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 of the Department of Health and Human Services ("OIG-HHS"); the Office of Personnel Management ("OPM"), which administers the Federal Employees Health Benefits Program ("FEHBP"); and the Defense Health Agency ("DHA"), which administers the TRICARE Program (collectively the "United States"); the State of Florida, acting through Florida Attorney General Pamela Jo Bondi, on behalf of the Florida Medicaid program, Agency for Health Care Administration; Baptist Health System, Inc. ("Baptist Health"), on behalf of Baptist Neurology, Inc. ("Baptist Neurology"); Southern Baptist Hospital of Florida, Inc. ("Southern Baptist Hospital"); and Baptist Enterprise Services, Inc. ("BPES") (collectively, "the Baptist Entities"); and Verchetta Wells ("Relator") (hereafter collectively referred to as "the Parties"), through their authorized representatives.

RECITALS

A. Baptist Health is a not-for-profit corporation incorporated in Florida. Baptist Health serves as the parent company for a network of affiliated hospitals and medical providers in the Jacksonville, Florida area. Baptist Neurology and Southern Baptist Hospital are part of this network and provide health care services which are billed to Medicare and other federal and non-federal insurance programs.

Civil Action") pursuant to the qui tam provisions of the False Claims Act, 31 U.S.C. § 3730(b) and the Florida False Claims Act, Florida Stat. § 68.083.

C. The United States contends that the Baptist Entities 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; FEHBP, U.S.C. §§ 8901-8914; and the TRICARE Program, 10 U.S.C. §§ 1071-1110b; and the Medicaid Program ("Medicaid"), 42 U.S.C. §§ 1396-1396w-5. Additionally, the United States maintains that the Baptist Entities had an obligation to return overpayments to Medicare under 42 U.S.C. § 1320a-7K(d). The State of Florida contends that the Baptist Entities submitted or caused to be submitted claims for payment to Florida Medicaid Program, Fla Stat. §§ 409.901-409.920.

D. The United States and the State of Florida contend they have certain civil claims against the Baptist Entities for the following conduct, which is referred to below as the Covered Conduct:

(1) Claims arising from the misdiagnosis, and subsequent mistreatment, of patients with neurological disorders during the period from September 1, 2009 to October 7, 2011. Specifically, the United States and the State of Florida contend that two Baptist Neurology physicians misdiagnosed patients with multiple sclerosis, unspecified demyelinating disease, encephalopathy, cerebral atherosclerosis, various types of neuropathy, and obstructive sleep apnea. As a result, the United States further alleges that these misdiagnoses led to false claims submitted to federal health care programs for medically unnecessary or unreasonable treatments, including treating patients misdiagnosed with multiple sclerosis with the following prescription drugs (Trade Name/Proper Name): Ampyra (Dalfampridine); Avonex or Rebif (Interferon Beta-1a); Betaseron or Extavia (Interferon Beta-1b); Copaxone (Glatiramer Acetate);
Gammagard (Immune Globulin Intravenous (Human), 10%); Gilenya (Fingolimod); H.P. Acthar Gel (Repository Corticotropin); and Tysabri (Natalizumab).

(2) In addition, the United States and the State of Florida contend that patients misdiagnosed with dystonia, spasmodic torticollis, or blepharospasm were mistreated with Botox (Onabotulinumtoxin A) and Xeomin (Incobotulinumtoxin A). On September 12, 2012, Baptist Health disclosed to the United States that its Compliance Office had determined that certain Botox and Xeomin claims submitted to Medicare by Baptist Neurology for the period September 10, 2009 through February 28, 2012 (the last date doctors in Baptist Neurology’s Downtown location injected patients with Botox and Xeomin), did not have appropriate documentation evidencing medical necessity as required by the applicable Medicare local coverage determination.

(3) Lastly, the United States and the State of Florida contend that Baptist Health knew that two Baptist Neurology physicians misdiagnosed and mistreated a number of their patients, but failed to relay this information to the government until Baptist Health’s disclosure regarding Botox claims on September 12, 2012.

