

FALSE CLAIMS ACT HEALTH CARE SETTLEMENT AGREEMENT

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 Washington, acting through the Washington Office of the Attorney General and on behalf of the Washington Health Care Authority (HCA) (collectively the "State") and Dr. Romeo Pavlic, Cardiovascular Institute, PC, Cardiovascular Institute II, PC, and USA Heart, Inc., (hereafter collectively referred to as "the Parties" where appropriate), through their authorized representatives. The United States and the State are collectively referred to herein as the "Government" where appropriate. Dr. Romeo Pavlic, Cardiovascular Institute, PC, Cardiovascular Institute II, PC, and USA Heart, Inc., are collectively referred to herein as "Dr. Pavlic and his Companies" where appropriate.

FACTUAL RECITALS

A. Romeo Pavlic has been licensed as a Physician and Surgeon in the State of Washington since 1980 under License Number MD00018454. Dr. Pavlic is a contracted provider with the Washington State Medicaid Program under Medicaid Provider number 2005976. Dr. Pavlic is also a contracted provider with the federal Medicare Program under Medicare Provider number G8874829. Claims for reimbursement for services are submitted to both programs under Dr. Pavlic's National Provider Identifier number 1508815036.

B. Lakeland Village ("LV") is located in Medical Lake, Washington. It is a State operated facility that provides training, education, and healthcare for about 250 individuals with developmental disabilities. People who receive services have profound physical and mental disabilities.

C. The Government contends that Dr. Pavlic and his Companies submitted or caused to be submitted claims for payment to the Medicare Program, Title XVIII of the Social Security Act, 42 U.S.C. §§ 1395-1395kkk-1 (“Medicare”) and the Washington State Medicaid Program, 42 U.S.C. §§ 1396-1396w-5, RCW 74.66 *et seq.*, and RCW 74.09.210 (“Medicaid”).

D. The Government contends that it has certain civil claims against Dr. Pavlic and his Companies arising from claims for payment submitted to Medicare and Medicaid, between January 1, 2010, and December 31, 2013, for care ostensibly provided to LV residents during scheduled Cardiac Clinics. Specifically, the Government contends that Dr. Pavlic and his Companies submitted up-coded claims for services he provided at LV Cardiac Clinic in two ways: 1) billing for Evaluation and Management (E/M) Current Procedural Terminology (CPT) code 99214 (Level 4 established patient office visit) when the services provided did not meet that level of care, and 2) billing for CPT code 99306 (a complete transthoracic echocardiogram) when he actually provided a service that should have been billed under CPT code 99308 (follow-up or limited echocardiogram). The conduct described in this paragraph is hereinafter referred to as the “Covered Conduct.”

E. The Government contends that it has certain civil claims against Dr. Pavlic and his Companies under the False Claims Act, codified at 31 U.S.C. § 3729-3733, the Medicaid Fraud False Claims Act, codified at RCW 74.66, the Fraudulent Practices Act, codified at RCW 74.09.210, and the common law for allegedly engaging in the Covered Conduct.

F. Dr. Pavlic and his Companies deny the contentions of the Government. This Settlement Agreement is neither an admission of liability by Dr. Pavlic and his Companies nor a concession by the Government that its claims are not well founded.

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

TERMS AND CONDITIONS

1. Dr. Pavlic and his Companies shall pay to the Government a total principal sum of three hundred thousand dollars (\$300,000.00), herein "the Settlement Amount." Of the Settlement Amount, \$279,190.00 is owed to the United States, which shall be paid within five (5) days of the Effective Date of this Agreement by electronic funds transfer pursuant to written instructions to be provided by the Office of the United States Attorney for the Eastern of Washington. Of the Settlement Amount, \$20,810.00 is owed to the State, which shall be paid within five (5) days of the Effective Date of this Agreement pursuant to written instructions to be provided by the Washington Office of the Attorney General. On the Effective Date of this Agreement, the Settlement Amount shall constitute a debt due and immediately owing to the Government per the terms of this paragraph.

