

## 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); Mercy Hospital Springfield f/k/a St. John's Regional Health Center, and Mercy Clinic Springfield Communities f/k/a/ St. John's Clinic, Inc. (Defendants); and Relator Viran Roger Holden, M.D. (hereafter collectively referred to as the Parties), through their authorized representatives.

### RECITALS

A. Defendant Mercy Hospital Springfield (Mercy Hospital) owns and operates a hospital located at 1235 E. Cherokee in Springfield, Missouri. Defendant Mercy Clinic Springfield Communities (Mercy Clinic) owns and operates medical office facilities in Springfield and other locations in Missouri. Both Mercy Hospital and Mercy Clinic are hereafter referred to collectively as Defendants.

B. On June 29, 2015, Relator Viran Roger Holden, M.D. (Relator), filed a *qui tam* action in the United States District Court for the Western District of Missouri captioned *United States ex rel. Viran Roger Holden v. Mercy Hospital Springfield f/k/a St. John's Regional Health Center and Mercy Clinic Springfield Communities f/k/a/ St. John's Clinic, Inc.*, No. 15-03283-DGK, pursuant to the *qui tam* provisions of the False Claims Act, 31 U.S.C. § 3730(b) (the Civil Action). In Relator's complaint, he alleged that Defendants' financial relationships with certain of their employed physicians violated the Stark Law, 42 U.S.C. § 1395nn, and the Anti-Kickback Statute, 42 U.S.C. § 1320a-7b(b)(2), and consequently that Defendants filed false claims with the Medicare Program for the payment of services referred to the Defendants by those physicians.

C. The United States contends that between February 1, 2009 and June 30, 2014, the Defendants' financial relationships with certain physicians employed by the Clinic (the Clinic Physicians) violated the Stark Law. Specifically, the United States contends that the Clinic improperly compensated the Clinic Physicians in a manner that improperly took into account the volume and value of the physicians' referrals of patients to Mercy Hospital's Mercy Oncology Infusion Center – Chub O'Reilly Cancer Center (the Infusion Center), for certain infusion services. The Clinic Physicians and the time periods at issue are identified in Attachment A to this Agreement. The United States further contends that, because of the Stark Law violations, the Defendants violated the False Claims Act by submitting, or causing to be submitted, false claims to Medicare for infusion services rendered to patients who were referred by the Clinic Physicians to the Infusion Center for the infusion services. The United States contends that it has certain civil claims against the Defendants arising from this conduct, which is referred to below as the Covered Conduct.

D. This Settlement Agreement is neither an admission of liability by Defendants nor a concession by the United States that its claims are not well founded. Defendants expressly deny the allegations of the United States and the Relator set forth herein and in the Civil Action.

E. Relator claims entitlement under 31 U.S.C. § 3730(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. Defendants shall pay to the United States Thirty-Four Million Dollars (\$34,000,000.00) (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 Office of the United States Attorney for the Western District of Missouri.

2. Conditioned upon the United States receiving the Settlement Amount from Defendants and as soon as feasible after receipt, the United States shall pay Five Million Four Hundred Forty Thousand Dollars (\$5,440,000.00) to Relator by electronic funds transfer.

3. Defendants shall pay \$45,781.45 to Relator for his reasonable attorney's fees and costs, pursuant to 31 U.S.C. § 3730(d)(1), no later than ten days after the Effective Date of this agreement.

4. Subject to the exceptions in Paragraph 7 (concerning excluded claims) below, and conditioned upon Defendants' full payment of the Settlement Amount, the United States releases Defendants together with their current and former parent corporations; subsidiaries; affiliates; brother and sister corporations; and the successors and assignees of any of them (collectively, Defendant Releasees) 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) and (4); or the common law theories of payment by mistake, unjust enrichment, and fraud.

5. In consideration of the obligations of the Defendants in this Agreement and the Corporate Integrity Agreement (CIA), entered into between OIG-HHS and Mercy Hospital Springfield, Mercy Clinic Springfield Communities, and MHM Support Services and conditioned upon Defendants' 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 Mercy Hospital Springfield and Mercy Clinic Springfield

Communities under 42 U.S.C. § 1320a-7a (Civil Monetary Penalties Law) or 42 U.S.C. § 1320a-7(b)(7) (permissive exclusion for fraud, kickbacks, and other prohibited activities) for the Covered Conduct, except as reserved in Paragraph 7 (concerning excluded claims), below, and as reserved in this Paragraph. The OIG-HHS expressly reserves all rights to comply with any statutory obligations to exclude Mercy Hospital Springfield and Mercy Clinic Springfield Communities 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 7, below.

6. Except as otherwise stated in this paragraph, (1) conditioned upon Defendants' full payment of the Settlement Amount, Relator, for himself and for his heirs, successors, attorneys, agents, and assigns, releases Defendants, the Defendant Releasees, and any current or former employee, officer, or director of Defendants from any claim, debt, demand, action, cause of action, or suit of any nature whatsoever, both at equity and at law, that the Relator has or may have had on behalf of himself, the United States, or any other individual or entity, from the beginning of time to the date of this Settlement Agreement; and (2) Defendants release Relator from any claim, debt, demand, action, cause of action, or suit of any nature whatsoever, both at equity and at law, that the Defendants have or may have had from the beginning of time to the date of this Settlement Agreement. Notwithstanding the foregoing, Relator and Defendants expressly reserve any claims they may have against each other for breach of any provision of the settlement agreement entered into in *Holden v. Mercy Clinic Springfield Communities, et al.*, U.S. Dist. Court, Western Dist. of Missouri, Case No. 6:15-cv-03206-BCW, and Relator and Defendants remain bound by all terms of such settlement agreement.

