IN THE UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

UNITED STATES ex rel. NICHOLAS M. DePACE, M.D.	:	**CIVIL ACTION NO.**
Plaintiff	:	**FILED UNDER SEAL**
v.	:	**JURY TRIAL DEMANDED**
THE COOPER HEALTH SYSTEM, A NEW JERSEY NON-PROFIT CORPORATION (COOPER HOSPITAL):	:	
and	:	
COOPER UNIVERSITY HOSPITAL	:	
and	:	
CARDIOVASCULAR ASSOCIATES OF THE DELAWARE VALLEY, P.A.	:	
Defendants	:	

COMPLAINT FOR VIOLATIONS OF FEDERAL AND STATE FALSE CLAIMS ACTS, ANTI-KICKBACK STATUTES, AND PHYSICIAN SELF-REFERRAL LAWS

I. INTRODUCTION

1. Qui Tam Relator Nicholas M. DePace, M.D. brings this action on his own behalf and on behalf of the United States of America and the State of New Jersey to recover civil damages and penalties under the False Claims Act, 31 U.S.C. § 3729, *et seq.*, and the New Jersey False Claims Act, § 2A:32C-1, *et seq.*, against Defendants, The Cooper Health System, A New Jersey Non-Profit Corporation (Cooper Hospital), Cooper University Hospital, and Cardiovascular Associates of the Delaware Valley, P.A.

2. Relator's allegations relate to illegal consulting arrangements and agreements between Defendant The Cooper Health System, A New Jersey Non-Profit Corporation (Cooper Hospital)(hereafter, "Health System") and certain New Jersey physicians whom Health System

paid, ostensibly, to serve as members of the Cooper Heart Institute Advisory Board (hereafter, "CHIAB").

3. Defendant Health System created the CHIAB for the purpose of concealing, as consulting fees, illegal payments made primarily to induce CHIAB's "advisors" to refer patients to Defendant Health System's facilities and its affiliate CADV, in violation of the federal Anti-Kickback Statute, 42 U.S.C. § 1320a-7b(b) and the New Jersey Anti-Kickback Statute, N.J.S.A. 30:4D-17(c). Defendant CADV, participated in the kickback scheme by recruiting physicians to serve as CHIAB members.

4. Referrals by the CHIAB advisors to Defendant Health System and/or Defendant Cooper Hospital and/or its affiliate Defendant CADV violated the federal physician self-referral law, 42 U.S.C. § 1395nn (commonly referred to as the "Stark Law"), and the New Jersey self-referral statute, N.J.S.A. 45:9-22.4 et seq. (commonly referred to as the "Codey Law"), in light of the financial relationship between these physicians and Defendants Health System, Cooper Hospital and/or CADV.

5. Referrals by Defendant CADV, acting by and through its physicians, to Defendant Health System and/or Defendant Cooper Hospital violated the Stark Law and the Codey Law, in light of the financial relationship between these CADV physicians and Defendants Health System and Cooper Hospital.

6. Defendant Health System and/or Defendant Cooper Hospital, acting through the Cooper Heart Institute, also violated the federal False Claims Act (federal FCA), 31 U.S.C. § 3729 et seq., and the New Jersey False Claims Act (NJFCA), § 2A:32C-1, et seq. Knowing that they were ineligible for the payments demanded due to violations of federal and state anti-

kickback statutes, and due to violations of the Stark Law and Codey Law, these Defendants submitted claims for reimbursement to Medicare, Medicaid, and other federal and state health care programs related to these illegal patient referrals, and they created or used false records in support of these false claims.

7. All Defendants participated in the illegal kickback scheme between Health System and CHIAB members, and so violated the federal FCA, 31 U.S.C. § 3729(a)(3), and the NJFCA, § 2A:32C-3.c., by conspiring to defraud the federal government and/or the state by getting false or fraudulent claims allowed or paid by Medicare, Medicaid, and other federal and/or state funded health programs.

8. The concern with illegal referral incentive programs like the CHIAB is that they interfere with the physician's judgment of what is the most appropriate care for a patient.

9. These illegal kickback programs can inflate costs to federal and state health care programs (Medicare, Medicaid, etc.) by causing physicians to overuse or to inappropriately use the services of a particular hospital.

10. In addition, unlawful incentives may result in the delivery of inappropriate care to federal and state health care program beneficiaries by inducing the physician to refer patients to the hospital providing financial incentives or to its affiliate, CADV, rather than to another hospital (or non-acute care facility) or cardiology practice offering the best or most appropriate care for that patient.

11. By funneling illegal kickback payments to the CHIAB "advisors," Defendants were able to lock-in lucrative referrals from general practitioners and cardiologists, and further strengthen their dominance over the healthcare market in southern New Jersey.

II. JURISDICTION AND VENUE

12. This action arises under the laws of the United States to redress violations of the federal FCA, 31 U.S.C. §3729 *et seq.*, the federal Anti-Kickback Statute, 42 U.S.C. § 1320a-7b(b); and the Stark Law, 42 U.S.C. § 1395nn.

13. Subject-matter jurisdiction is conferred by 31 U.S.C. §3732(a) and 28 U.S.C. §1331.

14. The Court has jurisdiction over Defendants' violations of the NJFCA, New Jersey Anti-Kickback Statute, and Codey Law (collectively referred to as the "New Jersey Law Violations"), pursuant to 31 U.S.C. §3732(b) because Defendants' New Jersey Law Violations and their violations of the federal FCA arise from the same transactions or occurrences. The Court also has pendant jurisdiction over Defendants' New Jersey Law Violations because these violations and Defendants' violations of the federal FCA arise out of a common nucleus of operative fact. In addition, a civil action for violation of the NJFCA may be brought in state or federal court. §2A:32C-5.a.

15. The Court has personal jurisdiction over all of the Defendants because they are all located within the District of New Jersey and act as providers of health care services and products to federal and state health care program beneficiaries, including Medicare and Medicaid beneficiaries, within the District of New Jersey. Each Defendant regularly performs healthcare services and submits claims for payment to federal and state health care programs, including, but not limited to, Medicare and Medicaid, and accordingly, is subject to the jurisdiction of this Court.

16. Venue lies under 28 U.S.C. § 1391(b),(c), and 31 U.S.C. §3732(a) because Defendants transact business within this district and the facts forming the basis of this Complaint occurred within this district.

17. The facts and circumstances of the Defendants' violations of the federal FCA have not been publicly disclosed in a criminal, civil, or administrative hearing, nor in any congressional, administrative, or General Accounting Office or Auditor General's report, hearing, audit, or investigation, or in the news media.

18. The facts and circumstances of Defendants violations of the NJFCA have not been publicly disclosed in a criminal, civil, or administrative hearing; nor in any legislative, administrative, or inspector general report, hearing, audit, or investigation, or in the news media.

19. Relator is the original source of the information upon which this Complaint is based, as that phrase is used in the federal FCA, and he provided disclosures of the allegations of this Complaint to the United States prior to filing.

20. Relator is the original source of the information upon which this Complaint is based, as that phrase is used in the NJFCA. Prior to filing, he voluntarily provided the information on which the allegations in the Complaint are based to the State of New Jersey.

21. Immediately upon filing the Complaint, Relator will provide the New Jersey Attorney General with a copy of this Complaint and written disclosure of substantially all material evidence and information Relator possesses.

III. PARTIES

22. Relator Nicholas M. DePace, M.D. ("Relator" or "Dr. DePace") is a resident of New Jersey and citizen of the United States.

23. Dr. DePace is a board-certified cardiologist, licensed to practice medicine under the laws of Pennsylvania and New Jersey.

24. Since 2007, Relator has been in private practice with offices in Cherry Hill and Sewell, NJ. Relator has also recently been employed as the Medical Director (South) of Jefferson Heart Center (1997 through 2006). Relator also worked for CADV from January 2, 2007 until May 5, 2007.

25. Dr. DePace earned a B.S., *summa cum laude* from Seton Hall University (1974) and his medical degree from Mt. Sinai School of Medicine (1978). Relator served his residency in internal medicine at Hahnemann Medical College (1979-1981) and a cardiovascular fellowship at Likoff Cardiovascular Institute (1981-1983).

26. In addition to cardiology, Relator is board certified in internal medicine, echocardiology, and lipidology (October 2008).

27. The real parties in interest to the claims set forth herein are the United States of America and the State of New Jersey.

28. Defendant The Cooper Health System, A New Jersey Non-Profit Corporation (Cooper Hospital) (hereafter "Health System") is a New Jersey not-for-profit corporation whose principal place of business is located at One Cooper Plaza, Camden, NJ 08103.

29. Defendant Health System dominates the Southern New Jersey health care community, where its facilities include The Cooper University Hospital (Cooper Hospital), The Children's Regional Hospital, and approximately a dozen satellite clinics in New Jersey, Pennsylvania, and Delaware. Through its University Physicians division, Health System operates more than 50 satellite offices.

30. In 2008, John P. Sheridan became Defendant Health System's President and Chief Executive Officer. From 2002 until early 2008, Christopher T. Oliva, M.D. held that position.

31. For 2006, Defendant Health System reported $674 million in revenues. Health System's Medicare charges in 2008 constituted 36% of all monthly charges. Founded in 1887, Cooper Hospital became known as "The Cooper Health System" in 1996.

32. Defendant Health System owns and operates Defendant Cooper University Hospital ("Cooper Hospital"), which is located at One Cooper Plaza, Camden, NJ.

33. Defendant Cooper Hospital is a 561-bed Level-I Trauma center with more than 5,000 full (3,950) and part-time (1,334) employees, which is Medicare Certified: 1966/ No. 31-0014.

34. Defendant Cooper Hospital reported revenues of $585 million and $667 million in 2006 and 2007, respectively. In 2007, Cooper Hospital received $84 million in Medicaid funds.

35. John P. Sheridan, Jr., the President and CEO of Defendant Health System, is directly responsible for operations of Defendant Cooper Hospital.

36. Defendant Health System, through Defendant Cooper Hospital, offers services through eight Centers of Excellence, including The Cooper Heart Institute at Cooper University Hospital ("Cooper Heart Institute").