2. Subject to the exceptions in Paragraph 3 (concerning excluded claims) below, and conditioned upon Dr. Pavlic's and his Companies' full payment of the Settlement Amount, the Government releases Dr. Pavlic and his Companies from any civil or administrative monetary claim the Government 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 Medicaid Fraud False Claims Act, RCW 74.66; the False Practices Act, RCW 74.09.210, or the common law theories of payment by mistake, unjust enrichment, and fraud.

3. Notwithstanding the release given in Paragraph 2 of this Agreement, or any other term of this Agreement, the following claims of the Government are specifically reserved and are not released:

- a. Any criminal, civil, or administrative liability arising under Title 26, U.S. Code (Internal Revenue Code) or state revenue codes;
- b. Any criminal liability;
- c. Except as explicitly stated in this Agreement, any administrative liability, including mandatory or permissive exclusion from Federal or State health care programs;
- d. Any liability to the Government (or its agencies) for any conduct other than the Covered Conduct;
- e. Any liability based upon obligations created by this Agreement;
- f. any civil or administrative liability that any person or entity, including Dr. Pavlic and his Companies, have or may have to the Federal, State or individual consumers or government program payers under any statute, regulation or rule not expressly covered by the release in this Agreement, including but not limited to, any and all of the following claims: (i) antitrust violations; (ii) claims involving unfair and/or deceptive acts and practices and/or violations of consumer protection laws;
- g. any liability which may be asserted on behalf of any other payers or insurers, including those that are paid by the Government programs on a capitated basis;
- h. any liability for expressed or implied warranty claims or other claims for defective or deficient products and services provided by Dr. Pavlic and

his Companies;

- i. any liability for personal injury or property damage or for other consequential damages arising from the Covered Conduct;
- j. any liability based on a failure to deliver goods or services due; and,
- k. Except as expressly stated herein, any liability of individuals.

4. This agreement is not intended to affect the terms of any provider agreement(s), contracts or other agreements that Dr. Pavlic and his Companies have or may have with HCA or any State of Washington agency.

5. Dr. Pavlic and his Companies fully and finally release the Government, its agencies, officers, agents, employees, and servants, from any claims (including attorney's fees, costs, and expenses of every kind and however denominated) that Dr. Pavlic or his Companies have asserted, could have asserted, or may assert in the future against the Government and its agencies, officers, agents, employees, and servants related to the Covered Conduct and the Governments' investigation and prosecution thereof.

6. 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 or Medicaid contractor (e.g., Medicare Administrative Contractor, fiscal intermediary, carrier) or any state payer, related to the Covered Conduct; and Dr. Pavlic and his Companies agree not to resubmit to any Medicare or Medicaid contractor or any state payer any previously denied claims related to the Covered Conduct, agrees not to appeal any such denials of claims, and agrees to withdraw any such pending appeals.

7. Dr. Pavlic and his Companies 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 Dr. Pavlic or his Companies, their present or former officers, directors, employees, shareholders, and agents in connection with:

- (1) the matters covered by this Agreement;
- (2) the Governments' audit(s) and civil and any criminal investigation(s) of the matters covered by this Agreement;
- (3) Dr. Pavlic's, or his Companies', investigation, defense, and corrective actions undertaken in response to the Governments' audit(s) and civil and any criminal 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 Dr. Pavlic or his Companies, make to the Government 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, and Dr. Pavlic and his Companies 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 Dr. Pavlic or his Companies, or any of their subsidiaries or affiliates to Medicare, Medicaid, TRICARE, or FEHBP Programs.

c. Treatment of Unallowable Costs Previously Submitted for Payment: Dr.

