IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

UNITED STATES OF AMERICA and STATE OF DELAWARE *ex rel.* NITIN VERMA, M.D.,	)	Civil Action No. 17-1742-MN
Plaintiffs-Relator,	)	
v.	)	
ERANGA HATHTHOTUWA, M.D. and ERANGA CARDIOLOGY, P.A.,	)	
Defendants.	)	

JOINT STIPULATION OF DISMISSAL

Subject to the terms and conditions of the Settlement Agreement, attached hereto as Exhibit 1, and pursuant to Rule 41(a)(1)(A)(i) of the Federal Rules of Civil Procedure and 31 U.S.C. § 3730(b)(1), the United States, the State of Delaware, Relator and Defendants (collectively, the "Parties") hereby stipulate to a joint dismissal of this action. No party hereto is an infant or incompetent.

The Parties further stipulate and agree that: (1) the Court shall retain jurisdiction over the Parties to enforce the terms of the Settlement Agreement; (2) the Court shall retain jurisdiction over Relator and Defendants regarding Relator's claims for attorney's fees, expenses and costs under the Federal False Claims Act, 31 U.S.C. § 3730(d) and the Delaware False Claims and Reporting Act, 6 *Del. C.* § 1205; and (3) Relator shall have 60 days from the date this matter is dismissed to file a petition for attorney's fees, expenses and costs notwithstanding the time limitations under Federal Rule of Civil Procedure 54(b), Local Civil Rule 54.3, or otherwise.

Respectfully submitted,

DAVID C. WEISS
United States Attorney

/s/ *Shamoor Anis*
Shamoor Anis
Assistant United States Attorney
Attorney for the United States of America

LIGUORI & MORRIS

/s/ *James E. Liguori*
James E. Liguori, Esq.
Attorney for Defendants

KATHLEEN JENNINGS
Attorney General of the State of Delaware

/s/ *Edward K. Black*
Edward K. Black
Deputy Attorney General
Attorney for the State of Delaware

WALDEN MACHT &
HARAN LLP

/s/ *Daniel R. Miller*
Daniel R. Miller, Esq.
Jonathan Z. Desantis, Esq.
Attorneys for Relator

SO ORDERED, this _____ day of _____, 2020.

_____
UNITED STATES DISTRICT JUDGE

EXHIBIT 1

SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is entered into among the United States of America, acting through the United States Attorney's Office for the District of Delaware (USAO) 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 Delaware, acting through the Department of Justice for the State of Delaware; Dr. Eranga Haththotuwa and Eranga Cardiology, P.A. (collectively, "Provider"), and Dr. Nitin Verma ("Relator") (hereafter collectively referred to as "the Parties"), through their authorized representatives.

RECITALS

A. Dr. Haththotuwa is a cardiologist who owns and operates his private practice Eranga Cardiology, P.A., with locations in Dover, Georgetown, and Milford, all in the State of Delaware.

B. On December 1, 2017, Relator filed a *qui tam* action in the United States District Court for the District of Delaware captioned *United States of America and State of Delaware ex rel. Nitin Verma v. Eranga Haththotuwa, M.D. and Eranga Cardiology, P.A.*, C.A. No. 17-1742-MN, pursuant to the *qui tam* provisions of the False Claims Act, 31 U.S.C. § 3730(b) (the "Civil Action"). Relator alleges that Provider routinely submitted claims to Medicare and Medicaid without providing the underlying services required to bill the specific Healthcare Common Procedure Coding System (HCPCS) codes for which Provider sought reimbursement.[1] Specifically, Relator alleges that Provider routinely bills for HCPCS codes that require both performance of the underlying service and the generation of an interpretive report. However,

[1] HCPCS is a code set based on the American Medical Association (AMA's) Current Procedural Terminology (CPT) code set. For the purposes of the allegations in this case, the relevant CPT and HCPCS codes are identical. This Settlement Agreement uses CPT and HCPCS codes interchangeably.

according to Relator, Provider regularly bills the government for these HCPCS codes without generating an interpretive report of the underlying service.

C. **The United States intervened in the Civil Action on** October 27, 2020.

D. The United States and the State of Delaware contend that Provider submitted or caused to be submitted claims for payment to the Medicare Program, Title XVIII of the Social Security Act, 42 U.S.C. §§ 1395-1395lll ("Medicare") and the Medicaid Program, 42 U.S.C. §§ 1396-1396w-5 ("Medicaid").

E. The United States and the State of Delaware further contend that they have certain civil claims against Provider arising from Provider submitting or causing to be submitted claims for payment to Medicare or Medicaid for the following CPT codes all of which require performing a procedure and preparing an analytical report: 78452, 93000, 93010, 93015, 93228, 93925, 93306, 93351, and 93880 when Provider did not properly prepare and sign such analytical reports from April 1, 2014, to March 31, 2020. This conduct by Provider is the "Covered Conduct."