37. Through the Cooper Heart Institute, Defendant Health System provides cardiology services to a large patient population spanning southern New Jersey, Pennsylvania, and Delaware. In Camden, NJ, the Cooper Heart Institute provides inpatient and outpatient services at Cooper Hospital, the Heart Institute Cardiac Imaging Center, and the Heart Institute

Echocardiography Lab. Outside Camden, Defendant Health System, through the Cooper Heart Institute, provides cardiology services at offices located in Cherry Hill, Salem, Tom's River, Voorhees, Sewell, and Willingboro, NJ.

38. In addition, Defendant Health System, through the Cooper Heart Institute, has affiliated offices operated through Defendants Cardiovascular Associates of the Delaware Valley, PA, and Associated Cardiovascular Consultants, P.A., and South Jersey Heart Group, P.C. Affiliate, South Jersey Heart Group, has, during 2008, been replaced by Surgical Group of South Jersey, which has recently been renamed "Virtua Surgical Group of South Jersey."

39. Defendant Cardiovascular Associates of the Delaware Valley, PA (hereafter, "CADV"), is a New Jersey professional corporation with an office and its principal business address at 210 W. Atlantic Avenue, Haddon Heights, NJ. Defendant CADV also has offices located in Cherry Hill and Elmer, NJ. Philip Koren, M.D. is the president of Defendant CADV.

40. In or around 2002, Defendant Health System established the Cooper Heart Institute Advisory Board (hereafter, "CHIAB") for the ostensible purpose of providing advice and direction to the Cooper Heart Institute. At all times relevant to this matter, Defendant Health System operated the CHIAB, including contracting for physicians to provide advisory services and paying these physicians' consulting fees. Defendant Health System, through the Cooper Heart Institute, managed the CHIAB, including setting CHAIB meeting agendas and conducting CHIAB meetings.

41. Medtronic, Inc. ("Medtronic"), is a global leader in medical technology and a manufacturer and seller of cardiac and other medical devices.

42. Medtronic is incorporated under the laws of the State of Minnesota, with its principal place of business located at 7 Medtronic Parkway, Minneapolis, Minnesota, 55432.

43. Medtronic functions in seven operating segments that manufacture and sell device-based medical therapies. Medtronic's seven operating segments are as follows: (1) Cardiac Rhythm Disease Management; (2) Spinal; (3) CardioVascular; (4) Neuromodulation; (5) Diabetes; (6) Surgical Technologies; and (7) Physio-Control.

44. Between fiscal years 2003 and 2008, Medtronic's net sales on a compound annual growth basis have increased more than 12 percent, from $7.665 Billion in fiscal year 2003 to $13.515 Billion in fiscal year 2008.

45. Cardiac Rhythm Disease Management ("CRDM") is Medtronic's largest business, accounting for $4.63 Billion in revenue in Fiscal year 2008. CardioVascular is Medtronic's third-largest business, accounting for $2.1 Billion in revenue in fiscal year 2008.

IV. FACTS

A. Background on Federal and State-Funded Health Insurance Programs

46. In 1965, Congress enacted Title XVIII of the Social Security Act, which established the Medicare Program to provide health insurance for the elderly and disabled. Medicare is a health insurance program for: people age 65 or older; people under age 65 with certain disabilities; and people of all ages with end-stage renal disease (permanent kidney failure requiring dialysis or a kidney transplant).

47. Medicare has two parts: Part A, the Basic Plan of Hospital Insurance; and Part B, which covers physicians' services and certain other medical services not covered by Part A.

48. Medicare Part A (Hospital Insurance) helps cover inpatient care in hospitals, including critical access hospitals, and skilled nursing facilities (not custodial or long-term care). Medicare Part A also helps cover hospice care and some home health care.

49. Medicare Part B (Medical Insurance) helps cover doctors' services and outpatient care. It also covers some other medical services that Part A doesn't cover (i.e., physical and occupational therapist services, etc.). Part B helps pay for covered health services and supplies when they are medically necessary.

50. Payments from the Medicare Program come from a trust fund – known as the Medicare Trust Fund – which is funded through payroll deductions taken from the work force, in addition to government contributions. Over the last forty years, the Medicare Program has enabled the elderly and disabled to obtain necessary medical services from medical providers throughout the United States.

51. The Medicare Program is administered through the United States Department of Health and Human Services ("HHS") and, specifically, the Centers for Medicare and Medicaid Services ("CMS"), an agency of HHS.

52. Much of the daily administration and operation of the Medicare Program is managed through private insurers under contract with the federal government (particularly CMS).

53. Under Medicare Part A, contractors serve as "fiscal intermediaries," administering Medicare in accordance with rules developed by the Health Care Financing Administration ("HCFA"), now known as the Centers for Medicare and Medicaid Services (CMS).

54. Under Medicare Part B, the federal government contracts with insurance companies and other organizations known as "carriers" to handle payment for physicians' services in specific geographic areas. These private insurance companies, or "Medicare Carriers", are charged with and responsible for accepting Medicare claims, determining coverage, and making payments from the Medicare Trust Fund.

55. The principal function of both intermediaries and carriers is to make and audit payments for Medicare services to assure that federal funds are spent properly.

56. To participate in Medicare, providers must assure that their services are provided economically and only when, and to the extent they are medically necessary. Medicare will only reimburse costs for medical services that are needed for the prevention, diagnosis, or treatment of a specific illness or injury.

57. Medicaid was created in 1965, at the same time as Medicare, when Title XIX was added to the Social Security Act. The Medicaid program aids the states in furnishing medical assistance to eligible needy persons, including indigent and disabled people. Medicaid is the largest source of funding for medical and health-related services for America's poorest people.

58. Medicaid is a cooperative federal-state public assistance program which is administered by the states. The New Jersey Medical Assistance and Health Services Program (New Jersey Medicaid) is administered by the New Jersey Department of Human Services (NJDHS), and specifically by the Division of Medical Assistance and Health Services (DMAHS), an agency of NJDHS.

59. Funding for Medicaid is shared between the federal government and those state governments that choose to participate in the program. Federal support for Medicaid is

significant. For example, the federal government provides 50% of the funding for New Jersey Medicaid, the remaining 50% of funds is received from the state.

60. Title XIX of the Social Security Act allows considerable flexibility within the States' Medicaid plans and therefore, specific Medicaid coverage and eligibility guidelines vary from state to state.

61. However, in order to receive federal matching funds, a state Medicaid program must meet certain minimum coverage and eligibility standards. A state must provide Medicaid coverage to needy individuals and families in five broad groups: pregnant women; children and teenagers; seniors; people with disabilities; and people who are blind. In addition, the state Medicaid program must provide medical assistance for certain basic services, including inpatient and outpatient hospital services.

62. DMAHS administers the New Jersey Medicaid program and provides health insurance to over 1 million low-income parents, children and people who are blind or disabled. The program pays for hospital services, doctor visits, prescriptions, nursing home care, and other healthcare needs. New Jersey Medicaid is the largest social services program in state government.

63. The complexity and financial magnitude federal and state health care programs, including the Medicare and Medicaid programs, create the incentive and opportunity for pervasive fraud and abuse.

64. Enacted in 1972, the main purpose of the federal Anti-Kickback Statute is to protect patients and federal health care programs from fraud and abuse by curtailing the corrupting influence of money on health care decisions

65. In 1979, in order to deal with fraud and abuse of the Medicaid program by both providers and recipients, the New Jersey legislature amended the state's Medicaid statute by enacting the New Jersey Anti-Kickback Statute (NJAKS). N.J.S.A. 30:4D-17(c) The NJAKS specifically prohibits the offer or receipt of kickbacks related to Medicaid services.

66. In 1989, the New Jersey legislature enacted a broad physician-referral statute, N.J.S.A. 45:9-22.4, et seq. (commonly referred to as the "Codey Law"), to prohibit the abuses associated with physician referrals for health care services in which the physician has a "significant beneficial interest."

67. As a prerequisite to participating in federally-funded health care programs, providers expressly certify (or, through their participation in a federally-funded health care program, impliedly certify) their compliance with the federal Anti-Kickback Statute.

68. As a prerequisite to participating in New Jersey's Medicaid program, providers must expressly certify (or, through their participation in the state-funded health care program, impliedly certify) their understanding of and compliance with both the federal Anti-Kickback Statute and the New Jersey Anti-Kickback Statute.

B. Applicable Laws

1. <u>The Federal Anti-Kickback Statute</u>

69. The federal Anti-Kickback Statute makes it a crime to knowingly and willfully offer, pay, solicit or receive any remuneration to induce a person:

(1) to refer an individual to a person for the furnishing of any item or service covered under a federal health care program; or

(2) to purchase, lease, order, arrange for or recommend any good, facility, service, or item covered under a federal health care program.

42 U.S.C. §1320a-7b(b)(1) and (2).

70. The term "any remuneration" encompasses any kickback, bribe, or rebate, direct or indirect, overt or covert, in cash or in kind. 42 U.S.C. §1320a-7b(b)(1).

71. Violations of the federal Anti-Kickback Statute must be knowing and willful. 42 U.S.C. §1320a-7b(b)(1). An act is willful if "the act was committed voluntarily and purposely, with the specific intent to do something the law forbids, that is with a bad purpose, either to disobey or disregard the law." *United States v. Starks,* 157 F.3d 833, 837-8 (11th Cir. 1998).

72. The federal Anti-Kickback Statute has been interpreted to cover any arrangement where one purpose of the remuneration was to obtain money for the referral of services or to induce further referrals. *United States v. Greber*, 760 F.2d 68 (3d Cir.), *cert. denied*, 474 U.S. 988 (1985). Moreover, payments made to physicians to induce referrals, even if also intended to compensate for professional services, violate the Anti-Kickback Statute. *United States ex rel. Pogue v. Diabetes Treatment Centers of America*, 2008 U.S. Dist. LEXIS 55432 [*23] (D.C. Cir. 2008).

73. A Violation of the federal Anti-Kickback Statute constitutes a felony punishable by a maximum fine of $25,000, imprisonment up to five years, or both. Any party convicted under the federal Anti-Kickback Statute *must* be excluded (*i.e.*, not allowed to bill for any services rendered) from Federal health care programs for a term of at least five years. 42 U.S.C. § 1320a-7(a)(1).

74. Even without a conviction, if the Secretary of HHS finds administratively that a provider has violated the federal Anti-Kickback Statute, the Secretary may exclude that provider from federal health care programs for a discretionary period, and may impose administrative sanctions of $50,000 per kickback violation. 42 U.S.C. § 1320a-7(b).

