

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); and the TRICARE Management Activity (TMA), through its General Counsel (collectively the "United States"); the State of Tennessee (Tennessee); HCA Inc. (formerly known as Hospital Corporation of America) (HCA); Parkridge Medical Center, Inc. (Parkridge); and Thomas Bingham (Relator) (hereafter collectively referred to as "the Parties"), through their authorized representatives.

RECITALS

A. HCA is a for-profit corporation organized and existing under the laws of Tennessee that has owned and operated hospitals across the United States. Parkridge is a wholly owned subsidiary of HCA, located in Chattanooga, Tennessee. HCA and Parkridge shall collectively be referred to as "HCA" below.

B. On March 26, 2008, Thomas Bingham filed a *qui tam* action in the United States District Court for the Eastern District of Tennessee captioned *United States ex rel. Thomas Bingham v. HCA, Inc.*, 1:08-CV-71, pursuant to the *qui tam* provisions of the False Claims Act, 31 U.S.C. § 3730(b), and the Tennessee Medicaid False Claims Act, Tenn. Code Ann. §§ 71-5-181 *et seq.* (the Civil Action). That complaint was subsequently amended, first on March 20, 2009, and subsequently on June 4, 2010. Relator alleged that certain HCA facilities engaged in unlawful financial relationships with particular physicians and submitted false claims to federal healthcare programs, in violation of 42 U.S.C. § 1395nn (also known as the Stark law), the Anti-Kickback Statute, 42 U.S.C. § 1320a-7b(b) and the False Claims Act.

C. The United States and Tennessee contend that HCA submitted or caused to be submitted claims for payment to the Medicare Program (Medicare), Title XVIII of the Social Security Act, 42 U.S.C. §§ 1395-1395kkk-1; the TRICARE Program, 10 U.S.C. §§ 1071-1110a; and the Medicaid Program (Medicaid), 42 U.S.C. §§ 1396-1396w-5, through Tennessee's Medicaid program known as TennCare.

D. The United States and Tennessee contend that they have certain civil claims against HCA arising from the following alleged conduct during the period from July 31, 2007 through July 31, 2011:

1. In July 2007, HCA, through its subsidiaries Parkridge and HCA Physician Services (HCAPS), entered into a series of transactions with Diagnostic Associates of Chattanooga (Diagnostic) through which it paid remuneration and provided other financial benefits intended to induce the physician members of Diagnostic to refer patients to HCA facilities. On July 31, 2007, HCAPS purchased the Diagnostic practice and hired numerous physician members of Diagnostic. Concurrent with, and as an integral part of, HCAPS' acquisition of the Diagnostic practice, HCA, through Parkridge, agreed to lease office space from Diagnostic at a rental rate well in excess of fair market value to meet the mortgage obligations of the Diagnostic members and agreed to release the Diagnostic members from a separate lease obligation that would not have otherwise expired until February 2013. These financial arrangements failed to meet the requirements of 42 U.S.C. § 1395nn (also known as the Stark law) and violated the Anti-Kickback Statute, 42 U.S.C. §1320a-7b(b).

2. From August 1, 2007, through July 31, 2011, in violation of the False Claims Act, 31 U.S.C. §§ 3729-3733 (FCA), and the Tennessee Medicaid False Claims Act,

Tenn. Code Ann. §§ 71-5-181 *et seq.*, HCA through Parkridge submitted or caused to be submitted claims to Medicare, TRICARE, and TennCare/Medicaid for inpatient and outpatient hospital services referred, ordered or arranged for by the Diagnostic physician members who benefitted from the prohibited financial arrangements between HCA and Diagnostic.

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

E. This Settlement Agreement is neither an admission of liability by HCA nor a concession by the United States and Tennessee that their claims are not well founded.