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. Provider shall pay to the United States a sum of $500,000.00 ("Settlement Amount"), of which $250,000 is restitution, over a period of five calendar years beginning from the Effective Date of this Agreement in monthly installments of $8,333.33 due on the 1st of each month until the Settlement Amount has been paid in full. The monthly installments shall be paid

via electronic funds transfer pursuant to written instructions to be provided by United States Attorney's Office for the District of Delaware.

2. Conditioned upon the United States receiving the Settlement Amount from Provider and as soon as feasible after receipt, the United States shall pay a total of $90,000.00 to Relator in monthly installments of $1,500.00 by electronic funds transfer.

3. Subject to the exceptions in Paragraph 6 below, and conditioned upon Provider's full payment of the Settlement Amount, the United States releases Provider from any civil or administrative monetary claim the United States has for the Covered Conduct under the False Claims Act, 31 U.S.C. §§ 3729–33; the Civil Monetary Penalties Law, 42 U.S.C. § 1320a-7a; the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801–12; or the common law theories of payment by mistake, unjust enrichment, and fraud.

4. Subject to the exceptions in Paragraph 6 below, and conditioned upon Provider's full payment of the Settlement Amount, Relator, for himself and for his heirs, successors, attorneys, agents, and assigns, releases Provider from any civil monetary claim Relator has on behalf of the United States for the Covered Conduct under the False Claims Act, 31 U.S.C. §§ 3729–33.

5. Subject to the exceptions in Paragraph 6 below, and conditioned upon Provider's full payment of the Settlement Amount, the State of Delaware releases Provider from any civil or administrative monetary claim the State of Delaware has for the Covered Conduct under the Delaware False Claims and Reporting Act, Del. Code tit. 6, § 1201(a)(1) and (a)(2) or the common law theories of payment by mistake, unjust enrichment, and fraud.

6. Notwithstanding the releases given in paragraphs 3–5 of this Agreement, or any other term of this Agreement, the following claims of the United States and the State of Delaware are specifically reserved and are not released:

a. Any liability arising under Title 26, U.S. Code (Internal Revenue Code);

b. Any criminal liability;

c. Except as explicitly stated in this Agreement, any administrative liability, including mandatory or permissive exclusion from Federal health care programs;

d. Any liability to the United States (or its agencies) or the State of Delaware for any conduct other than the Covered Conduct;

e. Any liability based upon obligations created by this Agreement;

f. Any liability of individuals other than Dr. Eranga Haththotuwa;

g. Any liability for express or implied warranty claims or other claims for defective or deficient products or services, including quality of goods and services;

h. Any liability for failure to deliver goods or services due; and

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

7. In the event that Provider fails to pay any amount as provided in Paragraph 1 within 10 business days of the date on which such payment is due, Provider shall be in default of their payment obligations ("Default"). In the event of such Default, OIG-HHS may exclude Provider from participating in all Federal health care programs until Provider pays the Settlement Amount and reasonable costs as set forth in Paragraph 1, above. OIG-HHS will provide written notice of any such exclusion to Provider. Provider waives any further notice of the exclusion under 42 U.S.C. § 1320a-7(b)(7) and agrees not to contest such exclusion either administratively or in any state or federal court. Reinstatement to program participation is not automatic. If at the end of the period of exclusion Provider wishes to apply for reinstatement, Provider must submit a written request for reinstatement to OIG-HHS in accordance with the provisions of 42 C.F.R. §§

1001.3001-.3005. Provider will not be reinstated unless and until OIG-HHS approves such request for reinstatement.

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 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 6 *Del. C.* 1204(c). 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 State of Delaware, its agencies, officers, agents, employees, and servants, from any claims arising from the filing of the Civil Action or under 6 *Del. C.* § 1203, and from any claims to a share of the proceeds of this Agreement and/or the Civil Action.

10. Provider waives and shall not assert any defenses Provider 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.

11. Provider fully and finally releases 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 Provider has 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. Provider fully and finally releases the State of Delaware, its agencies, officers, agents, employees, and servants, from any claims (including attorney's fees, costs, and expenses of every kind and however denominated) that Provider has asserted, could have asserted, or may assert in the future against the State of Delaware, its agencies, officers, agents, employees, and servants, related to the Covered Conduct and the State of Delaware's investigation and prosecution thereof.

13. 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 FEHBP contractor (e.g., Medicare Administrative Contractor, fiscal intermediary, carrier) or any state payer, related to the Covered Conduct; and Provider agrees not to resubmit to any Medicare or FEHBP 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.