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

F. 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. Within seven (7) days of the Effective Date of this Agreement, the Baptist Entities shall pay to the United States and the State of Florida $2,570,512 ("Settlement Amount") and interest accrued on the Settlement Amount until the date of payment at a rate of 2.25 percent per annum from February 1, 2014. The Baptist Entities shall pay to the United States the sum of $2,551,488, plus accrued interest as set forth above ("Federal Settlement Amount"), via electronic funds transfer pursuant to written instructions to be provided by the Civil Division of the United States Department of Justice. The Baptist Entities shall pay to Florida the sum of $19,024, plus accrued interest as set forth above ("Florida Settlement Amount"), to be disbursed in accordance with written instructions to be provided by the State of Florida Office of the Attorney General.

2. Conditioned upon the United States and the State of Florida receiving the Settlement Amount from the Baptist Entities and as soon as feasible after receipt, the United States shall pay $424,155 to Relator by electronic funds transfer.

3. The Baptist Entities shall also make a payment to Relator for her expenses and her attorney’s fees and costs, in an amount agreed upon by the Baptist Entities and Relator.

4. Subject to the exceptions in Paragraph 10 (concerning excluded claims) below, and conditioned upon the Baptist Entities’ full payment of the Settlement Amount, the United States releases the Baptist Entities 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 11 below (concerning excluded State claims), in consideration of the obligations of the Baptist Entities set forth in this Settlement Agreement, and conditioned upon receipt of the State Settlement Amount, the State of Florida hereby releases the Baptist Entities from any civil or administrative monetary cause of action that the State of Florida has or may have, as a result of the Covered Conduct related to or arising out of Medicaid reimbursements.

6. Subject to the exceptions in Paragraph 10 and 11 below, and conditioned upon the Baptist Entities’ full payment of the Settlement Amount, Relator, for herself and her heirs, successors, attorneys, agents, and assigns, releases the Baptist Entities, their officers, directors, employees, and the successors and assigns of any of them 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 or the Florida False Claims Act, Florida Stat. §§ 68.081-68.09.

7. OIG-HHS expressly reserves all rights to institute, direct, or to maintain any administrative action seeking exclusion against the Baptist Entities and/or their officers, directors, and employees from Medicare, Medicaid, and all other Federal health care programs (as defined in 42 U.S.C. § 1320a-7b(f)) under 42 U.S.C. § 1320a-7(a) (mandatory exclusion), or 42 U.S.C. § 1320a-7(b) or 42 U.S.C. § 1320a-7a (permissive exclusion).

8. In consideration of the obligations of the Baptist Entities set forth in this Agreement, and conditioned upon the Baptist Entities’ full payment of the Settlement Amount, DHA agrees to release and refrain from instituting, directing, or maintaining any administrative action seeking exclusion from the TRICARE Program against the Baptist Entities, 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. DHA expressly reserves authority to exclude
the Baptist Entities from the TRICARE Program under the mandatory exclusion provisions found at 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 DHA or the TRICARE Program from taking action against entities or persons, or for conduct and practices, for which claims have been reserved in Paragraph 10, below.

9. OPM expressly reserves all rights to institute, direct, or to maintain any administrative action seeking debarment against the Baptist Entities and/or their officers, directors, and employees under 5 U.S.C. §§ 8902a(b) (mandatory debarment) or (c) and (d) (permissive debarment).