F. Relator claims entitlement under 31 U.S.C. § 3730(d) and Tenn. Code Ann. § 71-5-183(d) to a share of the proceeds of this Settlement Agreement and to Relator's 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 Settlement Agreement, the Parties agree and covenant as follows:

TERMS AND CONDITIONS

1. HCA shall pay to the United States and Tennessee, collectively, the sum of Sixteen Million Five Hundred Thousand Dollars (\$16,500,000.00), plus interest accrued thereon at a simple rate of 1.64 percent per annum from June 15, 2012, and continuing until and including the day before complete payment is made (Settlement Amount) to be paid as follows:

a. HCA will make a payment to the United States in the amount of \$15,693,000.00 plus interest (Federal Settlement Amount) within ten (10) days of the Effective Date of this Agreement. All payments made by HCA to the United States will be made by electronic funds transfer pursuant to written instructions to be provided by the United States

Attorney's Office for the Eastern District of Tennessee; and

b. HCA will make a payment in the amount of \$807,000.00 plus interest ("Tennessee Settlement Amount") to Tennessee within ten (10) days of the Effective Date of this Agreement. All payments made by HCA to Tennessee will be made by check pursuant to written instructions to be provided by the Office of the Attorney General for Tennessee.

2. Conditioned upon the United States receiving the Federal Settlement Amount from HCA and as soon as feasible after receipt, United States shall pay \$2,903,340.00 to Relator by electronic funds transfer pursuant to written instructions provided by counsel for the Relator. Conditioned upon Tennessee receiving the Tennessee Settlement Amount from HCA, and as soon as feasible after receipt, Tennessee shall pay \$149,295.00 to Relator by check pursuant to written instructions provided by counsel for the Relator.

3. HCA shall pay to the counsel for the Relator within ten (10) days of the Effective Date of this Agreement the sum of \$236,000 for Relator's attorney's fees and costs pursuant to written instructions provided by counsel for the Relator.

4. Subject to the exceptions in Paragraph 9 (concerning excluded claims) below, and conditioned upon HCA's full payment of the Settlement Amount, the United States releases HCA, its parent, subsidiaries, affiliates, and successors in interest, and the officers, directors, and employees thereof, 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; or the common law theories of payment by mistake, unjust enrichment, and fraud.

5. Subject to the exceptions in Paragraph 9 below, and conditioned upon HCA's full

payment of the Settlement Amount, Tennessee (on behalf of itself, its officers, agents, agencies, and departments) releases HCA, its parent, subsidiaries, affiliates, and successors in interest, and the officers, directors, and employees thereof, from any civil or administrative monetary claim Tennessee has or may have for the Covered Conduct under the Tennessee Medicaid False Claims Act, Tenn. Code. Ann. §§ 71-5-181 *et seq.*, or the common law theories of payment by mistake, unjust enrichment, conversion and fraud. Tennessee also agrees to release and refrain from instituting, directing, or maintaining any administrative action seeking exclusion from TennCare and other State health care programs (as defined in Tenn. Comp. R. & Regs. 1200-13-.08) against HCA, its parent, subsidiaries, affiliates, and successors in interest, and the officers, directors, and employees thereof, for the Covered Conduct, except as specifically reserved in other portions of this Agreement. Tennessee does not have the authority, and does not intend, to release HCA, its parent, subsidiaries, affiliates, and successors in interest, and the officers, directors, and employees thereof, from any claims or actions which may be asserted by private payors or insurers, including those that are paid by TennCare on a capitated basis.

6. Subject to the exceptions in Paragraph 9 below, and conditioned upon HCA's full payment of the Settlement Amount, Relator, for himself and for his heirs, successors, attorneys, agents, and assigns, releases HCA, its parent, subsidiaries, affiliates, and successors in interest, and the officers, directors, and employees thereof, from any civil monetary claim the Relator has on behalf of the United States for the Covered Conduct under the False Claims Act, 31 U.S.C. §§ 3729-3733, and Tennessee for the Covered Conduct under the Tennessee Medicaid False Claims Act, Tenn. Code. Ann. §§ 71-5-181 *et seq.*

7. In consideration of the obligations of HCA in this Agreement and the Corporate

Integrity Agreement (CIA), entered into between OIG-HHS and Parkridge, conditioned upon payment in full of the Settlement Amounts described in Paragraph 1 above, 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 Parkridge 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 9 (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 Parkridge 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 9 below.

