



State of North Carolina

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February 1, 2014

North Carolina Senate President Pro Tempore Phil Berger
North Carolina House of Representatives Speaker Thom Tillis
Co-Chairs, Joint Legislative Commission on Governmental Operations

Senator Stan Bingham
Senator Thom Goolsby
Senator Buck Newton
Representative Jamie Boles
Representative N. Leo Daughtry
Representative John Faircloth
Representative Pat Hurley
Co-Chairs, Appropriations Subcommittee on Justice and Public Safety

North Carolina General Assembly
Raleigh, North Carolina 27601-1096

RE: G.S. §114-2.5; Report on Settlement Agreement for CareFusion Corporation

Dear Members:

Section 114-2.5 of the North Carolina General Statutes requires the Attorney General to report to the Joint Legislative Commission on Governmental Operations and the Chairs of the Appropriations Subcommittees on Justice and Public Safety regarding all settlements and court orders which result in more than \$75,000.00 being paid to the State. Pursuant to that statute, I am writing regarding the settlement of claims for Medicaid reimbursement to the state and federal governments in the above-referenced matter. Pursuant to federal law (42 C.F.R. § 433.320) recoveries in these cases are shared on a pro rata basis by the state and federal governments.

A Settlement Agreement has been executed between CareFusion and the State of North Carolina. CareFusion is a Delaware corporation with its principal place of business in San Diego, California. At all relevant times, CareFusion manufactured, sold and marketed a drug in the United States under the trade name Chloraprep.

This settlement resolves allegations that in 2008 CareFusion's predecessor corporation entered into agreements, as to which CareFusion assumed legal and financial responsibility, for payments of monies to an entity known as Health Care Concepts, Inc. (HCC) in order to conceal kickbacks to the physician owner of HCC, for the purpose of promoting and inducing providers to use Chloroprep, in violation of federal and state anti-kickback statutes. It was also alleged from July 1, 2008 through August 31, 2011, CareFusion promoted the sale of Chloraprep products for uses that were not approved by the Food and Drug Administration ("FDA") and knowingly made and/or disseminated unsubstantiated representations about the use of Chloraprep products.

Under the terms of North Carolina's settlement, the State of North Carolina will recover \$581,363.13. Of that amount the federal government will receive \$388,494.98 to satisfy North Carolina's obligation to return the federal portion of Medicaid recoveries to the federal government. Pursuant to G.S. § 1-610, the qui tam plaintiffs whose whistleblower actions brought this matter to the government's attention will receive \$18,928.79 of North Carolina's recovery. The North Carolina Medicaid Program will receive \$84,302.21 as restitution and interest. In addition, pursuant to Article IX, Section 7 of the North Carolina Constitution and G.S. § 115C-457.1, the penalty portion of the settlement in the amount of \$82,808.31 will be paid to the Civil Penalty Forfeiture Fund for the support of North Carolina public schools. Pursuant to G.S. § 115C-457.2 and G.S. § 108A-70.12(b)(3), the North Carolina Department of Justice will receive \$6828.84 for investigative costs and costs of collection.

We will be happy to respond to any questions you may have regarding this report.

Very truly yours,



Kristi Hyman
Chief of Staff

KH:ng

cc: Kristine Leggett, NCGA Fiscal Research Division
Christy Agner, NCDOJ, Legislative Liaison
Nels Roseland, NCDOJ, Deputy Chief of Staff

STATE SETTLEMENT AGREEMENT

I. PARTIES

This Settlement Agreement ("Agreement") is entered into between the State of North Carolina ("the State") and CareFusion Corporation ("CareFusion"), hereinafter collectively referred to as "the Parties."

II. PREAMBLE

As a preamble to this Agreement, the Parties agree to the following:

A. In January 2009, CareFusion was formed as a wholly-owned subsidiary of Cardinal Health Inc. ("Cardinal Health") and, on August 31, 2009, Cardinal Health completed the spinoff of its clinical and medical products business into CareFusion. On September 1, 2009, CareFusion began trading as a separate public company on the New York Stock Exchange, with its principal place of business in San Diego, CA. CareFusion is a Delaware corporation.