10. Notwithstanding the releases given in paragraphs 4 through 9 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;
   g. Any liability for failure to deliver goods or services due; or
   h. Any liability for personal injury or property damage or for other consequential damages arising from the Covered Conduct.
11. Notwithstanding any term of this Settlement Agreement, the State of Florida specifically does not release the Baptist Entities from any of the following liabilities:

a. any criminal, civil, or administrative liability arising under the State of Florida's revenue codes;

b. any criminal liability not specifically released by this Settlement Agreement;

c. any civil or administrative liability that any person or entity, including the Baptist Entities, has or may have to the State of Florida or to individual consumers or state program payors under any statute, regulation or rule, including but not limited to, any and all of the following claims: (i) State or federal antitrust violations; (ii) Claims involving unfair and/or deceptive acts and practices and/or violations of consumer protection laws;

d. any liability to the State of Florida for any conduct other than the Covered Conduct;

e. any liability to any other payors or insurers, including those that are paid by the Florida Medicaid program on a capitated basis;

f. any liability based upon obligations created by this Settlement Agreement;

g. except as explicitly stated in this Settlement Agreement, any administrative liability, including mandatory exclusion from the Florida Medicaid program;
h. any liability for express or implied warranty claims or other claims for defective or deficient products and services provided by the Baptist Entities, including quality of goods and services provided by the Baptist Entities;

i. any liability for personal injury or property damage or for such other consequential damages arising from the Covered Conduct; or

j. any liability for failure to deliver goods or services due.

12. Relator and her 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 her 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.

13. Relator, for herself, and for her heirs, successors, attorneys, agents, and assigns, releases the Baptist Entities, together with their officers, directors, employees and the successors and assigns of any of them from any liability to Relator arising from the filing of the Civil Action, or under 31 U.S.C. § 3730(d) or Florida Stat. § 68.085 for expenses or attorney’s fees and costs.

14. Conditioned upon Relator's acceptance and receipt of the payments described in Paragraphs 2 and 3, the Baptist Entities, together with their officers, directors, employees and the successors and assigns of any of them, release Relator, for herself, and for her heirs, successors,
attorneys, agents, and assigns, from any liability to the Baptist Entities arising from the filing of the Civil Action or under 31 U.S.C. Section 3730 or Florida Statute Section 68.

15. The Baptist Entities waive and shall not assert any defenses the Baptist Entities 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.

16. The Baptist Entities 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 the Baptist Entities 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.

17. The Baptist Entities hereby fully and finally release, waive, and discharge the State of Florida, its agencies, political subdivisions, employees, servants, and agents from any causes of action (including for attorneys’ fees, costs, and expenses of every kind and however denominated) which the Baptist Entities have or may have against the State of Florida, its agencies, political subdivisions, employees, servants, and agents, arising from the State of Florida's investigation and prosecution of the Covered Conduct.
18. 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), TRICARE carrier or payer, FEHBP carrier or payer, or any state payer, related to the Covered Conduct; and the Baptist Entities agree not to resubmit to any Medicare contractor, TRICARE carrier or payer, FEHBP carrier or payer, or any state payer any previously denied claims related to the Covered Conduct, and agrees not to appeal any such denials of claims.

19. The State Settlement Amount will not be decreased as a result of the denial of claims for payment now being withheld from payment by the Florida Medicaid program, or any other State payor, for the Covered Conduct; and the Baptist Entities agree not to resubmit to the Florida Medicaid program or any other State payor, any previously denied claims, which denials were based on the Covered Conduct, and agrees not to appeal any such denials of claims.

20. The Baptist Entities 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 Baptist Entities, 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 any civil or criminal investigation(s) of the matters covered by this Agreement;
(3) the Baptist Entities' investigation, defense, and corrective actions undertaken in response to the United States'
audit(s) and civil or criminal investigation(s) in connection
with the matters covered by this Agreement (including
attorney's fees);

(4) the negotiation and performance of this Agreement; and

(5) the payment the Baptist Entities make to the United States
pursuant to this Agreement and any payments that the
Baptist Entities may make to Relator, including costs and
attorney's fees

are unallowable costs for government contracting purposes and under the Medicare Program,
Medicaid Program, TRICARE Program, and the FEHB (hereinafter referred to as
"Unallowable Costs").

b. Future Treatment of Unallowable Costs: Unallowable Costs shall be
separately determined and accounted for by the Baptist Entities, and the Baptist Entities 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 the Baptist
Entities or any of their subsidiaries or affiliates to the Medicare, Medicaid, TRICARE, or
FEHB Programs.

