

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"), Relators Leatrice Ford and Thomas Schuhmann ("Relators"); and MedCath Corporation ("MedCath") (hereafter all collectively referred to as "the Parties").

RECITALS

A. MedCath is a dissolved Delaware Corporation with its principal place of business located in Charlotte, North Carolina. During the relevant period, from October 1, 2003 through the dates of sale,¹ MedCath owned and operated the following hospitals: Arizona Heart Hospital, Heart Hospital of Austin, Heart Hospital of Bakersfield, Heart Hospital of New Mexico, Louisiana Heart Hospital and TexSan Heart Hospital ("Former MedCath Hospitals"). The Former MedCath Hospitals focused on providing high-acuity services, including the diagnosis and treatment of cardiovascular disease. Each of the Former MedCath Hospitals were sold to unrelated third parties. Pursuant to the respective Purchase Agreements for each of these Former MedCath Hospitals, MedCath represents that it agreed to retain liability for or indemnify the buyers for any potential liability arising from claims submitted or caused to be submitted for payment to the Medicare

¹ Arizona Heart Hospital 10-01-2010
Bakersfield Heart Hospital 06-30-2012
Heart Hospital of Austin 11-01-2010
Heart Hospital of New Mexico 08-01-2011
Louisiana Heart Hospital 09-30-2011
TexSan Heart Hospital 12-31-2010

Program (Medicare), Title XVIII of the Social Security Act, 42 U.S.C. §§ 1395-1395kkk-1, related to the civil action described in Paragraph B below. Effective September 21, 2012, in accordance with Section 275 of the General Corporation Law of the State of Delaware, MedCath filed its Certificate of Dissolution to dissolve the Company.

B. On January 9, 2008, Relators filed a *qui tam* action in the United States District Court for the Southern District of Florida [Under Seal], captioned United States ex rel. Ford et al. v. [Under Seal], pursuant to the *qui tam* provisions of the False Claims Act, 31 U.S.C. § 3730(b); the Complaint was amended several times, the last of which was filed on February 7, 2013 (the "Civil Action").

C. The United States contends that the Former MedCath Hospitals 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.

D. The United States contends that it has certain civil claims against the Former MedCath Hospitals for engaging in the following conduct (hereafter referred to as the "Covered Conduct"): From October 1, 2003 until the dates of sale in Paragraph A, the Former MedCath Hospitals knowingly submitted Part A claims to Medicare for services relating to the insertion of Implantable Cardioverter Defibrillators (ICDs) that were implanted within 40 days of a myocardial infarction or within 3 months of a revascularization procedure and thus were in violation of Medicare's National Coverage Determination 20.4.

E. This Settlement Agreement is neither an admission of liability by MedCath or the Former MedCath Hospitals nor a concession by the United States that its claims are not well founded.

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

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

TERMS AND CONDITIONS

1. MedCath shall pay to the United States a total of \$6,100,000 (Settlement Amount) no later than September 27, 2013 by electronic funds transfer pursuant to written instructions to be provided by the United States Attorney's Office for the Southern District of Florida.

2. Conditioned upon the United States receiving the Settlement Amount from MedCath and as soon as feasible after receipt, the United States shall pay \$915,000 to Relators by electronic funds transfer.

3. Following the Effective Date of the Agreement and receipt of written instructions from Relators and no later than September 27, 2013, MedCath, agrees to pay Relators an aggregate total of \$25,000 pursuant to 31 U.S.C. § 3730(d) for expenses and attorney's fees and costs arising from the filing of the Civil Action.

4. Subject to the exceptions in Paragraph 6 (concerning excluded claims) below, and conditioned upon MedCath's full payment of the Settlement Amount, the United States releases MedCath and the Former MedCath Hospitals, together with their current or former direct and indirect parent and member corporations; limited partnerships, limited liability companies, and liquidating trusts including those holding

now or previously holding any direct or indirect ownership in any of the Former MedCath Hospitals, and the direct and indirect subsidiaries; direct or indirect brother and sister corporations; divisions; current or former owners; officers, directors, managers, trustees, non-physician employees, and affiliates; and the successors, transferees, purchasers, and assignees of any of them (collectively, the "Released Parties") 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 6 below, and conditioned upon MedCath's full payment of the Settlement Amount, Relators, for themselves and for their heirs, successors, attorneys, agents, assigns, and any other person or entity acting on their behalf or asserting their rights, agree to fully and finally release, waive, and forever discharge MedCath, the Former MedCath Hospitals, and each of the Released Parties from any and all allegations, claims, claims for relief, actions, rights, causes of action, suits, debts, obligations, liabilities, demands, losses, damages, punitive damages, costs, and expenses of any kind, character, or nature, known or unknown, asserted or unasserted, fixed or contingent, in law or in equity, in contract or tort, or under any state or federal statute or regulation or arising from or connected in any way with the facts, claims, or circumstances alleged in, arising under, or arising from the filing of the Civil Action, or from any past activities or actions of MedCath, the Former MedCath Hospitals, or each of the Released Parties, or from any civil monetary claim the Relators have on behalf of the United States for the Covered Conduct under the False Claims Act,

