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FOR IMMEDIATE RELEASE

The United States Government and a Georgia Whistleblower Reach a Historic False Claims Act and Stark Settlement Against Memorial Health University Medical Center, the Georgia Eye Institute and Provident Eye Physicians in Savannah, Georgia.

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**STARK SETTLEMENT AGAINST SAVANNAH HOSPITAL
AND PROVIDERS RESOLVES TWO-YEAR FEDERAL INVESTIGATION
OF IMPROPER PAYMENTS TO PHYSICIANS
IN VIOLATION OF THE FALSE CLAIMS ACT AND
THE STARK LAW**

Today, 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, announced a \$5,080,000.00 settlement against Memorial Health University Medical Center, Georgia Eye Institute and Provident Eye Physicians (hereinafter "Memorial Hospital"). The settlement came as a result of a whistleblower law suit or *qui tam* suit filed in July, 2006 by attorney Marlan B. Wilbanks from Atlanta, Georgia on behalf of Dr. Ryan F. Boland in Savannah, Georgia.

Memorial Hospital will pay the Government \$5,080,000.00 to settle the lawsuit which alleges violations of the Federal False Claims Act as well as the Stark Law. In addition to the settlement amount, the hospital was required to enter into a Certification of Compliance Agreement with the Department of Health and Human Services, Office of Inspector General ("HHS-OIG"). This settlement is the culmination of a two-year investigation conducted by federal authorities. The federal investigation was led by United States Attorneys Dan Spiro and Daniel Bennett. Mr. Spiro is Senior Trial Counsel with the Department of Justice in Washington, DC. Mr. Bennett is an Assistant United States Attorney for the Southern District of Georgia. The prosecution was aided by the efforts of Department of Justice Investigator, Kimberly Reinken.

In recognition of the substantial contributions made by Dr. Boland and his attorneys during the case, Dr. Boland will receive a 17.5% share of the settlement proceeds. In False Claims cases, the whistleblower (the person who initially files the lawsuit) is entitled to a percentage recovery of the award according to specific incentives created by Congress to encourage citizens to come forward when they have direct knowledge of a fraud being committed against the Government. Congress has long recognized the many personal and professional risks that a whistleblower takes in reporting fraudulent conduct to the Government. The whistleblower only receives money when their case is successfully resolved. If the Government finds no wrongdoing and there is no settlement reached with a defendant, then the whistleblower receives nothing.

As a part of the settlement, the United States Government intervened in this case and did not file its own complaint. The Government relied upon the allegations set forth in Dr. Boland's complaint which was filed in the Southern District of Georgia and its own internal investigations in reaching its determinations of wrongdoing against Memorial Hospital. The settlement agreement resolves the civil liability of the hospital and all of the allegations raised in Dr. Boland's complaint and amended complaint.

THE PLAINTIFF – RYAN F. BOLAND, M.D.

Dr. Boland is a licensed physician who presently practices in Savannah. In the past, he was employed by one of the Defendants, Georgia Eye Institute. Presently, he owns and operates The Boland Eye Center in Savannah. He is a board-certified ophthalmologist.

Several years ago, Dr. Boland became aware of great disparities in the amount of money being paid to certain physicians by Memorial Hospital. Dr. Boland felt that he had uncovered an unlawful scheme whereby Memorial Hospital was influencing patient referrals through the delivery of excessive payments to particular physicians and medical groups. Dr. Boland discovered that between 2003 and 2005, Georgia Eye Institute received \$500,000.00 per year from sources within the Memorial Hospital system purportedly for teaching services and indigent care services. In 2006, the amount was raised to \$600,000.00 per year. According to Dr. Boland's complaint, while the Georgia Eye Institute physicians, as a group, provided these services to Memorial, the payment was not distributed among the Georgia Eye Institute physicians on the basis of which physicians actually performed these services. Instead, he says that the money was distributed in a manner that was designed to retain these particular physicians as Memorial employees. He alleged that this arrangement and the payments made to certain key doctors were commercially unreasonable and that said payments were in excess of fair market value. Dr. Boland's complaint also alleges that the excessive payments took into consideration the value of the patient referrals made by those physicians to Memorial Hospital. Accordingly, Dr. Boland felt that these financial arrangements violated the Stark Statute as well as the False Claims Act.

Dr. Boland contacted his attorney, Marlan B. Wilbanks of Wilbanks & Bridges, LLP in Atlanta and a meeting was then set up with federal prosecutors and an investigator from the Department of Justice. Mr. Wilbanks filed a lawsuit on Dr. Boland's behalf and the federal investigation commenced which was ultimately resolved today with the announcement that the case had been settled for \$5,080,000.00 and that the Government was formally intervening in the case filed against Memorial Hospital for purposes of concluding the settlement.

APPLICABLE LAWS

Dr. Boland's complaint and the Department of Justice's allegations involve violations of both the False Claims Act and the Stark Law. The False Claims Act is a federal law (31 U.S.C. §3729, *et. seq.*). The False Claims Act (FCA) provides that it is illegal for a person or entity to knowingly present or cause to be presented any fraudulent claim for payment or approval to the United States Government. The FCA similarly makes it illegal for individuals and entities to work together in conspiring to violate the FCA. A person who violates the False Claims Act is liable to the United States Government for a civil penalty of not less than \$5,500.00 and not more than \$11,000.00 per false claim, plus three times the amount of damages which the Government sustains because of the fraudulent act at issue. Because this case was settled, there was never any adjudication as to any amount of civil monetary penalties that were owed by the Defendants.