B. At all relevant times, CareFusion, or its predecessor in interest Cardinal Health, manufactured, sold, and marketed a drug in the United States under the trade name ChloraPrep, which is an antiseptic that is applied to a patient's skin prior to surgery or injection.

C. On September 9, 2010, Cynthia Kirk ("Relator") filed a *qui tam* action in the United States District Court for the District of Kansas under the caption *United States ex rel. Kirk v. CareFusion Corporation, et al.*, Civil Action No. 10-2492, pursuant to the *qui tam* provisions of the False Claims Act, 31 U.S.C. § 3730(b). On November 10, 2010, Relator filed a *qui tam* action in the United States District Court for the District of Kansas captioned

United States ex rel. Kirk v. CareFusion Corporation, et al., Civil Action No. 10-2611. The two *qui tam* actions will be referred to collectively as the “Civil Actions.”

D. CareFusion has entered into or will be entering into a separate civil settlement agreement (the “Federal Settlement Agreement”) with the United States of America (as that term is defined in the Federal Settlement Agreement), hereinafter referred to as the “United States,” in settlement of the Covered Conduct, as defined in the Federal Settlement Agreement and in Paragraph F below.

E. The State contends that CareFusion caused claims for payment for ChloroPrep to be submitted to the State’s Medicaid Program (see 42 U.S.C. §§ 1396-1396(w-5)).

F. The State contends that it has certain civil and administrative causes of action against CareFusion for engaging in the following conduct during the time period July 1, 2008, through August 31, 2011 (hereinafter referred to as the “Covered Conduct”):

In July 2008 and October 2008, two wholly-owned subsidiaries of Cardinal Health entered into agreements with an organization called Health Care Concepts, Inc. (“HCC”). Under a July 1, 2008 “Master Solutions Accelerator Agreement,” Cardinal Health 200, Inc. agreed to pay \$9.1 million to HCC for certain software development, strategic marketing, and consulting services. Under an October 1, 2008 “Research Grant Agreement,” Cardinal Health 303, Inc. agreed to pay \$2.5 million to HCC for the completion of three enumerated projects. The United States contends that the compensation for the underlying services in these agreements was not fair market value, the terms of the deliverables in the agreements were not enforced consistent with their terms, and one purpose of these agreements was to conceal kickbacks to Dr. Charles Denham, the owner and operator of HCC.

In connection with the spinoff of CareFusion from Cardinal Health, Inc., CareFusion assumed legal, and, in the case of the July 2008 agreement, financial responsibility for the agreements entered into by its predecessors-in-interest. CareFusion made payments to HCC while Dr. Denham served as the co-chair of the Safe Practices Committee at the National Quality Forum, which reviews, endorses and recommends standardized healthcare performance measures and practices. The United States contends that CareFusion’s payments to HCC were

made for the purpose of influencing Dr. Denham's work as co-chair of the Safe Practices Committee and for the purpose of inducing Dr. Denham to recommend, promote and/or arrange for the purchase of CareFusion's product, ChloraPrep, in violation of the Federal Anti-Kickback Statute.

In addition, Relator alleges that during the period September 2009 through August 2011, CareFusion knowingly (1) promoted the sale of ChloraPrep products for uses that were not approved by the Food and Drug Administration ("FDA"), some of which were not medically accepted indications; and (2) knowingly made and/or disseminated unsubstantiated representations about the use of ChloraPrep products.

As a result of the foregoing conduct, the State contends that CareFusion submitted and/or caused to be submitted false or fraudulent claims for ChloraPrep, or caused purchases by the State's Medicaid Program.

G. This Agreement is neither an admission of liability by CareFusion nor a concession by the State that its claims are not well founded.

H. To avoid the delay, expense, inconvenience, and uncertainty of protracted litigation of these causes of action, the Parties mutually desire to reach a full and final settlement as set forth below.