75. HHS has published safe harbor regulations that define practices that are not subject to prosecution or sanctions under the federal Anti-Kickback Statute because such practices would unlikely result in fraud or abuse. See 42 C.F.R. §1001.952. However, only those arrangements that precisely meet all of the conditions set forth in the safe harbor are afforded safe harbor protection. None of the consulting arrangements at issue here meet these safe harbor regulations.

2. The Stark Law

76. Section 1877 of the Social Security Act, 42 U.S.C. § 1395nn(a)(1), the Stark Law, prohibits a physician from referring Medicare patients for certain "Designated Health Services" ("DHS"), to an entity with which the physician or the physician's immediate family has a "financial relationship," unless an exception applies.

77. When originally enacted in 1989, the Stark Law prohibitions applied only to physicians' referrals for clinical laboratory services. See Omnibus Budget Reconciliation Act of 1989, P.L. 101-239, § 6204. In 1993 and 1994, Congress extended the Stark Law to referrals for ten additional DHS, including inpatient and outpatient hospital services. See Omnibus Reconciliation Act of 1993, P.L. 103-66, § 13562; Social Security Act Amendments of 1994, P.L. 103-432, § 152.

78. The Stark Law prohibits physician referrals to related entities for inpatient and outpatient hospital services.

79. The Stark Law's prohibitions center on the connection between the referring physician and the entity receiving the referral. The term "financial relationship" includes indirect compensation arrangements between the physician and an entity that furnishes DHS. See 42 C.F.R. § 411.354(a)(1)(ii).

80. The Stark Law broadly defines "financial relationship" to include ownership and investment interest and compensation agreements that involve any direct or indirect remuneration between a physician and an entity providing DHS. The Stark Law's exceptions identify specific types of investments and compensation agreements that will not violate its referral and billing prohibitions.

81. For example, compensation paid to a referring physician serving as an employee in a hospital will fall within an exception to the statute if: (1) the employment is for readily identifiable services; (2) the amount of remuneration paid to the physician is consistent with the fair market value of the services provided and is not "determined in a manner that takes into account directly or indirectly the volume or value of any "referrals" by the physician; and (3) the compensation to the physician would be "commercially reasonable" in the absence of any referrals by the physician. 42 U.S.C. § 1395nn(e)(2). Thus, compensation paid to a physician under an employment agreement that exceeds fair market value, for which no actual services are performed, or which takes into account the volume or value of the referrals or other business generated between the parties, triggers the referral and payment prohibitions of the Stark Law with respect to DHS referred by that physician.

82. In addition to prohibiting certain physician referrals, the Stark Law prohibits health care entities from presenting or causing to be presented any Medicare claim for DHS provided as a result of a prohibited referral. See 42 U.S.C. § 1395nn(a)(1)(B). Any entity that collects Medicare payments for DHS rendered pursuant to a prohibited referral must refund all collected amounts. 42 U.S.C. § 1395nn(g)(2); 42 C.F.R. § 411.353(d).

83. Violations of the Stark Law may subject the physician to exclusion from participation in federal health care programs and various financial penalties, including: (1) a civil monetary penalty of $15,000 for each service included in a claim for which the physician knew or should have known that payment should not have been made under Section 1395nn(g)(1); and (b) an assessment of three times the amount claimed for a service rendered pursuant to a referral the physician knew or should have known was prohibited. See 42 U.S.C. §§ 1395nn(g)(3) , 1320a-7a(a).

84. Stark Law violators on both sides of the illegal referral relationship are subject to the sanctions which include denial of payments, refund of claims, and civil monetary penalties of up to $15,000 per DHS based on an improper referral. 42 U.S.C. § 1395nn(g).

3. The Federal False Claims Act

85. The federal False Claim Act (federal FCA) provides, in pertinent part:

(a) Any person who (1) knowingly presents, or causes to be presented, to an officer or employee of the United States Government or a member of the Armed Forces of the United States a false or fraudulent claim for payment or approval; (2) knowingly makes, uses, or causes to be made or used, a false record or statement to get a false or fraudulent claim paid or approved by the Government; (3) conspires to defraud the Government by getting a false claim

allowed or paid, is liable to the United States Government for a civil penalty of not less than $5,500 and not more than $11,000, plus 3 times the amount of damages which the Government sustains because of the act of that person.

(b) For purposes of this section, the terms "knowing" and "knowingly" mean that a person, with respect to information (1) has actual knowledge of the information; (2) acts in deliberate ignorance of the truth or falsity of the information; or (3) acts in reckless disregard of the truth or falsity of the information, and no proof of specific intent to defraud is required.

3. **The New Jersey Anti-Kickback Statute**

86. The New Jersey Anti-Kickback Statute (NJAKS) makes it a crime to solicit, offer, or receive any kickback, rebate or bribe in connection with:

(1) The furnishing of items or services for which payment is or may be made in whole or in part under the New Jersey Medical Assistance and Health Services Act; or

(2) The furnishing of items or services whose cost is or may be reported in whole or in part in order to obtain benefits or payments under the New Jersey Medical Assistance and Health Services Act; or

(3) The receipt of any benefit or payment under the New Jersey Medical Assistance and Health Services Act.

N.J.S.A. 30:4D-17(c).

87. Unlike the federal Anti-Kickback Statute, the NJAKS does not require that the prohibited conduct be "knowing" or "willful," even though one or both of these terms appears in

every other section of the New Jersey Medicaid statute that prohibits fraudulent conduct. The legislature's purposeful omission of this additional intent element to the prohibition against kickbacks supports a broad interpretation of New Jersey's anti-kickback statute to effectuate its purpose of deterring fraudulent conduct and abuse of the Medicaid system.

88. A violation of the NJAKS constitutes a high misdemeanor punishable by a maximum fine of $10,000, imprisonment up to three years, or both. N.J.S.A. 30:4D-17(c)(3).

89. Even without a conviction, a provider, or any person, firm, partnership, corporation or entity found to have violated the NJAKS shall be liable for the following civil penalties:

(1) Payment of interest on the amount of the excess benefits or payments at the maximum legal rate in effect on the date the payment was made to said person, firm, corporation, partnership or other legal entity for the period from the date upon which payment was made to the date upon which repayment is made to the State;

(2) Payment of an amount not to exceed three-fold the amount of such excess benefits or payments; and

(3) Payment in the sum of not less than and not more than the civil penalty allowed under the federal False Claims Act (31 U.S.C. § 3729 et seq.), as it may be adjusted for inflation pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, Pub.L.101-410, for each excessive claim for assistance, benefits or payments.

N.J.S.A. 30:4d-17(e).

4. **The New Jersey Self-Referral Law (the "Codey Law")**

90. The New Jersey Self-Referral Law, N.J.S.A. 45:9-22.4, et seq. (commonly referred to as the "Codey Law), prohibits physicians from referring any patient, including Medicare and Medicaid patients, to a health care service in which the physician, or the physician's immediate family, "has a significant beneficial interest." N.J.S.A. 45:9-22.5.

91. The Codey Law defines a "significant beneficial interest" as "any financial interest," except leases at prevailing rates and interests in publicly traded securities. N.J.S.A. 45:9-22.4.

92. The Codey Law is similar to the Stark Law in many respects, but is actually much broader than the Stark Law, in that the Codey Law applies to all patients (not just Medicare and Medicaid patients), and to all healthcare services (not just the Stark Law's DHS).

5. **The New Jersey False Claims Act**

93. The New Jersey False Claims Act (NJFCA) was enacted in 2008 (and became effective on March 13, 2008) and is modeled after the federal False Claims Act.

94. The NJFCA provides, in pertinent part:

(a) A person who (1) knowingly presents, or causes to be presented, to employee, officer or agent of the State, or to any contractor, grantee, or other recipient of State funds, a false or fraudulent claim for payment or approval; (2) knowingly makes, uses, or causes to be made or used a false record or statement to get a false or fraudulent claim paid or approved by the State; (3) conspires to defraud the State by getting a false or fraudulent claim allowed or paid by the state, is jointly and severally liable to the State for a civil penalty of not less than and not more

than the civil penalty allowed under the federal False Claims Act (31 U.S.C. § 3729 et seq.). NJFCA, § 2A:32C-3.a through c.

(b) For purposes of the NJFCA, the terms "knowing" and "knowingly" mean that a person, with respect to information: (1) has actual knowledge of the information; or (2) acts in deliberate ignorance of the truth or falsity of the information; or (3) acts in reckless disregard of the truth or falsity of the information, and no proof of specific intent to defraud is required. NJFCA § 2A:32C-2.

95. As stated above, the federal FCA currently provides for civil penalties of not less than $5,500 and not more than $11,000, plus 3 times the amount of damages which the government sustains because of the act of that person.

C. Background of the Cooper Heart Institute Advisory Board (CHIAB)

96. Defendant Health System established the CHIAB in approximately 2002. Around that same time, Dr. Oliva became Defendant Health System's President and CEO and Joseph E. Parrillo, M.D. became the director of the Cooper Heart Institute.

97. From 2002 through 2007, under Dr. Parrillo's leadership at the Cooper Heart Institute, Defendant Health System experienced "unprecedented growth" in its cardiology-related healthcare services lines (Cardiovascular Disease Division, Critical Care, Cooper Heart Institute). In 2006, Defendant Health System paid Dr. Parrillo $1.069 million in total compensation.

98. The CHIAB has two component groups: "participants" who are employed by or affiliated with Defendant Health System and/or Defendant Cooper Hospital and/or their affiliate, CADV; and "members" who "advise" the Cooper Heart Institute, under Health System's sham

"consulting" arrangements. The CHIAB "participants" fall into three groups: Cooper Hospital executives and administrative staff; Cooper Hospital physicians; and cardiologists affiliated with the Cooper Heart Institute.

99. After establishing the CHIAB, Defendant Health System, with assistance from physicians at Defendant CADV, identified and recruited New Jersey physicians to serve as "advisors" to the CHIAB. Defendant Health System then entered into Professional Consulting Agreements ("Consulting Agreements") with the CHAIB advisors. (Defendant Health System's Professional Consulting Agreement with Vishal Bahal, D.O. is attached as Exhibit "A.")

100. According to Defendant Health System's Consulting Agreements, the stated goal of the CHIAB was to: "advise Cooper Heart Institute regarding innovative technologies, new management strategies, community needs, and appropriate educational and research initiatives."