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

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

22. 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 19 (waiver for beneficiaries paragraph), below.

23. The Baptist Entities agree that they shall 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.

24. Upon receipt of the payment described in Paragraph 1, above, the United States, the State of Florida, and Relator shall promptly sign and file in the Civil Action a Notice of Partial Intervention and Joint Stipulation of Partial Dismissal of the Civil Action pursuant to Rule 41(a)(1).

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

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

27. 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 Middle 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.

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

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

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

31. This Agreement is binding on the Baptist Entities’ successors, transferees, heirs, and assigns.

32. This Agreement is binding on Relator’s successors, transferees, heirs, and assigns.

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

34. This Agreement is effective on the date of signature of the last signatory to the Agreement (“Effective Date of this Agreement”). Facsimiles of signatures and/or electronic signatures in portable document format (.pdf) shall constitute acceptable, binding signatures for purposes of this Agreement.
THE UNITED STATES OF AMERICA

DATED: April 24, 2014  BY: [Signature]
Ben Young
Trial Attorney
Civil Division
United States Department of Justice

DATED: ______________  BY: [Signature]
Jason Mehta
Assistant United States Attorney
Middle District of Florida

DATED: ______________  BY: [Signature]
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

DATED: ______________  BY: [Signature]
Paul J. Hutter
General Counsel
Defense Health Agency
U.S. Department of Defense

DATED: ______________  BY: [Signature]
Lloyd V. Williams
Deputy Director of Federal Employee Insurance Operations
United States Office of Personnel Management
THE UNITED STATES OF AMERICA

DATED: ____________ BY: ____________________________

Ben Young
Trial Attorney
Civil Division
United States Department of Justice

DATED: 04/25/2014 BY: ____________________________

Jason Mehta
Assistant United States Attorney
Middle District of Florida

DATED: 4/24/14 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

DATED: ____________ BY: ____________________________

Paul J. Hutter
General Counsel
Defense Health Agency
U.S. Department of Defense

DATED: APR 2 2 2014 BY: ____________________________

Lloyd V. Williams
Deputy Director for Federal Employee Insurance Operations
United States Office of Personnel Management
THE UNITED STATES OF AMERICA

DATED: ___________________        BY: ___________________

Ben Young
Trial Attorney
Civil Division
United States Department of Justice

DATED: ___________________        BY: ___________________

Jason Mehta
Assistant United States Attorney
Middle District of Florida

DATED: 4/24/14        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

DATED: ___________________        BY: ___________________

Paul J. Hutter
General Counsel
Defense Health Agency
U.S. Department of Defense

DATED: APR 22 2014        BY: ___________________

Lloyd V. Williams
Deputy Director for Federal Employee Insurance
Operations
United States Office of Personnel Management
THE UNITED STATES OF AMERICA

DATED: _______________ BY: ____________________________
Ben Young
Trial Attorney
Civil Division
United States Department of Justice

DATED: _______________ BY: ____________________________
Jason Mehta
Assistant United States Attorney
Middle District of Florida

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

DATED: 23 Apr 2014 BY: ____________________________
Paul J. Hutter
General Counsel
Defense Health Agency
U.S. Department of Defense

DATED: _______________ BY: ____________________________
Lloyd V. Williams
Deputy Director for Federal Employee Insurance
Operations
United States Office of Personnel Management

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STATE OF FLORIDA

By: Patricia A. Conners
Deputy Attorney General
Office of the Attorney General

Dated: 4/23/14
DATED: April 25, 2014

BY: Jana Kolarik Anderson, Esq.
Foley & Lardner, LLP

DATED: April 25, 2014

BY: Chris Blake, Esq.
Nelson Mullins Riley & Scarborough, LLP

Counsel for Baptist Health System, Inc.
RELATOR VERCHETTA WELLS

DATED: April 23, 2014 BY: Verchetta Wells
Relator

DATED: April 24, 2014 BY: Kirk Chapman
Milberg LLP
Counsel for Relator Verchetta Wells