

SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is entered into between 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") and Maine Dermatology, LLC ("Maine Dermatology") (hereafter collectively referred to as "the Parties"), through their authorized representatives.

RECITALS

- A. Maine Dermatology is a dermatology practice located at 2239 Atlantic Highway, Lincolnville, Maine.
- B. The United States contends that Maine Dermatology 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").
- C. The United States contends that it has certain civil claims against Maine Dermatology arising from Maine Dermatology submitting or causing to be submitted to Medicare claims for Evaluation and Management (E&M) services that improperly used the Modifier 25 and claims for E&M services that were upcoded from CPT Code 99213 to CPT Code 99214 during the period from June 1, 2010 through August 9, 2013. That conduct is referred to below as the "Covered Conduct."
- D. Maine Dermatology was overpaid by Medicare in the amount of \$3,704.17 for services furnished between September 12, 2013 and February 27, 2014 (the "Overpayment"). The Overpayment was based upon a lack of documentation in the medical records to support the service and/or the level of service billed to Medicare. As of August 6, 2015, there was an amount of \$830,261.10 currently being held in suspense by the Centers for Medicare & Medicaid Services ("CMS") for payments to Maine Dermatology. The suspension of funds ("Suspended Funds") to Maine Dermatology was initiated on October 25, 2013. Maine Dermatology expressly relinquishes any and all rights of any kind that it may have to the Suspended Funds that are applied to satisfy the Settlement Amount for the Covered Conduct (as defined in Paragraph 1 below), or to challenge the payment suspension, including but not limited to: any and all claims or rights to have an overpayment determined under 42 C.F.R. § 405.372(c); any and all rights to appeal or otherwise challenge, whether formally or informally or whether administratively or judicially, the claims that are included for payment in the Suspended Funds; any and all rights to resubmit claims for payment that are included in the Suspended Funds; and any other rights Maine Dermatology may have to challenge the payment suspension in any respect. In connection with the Agreement, Maine Dermatology agrees not to contest, and to in fact repay, the Overpayment. Maine Dermatology further agrees to have the Suspended Funds, as of the Effective Date of this Agreement, be credited toward the Settlement Amount for the Covered Conduct and the Overpayment. Any excess funds will be returned to Maine Dermatology barring any other obligation(s) to CMS or the

Exhibit A

U.S. Department of Health and Human Services, in accordance with 42 C.F.R. § 405.372(e).

- E. This Agreement is neither an admission of liability by Maine Dermatology nor a concession by the United States that its claims are not well founded.
- F. 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 Agreement, the Parties agree and covenant as follows:

TERMS AND CONDITIONS

1. Maine Dermatology shall pay to the United States \$633,520.49, which consists of a payment of \$629,816.32 (the "Settlement Amount for the Covered Conduct") plus a payment of \$3,704.17 for the Overpayment (as defined in Paragraph D above). Maine Dermatology agrees that after the Effective Date of this Agreement, CMS shall apply the Suspended Funds to the Settlement Amount for the Covered Conduct and Overpayment, and any excess funds will be returned to Maine Dermatology barring any other obligation(s) to CMS or the U.S. Department of Health and Human Services, in accordance with 42 C.F.R. § 405.372(e).
2. Subject to the exceptions in Paragraph 3 (concerning excluded claims) below, and conditioned upon Maine Dermatology's full payment of the Settlement Amount for the Covered Conduct, the United States releases Maine Dermatology together with its current and former owners, officers, agents, and employees 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.
3. Notwithstanding the release given in paragraph 2 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 and permissive 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;

Exhibit A

- f. Any liability for express or implied warranty claims or other claims for defective or deficient products or services, including quality of goods and services;
 - g. Any liability for failure to deliver goods or services due; and
 - h. Any liability for personal injury or property damage or for other consequential damages arising from the Covered Conduct.
4. Maine Dermatology waives and shall not assert any defenses it 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 the Covered Conduct and Overpayment for purposes of the Internal Revenue laws, Title 26 of the United States Code.
5. Maine Dermatology 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 Maine Dermatology has asserted, could have asserted, or may assert in the future against the United States and its agencies, officers, agents, employees, and servants related to the Covered Conduct and the United States' investigation and prosecution thereof.
6. The Settlement Amount for the Covered Conduct shall not be decreased as a result of the denial of claims for payment now being withheld from payment by any Medicare contractor (e.g., Medicare Administrative Contractor, fiscal intermediary, carrier) or any state payer, related to the Covered Conduct; and Maine Dermatology agrees not to resubmit to any Medicare contractor or any state payer any previously denied claims related to the Covered Conduct, and agrees not to appeal any such pending appeals.
7. 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 8 (waiver for beneficiaries paragraph), below.
8. Maine Dermatology 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.
9. Within three (3) business days of execution of this Agreement, the United States shall file a Complaint against Maine Dermatology, seeking damages in the amount of \$629,816.32 for violation of the False Claims Act, 31 U.S.C. §§ 3729-3733 (the "Civil Action"). On

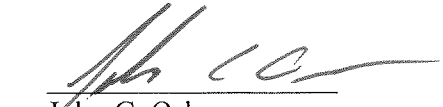
that same date, the Parties shall sign and file in the Civil Action a Stipulated Judgment for \$629,816.32 in favor of the United States on its Complaint.

10. Each Party shall bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.
11. 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.
12. 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 District of Maine. 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.
13. This Agreement constitutes the complete agreement between the Parties. This Agreement may not be amended except by written consent of the Parties.
14. The undersigned counsel represent and warrant that they are fully authorized to execute this Agreement on behalf of the persons and entities indicated below.
15. This Agreement may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same Agreement.
16. This Agreement is binding on Maine Dermatology's successors, transferees, heirs, and assigns.
17. All parties consent to the United States' disclosure of this Agreement, and information about this Agreement, to the public.
18. This Agreement is effective on the date of signature of the last signatory to the Agreement (Effective Date of this Agreement). Facsimiles of signatures shall constitute acceptable, binding signatures for purposes of this Agreement.

Exhibit A

THE UNITED STATES OF AMERICA

Thomas E. Delahanty II
U.S. Attorney for the District of Maine



John G. Osborn
Assistant U.S. Attorney

10-23-15
Date

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

Date

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THE UNITED STATES OF AMERICA

Thomas E. Delahanty II
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John G. Osborn
Assistant U.S. Attorney

Date

Robert K. DeConti

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

10/22/15

Date

[Handwritten signature]
7/95

Exhibit A

MAINE DERMATOLOGY, LLC



Charmaine Jensen, D.O., F.A.O.C.D.
Owner, Maine Dermatology, LLC

10/14/2015
Date



Heidi A. Sorensen, Esq.
Counsel for Maine Dermatology, LLC
Foley & Lardner, LLP

10/15/2015
Date

Peter J. DeTroy, Esq.
Counsel for Maine Dermatology, LLC
Norman, Hanson & DeTroy, LLC

Date



Exhibit A

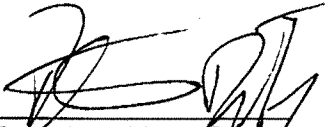
MAINE DERMATOLOGY, LLC

Charmaine Jensen, D.O., F.A.O.C.D.
Owner, Maine Dermatology, LLC

Date

Heidi A. Sorensen, Esq.
Counsel for Maine Dermatology, LLC
Foley & Lardner, LLP

Date



Peter J. DeTroy, Esq.
Counsel for Maine Dermatology, LLC
Norman, Hanson & DeTroy, LLC

10-14-15
Date