101. Within its Consulting Agreements, Defendant Health System enumerated the duties to be performed by CHIAB members in their position as advisors to the Cooper Heart Institute:

1) Serve on the CHIAB;

2) "Advise Cooper Heart Institute regarding innovative technologies, new management strategies, community needs, and appropriate educational and research initiatives;"

3) Attend bi-monthly meetings of the CHIAB;

4) "Any other duties that Chairman of the CHIAB deems appropriate."

102. In exchange for performing these cursory "advisory" services, CHIAB members were to receive "consultant fees" based on an hourly rate of $272.50 for "hours approved in advance."

103. The only hours "approved in advance" referenced in Defendant Health System's Consulting Agreement were the bi-monthly meetings of the CHIAB which were to be "approximately 17 hours each."

104. Defendant Health System specifically stated in its Consulting Agreement that CHIAB advisors would not be paid unless they attended the bi-monthly CHIAB meetings. In other words, Defendant Health System paid CHIAB advisors on the condition that they attend bi-monthly CHIAB meetings.

105. The purpose of the CHIAB, as iterated in the Consulting Agreement drafted by Defendant Health System, was to engage the services of "qualified experienced Advisors and individuals to advise and direct that Program."

106. Other terms of Defendant Health System's Consulting Agreement clearly stated that prospective CHIAB advisors need only possess the most basic professional qualifications -- a license to practice medicine in New Jersey.

107. One way in which Defendant Health System contacted potential CHIAB advisors was through physicians employed by Defendant CADV (which is affiliated with Defendant Health System), who would approach potential referral sources and invite them to become CHIAB physician advisors.

108. Once identified as a potential CHIAB advisor, Defendant Health System would contact the physician consultant directly and provide them with a form "Professional Consulting Agreement."

109. Defendant Health System's CHIAB Consulting Agreements were executed by the physician CHIAB "advisor" and Defendant Health System's President and Chief Executive Officer, Christopher T. Oliva, MD. Consultant fees to CHIAB advisors were paid by Defendant Health System.

D. Defendant Health System Created the CHIAB in an Effort to Conceal Excessive Remuneration Paid to CHIAB Members to Induce Referrals to Health System's Cooper Hospital and/or the Cooper Heart Institute In Violation of the Anti-Kickback Statute.

1. Overview of Defendants' Kickback Scheme

110. Since approximately 2002, Defendant Health System has conducted an unlawful scheme to obtain lucrative patient referrals for in-patient and out-patient services Defendant Health System provides through Defendant Cooper Hospital and/or the Cooper Heart Institute, including cardiology services provided by the affiliated offices operated through Defendant CADV. All of the named Defendants carefully coordinated their efforts to further Defendant Health System's fraudulent consulting arrangements with targeted New Jersey physicians who enjoyed high-volume practices.

111. Defendant Health System's scheme involved providing physician consultants with illegal remuneration disguised as "consulting fees" for services which these physicians were to provide as "advisors" to Defendant Health System's newly-created (in approximately 2002) Cooper Heart Institute Advisory Board (CHIAB).

112. Defendant Health System utilized the CHIAB in what was essentially a thinly-veiled marketing scheme aimed at inducing physician "consultants" to make patient referrals to Defendant Cooper Hospital, itself and/or through the Cooper Heart Institute, and to Defendant CADV.

113. Defendant CADV, in turn, referred substantial numbers of patients to Defendant Cooper Hospital, itself and/or through the Cooper Heart Institute.

114. In furtherance of this scheme, Defendant Health System, together with cardiologists affiliated with the Cooper Heart Institute, namely Defendant CADV, conspired to recruit CHIAB physician "advisors" who were good potential referral sources.

115. Defendant Health System misrepresented the true nature of the consulting arrangements and payments made to CHIAB members through the use of affiliated entities, including the Cooper Heart Institute and the CHIAB.

116. Defendant Health System also used contractual arrangements to create a misleading paper trail in order to conceal the true nature of the prohibited remunerations made to CHIAB members.

2. Selection of CHIAB Advisors: Focus on Patient Volume – Not Credentials

117. In 2007, there were at least 21 members (advisors) of the CHIAB, whose practices (and therefore Defendants' potential referral sources) spanned across Southern New Jersey from Cinnaminson to Vineland, and extended north to Trenton.

118. In 2008, there were also 21 members (advisors) to the CHIAB, whose practices maintained the Defendants' expansive referral base across Southern New Jersey and North to Trenton.

119. Many of the CHIAB advisors engaged by Defendant Health System were family practitioners with large patient populations, or were physicians with other non-cardiology specialties (i.e., from 2007 to 2008, one CHIAB member was a lung specialist).

120. Though the CHIAB was tasked with advising Health System's world-renowned cardiologists at the Cooper Heart Institute, Defendant Health System recruited nearly as many non-cardiologists as cardiologists. Relator DePace was among the cardiologist "advisors" to the Cooper Heart Institute in 2007.

121. From 2007 to 2008, Defendant Health System increased the presence of general practitioners and diluted the concentration of cardiologists on the CHIAB when it replaced three 2007 members (2 general practitioners and one cardiologist) with three new CHIAB members who were all general practitioners.

122. No cardiologist from either Defendant Health System's Cooper Heart Institute or from its affiliated cardiology practice (Defendant CADV) was a CHIAB member.

123. Defendant Health System sought out as potential CHIAB "advisors" physicians who were general practitioners (and a minority of cardiologists) with high-volume practices in and around Southern New Jersey and who were not employed by or already affiliated with Defendant Health System through Defendant Cooper Hospital and/or the Cooper Heart Institute.

124. Defendant Health System's selection process was governed by the volume of new business the potential CHIAB member could refer to Defendant Cooper Hospital and/or the Cooper Heart Institute, or its affiliate CADV, regardless of the physician "advisor's" academic credentials or professional experience.

3. CHIAB Agendas: Paying "Advisors" to Attend Free CME

125. From October 2004 through September 2008, the CHIAB held a total of sixteen advisory board meetings. Those sixteen CHIAB meetings occurred as follows: October 2004; February 2005; May 2005; September 2005; December 2005; February 2006; May 2006; September 2006; December 2006; February 2007; June 2007; September 2007; December 2007; February 2008; May 2008; and September 2008.

126. In early 2007, Dr. Koren from Defendant CADV and Cooper's Dr. Parrillo approached Relator and asked him to serve as an advisor to the CHIAB. Dr. DePace later received and signed Defendant Health System's Consulting Agreement.

127. Relator attended part of the CHIAB meeting in the Spring of 2007.

128. Approximately two weeks after attending the Spring 2007 meeting of the CHIAB, Relator received in the mail a survey about the Spring 2007 CHIAB meeting he had attended. Dr. DePace completed the survey and he mailed it back to Defendant Health System.

129. Thereafter, on May 8, 2007, Joseph E. Parrillo, the Director of the Cooper Heart Institute, sent a letter to Dr. DePace enclosing the agenda for the CHIAB meeting scheduled for June 2, 2007. Dr. Parrillo did not mention in this letter any particular preparation required of Dr. DePace – except to contact the Cooper Heart Institute's Director of Marketing, Valerie Larkin, to RSVP.

a. June 2, 2007 CHIAB Meeting

130. According to the CHIAB Agenda for June 2, 2007, the CHIAB meeting would last only eight hours -- not the 17 hours specified in the Consulting Agreement.

131. More than two of the eight hours scheduled for the June 2, 2007 CHIAB meeting were set aside for meals and breaks.

132. The so-called substantive portion of the CHIAB meeting amounted to a series of presentations by professors of health management on general healthcare subjects interspersed with 10-minute opportunities for the advisors' input.

133. The morning session of the June 2, 2007 CHIAB meeting consisted of the following agenda items and the corresponding time allotted for each:

Agenda Item	Time Allotted
Continental breakfast	30 minutes
Welcome/Update by Joseph E. Parrillo, Jr., Director Heart Institute	20 minutes
"Our National Healthcare Policy: What to Expect in the Future"	50 minutes
Discussion and Advisory Input	10 minutes
"The Efficient Utilization of Resources in the Delivery of Healthcare"	50 minutes
Discussion and Advisory Input	10 minutes
Break	15 minutes

134. Contrary to Defendant Health System's stated goals for the CHIAB, none of the subjects listed on the June 2, 2007 CHIAB Agenda were likely to elicit input from CHIAB members "regarding innovative technologies, new management strategies, community needs, and appropriate educational and research initiatives" for the Cooper Heart Institute.

b. February 23, 2008 CHIAB Meeting.

1. February 2008 CHIAB Meeting Agenda

135. Dr. DePace also obtained the CHIAB Agenda for Saturday, February 23, 2008.

136. The cover letter accompanying the February 23, 2008 CHIAB Agenda shows that the Cooper Heart Institute's Director of Marketing (not the Director of the Heart Institute, Dr. Parrillo) provided the CHIAB agenda to physician advisors.

137. The February 2008 CHIAB agenda confirmed what Relator had observed from the July 2007 CHIAB agenda: none of the subjects to be covered by the CHIAB on February 23, 2008 was likely to elicit advice from CHIAB members for the Cooper Heart Institute "regarding innovative technologies, new management strategies, community needs, and appropriate educational and research initiatives."

138. The February 23, 20008 CHIAB meeting agenda consisted of the following agenda items and the corresponding time allotted for each:

Agenda Item	Time Allotted
Continental breakfast	30 minutes
Welcome/Update by Joseph E. Parillo, Jr., Director Heart Institute	15 minutes
"Dealing with the Difficult Patient Encounter"	45 minutes
Discussion and Advisory Board Input	15 minutes
"Stark Law – 2008 Update" (presented by Health System's attorney)	40 minutes
Discussion and Advisory Board Input	15 minutes
Break	10 minutes
"How to Gain the Trust and Confidence of Patients."	45 minutes
Discussion and Advisory Board Input	15 minutes
"Research in the Clinical Practice Setting"	30 minutes
Discussion and Advisory Board Input	10 minutes
Buffet Lunch	30 minutes
"New Guidelines for Preoperative Evaluation in Non-Cardiac Surgery"	30 minutes
Discussion and Advisory Board Input	10 minutes
"Cardiac and Vascular Intervention Update"	30 minutes
Discussion and Advisory Board Input	10 minutes
"Early Surgical Intervention in Aortic Stenosis"	30 minutes
Discussion and Advisory Board Input	10 minutes
Review, Planning for Future Meetings	1 hour

139. Many of the substantive presentations of the February 2008 CHIAB meeting involved general healthcare topics, and none of which would elicit advice from CHIAB members for Defendant Cooper Heart Institute "regarding innovative technologies, new management strategies, community needs, and appropriate educational and research initiatives:"

Agenda Item	Time Allotted
"Dealing with the Difficult Patient Encounter"	45 minutes
"Stark Law – 2008 Update" (presented by Health System's attorney)	40 minutes
"How to Gain the Trust and Confidence of Patients."	45 minutes

140. Other subjects covered on February 23, 2008 were obviously outside the purview of the CHIAB advisors' expertise, most of whom were general practitioners, who were simply ill-equipped, in terms of academic credentials and professional expertise, to advise the Cooper Heart Institute on these subjects:

Agenda Item	Time Allotted
"Cardiac and Vascular Intervention Update"	30 minutes
"Early Surgical Intervention in Aortic Stenosis"	30 minutes.

