

For Immediate Release

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North Carolina Physicians' Whistleblower Lawsuit Leads to Second Multi-Million-Dollar Recovery in Ground-Breaking Emergency Room Fraud Case



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CHARLOTTE, NC (September 25, 2018) – The United States Department of Justice and the United States Attorney’s Office for the Western District of North Carolina today announced that HEALTH MANAGEMENT ASSOCIATES, INC. (“HMA”), now known as Health Management Associates, LLC, and its parent,¹ will pay over \$260 million to resolve false hospital billing and kickback allegations. This settlement includes civil payments by HMA of more than \$74 million plus interest to the federal government and participating Medicaid states to settle six

¹ In February 2014, Community Health Systems, Inc. (“CHS”), a rival for-profit, publicly traded system of community-based hospitals, acquired HMA. In 2015, CHS and the United States settled a number of False Claims Act lawsuits alleging that the company had committed fraud related to unnecessary ED admissions, paying more than \$98 million to the Government.

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whistleblower lawsuits filed under federal and state False Claims Acts (FCAs) related to HMA's emergency room fraud. One of these cases, filed by Drs. Thomas Mason and Steven Folstad, and their emergency medicine practice, Mid-Atlantic Emergency Medical Associates, PA ("MEMA") ("collectively, "the MEMA Relators"), alleges a nationwide scheme by HMA's corporate, division, and hospital executives to defraud federal and state healthcare programs by submitting false claims related to patients treated in HMA's emergency rooms. MEMA alleged that HMA's fraud caused two types of false claims to be submitted. First, HMA caused patients to be admitted from their emergency room without regard for medical necessity. In other words, patients were hospitalized when they did not need to be. Second, when HMA did bill for outpatient emergency room care, they padded the charges by manipulating the acuity points used to justify their billing.

The MEMA Relators also allege that HMA and its affiliates acted in concert with a national emergency physician staffing company, Emergency Medical Services Corporation, Inc. ("EmCare"),² and its affiliated entities, to defraud government healthcare programs and retaliate against MEMA for refusing to participate in the HMA and EmCare defendants' emergency room fraud. The settlement includes false claims HMA submitted for both unnecessary admissions (false inpatient charges) and inflated patient acuity to support upcoded outpatient emergency room charges.

Alleged Fraudulent Outpatient and Inpatient Charges from HMA's Emergency Rooms

The MEMA Relators' 150-page whistleblower Complaint, originally filed in September 2010 on behalf of the United States and numerous qui tam states, alleges that HMA submitted false claims related to the following conduct:

- **Pressuring emergency medicine providers to meet HMA's corporate ED metrics aimed at admitting emergency room patients to HMA hospitals without regard to medical necessity, which led to HMA billing government programs for fraudulent hospital admissions;**
- **Conspiring with EmCare to violate the anti-kickback statute by providing EmCare access to emergency services contract bids, in which EmCare demonstrated its willingness to participate with HMA in the emergency room fraud. HMA awarded EmCare new and renewed emergency services and hospitalist contracts, including at Lake Norman Regional Medical Center in Mooresville, NC, in recognition of EmCare's assistance in orchestrating HMA's emergency room fraud. HMA then billed government programs for fraudulent hospital admissions; and**
- **Artificially inflating the home-grown system developed by HMA to determine patient acuity that was used by HMA hospitals to bill for emergency room care, including at Lake Norman and Davis Regional Medical Center in Statesville, NC. HMA then billed government programs for the inflated outpatient hospital charges.**

² EmCare was, until December 2016, a for-profit corporation owned by Envision Healthcare Holdings, Inc. (NYSE: EHH). On December 1, 2016, as a result of a merger, EmCare's parent, EHH, became Envision Healthcare Corporation ("ENVISION"). It is traded on the New York Stock Exchange (NYSE): EVHC. In 2017, Envision's net revenues were several billion dollars.

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HMA's Criminal Plea, Fine & Corporate Integrity Agreement

As part of the settlement, a HMA subsidiary, Carlisle HMA, LLC, which had operated Carlisle Regional Medical Center in Pennsylvania until late last year, plead guilty to one count of conspiracy to commit healthcare fraud, 18 U.S.C. § 1347, in connection with a three-year Non-Prosecution Agreement (NPA) between HMA and the United States Department of Justice Criminal Fraud Section. HMA will pay a \$35 million monetary penalty under the terms of the NPA. During the time relevant to MEMA's lawsuit, HMA's co-conspirator, EmCare, held emergency physician and hospitalist physician services contracts at HMA's Carlisle Regional. Carlisle HMA, LLC was charged in a criminal information filed today in the District of Columbia with conspiracy to commit health care fraud. According to the Government's announcement, HMA has been, since July 2014, acting under a Corporate Integrity Agreement (CIA) between its Parent, CHS, and the Office of Inspector General of the Department of Health and Human Services (HHS-OIG).