31 U.S.C. §§ 3729-3733, any similar federal or state statute or regulation, or any liability under 31 U.S.C. § 3730(d) for expenses or attorney's fees and costs.

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

- a. Any liability arising under Title 26, U.S. Code (Internal Revenue Code);
- b. Any criminal liability;
- c. Except as explicitly stated in this Agreement, any administrative liability, including mandatory or permissive exclusion from Federal health care programs;
- d. Any liability to the United States (or its agencies) for any conduct other than the Covered Conduct;
- e. Any liability of physicians who implanted ICDs set forth in the Covered Conduct;
- f. Any liability based upon obligations created by this Agreement;
- 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; and
- h. Any liability for failure to deliver goods or services due.

7. Relators for themselves and for their heirs, successors, attorneys, agents, assigns, and any other person or entity acting on their behalf or asserting their rights, 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). Conditioned upon Relators' receipt of the payment described in Paragraph 2, Relators and their heirs, successors, attorneys, agents, and assigns fully and finally release, waive, and forever discharge the United States, its agencies, officers, agents, employees, and servants, from any claims arising from the filing of the Civil Action or under 31 U.S.C. § 3730 as it relates to MedCath and the Former MedCath Hospitals only; and from any other claims for a share of the Settlement Amount in this Agreement; and in full settlement of any claims Relators may have against the United States under this Agreement.

8. MedCath for itself and on behalf of each of the Released Parties 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 Agreement bars a remedy sought in such criminal prosecution or administrative action.

9. Nothing in Paragraph 8 above 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.

10. MedCath for itself and on behalf of each of the Released Parties agree to fully and finally release, waive, and forever discharge Relators and their counsel from any and all allegations, claims, claims for relief, actions, rights, causes of action, suits,

debts, obligations, liabilities, demands, losses, damages, punitive damages, costs, and expenses of any kind, character, or nature, known or unknown, asserted or unasserted, fixed or contingent, in law or in equity, in contract or tort, or under any state or federal statute or regulation or arising from or connected in any way with the facts, claims, or circumstances alleged in, arising under, or arising from the filing of the Civil Action, or from any past activities or actions of Relators.

11. MedCath for itself and on behalf of each of the Released Parties fully and finally release the United States, its agencies, officers, agents, employees, and servants, from any claims (including attorney's fees, costs, and expenses of every kind and however denominated) they have asserted, could have asserted, or may assert in the future against the United States, its agencies, officers, agents, employees, and servants, related to the Covered Conduct and the United States' investigation and prosecution thereof.

12. The Settlement Amount shall not be decreased as a result of the denial of claims for payment now being withheld from payment by any Medicare contractor (e.g., Medicare Administrative Contractor, fiscal intermediary, carrier) or any state payer, related to the Covered Conduct; and MedCath for itself and on behalf of each of the Released Parties agree not to resubmit to any Medicare contractor or any state payer any previously denied claims related to the Covered Conduct, and agree not to appeal any such denials of claims.

13. MedCath for itself and on behalf of each of the Released Parties 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 the Former MedCath Hospitals, their 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) MedCath's and the Former MedCath Hospitals' 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 MedCath makes to the United States pursuant to this Agreement and any payments that MedCath may make to Relator, including costs and attorneys' fees; and

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 MedCath and the Former MedCath Hospitals and they 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 MedCath or any of its subsidiaries or affiliates to the Medicare, Medicaid, TRICARE, or FEHBP Programs.

c. Treatment of Unallowable Costs Previously Submitted for Payment:

MedCath for itself and on behalf of each of the Released Parties further agree that within 90 days of the Effective Date of this Agreement they 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 MedCath and the Former MedCath Hospitals or any of their 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. MedCath for itself and on behalf of each of the Released Parties agree that the United States, at a minimum, shall be entitled to recoup from MedCath and the Former MedCath Hospitals 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 MedCath and the Former MedCath Hospitals or any of their subsidiaries or affiliates on the effect of inclusion of Unallowable Costs (as defined in this Paragraph) on

MedCath and the Former MedCath Hospitals or any of their 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 MedCath's and the Former MedCath Hospitals' books and records to determine that no Unallowable Costs have been claimed in accordance with the provisions of this Paragraph.