141. Two subjects on the February 2008 CHIAB agenda seemed inappropriate topics to be covered by an advisory board to a heart institute: "New Guidelines for Preoperative Evaluation in Non-Cardiac Surgery" (emphasis added); and Stark Law – 2008 Update," which was presented by a private attorney not employed by Defendant Health System.

142. A physician from Defendant CADV, Jeffrey Kramer, MD, was scheduled to speak at the February 23, 2008 CHIAB meeting, where he delivered a presentation titled "Research in the Clinical Practice Setting."

143. CHIAB advisors were scheduled to engage in "Discussion and Advisory Board Input" for less than two hours.

c. **September 20, 2008 CHIAB Meeting**

144. Relator recently attended part of the CHIAB meeting on September 20, 2008.

1. **September 2008 CHIAB: Meeting Materials**

145. Relator arrived on September 20, 2008 after the CHIAB meeting had begun. While there, he obtained the following materials which Defendants provided to the CHIAB members in attendance:

a) Agenda for CHIAB Meeting on Saturday, September 20, 2008 at The Mansion at Main Street in Voorhees;
b) Cooper Heart Institute Advisory Board 2008 Members;
c) Cooper Heart Institute Advisory Board 2008 Participants;
d) Cooper Heart Institute Advisory Board Meeting, Saturday, September 20, 2008, Cooper University Hospital Speakers;
e) Biographical information for Edward F.X. Hughes, MD, MPH, Kellogg School of Management;
f) Wall Street Journal Op-Ed 9/16/2008: "Why Obama's Health Plan is Better.";
g) New York Times Op-Ed 9/16/2008: " McCain's Radical Agenda.";
h) Curriculum Vitae for Frank W. Bowen, III, M.D.;
i) PowerPoint: Pay for Performance (P4P) by Carolyn Bekes, M.D.;
j) PowerPoint: Non-Coronary Etiologies of Chest Pain by Steven W. Werns. M.D.;
k) PowerPoint: Remote patient monitoring and Management by John Andriulli, D.O., FACC.;
l) PowerPoint: Cardiac Syncope by Daniel Tarditi, D.O.;
m) PowerPoint: Novel Approaches to the Management of Aortic Root Pathology by Frank W. Bowen, M.D.;
n) Cardiac Surgery at Cooper University A New Era.

2. **September 20, 2008 CHIAB Meeting Agenda**

146. The September 20, 2008 CHIAB meeting agenda consisted of the following agenda items and corresponding time allotted to each:

Agenda Item	**Time Allotted**
Continental breakfast	30 minutes

Welcome/Update by Joseph E. Parrillo, Director of the Heart Institute	15 minutes
"The Healthcare Plans of the Two Presidential Candidates: What are the Implications and Significance"	45 minutes
Discussion and Advisory Board Input	15 minutes
"The Healthcare Plans of the Two Presidential Candidates and the Driving Issue of Costs"	45 minutes
Discussion and Advisory Board Input	15 minutes
Break	15 minutes
"Physician Pay for Performance"	30 minutes
Discussion and Advisory Board Input	10 minutes
"Chest Pain Syndromes Not Due to Coronary Artery Disease	30 minutes
Discussion and Advisory Board Input	10 minutes
Buffet Lunch	40 minutes
"Implantable Devices: An Update on Innovations in Remote Monitoring"	30 minutes
Discussion and Advisory Board Input	10 minutes
"Cardiac Syncope"	30 minutes
Discussion and Advisory Board Input	10 minutes
"Novel Approaches to the Management Of Aortic Root Pathology	30 minutes
Discussion and Advisory Board Input	10 minutes
Review, Planning for Future Meetings	10 minutes

147. The September 2008 CHIAB agenda further cemented Relator's conclusions from the July 2007 CHIAB Agenda and his observations at the February 2008 CHIAB meeting - none of the subjects to be covered by the CHIAB on September 20, 2008 was likely to elicit advice from CHIAB members for the Cooper Heart Institute "regarding innovative technologies, new management strategies, community needs and appropriate educational and research initiatives."

3. September CHIAB Meeting: Relator's Observations`

148. The presentations made to CHIAB "advisors" on September 20, 2008 included two presentations, by a Business School professor, on the Healthcare Plans of the Presidential Candidates, which combined, consumed nearly two hours of the CHIAB meeting and which

focused on a subject that was clearly neither appropriate in an "advisory board" setting, nor germane to the Cooper Heart Institute Advisory Board's alleged purpose.

149. Other substantive presentations of the September 2008 CHIAB meeting involved general healthcare topics, none of which elicited advice from CHIAB members for Defendant Cooper Heart Institute "regarding innovative technologies, new management strategies, community needs, and appropriate educational and research initiatives."

Agenda Item	**Time Allotted**
Physician Pay-for-Performance	30 minutes
Chest Pain Syndromes Not Due to Coronary Artery Disease	30 minutes

150. The presentation made on September 20, 2008, titled "Implantable Devices: An Update on Innovation Remote Monitoring," appeared to be more of a marketing opportunity for Defendants' cardiac monitoring service, and contained many references to the superiority of the Medtronic brand products and services.

151. The presentation made on September 20, 2008, titled "Implantable Devices" was given by John Andriulli, D.O. ("Andriulli"), the Director of Defendant Cooper Hospital's Arrhythmia Device Program. Andriulli is a consultant for Medtronic. Andriulli has also performed case studies and performed clinical trials sponsored by Medtronic.

152. Andriulli is the principal investigator on a clinical study entitled, "Does Lung Impedance Correlate With Changes in BNP in Stable and Acutely Decompensated Heart Failure Patients," sponsored by Medtronic and Southern New Jersey Cardiac Specialists. This study began in September 2005, and the current estimated completion date is January 2009.

153. Andriulli has served on the OptiVol Advisory Board. OptiVol™ ("OptiVol") is a fluid status monitoring product manufactured and sold by Medtronic.

154. OptiVol is found only on Medtronic cardiac resynchronization-defibrillators (CRT-Ds) and implantable cardioverter-defibrillators (ICDs). OptiVol uses low electrical pulses that travel across the thoracic cavity (the chest area encompassing the lungs and heart) to measure the level of resistance, indicating fluid in the chest – a common symptom of heart failure.

155. OptiVol data can be transmitted wirelessly using various Medtronic wireless device products, and OptiVol data can be viewed via the internet on the Medtronic CareLink Network®, which is an internet based remote patient management. As of September 2008, more than 250,000 patients are followed remotely via the Medtronic CareLink Network.

156. Andriulli's presentation at the CHIAB meeting on September 20, 2008, titled "Implantable Devices," focused heavily on the benefits of the Medtronic CareLink Network, OptiVol, and other Medtronic products. In addition, Andriulli's presentation discussed billing and Medicare reimbursement for the use of these Medtronic systems and products.

157. In the Spring of 2005, Defendant Cooper Health System and Defendant Cooper Hospital announced that it was the first center in the Delaware Valley to implant the Medtronic InSync Sentry™, which they described as an advanced heart failure management system featuring Medtronic's OptiVol.

158. The substance of the September 20, 2008 presentation, "Implantable Devices: An Update on Innovation Remote Monitoring," was outside the area of expertise of the general practitioners and non-cardiologists who comprise the majority of the CHIAB "advisors".

159. Another lecture, "Novel Approaches to the Management of Aortic Root Pathology," was a marketing effort aimed at the cardiologists on the CHIAB to have them refer sophisticated aneurysm cases to Cooper, rather than the presenter's former employer (the University of Pennsylvania).

160. Other substantive presentations made at the September 2008 CHIAB meeting involved healthcare topics which, though helpful for general practitioners, were far too rudimentary for both the CHIAB cardiologists and the cardiologists affiliated with The Cooper Heart Institute. These discussions would never produce advice from CHIAB members for Defendants' Cooper Heart Institute "regarding innovative technologies, new management strategies, community needs, and appropriate educational and research initiatives."

Agenda Item	**Time Alloted**
"Cardiac Syncope	30 minutes
"Chest Pain Syndromes Not Due to Artery Disease"	30 minutes

161. Other subjects covered on September 20, 2008 were beyond the understanding of the general practitioners who accounted for the majority of CHIAB members, and who lacked the academic credentials and professional expertise to advise the Cooper Heart Institute on these subjects:

Agenda Item	**Time Alloted**
"Implantable Devices: An Update on Innovations In Remote Monitoring"	30 minutes
"Novel Approaches to the Management of Aortic Root Pathology"	30 minutes

162. Even though the implantable device and aortic root pathology presentations could have provided useful information to the cardiologists on the CHIAB, both topics contained a

marketing element, as the speakers used their session, in part, as a platform to promote Defendant Cooper Hospital and/or its affiliated cardiologists.

163. While Dr. DePace attended a portion of the September 20, 2008 meeting, his friend, Dr. Vishal Bahal, attended the entire meeting and relayed his observations to the Relator during a dinner on September 23, 2008.

164. Upon information and belief, following the morning break, the CHIAB advisors in attendance on September 20, 2008 each introduced themselves to the group and that an audio recording was made of these introductions.

165. Dr. Parrillo, the Director of The Cooper Heart Institute, personally greeted most of the CHIAB members at some point during the meeting.

166. The entire September 2008 CHIAB meeting lasted less than seven hours (7:30 a.m. until 2:15 p.m.) including meals and breaks.