The \$74 million settlement of the federal and state Governments' claims against HMA (as alleged by multiple whistleblowers), except with regard to Carlisle HMA's criminal plea, was made without any determination or admission of liability by any of the defendants. The Government did not file a separate Complaint in Intervention but joined in the qui tam complaints filed by the relators, including the MEMA Whistleblowers' complaint.³

Ground-Breaking Emergency Room Fraud Recovery: HMA Used Valuable Emergency Physician & Hospitalist Contracts as Kickbacks in Exchange for Referrals

In this precedent-setting case, the MEMA Relators alleged that HMA and EmCare, parties to a Preferred Provider Agreement since 2008, conspired to use emergency room and hospitalist contracts and related payments as kickbacks in violation of federal laws. HMA, the MEMA Relators allege, awarded EmCare new emergency room and hospitalist services contracts and allowed EmCare to maintain existing contracts, in return for cooperation from EmCare management and physicians in HMA's efforts to defraud government healthcare programs.

When this case was filed over eight years ago, HMA was a for-profit, publicly-traded hospital system which operated more than 55 community-based hospitals located throughout the United States. HMA's national headquarters was located in Naples, Florida. This settlement confirms the widespread kickback scheme revealed in the MEMA Relators allegations, and includes covered conduct spanning multiple years and involving EmCare emergency medicine contracts at 37 HMA hospitals, and EmCare hospitalist contracts at five HMA facilities.

The MEMA Relators also alleged that HMA offered bonus payments to other emergency physicians, including MEMA, that were tied to meeting HMA's emergency department metrics intended to increase admissions of emergency room patients without regard to medical necessity. MEMA rejected HMA's efforts to incentivize their physicians to commit fraud.

When MEMA would not cooperate with HMA's emergency room fraud, HMA and EmCare conspired to terminate MEMA's long-standing contracts at Lake Norman and Davis Regional.

³ A copy of the Settlement Agreement, Corporate Integrity Agreement and related documents are available on the Department of Justice's website, <https://www.justice.gov/news>, the United States' Attorney for the Western District of North Carolina, <https://www.justice.gov/usao-wdnc>, <https://twitter.com/WDNcnews>. A copy of the MEMA Whistleblowers' Complaint, Settlement Agreement, and related documents are available at www.FalseClaimsAct.com.

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The MEMA Relators allege that, in furtherance of the alleged kickback scheme, HMA gave EmCare valuable emergency room and hospitalist contracts at Lake Norman in exchange for EmCare's assistance in orchestrating HMA's emergency room fraud. The settlement announced today follows a December 19, 2017 settlement in which EmCare paid more than \$31 million to the United States and participating Medicaid states, including North Carolina, for that company's pivotal role in the emergency room conspiracy with HMA.

HMA'S Nationwide Conspiracy with EmCare to Increase Profits at Patients' Expense and Remove Emergency Room Physicians Who Stood In Their Way

The MEMA Relators prevailed on their allegations that HMA engaged in a multi-year campaign to defraud healthcare programs out of millions of dollars in hospital claims for both inflated outpatient Emergency room care and medically unnecessary admissions and related inpatient care. The MEMA Relators also describe in their lawsuit many months of abusive and illegal practices by HMA, with EmCare's complicity, to retaliate against emergency physicians who resisted the defendants' efforts to commit healthcare fraud. MEMA alleged that they were threatened with termination, and ultimately fired by HMA hospital executives, for refusing to submit to HMA's pressure to commit fraud.

Dr. Mason and Dr. Folstad are both board-certified and respected emergency room physicians. Their practice, MEMA, located in Charlotte, North Carolina, included 60 board-certified emergency physicians. MEMA maintained exclusive contracts to service, among others, two Charlotte-area hospitals owned by HMA, Lake Norman and Davis Regional. These HMA hospital contracts represented two of MEMA's five longstanding emergency services contracts under which the Relators served patients in the greater-Charlotte community. By the spring of 2010, the MEMA Relators had provided emergency medical care to patients at these two Charlotte-area HMA hospitals for more than a decade. In recognition of MEMA's many years outstanding patient care, contracts with both HMA hospitals had been renewed multiple times.

