the State of Ohio, acting through the Ohio Attorney General's Office and the Ohio Department of Medicaid ("State of Ohio"); and Memorial Hospital (hereafter collectively referred to as "the Parties"), through their authorized representatives.

RECITALS

A. Memorial Hospital, now known as Promedica Memorial Hospital, ("Memorial") is an Ohio nonprofit corporation that operates an acute care hospital located in Fremont, Ohio.

B. In August 2012, Memorial submitted letters to the United States Attorney's Office for the Northern District of Ohio and to OIG-HHS in which it disclosed that its financial relationships with two physicians, Dr. Dale Solze and Dr. Naren Lakshmipathy, may have violated the Anti-Kickback Statute, 42 U.S.C. § 1320a-7b(b), and the Stark Law, 42 U.S.C. § 1395nn. Specifically, Memorial disclosed the following facts: (1) between August 1, 2002 and May 31, 2012, Memorial paid Dr. Solze above-market rates for intraocular lenses that were used by Dr. Solze in cataract surgeries that he performed at Memorial, (2) between April 1, 2006 and August 21, 2012, Memorial operated a joint venture, Memorial Pain Management, LLC, with Dr. Lakshmipathy through which improper remuneration was provided to Dr. Lakshmipathy, and (3) as a

result, during the periods indicated above, Memorial submitted false claims for payment to the Medicare and Medicaid programs, in violation of the False Claims Act, 31 U.S.C. §§ 3729-3733, for services rendered to patients that were referred to Memorial by Drs. Solze and Lakshmiopathy. This conduct is referred to below as the Covered Conduct.

C. Memorial has represented that it has taken several actions to cease the Covered Conduct, including, but not limited to, the dissolution of Memorial Pain Management, LLC, and the annulment of all payment obligations from Memorial Pain Management, LLC to Dr. Lakshmiopathy.

D. The United States contends that it has certain civil and administrative claims, as specified in paragraphs 2 and 3 below, against Memorial arising from the Covered Conduct.

E. The State of Ohio also contends that it has certain civil claims, as specified in paragraph 4, below, against Memorial arising out of the Covered Conduct.

E. This Settlement Agreement is neither an admission of liability by Memorial nor a concession by the United States or the State of Ohio that their claims are not well founded.

F. To avoid the delay, uncertainty, inconvenience, and expense of protracted litigation of the above claims, and in consideration of the mutual promises and obligations of this Settlement Agreement, the Parties agree and covenant as follows:

TERMS AND CONDITIONS

1. Memorial shall pay to the United States eight million, five hundred thousand dollars (\$8,500,000) ("Settlement Amount") no later than ten 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 Northern District of Ohio. The United States agrees to pay \$600,383.62 of the Settlement Amount to the State of Ohio.

2. Subject to the exceptions in Paragraph 5 (concerning excluded claims) below, and conditioned upon Memorial's full payment of the Settlement Amount, the United States releases Memorial and its officers and directors 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); or the common law theories of payment by mistake, unjust enrichment, and fraud.

3. In consideration of Memorial's disclosure of this matter, the obligations of Memorial in this Agreement, and conditioned upon Memorial's full payment of the Settlement Amount, the 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 Memorial under 42 U.S.C. § 1320a-7a (Civil Monetary Penalties Law), the civil monetary provisions of the Stark Law at 42 U.S.C. § 1395nn(g)(3), 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 5 (concerning excluded claims), below, and as reserved in this Paragraph. The OIG-HHS expressly reserves all rights to comply with any statutory obligations to exclude Memorial 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 the OIG-HHS from taking action against entities or persons, or for conduct and practices, for which claims have been reserved in Paragraph 5, below.

4. Subject to the exceptions in Paragraph 5 (concerning excluded claims) below, in consideration of the obligations of Memorial in this Agreement, and conditioned upon Memorial's full payment of the Settlement Amount, the State of Ohio (on behalf of itself, its officers, agents, agencies and departments) agrees to release Memorial from any civil or administrative monetary claim the State of Ohio has or may have for the Covered Conduct under Ohio Rev. Code Ann. § 5164.35 [formerly O.R.C. § 5111.03], or the common law theories of payment by mistake and unjust enrichment.