167. The meeting ended at 2:15 p.m., even though the agenda provided for a "Review, Planning for Future Meetings" session, (which was supposed to take place from 2:30 p.m. until 3:30 p.m.). In lieu of holding this live review and planning session, Defendant Health System used a survey or questionnaire to obtain CHIAB members' comments.

168. Two weeks after the meeting, CHIAB members received a survey regarding the September 2008 meeting by mail. On the survey, there is a box for the advisor to indicate that the member had spent two hours preparing for the CHIAB meeting.

169. The questionnaire completed by CHIAB advisors also included an attestation that the CHIAB advisor spent an hour completing it. In reality, they spent only minutes filling it out before mailing it back to Defendant Health System.

4. Location: Saturday CME at The Mansion - Featuring Five-Star Cuisine

170. According to agendas for the June 2, 2007, February 23, 2008 and September 20, 2008 CHIAB meetings, Defendants held the CHIAB meetings at The Mansion at Main Street (hereafter, "the Mansion") in Voorhees, NJ.

171. Located at 3000 Main Street in Voorhees, NJ, the Mansion is the Philadelphia/Southern New Jersey area's "premier full service catering and wedding facility."

172. Diners at the Mansion enjoy five-star cuisine in opulent surroundings. Guests to the Mansion are greeted by marble columns, sweeping staircases, manicured lawns, and a swan-filled pond. The Mansion offers banquets with elegant service and first-class appointments: a trumpeter to announce arrivals for weddings; a personal Maitre D'; and white-glove service.

173. All CHIAB meetings were held on Saturdays at the luxurious Mansion.

5. CHIAB Advisors: Paid $562.50/hour to Attend Free CME in Luxury

174. On paper, Defendant Health System created the illusion, through its Consulting Agreement, that CHIAB advisors are paid for their services based on a rate of $272.50 per hour. In reality, Defendant Health System paid CHIAB advisors more than double that rate.

175. CHIAB members received $18,000 annually to attend four meetings, or $4,500 per eight-hour meeting. Defendant Health System actually paid its CHIAB "advisors" $562.50 per hour. Such compensation paid by Defendant Health System to the CHIAB advisors was excessive and far beyond fair market value for the so-called "advisory" services rendered.

176. Defendant Health System paid CHIAB members $562.50 for every hour they were scheduled to spend at the Mansion on Main Street – including the hours spent eating five-star cuisine, taking breaks, listening to continuing medical education lectures, and filling out the

questionnaire at the end. Defendant Health System even paid CHIAB members for time when they could not have been providing consulting services because time reserved at the end of CHIAB meetings for review and planning for future meetings was never exhausted.

177. Defendant Health System knew that the two hours of preparation time they permitted advisors to claim on the questionnaire mailed to the home was a farce. Health System did not require advisors to do anything to prepare - and in fact they could not have prepared for the CHIAB meeting because they received no materials - except for the agenda - in advance of the meeting.

178. Although Relator completed one CHIAB survey which was sent to his home, he never pursued payment from Defendant Health System for his services as a CHIAB advisor.

179. It became clear to Relator that the CHIAB advisors' primary value to Defendant Health System (and the main impetus for Defendant Health System to pay excessive remuneration for CHIAB members' services) was the "advisors'" high-volume practices and concomitant ability to refer patients to Health System through Defendant Cooper Hospital and/or the Cooper Heart Institute, including its affiliated cardiology practice, Defendant CADV.

6. Contracting with CHIAB Advisors to Induce Referrals

180. Defendant Health System contracted with CHIAB members, at least in part, to induce patient referrals.

181. Defendant Health System recruited and contracted with physicians, including numerous general practitioners and other non-cardiologists, who generally lacked the academic credentials and professional expertise to "advise Cooper Heart Institute regarding innovative

technologies, new management strategies, community needs, and appropriate educational and research initiatives."

182. Defendant Health System itself (and/or through the Cooper Heart Institute) created CHIAB agendas and conducted CHIAB meetings which featured substantive topics that were either outside the experience of CHIAB members or involved only basic health practice management issues -- which are of little assistance to the specialized work of the Cooper Heart Institute and the stated mission of the CHIAB. Other presentations were thinly veiled marketing opportunities for Cooper Hospital and/or its suppliers.

183. At least one CHIAB meeting featured a lecture, by a business school professor, on the presidential candidates' healthcare plans which is clearly of no import to the Cooper Heart Institute, and was merely a two-hour filler.

184. The September 20, 2008 meeting was not the only CHIAB meeting that featured presentations by business school professors that were of no import to the Cooper Heart Institute or the stated mission of the CHIAB. Between October 2004 and September 2008, seven different business school professors gave presentations at CHIAB meetings.

185. Lawton R. Burns, a professor at the University of Pennsylvania's Wharton School of Business, gave presentations at the CHIAB meetings in October 2004, May 2005, May 2006, and May 2008. Mr. Burns' presentations at CHIAB meetings included such topics as: "Characteristics of Successful Physician Practices (October 2004); and "Expensive HealthCare Technology: The Need for Hospital/Physician Collaboration" (May 2006).

186. Paul A. Tiffany, a Senior Lecturer at the University of California at Berkley's Haas School of Business, gave presentations at the CHIAB meetings in February 2005 and

December 2005. Mr. Tiffany's presentations at CHIAB meetings included such topics as: "Medicine as a Business" (February 2005); "Business & Strategic Planning In Healthcare" (February 2005); "Strategy and Tactics for the Successful Healthcare Provider" (December 2005).

187. The only services Defendant Health System required of CHIAB advisors in exchange for their yearly "consulting" fees of $18,000 were to attend four CHIAB meetings – nothing more.

188. Defendants Health System and Cooper Hospital have not made any public statements acknowledging the existence of the CHIAB, let alone mentioned or acknowledged any of the so-called advice "regarding innovative technologies, new management strategies, community needs, and appropriate educational and research initiatives" that Defendants Health System and Cooper Hospital purportedly received from the CHIAB "advisors."

189. Since 2002, Defendant Health System has paid CHIAB "advisors" compensation greatly in excess of the fair market value of these physicians' services. Defendant Health System paid CHIAB members $18,000 per year to attend four advisory board meetings (at a rate $4,500/meeting, or $562.50 per hour). CHIAB members were paid by check issued by Defendant Health System.

190. CHIAB meetings were not conducted to provide a forum for CHIAB physician members to advise the Cooper Heart Institute "regarding innovative technologies, new management strategies, community needs, and appropriate educational and research initiatives." Rather, Defendant Health System arranged and conducted CHIAB meetings as part of the kickback scheme to provide CHIAB advisors with financial inducements (five-star meals, and

free CME courses in a luxurious setting), in exchange for patient referrals to Defendant Health System and CADV. Defendant Health System paid CHIAB members excessive remuneration simply to attend.

191. In exchange for Defendant Health System's excessive remunerations, CHIAB members referred patients to Defendant Cooper Hospital and/or the Cooper Heart Institute and/or CADV.

192. Defendant CADV, in turn, referred substantial numbers of patients to Defendant Cooper Hospital and/or the Cooper Heart Institute for expensive cardiac procedures.

193. At least one CHIAB member (Dr. Cavallaro) acknowledged that, when making referrals, he knew that Defendant Health System (through the CHIAB) "butters his bread."

7. CHIAB Consulting Arrangements Violate Federal and State Anti-Kickback Statutes, Physician Self-Referral Laws, and Constitute FCA and NJFCA Violations

194. Defendant Health System created the CHIAB as a "sham" advisory body to the Cooper Heart Institute to cover for the true purpose of the illegal remuneration (kickbacks) paid by Defendant Health System to CHIAB members: to induce CHIAB members with lucrative practices to refer patients to Defendant Cooper Hospital and/or the Cooper Heart Institute.

195. Through misleading Consulting Agreements, Defendant Health System masked its illegal arrangements and excessive compensation by misstating the services expected of the CHIAB advisors and disguising kickbacks at "consulting fees."

196. Defendant Health System paid advisory board members $18,000 annually for four CME meetings which last eight hours, which translates to remuneration of $562.50 per hour for five-star dining and listening to lectures.

197. Compensation of $562.50 per hour for listening to lectures is both excessive and not commercially reasonable.

198. Defendant Health System used excessive payments to CHIAB physicians, who performed little or no professional services in return, as financial inducements for referrals to Defendant Health System's Cooper Hospital and/or the Cooper Heart Institute and/or Defendant CADV.

199. Defendant Health System provided these illegal remunerations to CHIAB physicians (including excessive compensation, free CME, and luxurious banquets), at least in part, to induce CHIAB advisors to refer patients to Defendant Cooper Hospital and/or the Cooper Heart Institute and/or Defendant CADV.

200. Through the CHIAB sham consulting arrangements, Defendants have violated both the federal and state anti-kickback statutes because one purpose of the remuneration paid to CHIAB advisors was to induce further referrals of individuals to Defendant Health System, through Defendant Cooper Hospital and/or the Cooper Heart Institute, for an item or service that could be paid for by a federal or state healthcare program. Defendant Health System's excessive payments to CHIAB physicians to induce referrals, even if also intended to compensate for professional services rendered during CHIAB meetings, violate state and federal anti-kickback statutes.

201. Defendant Health System, through its operations at Defendant Cooper Hospital and/or the Cooper Heart Institute, provides healthcare services to qualifying beneficiaries of federal and state health care programs, including Medicare and Medicaid.

202. Defendant Health System's illegal kickbacks to CHIAB members did induce CHIAB members to make referrals of individuals to Defendant Health System and/or Defendant Cooper Hospital directly and/or through the Cooper Heart Institute and/or its affiliate CADV for an item or service that could be paid for by a federal or state healthcare program.

203. Defendant Health System's illegal kickbacks to CHIAB members did induce CHIAB members to make referrals of individuals to the Cooper Heart Institute's affiliated physician practices, namely Defendant CADV.

204. CHIAB members directed referrals of patients in federally-funded health care programs to Defendant Health System's Cooper Hospital and/or Cooper Heart Institute and/or affiliated cardiology practices, including Defendant CADV, in violation of the federal Anti-Kickback Statute, 42 U.S.C. § 1320a-7b(b).

205. CHIAB members directed referrals of patients in state-funded health care programs to Defendant Health System's Cooper Hospital and/or Cooper Heart Institute and/or affiliated cardiology practices, including Defendant CADV, in violation of the New Jersey Anti-Kickback Statute, N.J.S.A. 30:4D-17(c).