III. TERMS AND CONDITIONS

NOW, THEREFORE, in reliance on the representations contained herein and in consideration of the mutual promises, covenants and obligations set forth in this Agreement, and for good and valuable consideration as stated herein, the Parties agree as follows:

1. CareFusion agrees to pay to the United States and the Medicaid Participating States (as defined in sub-paragraph (c) below), collectively, the sum of \$40,100,000, plus accrued interest on that amount of 1.5% per annum commencing on May 3, 2013, and continuing and including the day before payment is made under this Agreement (collectively,

the "Settlement Amount"). The Settlement Amount shall constitute a debt immediately due and owing to the United States and to the Medicaid Participating States on the Effective Date of the Federal Settlement Agreement and subject to the terms of this Agreement with respect to the Medicaid State Settlement Amount, as that term is defined below. This debt shall be discharged by payments to the United States and to the Medicaid Participating States, under the following terms and conditions:

(a) CareFusion shall pay to the United States the sum of \$32,049,320 plus accrued interest on that amount at the rate of 1.5% per annum commencing on May 3, 2013, and continuing until and including the day before complete payment is made (the "Federal Settlement Amount"). The Federal Settlement Amount shall be paid pursuant to the terms of the Federal Settlement Agreement.

(b) CareFusion shall pay to the Medicaid Participating States the sum of \$8,050,680, plus accrued interest at a rate of 1.5% per annum from May 3, 2013, continuing until and including the day before complete payment is made (the "Medicaid State Settlement Amount"), such sum, however, is subject to and shall be adjusted in accordance with the non-participating state deduction provision of sub-paragraph (d) below (resulting in the final "Medicaid Participating State Settlement Amount"). The Medicaid Participating State Settlement Amount shall be paid by CareFusion no later than seven (7) business days after this Agreement is fully executed by the Parties and delivered to CareFusion's attorneys. The Medicaid Participating State Settlement Amount shall be paid by electronic funds transfer to the New York State Attorney General's National Global Settlement Account pursuant to written instructions from the State Negotiating Team ("State Team"), which written instructions shall be delivered to counsel for CareFusion.

(c) CareFusion shall execute a State Settlement Agreement with any State that executes such a State Settlement Agreement in the form to which CareFusion and the State Team have agreed, or in a form otherwise agreed to by CareFusion and an individual State. The State shall constitute a Medicaid Participating State provided the State Settlement Agreement is fully executed by the State and delivered to CareFusion's attorneys within 60 days of receiving this Agreement. If this condition is not satisfied within 60 days, CareFusion's offer to resolve this matter with the individual State shall become null and void absent written agreement between counsel for CareFusion and the State Team to extend the 60 day period.

(d) The total portion of the amount paid by CareFusion in settlement for the Covered Conduct for the State is \$579,869.23, consisting of a portion allocated to the State and paid by CareFusion under this Agreement, plus another portion separately and contemporaneously paid to the United States by CareFusion as part of the Federal Settlement Agreement. The amount specifically allocated to the State itself under this Agreement is the sum of \$191,374.25, plus applicable interest (the "State Amount"). If the State does not execute this Agreement within 60 days of receiving this Agreement, the State Amount shall be deducted from the Medicaid State Settlement Amount and shall not be paid by CareFusion, absent written agreement between counsel for CareFusion and the State Team to extend the time period for executing this Agreement.

2. The State agrees to dismiss with prejudice any state law claims which the State has the authority to dismiss currently pending against CareFusion in State or Federal Courts for the Covered Conduct, including any supplemental state law claims asserted in the Civil Action. Contingent upon the receipt of their respective State Amounts, the State, if

served with the Civil Action and liable to pay a Relator's share, agrees to pay the Relator via the State Team, as soon as feasible after such receipt, such amounts as have been or will be negotiated with the Relator in the Civil Action, which shall be set forth in side letters issued to and executed by the Relator in the Civil Action.