14. Provider agrees 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. §§ 1395-1395lll and 1396-1396w-5; and the regulations and official program directives promulgated thereunder) incurred by or on behalf of Provider, its present or former officers, directors, employees, shareholders, and agents in connection with:

i. the matters covered by this Agreement;

ii. the United States' audit(s) and civil investigation(s) of the matters covered by this Agreement;

iii. Provider's investigation, defense, and corrective actions undertaken in response to the United States' audit(s) and civil investigation(s) in connection with the matters covered by this Agreement (including attorney's fees);

iv. the negotiation and performance of this Agreement; and

v. the payment Provider makes to the United States pursuant to this Agreement and any payments that Provider 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 Federal Employees Health Benefits Program (FEHBP) (hereinafter referred to as Unallowable Costs).

b. Future Treatment of Unallowable Costs: Unallowable Costs shall be separately determined and accounted for by Provider, and Provider 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 Provider or any of its subsidiaries or affiliates to the Medicare, Medicaid, TRICARE, or FEHBP Programs.

c. Treatment of Unallowable Costs Previously Submitted for Payment: Provider further agrees that within 90 days of the Effective Date of this Agreement it shall identify to applicable Medicare 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 Provider 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. Provider agrees that the United States, at a minimum, shall be entitled to recoup from Provider 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 Provider or any of its subsidiaries or affiliates on the effect of inclusion of Unallowable Costs (as defined in this Paragraph) on Provider or any of its 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 or the State of Delaware to audit, examine, or re-examine Provider's books and records to determine that no Unallowable Costs have been claimed in accordance with the provisions of this Paragraph.

15. Provider agrees to cooperate fully and truthfully with the United States' investigation of individuals and entities not released in this Agreement. Upon reasonable notice, Provider shall encourage, and agrees not to impair, the cooperation of its directors, officers, and employees, and shall use its 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. Provider further agrees to furnish to the United States, upon request, complete and unredacted copies of all non-privileged documents, reports, memoranda of interviews, and records in its possession, custody, or control concerning any investigation of the Covered Conduct that it has undertaken, or that has been performed by another on its behalf.

16. 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 17, below.

17. Provider agrees that it waives 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.

18. Upon receipt of the payment described in Paragraph 1, above, the Parties shall promptly sign and file in the Civil Action a Joint Stipulation of Dismissal of the Civil Action pursuant to Rule 41(a)(1).

19. Provider agrees that Relator and its attorneys are entitled to reasonable expenses, attorney's fees and costs as prevailing parties pursuant to 31 U.S.C. § 3730(d), 12 Del. C. 1205, or any other applicable fee-shifting statute or rule. Relator and Provider agree that the United States District Court shall have continuing jurisdiction to issue orders with regard to any disputes over the amounts for expenses, attorney's fees and costs. Relator and Provider further agree that

they will exercise good faith efforts to reach an agreement as to Relator's Attorneys' Fees and Costs. Relator and Provider further agree that should they be unable to reach agreement, Relator may file a motion for attorney's fees, costs and expenses in the District Court within 75 days of the date of dismissal. The Parties agree that the Joint Stipulation of Dismissal shall expressly provide that Relator may file a motion for attorney's fees, costs and expenses in the District Court within 60 days of the date of dismissal notwithstanding the time limitations under Federal Rule of Civil Procedure 54(b), Local Civil Rule 54.3, or otherwise.

20. 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.

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

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

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

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

25. This Agreement is binding on Provider's successors, transferees, heirs, and assigns.

26. This Agreement is binding on Relator's successors, transferees, heirs, and assigns.

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

28. 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

David C. Weiss
UNITED STATES ATTORNEY
United States Attorney's Office for the District of Delaware

DATED: 11/10/2020 BY: Shamoor Anis
Shamoor Anis
Assistant United States Attorney
United States Attorney's Office for the District of Delaware

DATED: 11/02/2020 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

THE STATE OF DELAWARE

DATED: 11/05/2020 BY:
Edward K. Black
Deputy Attorney General
Delaware Department of Justice

DR. ERANGA HATHTHOTUWA, ERANGA CARDIOLOGY, P.A. - DEFENDANTS

DATED: 10/19/20 BY:
Dr. Eranga Haththotuwa

DATED: 10/22/20 BY:
James E. Liguori, Esq.
Counsel for Defendants

DR. NITIN VERMA - RELATOR

DATED: 10/29/2020 BY: NITIN VERMA
Dr. Nitin Verma

DATED: 10/29/2020 BY: Jonathan Z. DeSantis
Daniel R. Miller, Esq.
Jonathan Z. DeSantis, Esq.
Counsel for Relator