206. CHIAB members referred Medicare patients for DHS to Defendant Health System, an entity with which they had a financial relationship, in violation of the Stark Law.

207. Defendant CADV, acting through its physicians, referred Medicare patients for DHS to Defendant Health System, an entity with which they had a financial relationship, in violation of the Stark Law.

208. CHIAB Members and Defendant CADV, acting through its physicians, referred Medicare and Medicaid patients to Defendant Health System, an entity in which they have a significant beneficial interest, in violation of the Codey Law.

209. Defendant Health System, through its operations at Defendant Cooper Hospital and/or the Cooper Heart Institute, caused claims to be submitted for healthcare services to qualifying beneficiaries of federal and state health care programs, including Medicare and Medicaid, who were improperly referred by CHIAB members.

210. Defendant CADV caused claims to be submitted for healthcare services to qualifying beneficiaries of federal and state health care programs, including Medicare and Medicaid, who were improperly referred by CHIAB members.

211. Defendant Health System knowingly created the CHIAB in an attempt to conceal its payment of excessive fees to CHIAB physicians. Defendants also knew that consulting fees paid to CHIAB advisors should not be payment for or contingent upon referrals. Defendants knew that their actions violated state and federal anti-kickback statutes.

212. Defendants knew that payments made to CHIAB advisors to induce referrals violated state and federal anti-kickback statutes.

213. In order for Defendants Health System's services, whether provided through Defendant Cooper Hospital and/or or the Cooper Heart Institute, to qualify for coverage under Federal health care programs, it must meet all Medicare conditions of participation (Medicare COPS), including compliance with the federal Anti-Kickback Statute. Defendants failed to meet these Medicare COPS because, as alleged herein, Defendants violated the federal Anti-Kickback Statute.

214. In order for Defendant Health System's services, whether provided through Defendant Cooper Hospital and/or the Cooper Heart Institute, to qualify for coverage under New Jersey's state health care programs, including Medicaid, it must meet all Medicaid conditions of participation (Medicaid COPS), including compliance with the federal and state anti-kickback statutes. Defendants failed to meet these Medicaid COPS because, as alleged herein, Defendants violated the federal and state anti-kickback statutes.

215. In order for Defendant CADV's services to qualify for coverage under Federal health care programs, it must meet all Medicare conditions of participation (Medicare COPS), including compliance with the federal Anti-Kickback Statute. Defendant CADV failed to meet these Medicare COPS because, as alleged herein, Defendant CADV violated the federal Anti-Kickback Statute.

216. In order for Defendants CADV's services to qualify for coverage under New Jersey's state health care programs, including Medicaid, they must meet all Medicaid conditions of participation (Medicaid COPS), including compliance with the federal and state anti-kickback statutes. Defendant CADV failed to meet these Medicaid COPS because, as alleged herein, Defendant CADV violated the federal and state anti-kickback statutes.

217. In the six years since the CHIAB was created in 2002, Defendant Health System paid $18,000 annually to each of (at a minimum) 21 members of CHIAB, for total estimated illegal kickbacks of at least $2,268,000.

218. The tainted referrals by CHIAB physicians to Defendant Health System's Defendant Cooper Hospital (directly and through the Cooper Heart Institute) and to Defendant CADV far exceed Defendant Health System's kickback payments.

219. Defendants' unlawful scheme to acquire future patient referrals by paying "kickbacks," its payment of excessive compensation under the guise of "consulting fees," and its ongoing payments of physician compensation to CHIAB advisors which greatly exceeded fair market value (in some instances, for physician services which were not rendered) violate the aforementioned federal and New Jersey anti-kickback statutes.

220. Defendants have violated the federal FCA and NJFCA by committing acts to further the submission of claims to state and federal health care programs for services related to patient referrals tainted by Defendant Health System's federal and state anti-kickback statute violations.

221. Defendants have violated the federal FCA and the NJFCA by committing acts to further the submission of claims to state and federal health care programs for services related to patient referrals tainted by Stark Law and Codey Law violations.

Count I (All Defendants) - Violations of the Federal Anti-Kickback Statute 42 U.S.C. § 1320a-7b(b).

222. Relator re-alleges ¶¶ 1-221 as though fully set forth herein.

223. Defendant Health System's CHIAB involves consulting arrangements that violate the federal Anti-Kickback Statute because payments to CHIAB "advisors" disguised as "consulting fees" constitute remuneration offered to induce, or in return for, the referral of business paid for by federal programs, including Medicare or Medicaid.

224. Defendant Health System knowingly made excessive payments to CHIAB members as financial inducement for patient referrals to Defendant Cooper Hospital and to Defendants CADV, which services were paid for by federal programs, including Medicare, Medicaid, etc., in violation of the Anti-Kickback Statute, 42 U.S.C. § 1320a-7b(b).

225. Defendant Health System's illegal kickbacks to CHIAB "advisors" induced improper referrals of services provided to beneficiaries of federally-funded healthcare programs.

226. Defendant Health System's CHIAB consulting arrangements are not protected under the existing "safe harbor" regulations.

227. Since 2002, Defendant Health System paid total estimated kickbacks to CHIAB members in excess of $2.2 million.

228. For each of these federal Anti-Kickback Statute violations, Defendants are subject to penalties of up to $50,000 for each improper act, plus damages of up to three times the amount of the improper remuneration at issue. 42 U.S.C. § 1320a-7a(a).

WHEREFORE, Relator requests the following relief:

A. Judgment against the Defendants in an amount equal to up to three times the amount of the improper remuneration at issue;

B. Imposition of penalties of up to $50,000 for each kickback violation;

C. His attorneys' fees, costs, and expenses;

D. Such other relief as the Court deems just and appropriate.

Count II (All Defendants) - Violations of the Stark Law
42 U.S.C. § 1395nn

229. Relator re-alleges ¶¶ 1-228 as though fully set forth herein.

230. CHIAB members had a financial relationship with Defendant Health System to which the Stark Law applied, namely the illegal, excessive remuneration that Defendant Health System paid to CHIAB members.

231. CHIAB members referred Medicare patients for DHS to Defendant Health System, an entity with which they had a financial relationship, in violation of the Stark Law, 42 U.S.C. § 1395nn.

232. None of the Stark Law's exceptions apply to the illegal financial relationship or referrals between Defendant Health System and the CHIAB members.

233. Defendant CADV, acting through its physicians, had a financial relationship with Defendant Health System to which the Stark Law applied, namely the referrals that CADV and its physicians received from CHIAB members who received illegal, excessive remuneration from Defendant Health System.

234. Defendant CADV, acting through its physicians, referred Medicare patients for DHS to Defendant Health System, an entity with which they had a financial relationship, in violation of the Stark Law, 42 U.S.C. § 1395nn.

235. None of the Stark Law's exceptions apply to the illegal financial relationship or referrals between Defendant Health System and Defendant CADV and its physicians.

236. Each referral of a Medicare patient for DHS by a physician member of the CHIAB, or by Defendant CADV, acting through its physicians, to Defendant Health System's facilities constituted a violation of the Stark Law, 42 U.S.C. § 1395nn.

237. Defendant Health System's claims for Medicare funds related to tainted referrals it received from CHIAB Members and Defendant CADV and its physicians constituted violations of the Stark Law, 42 U.S.C. § 1395nn.

238. CHIAB members and Defendant CADV, acting through its physicians, who referred Medicare patients for DHS to Defendant Health System are subject to liability under the Stark Law, 42 U.S.C. § 1395nn(a)(1)(A).

WHEREFORE, Relator requests the following relief:

A. Judgment against the Defendants in an amount equal to a refund of all Medicare claims paid for DHS, that resulted from an illegal referral, pursuant to 42 U.S.C. § 1395nn(g)

B. Imposition of sanctions against Defendants, including denials of payments, and refunds of claims pursuant to 42 U.S.C. § 1395nn(g);

C. Imposition of penalties up to $15,000 for each Stark Law violation;

D. His attorneys' fees, costs, and expenses; and

E. Such other relief as the Court deems just and appropriate.

COUNT III (All Defendants) – Violation of the Federal False Claims Act
31 U.S.C. § 3729(a)(1), (2), (3) and (7)

239. Relator re-alleges ¶¶ 1- 238 as though fully set forth herein.

240. Defendant Health System provided incentives to CHIAB members to induce improper referrals of services to Defendant Health System, through Defendant Cooper Hospital and/or the Cooper Heart Institute, and to Defendant CADV for the provision of health services to beneficiaries of federally-funded health care programs in violation of the federal Anti-Kickback Statute.

241. Defendant CADV conspired with Defendants Health System and Cooper Hospital by assisting in the illegal kickback arrangement by recruiting members of the CHIAB.

242. Defendants' violations of the federal Anti-kickback Statute give rise to liability under the federal False Claims Act.

243. As a prerequisite to participating in federally-funded health care programs, Defendants expressly certified (or, through their participation in a federally funded program, impliedly certified) their compliance with the federal Anti-Kickback Statute.

244. Defendant Health System and/or Defendant Cooper Hospital violated the federal False Claims Act by submitting claims for reimbursement from federal health care programs, including Medicare and Medicaid, knowing that they were ineligible for the payments demanded due to federal Anti-Kickback Statute violations associated with illegal remuneration paid to members of the CHIAB.

245. Defendant CADV violated the federal False Claims Act by submitting claims for reimbursement from federal health care programs, including Medicare and Medicaid, knowing that it was ineligible for the payments demanded due to federal Anti-Kickback Statute violations associated with illegal remuneration paid to members of the CHIAB.

246. Claims submitted by Defendant Health System and/or by Defendant Cooper Hospital to federally-funded health care programs (including Medicare, Medicaid, etc) related to tainted referrals (those stemming from violations of the federal Anti-Kickback statute) constituted violations of the federal False Claims Act, 31 U.S.C. § 3729(a)(1).

247. Claims submitted by Defendant CADV to federally-funded health care programs (including Medicare, Medicaid, etc) related to tainted referrals (those stemming from violations of the federal Anti-Kickback statute) constituted violations of the federal False Claims Act, 31 U.S.C. § 3729(a)(1).

248. Each claim submitted by Defendants to a federally-funded health care program (including Medicare, Medicaid, etc) for a service provided to a patient referred by a CHIAB "advisor" is false because it is tainted by a referral obtained through an illegal kickback.