The Federal Physician's Self-Referral Statute is commonly known as the "Stark Law". The Stark Law is codified at 42 U.S.C. §1395nn and named after its chief proponent, Congressman Pete Stark, of California. The Stark Law prohibits physicians from making a referral of a Medicare patient to an entity for the furnishing of a designated health service, if the referring physician has a financial relationship with the entity that received the referral which does not meet a statutory or regulatory exception. The Stark Law also prohibits entities from billing for services provided to Medicare patients pursuant to a prohibited referral.

THE GOVERNMENT'S ALLEGATIONS OF WRONGDOING

In the Settlement Agreement reached with the Defendants and Dr. Boland, the Government sets forth its contentions of wrongdoing against Memorial Hospital. After concluding its own investigation, the Department of Justice released its conclusions that supported Dr. Boland's allegations that the Defendants violated the False Claims Act and the Stark Law.

In the Settlement Agreement that was made public today, the United States made allegations regarding specific conduct by the Defendants which it determined to be a violation of the False Claims Act as well as the Stark Statute. Government prosecutors allege that Memorial Hospital submitted or caused to be submitted false claims to Medicare for items and services delivered by Memorial Hospital that were ordered by employed ophthalmologists from January 1, 2003 to December 1, 2006. These employed ophthalmologists had a financial relationship with Memorial Hospital and they were compensated at levels that were above commercially reasonable rates. The Government contends that the amount paid by Memorial to the ophthalmologists exceeded the fair market value of the services rendered, thereby violating the

Stark Law. One of the primary objectives of the prohibitions set forth in the Stark Law is to make sure that physicians who are in a position to make patient referrals are not affected in their decision-making by the lure of excess compensation. Because the ophthalmologists at issue in this case had a relationship with Memorial Hospital and the same physicians were in a position to make referrals to Memorial Hospital, it is very important that all compensation paid by the hospital was commercially reasonable and within the ranges of the applicable fair market value.

As a condition that Memorial Hospital must meet before the case can be settled and dismissed, a Certification of Compliance Agreement was required. The Certification of Compliance Agreement was entered into between OIG-HHS and Memorial Hospital. As part of that agreement, the OIG-HHS agreed to refrain from instituting any administrative action in order to seek exclusion from Medicare, Medicaid or any other federal healthcare program against Memorial Hospital related to the covered conduct set forth in the Settlement Agreement.

In the Settlement Agreement which recites Memorial Hospital's obligation to pay \$5,080,000.00 in damages and requires the hospital to enter into a Certification of Compliance Agreement, Memorial expressly denies any liability whatsoever. It should be noted that this case involves allegations involving specific violations of the False Claims Act and the Stark Law only. There are no allegations regarding the quality of care issues on behalf of the hospital or any physicians who made referrals to the hospital.

RELATOR'S COUNSEL

Marlan B. Wilbanks is a principal in the Atlanta law firm of Wilbanks & Bridges, LLP. Wilbanks & Bridges specializes exclusively in representing whistleblowers such as Dr. Boland in *qui tam* cases. Marlan Wilbanks and his partner, Ty M. Bridges, worked closely with the Department of Justice Attorneys and the Investigator in Savannah, as well as with the Department of Justice Attorney who handled this case from Washington, DC. Mr. Wilbanks stated that "We were very fortunate to have the combined prosecutorial efforts of the Government attorneys in Washington and Savannah on this case. They devoted many hours to investigating this case and reviewing the voluminous documents and records which supported our allegations of wrongdoing. We would also be remiss in discussing the success of this case without making reference to the Department of Justice Investigator who was actively involved in the case on a daily basis. Kim Reinken did an outstanding job in analyzing many of the documents that were obtained."

Mr. Wilbanks went on to add that "While our firm has had numerous recoveries in False Claims Act cases over the years, it is more infrequent for us to be involved in a Stark violation case. I believe that the amount of this settlement attributed to the recovery of losses to the Government resulting from the Stark violation uncovered in this case is one of the largest in Georgia history and certainly the largest Stark case ever settled or taken to Judgment in the Southern District of Georgia. Stark cases are very important because they deter healthcare providers from buying or influencing referrals improperly. Our citizens need to know that a doctor's decision regarding a referral is based purely on medical considerations and not influenced by compensation or kickbacks made to referring doctors."

Mr. Wilbanks added that “Dr. Boland was an excellent client. He has a strong sense of ethics and he was fully committed to supporting the Government in the prosecution of this action. Because of the risk that he took in being a whistleblower against other doctors in Savannah and one of the largest hospitals in the area, Dr. Boland’s efforts should be applauded and appreciated by all taxpayers who care about the financial well-being and viability of our federal healthcare programs such as Medicare and Medicaid.”

Mr. Wilbanks also noted the substantial contributions of the other attorneys working on this case, Ty M. Bridges of Wilbanks & Bridges, LLP and Kenneth Futch from Blackshear, Georgia.

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