The MEMA Relators' complaint describes how profit-driven executives at HMA worked to impose revenue-focused benchmarks in emergency rooms throughout the HMA system. The MEMA Relators allege that, beginning in 2008, HMA implemented a series of measures at emergency rooms throughout the country aimed at both increasing admissions, without regard to medical necessity, and inflating charges for emergency room care by ordering unnecessary tests and billing for higher levels of emergency care than medically necessary. They allege that EmCare worked hand-in-hand with HMA to carry out these fraudulent measures.

As alleged in their lawsuit, Drs. Mason and Folstad and MEMA paid a steep price for their principled stance against HMA and EmCare. In May of 2010, just months after the third renewal of the Davis Regional contract, HMA's corporate leadership caused the hospital executives to abruptly fire MEMA without any legitimate basis, ending MEMA's long-standing emergency services contracts with Lake Norman and Davis Regional. The MEMA Relators alleged that HMA rewarded its co-conspirator, EmCare, with the Lake Norman emergency room and hospitalist services contracts.

According to the Government, the resolution documents include admissions by HMA that the company:

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“instituted a formal and aggressive plan to improperly increase overall emergency department inpatient admissions at all HMA hospitals, ...As part of the plan, HMA set mandatory company-wide admission rate benchmarks for patients presenting to HMA hospital emergency departments – a range of 15 to 20 percent for all patients presenting to the emergency department, depending on the HMA hospital, and 50 percent for patients 65 and older (i.e. Medicare beneficiaries) - solely to increase HMA revenue. HMA executives and HMA hospital administrators executed the scheme by pressuring, coercing and inducing physicians and medical directors to meet the mandatory admission rate benchmarks and admit patients who did not need inpatient admission through a variety of means, including by threatening to fire physicians and medical directors if they did not increase the number of patients admitted.”

Case History

The False Claims Act allows a private citizen to file a whistleblower or “qui tam” lawsuit against any person (including corporations) engaged in fraud against the government. In September of 2010, the MEMA Relators filed their whistleblower suit, under seal, in Charlotte’s district court before Judge Graham C. Mullen.⁴

In January 2014, their case was unsealed and United States, without filing a separate complaint, joined (“intervened”) in the MEMA Relators’ claims against HMA related to unnecessary emergency room admissions. The United States also intervened in the MEMA relators’ kickback allegations, including novel allegations that the emergency services contracts that EmCare sought to gain or maintain were inducements in violation of the AKS. As a result, EmCare caused HMA to submit false claims to government healthcare programs. The MEMA Relators pursued their allegations that HMA engaged in fraudulent upcoding of emergency room patient charges (inflated patient acuity) in a non-intervened posture, and obtained a \$12 million recovery on behalf of the government related to their patient acuity claim.

This intense and sustained joint effort by the Government and multiple Relators, including the MEMA Relators, and their legal team, resulted in this \$74 million settlement with HMA. Today’s settlement includes: \$62 million, part of which resolves the Relators’ claims that patients were admitted from the emergency room without medical necessity, and part of which is the government’s recovery on the MEMA Relators’ anti-kickback allegations on which the Government intervened; and \$12 million to resolve the MEMA Relators’ allegations that HMA submitted claims for inflated emergency room charges based on manipulated patient acuity, a claim on which the Government did not intervene.

A successful whistleblower is entitled, by law, to a relator’s share of 15 to 25 percent of the government’s recovery on claims when, as here, the government has intervened in the case. When the government does not intervene in a particular claim, the Relator receives a share between 25 and 30 percent of the Government’s recovery. In keeping with federal and qui tam state FCAs, as successful qui tam plaintiffs, the MEMA Relators will receive a share of the Government’s recoveries on their intervened and non-intervened claims covered in today’s settlement, in recognition of their longstanding efforts.

⁴ A copy of the MEMA Relators’ False Claims Act Complaint can be found at www.FalseClaimsAct.com.

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Nearly \$100 Million in Combined Recoveries from HMA and EmCare

Together, the Government will recover nearly \$100 million from HMA and EmCare as a result of Dr. Mason, Dr. Folstad, and MEMA's substantial contributions to federal and state efforts combat healthcare fraud. The federal and state FCA recoveries include the \$74 million recovery, plus interest, from HMA under the terms of today's settlement (which includes, among other FCA cases, the MEMA Relators' FCA claims on behalf of the government), and more than \$30 million, plus interest, paid by HMA's co-conspirator, EmCare as a result of the December 2017 settlement.