3. Subject to the exceptions in Paragraph 4 (concerning excluded claims) below, in consideration of the obligations of CareFusion set forth in this Agreement, and conditioned upon receipt by the State of its share of the Medicaid Participating State Settlement Amount, the State agrees to release CareFusion, its predecessors and current and former parents, divisions, subsidiaries, successors, transferees, heirs, and assigns, and their current and former directors, officers, and employees, individually and collectively (collectively, the "CareFusion Released Entities"), from any civil or administrative monetary cause of action that the State has for any claims submitted or caused to be submitted to the State Medicaid Program as a result of the Covered Conduct. For the avoidance of doubt, CareFusion represents that Dr. Charles Denham was not an employee of CareFusion or any current or former affiliate thereof, and the term "employees" as used in this Paragraph does not include Dr. Charles Denham.

4. Notwithstanding any term of this Agreement, the State specifically does not release any person or entity from any of the following liabilities:

- (a) any criminal, civil, or administrative liability arising under state revenue codes;
- (b) any criminal liability not specifically released by this Agreement;
- (c) any civil or administrative liability that any person or entity, including any CareFusion Released Entities, has or may have to the State or to individual consumers or

state program payors under any statute, regulation or rule not expressly covered by the release in Paragraph 3 above, 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 for any conduct other than the Covered Conduct;

(e) any liability which may be asserted on behalf of any other payors or insurers, including those that are paid by the State's Medicaid program on a capitated basis;

(f) any liability based upon obligations created by this Agreement;

(g) except as explicitly stated in this Agreement, any administrative liability, including mandatory exclusions from the State's Medicaid program;

(h) any liability for expressed or implied warranty claims or other claims for defective or deficient products and services provided by CareFusion;

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

(j) any liability based on a failure to deliver goods or services due.

5. In consideration of the obligations of CareFusion set forth in this Agreement, and conditioned on receipt by the State of its share of the State Participating Medicaid Settlement Amount, the State agrees to release and refrain from instituting, recommending, directing, or maintaining any administrative action seeking exclusion from the State's Medicaid program against CareFusion for the Covered Conduct, except as reserved in Paragraph 4 above. Nothing in this Agreement precludes the State from taking action against CareFusion in the event that CareFusion is excluded by the federal government, or for conduct and practices other than the Covered Conduct.

6. CareFusion waives and shall not assert any defenses it may have to criminal prosecution or administrative action for the Covered Conduct, which defenses may be based in whole or in part on a contention, under the Double Jeopardy Clause of the Fifth Amendment of the Constitution or the Excessive Fines Clause of the Eighth Amendment of the Constitution, that this Agreement bars a remedy sought in such criminal prosecution or administrative action.

7. In consideration of the obligations of the State set forth in this Agreement, CareFusion waive(s) and discharge(s) the State, its agencies, political subdivisions, employees, servants, and agents from any causes of action (including attorneys' fees, costs, and expenses of every kind and however denominated) that CareFusion has asserted, could have asserted, or may assert in the future against the State, its agencies, political subdivisions, employees, servants, and agents, related to the Covered Conduct and the State's investigation and prosecution thereof.

8. The amount that CareFusion must pay to the State pursuant to Paragraph III.1. above will not be decreased as a result of the denial of claims for payment now being withheld from payment by the State's Medicaid program, or any other state payor, for the Covered Conduct; and CareFusion agrees not to resubmit to the State's Medicaid program or any other state payor, any previously denied claims, which denials were based on the Covered Conduct, and agrees not to appeal or cause the appeal of any such denials of claims.

9. CareFusion shall not seek payment for any claims for reimbursement to the State's Medicaid Program covered by this Agreement from any health care beneficiaries or their parents, sponsors, legally responsible individuals, or third party payors.

10. CareFusion expressly warrants that it has reviewed its financial condition and that CareFusion is currently solvent, and that payment of the Settlement Amount described in Paragraph 1 shall not render CareFusion insolvent.

11. The Parties each represent that this Agreement is freely and voluntarily entered into without any degree of duress or compulsion whatsoever.

12. CareFusion agrees to cooperate fully and truthfully with any State investigation of individuals or entities not released in this Agreement. Upon reasonable notice, CareFusion shall facilitate, and agrees not to impair, the cooperation of its directors, officers, employees or agents, for interviews and testimony, consistent with the rights and privileges of such individuals and of CareFusion. Upon request, CareFusion agrees to furnish to the State complete and unredacted copies of all non-privileged documents including, but not limited to, reports, memoranda of interviews, and records in their possession, custody or control, concerning the Covered Conduct. CareFusion shall be responsible for all costs it may incur in complying with this Paragraph.