8. In consideration of the obligations of HCA set forth in this Agreement, conditioned upon HCA's full payment of the Settlement Amount, TMA agrees to release and refrain from instituting, directing, or maintaining any administrative action seeking exclusion from the TRICARE Program against HCA under 32 C.F.R. § 199.9 for the Covered Conduct, except as reserved in Paragraph 9 (concerning excluded claims) below, and as reserved in this Paragraph. TMA expressly reserves authority to exclude HCA from the TRICARE Program under 32 C.F.R. §§ 199.9 (f)(1)(i)(A), (f)(1)(i)(B), and (f)(1)(iii), based upon the Covered Conduct. Nothing in this Paragraph precludes TMA or the TRICARE Program from taking action against entities or persons, or for conduct and practices, for which claims have been

reserved in Paragraph 9 below.

9. Notwithstanding the releases given in paragraphs 4, 5, 7 and 8 of this Agreement, or any other term of this Agreement, the following claims of the United States and Tennessee 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 and the TennCare program;
- d. Any liability to the United States or Tennessee (or their respective agencies) for any conduct other than the Covered Conduct;
- e. Any liability based upon obligations created by this Agreement;
- f. Any administrative 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;
- j. Any criminal, civil, or administrative liability arising under state revenue codes; and
- k. Any liability to Tennessee, individual consumers or state program payors for claims involving unfair and/or deceptive acts or practices and/or violations of consumer protection laws.

10. Relator and his heirs, successors, attorneys, agents, and assigns shall not object to this Agreement but 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) and Tenn. Code Ann. § 71-5-183(c)(2)(B). Conditioned upon Relator's receipt of the payment described in Paragraph 2, Relator and his heirs, successors, attorneys, agents, and assigns fully and finally release, waive, and forever discharge the United States and Tennessee, and their respective agencies, officers, agents, employees, and servants, from any claims arising from the filing of the Civil Action or under 31 U.S.C. § 3730, or under Tenn. Code Ann. § 71-5-183, and from any claims to a share of the proceeds of this Agreement and/or the Civil Action.

11. HCA and its parent, subsidiaries, including Parkridge, affiliates, and successors in interest, and the officers, directors, and employees thereof, fully and finally release the Relator and his attorneys and agents from any claims (including attorney's fees, costs, and expenses of every kind and however denominated) that HCA has asserted, could have asserted, or may assert in the future against the Relator and his attorneys and agents related to or arising from the filing of the civil action.

12. HCA waives and shall not assert any defenses HCA 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.

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

14. 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 carrier or intermediary or any state payer related to the Covered Conduct, and HCA agrees not to resubmit to any Medicare carrier or intermediary or any state payer any previously denied claims related to the Covered Conduct and agrees not to appeal any such denials of claims.

15. HCA 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 HCA, 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) HCA'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;

(5) the payment HCA makes to the United States pursuant to this Agreement and any payments that HCA may make to Relator, including costs and attorneys fees; and

(6) the negotiation of, and obligations undertaken pursuant to the CIA

to:

(i) retain an independent review organization to perform annual reviews as described in Section III of the CIA; and

(ii) prepare and submit reports to the OIG-HHS,

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). However, nothing in this paragraph 15.a.(6) that may apply to the obligations undertaken pursuant to the CIA affects the status of costs that are not allowable based on any other authority applicable to HCA.

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

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

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. HCA 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. Within five (5) business days after receipt of the Settlement Amount set forth in Paragraph 1, above, the United States, Tennessee and Relator shall promptly sign and file in the Civil Action (1) a notice of the United States' and Tennessee's respective elections to intervene in the Civil Action filed by Relator against HCA for the purpose of settlement, and (2) a Joint Stipulation of Dismissal of the Civil Action pursuant to Rule 41(a)(1) in the form of the Notice of Partial Intervention and Stipulation of Dismissal attached hereto as Attachment A. The Stipulation of Dismissal will become effective following notice to the Court of receipt of the Settlement Amount set forth in Paragraph 1.

19. 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 into 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 Eastern District of Tennessee. 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 HCA's successors, transferees, heirs, and assigns.