5. Notwithstanding the releases given in paragraphs 2 through 4 of this Agreement, or any other term of this Agreement, the following claims of the United States and the State of Ohio are specifically reserved and are not released:

- a. Any liability arising under Title 26, U.S. Code (Internal Revenue Code) or any provision of the Ohio tax 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 civil or administrative liability that any person or entity has or may have to the State of Ohio or to individual consumers or state program payors under any statute, regulation or rule not expressly covered by the release in Paragraph 4, above, including but not

limited to, any and all of the following claims: (i) antitrust violations; (ii) claims involving unfair or deceptive acts and practices and/or (iii) claims involving violations of consumer protection laws;

- e. Any liability relating to Medicaid which may be asserted on behalf of any other payors or insurers, including those that are paid by the State's Medicaid program on a capitated basis;
- f. Any liability to the United States or the State of Ohio (or their agencies) for any conduct other than the Covered Conduct;
- g. Any liability based upon obligations created by this Agreement;
- h. Any liability for express or implied warranty claims or other claims for defective or deficient products or services, including quality of goods and services;
- i. Any liability for failure to deliver goods or services due;
- j. Any liability for personal injury or property damage or for other consequential damages arising from the Covered Conduct;
- k. Any liability that may be asserted by a state professional licensing board; and/or
- l. Any liability of individuals not identified in paragraph 2 above.

6. Memorial waives and shall not assert any defenses Memorial 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.

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

8. 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 Memorial agrees not to resubmit to any Medicare contractor or any state payer any previously denied claims related to the Covered Conduct, and agrees not to appeal any such denials of claims.

9. Memorial 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-1 and 1396-1396w-5; and the regulations and official program directives promulgated thereunder) incurred by or on

behalf of Memorial, its present or former officers, directors, employees, shareholders, and agents in connection with:

- (1) the matters covered by this Agreement;
- (2) the United States' audit(s) and civil investigation(s) of the matters covered by this Agreement;
- (3) Memorial's investigation, defense, and corrective actions undertaken in response to the United States' audit(s) and civil investigation(s) in connection with the matters covered by this Agreement (including attorney's fees);
- (4) the negotiation and performance of this Agreement; and
- (5) the payment Memorial makes to the United States and the State of Ohio pursuant to this Agreement

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

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

c. Treatment of Unallowable Costs Previously Submitted for Payment:

Memorial further agrees that within 90 days of the Effective Date of this Agreement it shall identify to applicable Medicare and TRICARE fiscal intermediaries, carriers, and/or contractors, and Medicaid and FEHBP fiscal agents, any Unallowable Costs (as defined in this Paragraph) included in payments previously sought from the United States, or any State Medicaid program, including, but not limited to, payments sought in any cost reports, cost statements, information reports, or payment requests already submitted by Memorial 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. Memorial agrees that the United States, at a minimum, shall be entitled to recoup from Memorial 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 Memorial or any of its subsidiaries or affiliates on the effect of inclusion of Unallowable Costs (as defined in this Paragraph) on Memorial 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 Memorial's books and records to determine that no Unallowable Costs have been claimed in accordance with the

provisions of this Paragraph.

10. Memorial agrees to cooperate fully and truthfully with any investigation of individuals and entities not released in this Agreement by the United States or the State of Ohio. Upon reasonable notice, Memorial shall encourage, and agrees not to impair, the cooperation of its directors, officers, and employees, and shall use its best efforts to make available, and encourage, the cooperation of former directors, officers, and employees for interviews and testimony, consistent with the rights and privileges of such individuals. Memorial further agrees to furnish to the United States and/or the State of Ohio, upon request, complete and unredacted copies of all non-privileged documents, reports, memoranda of interviews, and records in its possession, custody, or control concerning any investigation of the Covered Conduct that it has undertaken, or that has been performed by another on its behalf.