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

- a. Any liability arising under Title 26, U.S. Code (Internal Revenue Code);
- b. Any criminal liability;
- c. Except as explicitly stated in this Agreement, any administrative liability, including mandatory exclusion from Federal health care programs;
- d. Any liability to the United States (or its agencies) for any conduct other than the Covered Conduct;
- e. Any liability based upon obligations created by this Agreement;
- f. Any liability for express or implied warranty claims or other claims for defective or deficient products or services, including quality of goods and services;
- g. Any liability for failure to deliver goods or services due;
- h. Any liability for personal injury or property damage or for other consequential damages arising from the Covered Conduct; and
- i. Any liability of individuals.

8. 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). 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, 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, and from any claims to a share of the proceeds of this Agreement and/or the Civil Action.

9. Relator, for himself, and for his heirs, successors, attorneys, agents, and assigns, releases Defendants and the Defendant Releasees, from any liability to Relator arising from the filing of the Civil Action, or under 31 U.S.C. § 3730(d) for expenses or attorney's fees and costs.

10. 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 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.

11. Defendant Releasees 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) that Defendant Releasees 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 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 agrees to withdraw any such pending appeals.

13. 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, 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 and civil investigation of the matters covered by this Agreement;
- (3) Defendants' investigation, defense, and corrective actions undertaken in response to the United States' audit and civil investigation in connection with the matters covered by this Agreement (including attorney's fees);
- (4) the negotiation and performance of this Agreement;
- (5) the payment Defendants make to the United States pursuant to this Agreement and any payments that Defendants may make to Relator, including costs and attorney's 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 paragraph 13.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 Defendants.

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

c. Treatment of Unallowable Costs Previously Submitted for Payment: Defendants 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 Defendants 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. 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 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 Defendants or any of their subsidiaries or affiliates on the effect of inclusion of Unallowable Costs (as defined in this Paragraph) on Defendants 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 Defendants' 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, 5, and 15 (waiver for beneficiaries paragraph).

15. Defendants 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, Relator and the United States shall promptly sign and file in the Civil Action a Joint Stipulation of Dismissal of the Civil Action pursuant to Rule 41(a)(1).

17. Except as provided in Paragraph 3 above, 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 Western District of Missouri. 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 Defendants' successors, transferees, heirs, and assigns.

24. This Agreement is binding on Relator's 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 and electronic transmissions of signatures shall constitute acceptable, binding signatures for purposes of this Agreement.

**THE UNITED STATES OF AMERICA**

DATED: \_\_\_\_\_

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

DATED: 4-27-17

BY: Lucinda S. Woolery  
Lucinda S. Woolery  
Assistant United States Attorney  
Western District of Missouri

DATED: \_\_\_\_\_

BY: \_\_\_\_\_  
Lisa M. Re  
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

**DEFENDANTS**

Mercy Hospital Springfield f/k/a St. John's Health System, Inc.

DATED: 4/20/17

BY: Alan Scarrow  
Alan Scarrow, M.D., J.D.  
President

Mercy Clinic Springfield Communities f/k/a St. John's Clinic, Inc.

DATED: 4/20/17

BY: Alan Scarrow  
Alan Scarrow, M.D., J.D.  
President

DATED: 4/20/17

Thompson Coburn LLP  
BY: Jan Paul Miller  
Jan Paul Miller, Esq.  
Counsel for Defendants

THE UNITED STATES OF AMERICA

DATED: 5/2/17

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

DATED: \_\_\_\_\_

BY: \_\_\_\_\_  
Lucinda S. Woolery  
Assistant United States Attorney  
Western District of Missouri

DATED: 1/25/17

BY: Lisa M. Re  
Lisa M. Re  
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

DEFENDANTS

Mercy Hospital Springfield E/k/a St. John's Health System, Inc.

DATED: 4/20/17

BY: Alan Scarrow  
Alan Scarrow, M.D., J.D.  
President

Mercy Clinic Springfield Communities E/k/a St. John's Clinic, Inc.

DATED: 4/20/17

BY: Alan Scarrow  
Alan Scarrow, M.D., J.D.  
President

Thompson Coburn LLP

DATED: \_\_\_\_\_

BY: \_\_\_\_\_  
Jan Paul Miller, Esq.  
Counsel for Defendants

RELATOR

DATED: 04-19-17

BY: Viran Roger Holden  
Viran Roger Holden, M.D.

DATED: 4-19-17

BY: Jenifer M. Placzek  
Jenifer M. Placzek, Esq.  
Placzek Winget & Placzek  
Counsel for Viran Roger Holden, M.D.

## ATTACHMENT A

<b>Name</b>	<b>Beginning Date</b>	<b>End Date</b>
Bharadwaj, Jayaram	5/1/2009	6/25/2010
Bosscher, James R.	2/1/2009	9/30/2010
Carlson, Jay W.	5/2/2011	6/30/2014
Holden, Viran R.	2/1/2009	5/14/2014
Hoos, Gary L.	2/1/2009	5/14/2014
Lewis, Christopher	2/1/2009	10/8/2009
Nair, Rajesh R.	2/1/2009	5/14/2014
Nanney, Gregory	10/25/2010	6/30/2012
Raju, Manjula	2/1/2009	5/14/2014
Snider, Jessica N.	7/6/2013	6/30/2014
Tiriveedhi, Lavanya	2/1/2009	5/14/2014
Tummala, Mohan K.	8/19/2011	6/30/2014