13. After this Agreement is executed and the Settlement Amount is paid by CareFusion in accordance with Paragraph 1 of this Agreement, the Parties shall: (a) promptly sign and file a Joint Stipulation of Dismissal of all claims against CareFusion that are asserted in *U.S. ex rel. Kirk v. CareFusion*, No. 10-2492; such dismissal shall be with prejudice as to all claims asserted by Relator against CareFusion, and without prejudice as to the State, except with respect to claims for the Covered Conduct, which shall be dismissed with prejudice; and (b) promptly sign and file a Joint Stipulation of Dismissal of all claims against CareFusion that are asserted in *U.S. ex rel. Kirk v. CareFusion*, No. 10-2611 (D.

Kan.); such dismissal shall be with prejudice as to all claims asserted by Relator against CareFusion and without prejudice as to the State.

14. Except as expressly provided to the contrary in this Agreement, each Party to this Agreement shall bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

15. Except as otherwise stated in this Agreement, this Agreement is intended to be for the benefit of the Parties only, and by this instrument the Parties do not release any liability against any other person or entity.

16. Nothing in this Agreement constitutes an agreement by the State concerning the characterization of the amounts paid hereunder for purposes of the State's revenue code.

17. In addition to all other payments and responsibilities under this Agreement, CareFusion agrees to pay all reasonable expenses and travel costs of the State Team, including reasonable consultant fees and expenses. CareFusion will pay this amount by separate check made payable to the National Association of Medicaid Fraud Control Units, after the Medicaid Participating States execute their respective Agreements, or as otherwise agreed by the Parties.

18. This Agreement is governed by the laws of the State, and venue for addressing and resolving any and all disputes relating to this Agreement shall be the state courts of appropriate jurisdiction of the State.

19. The undersigned CareFusion signatories represent and warrant that they are authorized as a result of appropriate corporate action to execute this Agreement. The undersigned State signatories represent that they are signing this Agreement in their official

capacities and that they are authorized to execute this Agreement on behalf of the State through their respective agencies and departments.

20. All parties consent to the State's disclosure of this Agreement, and information about this Agreement, to the public.

21. The Effective Date of this Agreement shall be the date of signature of the last signatory to this Agreement. Facsimiles of signatures shall constitute acceptable binding signatures for purposes of this Agreement.

22. This Agreement shall be binding on all successors, transferees, heirs, and assigns of the Parties.

23. This Agreement constitutes the complete agreement between the Parties with respect to this matter and shall not be amended except by written consent of the Parties.

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

STATE OF NORTH CAROLINA

By: Charles H. Hobbgood

Dated: 12/16/2013

CHARLES H. HOBGOOD
Director, Medicaid Investigations Division
Office of the Attorney General


By: Sandy Terrell

Dated: 12/11/13

SANDY TERRELL, Acting Director
Division of Medical Assistance

CAREFUSION CORPORATION

DATED: 1/7/14

BY: 
Joan Stafslien
Executive Vice President, General Counsel

DATED: _____

BY: _____
Karen P. Hewitt
Jones Day
Counsel for CareFusion Corporation

DATED: _____

BY: _____
Timothy M. McCrystal
Ropes & Gray LLP
Counsel for CareFusion Corporation

DATED: _____

BY: _____
Jeffrey N. Gibbs
Hyman, Phelps & McNamara, PC
Counsel for CareFusion Corporation

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CAREFUSION CORPORATION

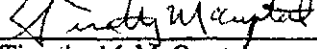
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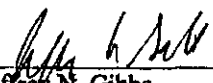
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Ropes & Gray LLP
Counsel for CareFusion Corporation

DATED: 11/7/14

BY: 
Jeffrey N. Gibbs
Hyman, Phelps & McNamara, PC
Counsel for CareFusion Corporation