11. 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 12 (waiver for beneficiaries paragraph), below.

12. Memorial 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.

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

14. Each party and signatory to this Agreement represents that it freely and voluntarily enters in to this Agreement without any degree of duress or compulsion.

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

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

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

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

19. This Agreement is binding on Memorial's successors, transferees, heirs, and assigns.

20. All parties consent to the disclosure of this Agreement, and information about this Agreement, to the public.

21. This Agreement is effective on the date of signature of the last signatory to the Agreement (Effective Date of this Agreement). Facsimiles of signatures shall constitute acceptable, binding signatures for purposes of this Agreement.

SIGNATURE PAGES TO FOLLOW

THE UNITED STATES OF AMERICA

DATED: 3/13/14

BY:

Guillermo J. Rojas
Guillermo J. Rojas
Assistant United States Attorney
Northern District of Ohio

DATED: 3/13/14

BY:

David T. Cohen
David T. Cohen
Senior Trial Counsel
Commercial Litigation Branch
Civil Division
United States Department of Justice

DATED: 3/13/14

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

THE STATE OF OHIO

DATED: _____

BY:

Michael DeWine
Ohio Attorney General
Ohio Attorney General's Office
State Office Tower
80 East Broad Street, 17th Floor
Columbus, OH 43215

DATED: _____

BY:

John B. McCarthy, Director
Ohio Department of Medicaid
50 West Town Street, Suite 400
Columbus, OH 43215

THE UNITED STATES OF AMERICA

DATED: _____

BY:

Guillermo J. Rojas
Assistant United States Attorney
Northern District of Ohio

DATED: _____

BY:

David T. Cohen
Senior Trial Counsel
Commercial Litigation Branch
Civil Division
United States Department of Justice

DATED: _____

BY:

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

THE STATE OF OHIO

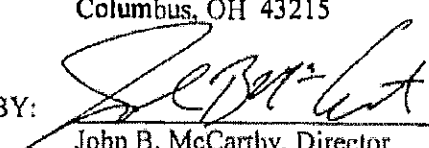
DATED: _____

BY:

Michael DeWine
Ohio Attorney General
Ohio Attorney General's Office
State Office Tower
80 East Broad Street, 17th Floor
Columbus, OH 43215

DATED: 3-12-74

BY:



John B. McCarthy, Director
Ohio Department of Medicaid
50 West Town Street, Suite 400
Columbus, OH 43215

THE UNITED STATES OF AMERICA

DATED: _____

BY: _____

Guillermo J. Rojas
Assistant United States Attorney
Northern District of Ohio

DATED: _____

BY: _____

David T. Cohen
Senior Trial Counsel
Commercial Litigation Branch
Civil Division
United States Department of Justice

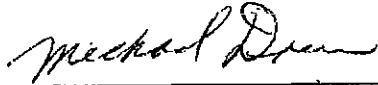
DATED: _____

BY: _____

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

THE STATE OF OHIO

DATED: MARCH 3, 2014 BY: _____


Michael DeWine
Ohio Attorney General
Ohio Attorney General's Office
State Office Tower
80 East Broad Street, 17th Floor
Columbus, OH 43215

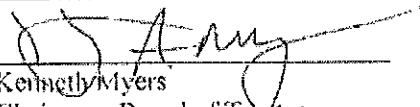
DATED : _____

BY: _____


John B. McCarthy, Director
Ohio Department of Medicaid
50 West Town Street, Suite 400
Columbus, OH 43215

MEMORIAL HOSPITAL

DATED: 3/4/14

BY: 
Kenneth Myers
Chairman, Board of Trustees
ProMedica Memorial Hospital

DATED: 3/5/14

BY: 
D. Michael Crites, Esq.
Dinsmore & Shohl LLP
Counsel for ProMedica Memorial Hospital