14. This Agreement is intended to be for the benefit of the Parties only. The Parties do not release any claims against any other person or entity, except to the extent provided for in Paragraphs 4 and 15 (waiver for beneficiaries paragraph), below.

15. MedCath for itself and on behalf of each of the Released Parties agree that they waive and shall not seek payment for any of the health care billings covered by this Agreement from any health care beneficiaries or their parents, sponsors, legally responsible individuals, or third party payors based upon the claims defined as Covered Conduct.

16. Upon receipt of the payment described in Paragraph 1, above, the United States and Relators shall promptly file in the Civil Action a Stipulation of Dismissal With Prejudice of the Civil Action pursuant to Rule 41(a)(1) as to the MedCath and Former MedCath Hospitals only.

17. Except as expressly provided to the contrary 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.

18. 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.

19. 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 Southern District of Florida. 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.

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

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

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

23. This Agreement is binding on MedCath, the Former MedCath Hospitals, and on each of the Released Parties and their successors, transferees, heirs, and assigns.

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

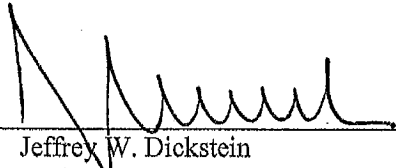
25. All parties consent to the United States' disclosure of this Agreement, and information about this Agreement, to the public.

26. 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: 9/25/13

BY: _____



Jeffrey W. Dickstein
Assistant United States Attorney
Southern District of Florida

DATED: _____

BY: _____

Amy L. Easton
Trial Attorney
Commercial Litigation Branch
Civil Division

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 UNITED STATES OF AMERICA

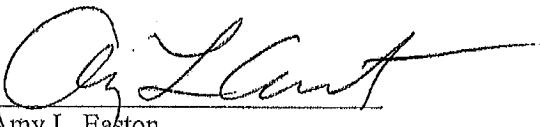
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BY: _____

Jeffrey W. Dickstein
Assistant United States Attorney
Southern District of Florida

DATED: 9/25/13

BY: _____


Amy L. Easton
Trial Attorney
Commercial Litigation Branch
Civil Division

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

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Jeffrey W. Dickstein
Assistant United States Attorney
Southern District of Florida

DATED: _____

BY: _____

Amy L. Easton
Trial Attorney
Commercial Litigation Branch
Civil Division

DATED: 9/24/13

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

MEDCATH AND THE FORMER MEDCATH HOSPITALS

DATED: 9/24/13 BY: Lora Ramsey

Lora Ramsey
President and Chief Financial Officer
10800 Sikes Place, Suite 200
Charlotte, North Carolina 28277

On Behalf of MedCath and of each of the Released Parties

DATED: 9/24/13 BY: Thomas C. Fox

Thomas C. Fox
Reed Smith LLP
1301 K Street, N.W.
Suite 1100 - East Tower
Washington, DC 20005

Daniel A. Cody
Reed Smith LLP
101 Second Street
Suite 1800
San Francisco, CA 94105

Counsel for MedCath

Relators

DATED: 9/23/13

BY: Leatrice Richards formerly Leatrice Ford
Leatrice Ford

DATED: _____

BY: _____
Thomas Schuhmann

DATED: _____

BY: _____
Counsel for Relators

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Law Offices of Bryan A. Vroon, LLC
1718 Peachtree Street, Suite 1088
Atlanta, GA 30309

Theodore J. Leopold, Esq.
Leopold Law, PA
2925 PGA Blvd, Suite 200
Palm Beach Gardens, FL 33410

Relators

DATED: _____

BY: _____

Leatrice Ford

DATED: 9/27/13

BY: 

Thomas Schuhmann

DATED: _____

BY: _____

Counsel for Relators

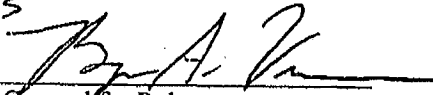
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Palm Beach Gardens, FL 33410

Relators

DATED: _____ BY: _____
Leatrice Ford

DATED: _____ BY: _____
Thomas Schuhmann

DATED: September 23, 2013 BY: 
Counsel for Relators

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