Pavlic and his Companies 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 Government, including, but not limited to, payments sought in any cost reports, cost statements, information reports, or payment requests already submitted by Dr. Pavlic or his Companies, 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. Dr. Pavlic and his Companies agree that the Government, at a minimum, shall be entitled to recoup from Dr. Pavlic or his Companies, 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, Medicaid Fraud Control Unit, and/or the affected agencies. The Government reserves its rights to disagree with any calculations submitted by Dr. Pavlic or his Companies, or any of their subsidiaries or affiliates on the effect of inclusion of Unallowable Costs (as defined in this Paragraph) on Dr. Pavlic or his Companies, 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 Government to audit, examine, or re-examine Dr. Pavlic's or his Companies' books and records

to determine that no Unallowable Costs have been claimed in accordance with the provisions of this Paragraph.

8. Dr. Pavlic and his Companies warrant that they have reviewed their financial situation and that they currently are solvent within the meaning of 11 U.S.C. §§ 547(b)(3) and 548(a)(1)(B)(ii)(I), and shall remain solvent following payment to the United States of the Settlement Amount. Further, the Parties warrant that, in evaluating whether to execute this Agreement, they (a) have intended that the mutual promises, covenants, and obligations set forth constitute a contemporaneous exchange for new value given to Dr. Pavlic and his Companies, within the meaning of 11 U.S.C. § 547(c)(1); and (b) conclude 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 Dr. Pavlic and his Companies was or became indebted to on or after the date of this transfer, within the meaning of 11 U.S.C. § 548(a)(1).

9. If within 91 days of the Effective Date of this Agreement or of any payment made under this Agreement, Dr. Pavlic and his Companies commence, or a third party commences, any case, proceeding, or other action under any law relating to bankruptcy, insolvency, reorganization, or relief of debtors (a) seeking to have any order for relief of Dr. Pavlic and his Companies' debts, or seeking to adjudicate Dr. Pavlic and his Companies as bankrupt or insolvent; or (b) seeking appointment of a receiver, trustee, custodian, or other similar official for Dr. Pavlic and his Companies or for all or any substantial part of Dr. Pavlic and his Companies' assets, Dr. Pavlic and his Companies agrees as follows:

a. Dr. Pavlic and his Companies' obligations under this Agreement may not be avoided pursuant to 11 U.S.C. § 547, and Dr. Pavlic and his Companies shall not

argue or otherwise take the position in any such case, proceeding, or action that: (i) Dr. Pavlic and his Companies' obligations under this Agreement may be avoided under 11 U.S.C. § 547; (ii) Dr. Pavlic and his Companies were insolvent at the time this Agreement was entered into, or became insolvent as a result of the payment made to the United States; or (iii) the mutual promises, covenants, and obligations set forth in this Agreement do not constitute a contemporaneous exchange for new value given to Dr. Pavlic and his Companies.

b. If Dr. Pavlic and his Companies' obligations under this Agreement 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 sole option, may rescind the releases in this Agreement and file a complaint against Dr. Pavlic and his Companies based on the Covered Conduct. The Parties agree and understand that in that instance the full amount any of damages and/or penalties based on any such complaint against Dr. Pavlic and his Companies are non-dischargeable and not subject to any stay in any bankruptcy declared by Dr. Pavlic or his Companies or any one of them. Dr. Pavlic and his Companies further agree that any such resulting claims, actions, collection efforts, or proceedings brought by the United States are not subject to an "automatic stay" pursuant to 11 U.S.C. § 362(a) as a result of the action, case, or proceedings described in the first clause of this Paragraph, and Dr. Pavlic and his Companies shall not argue or otherwise contend that the United States' claims, actions, or proceedings are subject to an automatic stay.

c. Dr. Pavlic and his Companies acknowledge that its agreements in this Paragraph are provided in exchange for valuable consideration provided in this Agreement.

10. 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 11 (waiver for beneficiaries paragraph), below.

11. Dr. Pavlic and his Companies 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 payers based upon the claims defined as Covered Conduct.

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

13. 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.

14. This Agreement is governed by the laws of the United States and the State of Washington. The exclusive jurisdiction and venue for any dispute relating to this Agreement is the United States District Court for the Eastern District of Washington. 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.