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

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

THE UNITED STATES OF AMERICA

DATED: 9/12/2012

BY: William C. Killian
WILLIAM C. KILLIAN
UNITED STATES ATTORNEY
Eastern District of Tennessee

DATED:

BY: _____
DANIEL R. ANDERSON
LAURIE A. OBEREMBT
Civil Division
United States Department of Justice

DATED:

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

DATED:

BY: _____
PAUL J. HUTTER
General Counsel
TRICARE Management Activity
United States Department of Defense

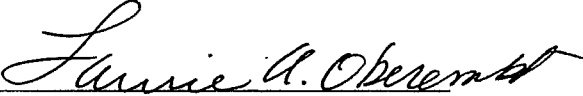
THE STATE OF TENNESSEE

DATED:

BY: _____
ROBERT E. COOPER
Attorney General & Reporter

THE UNITED STATES OF AMERICA

DATED: BY: _____
WILLIAM C. KILLIAN
UNITED STATES ATTORNEY
Eastern District of Tennessee

DATED: 9/14/12 BY: 
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LAURIE A. OBEREMBT
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THE STATE OF TENNESSEE

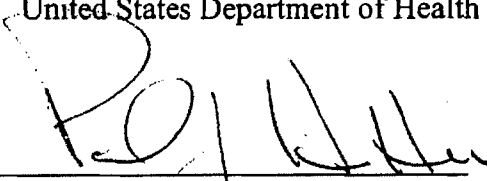
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TRICARE Management Activity
United States Department of Defense

SEP 13 2012

THE STATE OF TENNESSEE

DATED: BY: _____
ROBERT E. COOPER
Attorney General & Reporter

THE UNITED STATES OF AMERICA

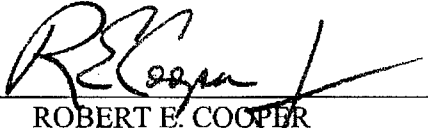
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UNITED STATES ATTORNEY
Eastern District of Tennessee

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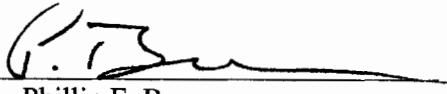
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PAUL J. HUTTER
General Counsel
TRICARE Management Activity
United States Department of Defense

THE STATE OF TENNESSEE

DATED: 9/14/12 BY: 
ROBERT E. COOPER
Attorney General & Reporter

RELATOR THOMAS BINGHAM

DATED: 9/14/12

BY: 
Phillip E. Benson
Warren Benson Law Group
Counsel for Relator

DATED:

Thomas Bingham


RELATOR THOMAS BINGHAM

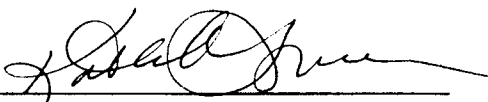
DATED:

BY: _____
Phillip E. Benson
Warren Benson Law Group
Counsel for Relator

DATED: 9/14/12 Thomas Bingham
Thomas Bingham

HCA INC.

DATED: Sept 13, 2012 BY: 
ROBERT A. WATERMAN
Senior Vice President and General Counsel

DATED: Sept. 13, 2012 BY: 
KATHERINE A. LAUER
Latham & Watkins, LLP

PARKRIDGE MEDICAL CENTER, INC.

DATED: BY: _____
DARRELL W. MOORE
Chief Executive Officer

DATED: BY: _____
KATHERINE A. LAUER
Latham & Watkins, LLP

HCA INC.

DATED:

BY: _____

ROBERT A. WATERMAN
Senior Vice President and General Counsel

DATED:

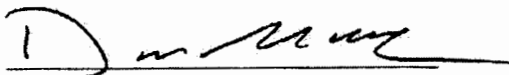
BY: _____

KATHERINE A. LAUER
Latham & Watkins, LLP

PARKRIDGE MEDICAL CENTER, INC.

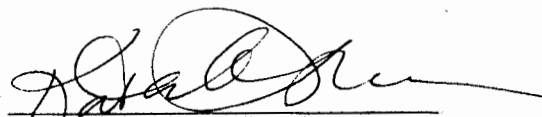
DATED:

9-13-12

BY:  _____

DARRELL W. MOORE
Chief Executive Officer

DATED: Sept. 13, 2012 BY:

 _____

KATHERINE A. LAUER
Latham & Watkins, LLP