249. CHIAB members had a financial relationship with Defendant Health System to which the Stark Law applied, namely the illegal, excessive remuneration that Defendant Health System paid to CHIAB members.

250. CHIAB members referred Medicare patients for DHS to Defendant Health System, an entity with which they had a financial relationship, in violation of the Stark Law, 42 U.S.C. § 1395nn.

251. Defendant CADV, acting through its physicians, had a financial relationship with Defendant Health System to which the Stark Law applied, namely the referrals that CADV and its physicians received from CHIAB members who received illegal, excessive remuneration from Defendant Health System.

252. Defendant CADV, acting through its physicians, referred Medicare patients for DHS to Defendant Health System, an entity with which they had a financial relationship, in violation of the Stark Law, 42 U.S.C. § 1395nn.

253. Each referral of a Medicare patient for DHS by a physician member of the CHIAB, or by Defendant CADV, acting through its physicians, to Defendant Health System's facilities constituted a violation of the Stark Law, 42 U.S.C. § 1395nn.

254. Defendant Health System's claims for Medicare funds related to tainted referrals it received from CHIAB Members and Defendant CADV and its physicians constituted violations of the Stark Law, 42 U.S.C. § 1395nn.

255. Claims submitted by Defendant Health System for Medicare funds that are tainted by the Defendants' Stark Law violations constitute violations of the federal False Claims Act, 31 U.S.C. § 3729(a)(1).

256. Defendant Health System knowingly caused to be made or used false records or statements, including, i.e., the false certifications and representations of compliance with the federal Anti-Kickback Statute which Defendant caused to be made when it submitted the false claims for payment, the Medicare enrollment forms, and cost reports to get false or fraudulent claims (those related to referrals tainted by violations of the federal Anti-Kickback statute and the Stark Law) paid or approved constitute violations of the federal False Claims Act, 31 U.S.C. § 3729(a)(2).

257. Defendants, through their concerted efforts to carry out Defendant Health System's fraudulent CHIAB consulting arrangements, conspired to defraud the federal government by getting false or fraudulent claims (those related to referrals tainted by violations of the federal Anti-Kickback statute and the Stark Law) allowed or paid by the government in violation of the federal False Claims Act, 31 U.S.C. § 3729(a)(3).

258. Defendant Health System knowingly caused to be made or used false records or false statements, i.e., the false certifications caused to be made by Defendant when the cost reports were submitted, to conceal, avoid, or decrease an obligation to pay or transmit money or property to the United States, in violation of the federal False Claims Act, 31 U.S.C. § 3729(a)(7).

259. All of the Defendants' conduct described in this Complaint was knowing, as that term is used in the federal False Claims Act.

WHEREFORE, Relator requests the following relief:

A. Judgment against Defendants for three times the amount of damages the United States has sustained because of their actions, plus a civil penalty of $11,000 for each violation of the federal False Claims Act.

B. 25% of the proceeds of this action if the United States elects to intervene, and 30% if it does not.

C. His attorneys' fees, costs, and expenses.

D. Such other relief as the Court deems just and appropriate.

Count IV (All Defendants) – Violations of the New Jersey Anti-Kickback Statute N.J.S.A. 30:4D-17(c)

260. Relator re-alleges ¶¶ 1-259 as though fully set forth herein.

261. Defendant Health System's CHIAB involves consulting arrangements that violate the New Jersey Anti-Kickback Statute, NJSA 30:4D-17(c), because payments to CHIAB "advisors" disguised as "consulting fees" constitute kickbacks, rebates or bribes in connection with the furnishing of items or services for which payment is or may be made in whole or in part under the New Jersey Medicaid statute in violation of the New Jersey Anti-Kickback Statute, N.J.S.A. 30:4D-17(c)(1).

262. Defendant Health System knowingly made excessive payments to CHIAB members as kickbacks, financial inducement for referrals to Defendant Cooper Hospital and/or Defendant CADV for services which were or may be paid in whole or in part by the New Jersey Medicaid program, in violation of the New Jersey Anti-Kickback Statute, N.J.S.A. 30:4D-17(c).

263. Defendant Health System, in entering into CHIAB consulting arrangements, made offers of illegal kickbacks to CHIAB "advisors," who received Defendant Health System's

kickbacks in connection with services provided to beneficiaries of state-funded healthcare programs, including New Jersey Medicaid.

264. Defendant Health System's CHIAB consulting arrangements are not covered by the exceptions to the New Jersey Anti-Kickback Statute at 30:4D-17(c).

265. Defendants' conduct in furthering Defendant Health System's CHIAB consulting arrangements also resulted in the submission of false claims in violation of the New Jersey False Claims Act, § 2A:32C-1, et seq.

266. Since 2002, Defendant Health System paid total estimated kickbacks to CHIAB members in excess of $2.2 million.

267. For each of these New Jersey Anti-Kickback Statute violations, Defendants are subject to criminal penalties of up to $10,000 for each improper act, and civil penalties of (1) interest on the amount of excess benefits or payments; (2) damages of up to three times the amount of the improper remuneration at issue; (3) payment of the civil penalty allowed under the federal False Claims Act (31 U.S.C. § 3729, et seq.). NJSA 30:4D-17(c)(3).

WHEREFORE, Relator requests the following relief:

A. Judgment against the Defendants in an amount equal to:

(1) Interest on the amount of excess benefits or payments;

(2) Damages of up to three times the amount of the improper remuneration at issue;

(3) Payment of the civil penalty allowed under the federal False Claims Act (31 U.S.C. § 3729, et seq.);

B. Imposition of penalties of up to $10,000 for each kickback violation;

C. His attorneys' fees, costs, and expenses;

D. Such other relief as the Court deems just and appropriate.

Count IV (All Defendants) - Violations of The New Jersey False Claims Act § 2A:32C-3.a., b., and c.

268. Relator re-alleges ¶¶ 1- 267 as though fully set forth herein.

269. Defendant Health System's provision of incentives to induce improper referrals of services provided to beneficiaries of state-funded health care programs, including Medicaid, violated both the federal Anti-Kickback Statute and the New Jersey Anti-Kickback Statute, N.J.S.A. 30:4D-17(c), which prohibit the participation in a scheme to offer or receive kickbacks in connection with the furnishing of items or services which are billable to the New Jersey Medicaid program.

270. CHIAB members had a significant beneficial interest with Defendant Health System to which the Codey Law applied, namely the illegal, excessive remuneration that Defendant Health System paid to CHIAB members.

271. CHIAB members referred Medicare and Medicaid patients to Defendant Health System, an entity with which they had a significant beneficial interest, in violation of the Codey Law.

272. Defendant CADV, acting through its physicians, had a significant beneficial interest with Defendant Health System to which the Codey Law applied, namely the referrals that CADV and its physicians received from CHIAB members who received illegal, excessive remuneration from Defendant Health System.

273. Defendant CADV, acting through its physicians, referred Medicare and Medicaid patients to Defendant Health System, an entity with which they had a significant beneficial interest, in violation of the Codey Law.

274. Each referral of a Medicare and Medicaid patient by a physician member of the CHIAB, or by Defendant CADV, acting through its physicians, to Defendant Health System's facilities constituted a violation of the Codey Law.

275. Defendant Health System's claims for Medicare and Medicaid funds related to tainted referrals it received from CHIAB Members and Defendant CADV and its physicians constituted violations of the Codey Law.

276. Defendants' violations of the New Jersey Anti-Kickback Statute and the Codey Law also give rise to liability under the New Jersey False Claims Act (NJFCA).

277. As a prerequisite to participating in state-funded health care programs, including New Jersey Medicaid, Defendants expressly certified (or, through their participation in state-funded programs, impliedly certified) their compliance with federal and state anti-kickback statutes, and the Codey Law.

278. Defendants violated the NJFCA, § 2A:32C-1, et seq.., by submitting claims for reimbursement from state health care programs, including Medicaid, knowing that they were ineligible for the payments demanded due to state and federal anti-kickback statute violations, as well as Codey Law violations, associated with illegal remuneration paid to members of the CHIAB.

279. Defendant Health System's and/or Defendant Cooper Hospital's submission of claims to state-funded health care programs (including Medicaid, etc) related to illegal referrals

(tainted by violations of the New Jersey Anti-Kickback statute and the Codey Law) constituted violations of the New Jersey False Claims Act, § 2A:32C-3.a.

280. Defendant CADV's submission of claims to state-funded health care programs (including Medicaid, etc) related to illegal referrals (tainted by violations of the New Jersey Anti-Kickback statute and the Codey Law) constituted violations of the New Jersey False Claims Act, § 2A:32C-3.a.

281. Defendant Health System, knowingly made or used or caused to be made or used false records or statements, including, i.e., the false certifications and representations Defendant caused to be made when it submitted the false claims for payments, provider applications and provider agreements to the State of New Jersey, in which Defendant falsely certified compliance with federal and New Jersey Anti-Kickback Statutes, as well as the Codey Law, to get false or fraudulent claims (tainted by violations of the federal and New Jersey Anti-Kickback statutes and the Codey Law) paid or approved by state-funded health care programs (including Medicaid, etc), which constitute false claims in violation of the New Jersey False Claims Act, § 2A:32C-3.b.

282. Defendants, through their concerted efforts to carry out Defendant Health System's fraudulent CHIAB consulting arrangements, conspired to defraud the state of New Jersey by getting false or fraudulent claims (tainted by violations of the New Jersey Anti-Kickback Statute and the Codey Law) allowed or paid by the state government in violation of the New Jersey False Claims Act, § 2A:32C-3.c.

283. All of the Defendants' conduct described in this Complaint was knowing, as that term is used in the New Jersey False Claims Act, § 2A:32C-2.

WHEREFORE, Relator requests the following relief:

A. Judgment against Defendants for three times the amount of damages the State of New Jersey has sustained because of their actions, plus a civil penalty of $11,000 for each violation of the New Jersey False Claims Act.

B. 25% of the proceeds of this action if the State of New Jersey elects to intervene, and 30% if it does not.

C. His attorneys' fees, costs, and expenses.

D. Such other relief as the Court deems just and appropriate.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Complaint For Violations of Federal and State False Claims Acts, Anti-Kickback Statutes, and Physician Self-Referral Laws, has been served upon the following on the date and in the manner listed below:

VIA FEDERAL EXPRESS

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