Claims for Harm to Emergency Physicians and their Practice Are Not Resolved

While this milestone settlement resolves the Government's claims against HMA and EmCare, it also marks a transition for the MEMA Relators. The MEMA Relators have brought a number of private causes of action against HMA (now part of CHS) and EmCare, including violations of the anti-retaliation provisions of the federal and state FCAs, as well as claims based on allegations that the defendants unlawfully interfered with their hospital contracts, HMA defamed them among colleagues, and EmCare and HMA committed unfair and deceptive trade practices. These private claims survive today's announced settlement with HMA and its parent and the December 2017 settlement with EmCare and its affiliates, and will now be pursued in federal court in Charlotte.

Fighting Fraud at the Hospital's Front Door – In the Emergency Department

The MEMA Relators and their counsel comment below on this historic settlement:

Timothy E. Lietz, M.D., FACEP - President & CEO – Mid-Atlantic Emergency Medical Associates:

“MEMA, and its team of Board Certified emergency room physicians, has always put our patients best interests ahead of all else.

HMA and EmCare were involved in a scheme to defraud the government out of millions of dollars, MEMA refused to participate and our contracts were terminated at two Charlotte hospitals, Lake Norman and Davis Regional.

After a grueling and stressful eight year process, it gives us some relief to have a resolution that exposes the fraudulent activity perpetrated by the defendants.

In my opinion, MEMA represents the best in healthcare organizations; we stand for what is best for our patients no matter what the financial ramifications. When we refused to participate in these schemes, we paid the price by being fired from two hospitals we had serviced for 20 years.”

Thomas L. Mason, M.D., FACEP – Senior Member –Mid-Atlantic Emergency Medical Associates:

“After 24 years of practicing emergency room medicine at the

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highest level, it saddens me that we needed to file a federal lawsuit with all the effort that it has taken to stop these fraudulent practices. It is my hope that our efforts over these many years will make a difference for emergency room patients all over the United States.”

Steven G. Folstad, M.D., FACEP – Senior Member - Mid-Atlantic Emergency Medical Associates::

“Our efforts should embolden other emergency medicine practitioners to stand up against corporate pressure to put profits before patient care. Perhaps others will not have to resort to taking the extraordinary measures that our group was forced to do to stop this type of illegal behavior.”

Marc S. Raspanti, of Pietragallo Gordon Alfano Bosick & Raspanti, LLP, lead counsel:

“It has been a privilege to represent our clients through this long and stressful ordeal. They remain true healthcare professionals who chose to place their patients before corporate pressures. At the end of the day, only sick patients should be hospitalized. Billing for unnecessary hospital stays wastes precious government funds and endangers the viability of the Medicare Trust Fund.”

Pamela Coyle Brecht, a partner with Pietragallo Gordon Alfano Bosick & Raspanti, LLP, who has also represented the MEMA Relators since 2010:

“As a result of the fortitude of Drs. Mason and Folstad and their practice, and their willingness to stand up for their patients against two national behemoths, unsuspecting emergency room patients are no longer subject to this fraud. The taxpayers – both federal and state - have recovered tens of millions of dollars through the MEMA Relators’ efforts.

In recognition of the harsh reality that those who stand up against fraud often suffer retaliation and all of its related harm, the federal False Claims Act and the laws of North Carolina provide remedies for persons who, like the MEMA Relators, have been victimized by fraudsters.”

James F. Wyatt, III, the Whistleblowers’ Charlotte-based counsel:

“Our clients showed immense courage and stood up for what is right. They have paid a heavy price for that. We now intend to pursue the defendants for the personal damages suffered by our clients in the next stage of this litigation.”

Bill Pietragallo, managing partner, Pietragallo Gordon Alfano Bosick & Raspanti, LLP:

“Our law firm is honored to represent a group of dedicated emergency room physicians who pushed back against efforts to compromise their best medical judgment. I am proud of them and of my partners who never

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wavered in their commitment to this important case and its impact on the delivery of best medical practices for emergency room patients.”

Mid-Atlantic Emergency Medical Associates, PA (MEMA)

MEMA is a large independent physician-owned practice providing high quality emergency and acute medical care throughout greater Charlotte and the Piedmont area of North Carolina. It has a staff of nearly 90 in place, including 56 physicians, 27 advance practice providers (physicians assistants and nurse practitioners), and dedicated administrative staff. MEMA was founded in 1976 and is based in downtown Charlotte. From July 1, 1996, until November 3, 2010, MEMA was the exclusive provider of emergency physician services at HMA’s Lake Norman Regional Medical Center. From October 2000 until September 1, 2010, MEMA was also the exclusive provider of emergency physician services at HMA’s Davis Regional Medical Center.