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

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

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

18. This Agreement is binding on Dr. Pavlic's and his Companies' successors, transferees, heirs, and assigns.

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

20. 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: 3-14-17 BY: 
Tyler Tornabene
Assistant United States Attorney
Eastern District of Washington

DATED: 3/3/17 BY: 
Lisa M. Re
Assistant Inspector General for Legal Affairs
Office of Counsel to the Inspector General
Office of Inspector General
U.S. Department of Health and Human Services

THE STATE OF WASHINGTON

DATED: _____ BY: _____
Douglas Walsh
Senior Assistant Attorney General
Medicaid Fraud Control Unit
Washington Office of the Attorney General

DATED: _____ BY: _____
MaryAnne Lindeblad
Medicaid Director
Washington Health Care Authority

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THE UNITED STATES OF AMERICA

DATED: _____

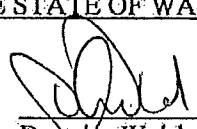
BY: _____
Tyler Tornabene
Assistant United States Attorney
Eastern District of Washington

DATED: _____

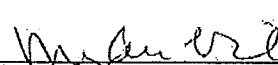
BY: _____
Lisa M. Re
Assistant Inspector General for Legal Affairs
Office of Counsel to the Inspector General
Office of Inspector General
U.S. Department of Health and Human Services

THE STATE OF WASHINGTON

DATED: 3/3/17

BY:  _____
Douglas Walsh
Senior Assistant Attorney General
Medicaid Fraud Control Unit
Washington Office of the Attorney General

DATED: 3-3-17

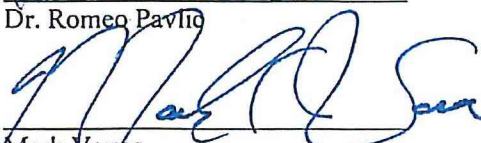
BY:  _____
MaryAnne Lindeblad
Medicaid Director
Washington Health Care Authority

DR. ROMEO PAVLIC

DATED: 2.28.17

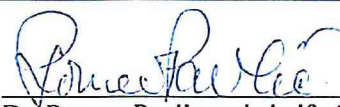
BY: 
Dr. Romeo Pavlic

DATED: 2/28/17

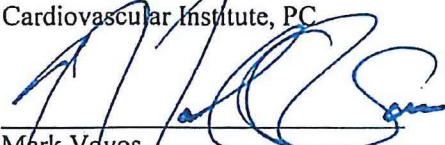
BY: 
Mark Voyos
Counsel for Dr. Romeo Pavlic

CARDIOVASCULAR INSTITUTE PC

DATED: 2.28.17

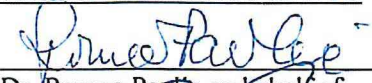
BY: 
Dr. Romeo Pavlic on behalf of
Cardiovascular Institute, PC

DATED: 2-28-17

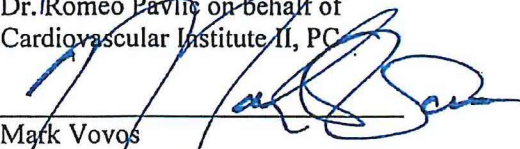
BY: 
Mark Voyos
Counsel for Cardiovascular Institute, PC

CARDIOVASCULAR INSTITUTE II PC

DATED: 2.28.17

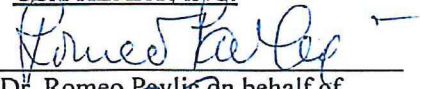
BY: 
Dr. Romeo Pavlic on behalf of
Cardiovascular Institute II, PC

DATED: 2-28-17

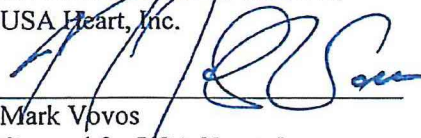
BY: 
Mark Voyos
Counsel for Cardiovascular Institute II, PC

USA HEART, INC.

DATED: 2.28.17

BY: 
Dr. Romeo Pavlic on behalf of
USA Heart, Inc.

DATED: 2-28-17

BY: 
Mark Voyos
Counsel for USA Heart, Inc.