Thomas L. Mason, MD, FACEP

Dr. Thomas Mason is board-certified in emergency medicine and is a current and former member of many local and national professional scientific societies. He is a Fellow of the American College of Emergency Physicians (“ACEP”); he serves as a Councillor for ACEP, and as an Oral Board Examiner for the American Board of Emergency Medicine. From 1997 to November 2010, Dr. Mason served as the Medical Director of the Emergency Department at HMA’s Lake Norman Regional Medical Center, located in Mooresville, North Carolina. During his tenure at Lake Norman, Dr. Mason also served on the hospital Medical Executive Committee for 13 years and was elected Chief of Staff from 2006 to 2008. Dr. Mason was elected President of the North Carolina College of Emergency Physicians (“NCCEP”) in 2000 and has served on the NCCEP Board of Directors since 1994. In 2006, during his time as HMA’s ED Director at Lake Norman Medical Center, Dr. Mason was named Emergency Physician of the year by the NCCEP.

Steven G. Folstad, MD, FACEP

Dr. Steven Folstad is board-certified in emergency medicine and is a Fellow of the American College of Emergency Physicians (“ACEP”). Dr. Folstad is a current and former member of many local and national professional scientific societies. Dr. Folstad has served on the faculty of the Department of Emergency Medicine, Wake Forest University Bowman Gray School of Medicine, in Winston-Salem, North Carolina and as the Residency Program Director. He is presently a Fellow of NCCEP. Until 2016, Dr. Folstad also served as the Medical Director, Iredell County EMS. From 2000 until 2008, Dr. Folstad served as Medical Director of the Emergency Department at HMA’s Davis Regional Medical Center, located in Statesville, North Carolina. From 2008 to 2013, Dr. Folstad served as President and Chief Executive Officer of MEMA.

The Prosecution Team

After this case was filed under seal in 2010, the matter was actively investigated by the United States Department of Justice, the United States Attorney’s Office for the Western District of North Carolina, HHS-OIG, the FBI, and the North Carolina Department of Justice. Dr. Mason, Dr. Folstad, MEMA, and their legal team, express their appreciation for the hard work by government lawyers and investigators throughout the United States, which resulted in the recovery of millions of dollars for federal and state taxpayers. In particular, they thank Laurie Oberembt and Marie Bonkowski, Senior Trial Counsel, Commercial Litigation Branch - Civil Division, United States Department of Justice; R. Andrew Murray, U.S. Attorney for the

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Western District of North Carolina; Gill Beck, Civil Chief, U.S. Attorney's Office; Jonathan Ferry, Assistant US Attorney; Special Agent Stephanie L. Cheek, HSS-OIG; F. Edward Kirby, Jr., Special Deputy Attorney General and Director, North Carolina Department of Justice; Michael M. Berger, Assistant Attorney General, North Carolina Department of Justice, Medicaid Investigations Division; and the National Medicaid Fraud Control Units (NMFCU) for their support and outstanding work on this case over eight years.

The lawsuit is captioned *United States et. al. ex rel. Mason, Folstad and MEMA v. Health Management Associates, Inc., et. al.*, No. 3:10CV472 (W.D.N.C.). The matter is assigned to the Honorable Graham C. Mullen. The plaintiffs' private causes of action, which are still pending against HMA and EmCare, will be remanded to the U.S. District Court for the Western District of North Carolina for litigation on the Whistleblowers' private causes of action.

Whistleblowers' Counsel

Drs. Mason and Folstad and MEMA have been represented for longer than eight years by Marc S. Raspanti, Pamela Coyle Brecht, and Michael A. Morse of the Pennsylvania law firm, Pietragallo Gordon Alfano Bosick & Raspanti, LLP. They pursued this case on behalf of the MEMA Relators and the American taxpayers with co-counsel, James F. Wyatt, III and Robert Blake of the Charlotte, North Carolina law firm Wyatt & Blake, LLP.

Pietragallo Gordon Alfano Bosick & Raspanti, LLP, a litigation and business law firm with a national client base, is one of the largest and most experienced whistleblower law firms in the United States. Lawyers in its nationwide whistleblower practice have served for 30 years as lead counsel in qui tam cases that have recovered over \$2 billion for federal and state taxpayers. In addition to its Pittsburgh and Philadelphia offices, the firm has offices in Sharon, Pennsylvania; Steubenville, Ohio; and Weirton, West Virginia. For more information, visit our website at www.PIETRAGALLO.com.

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