



Care”) originally provided information to the State of Texas which is the basis for this suit and is included as a named party Plaintiff in this case.

The action from which this case was severed was filed on or about the 14<sup>th</sup> day of March 2000 by Ven-A-Care pursuant to § 36.102 of the Act. On or about the 8th day of May 2000, the State of Texas exercised its prerogative under § 36.104 of the Act and formally filed its Notice of Intervention. On or about May 25, 2004, the Court granted leave to the State and Ven-A-Care to partially unseal and sever the claims against these three Defendants from the original case.

**I.**  
**DISCOVERY CONTROL PLAN**

1.1 Plaintiff, the State of Texas, designates this case as a Level 3 case requiring a discovery control plan tailored to the circumstances of this specific suit.

**II.**  
**DEFENDANTS**

The Defendants complained of and sued in this action are:

2.1 ABBOTT LABORATORIES INC. (“ABBOTT”), is a corporation organized under the laws of Delaware with its principal offices in Abbott Park, Illinois. At all times material to this civil action, ABBOTT has transacted business in the State of Texas by, including but not limited to, selling and distributing to purchasers in the State of

Texas the multi-source pharmaceutical products that are the subject of this action.

ABBOTT has been served and has answered this suit.

2.2 ABBOTT LABORATORIES is a corporation organized under the laws of Illinois, with its principal offices in Abbott Park, Illinois. At all times material to this civil action, ABBOTT LABORATORIES has transacted business in the State of Texas by, including but not limited to, selling and distributing to purchasers in the State of Texas the multi-source pharmaceutical products that are the subject of this action. ABBOTT LABORATORIES has been served and has answered this suit.

2.3 HOSPIRA, INC. ("HOSPIRA"), is a corporation organized under the laws of Delaware, with its principal offices in Lake Forest, IL. HOSPIRA is the successor to ABBOTT's Hospital Products Division. At all times material to this civil action, HOSPIRA and/or ABBOTT transacted business in the State of Texas by, including but not limited to, selling and distributing to purchasers in the State of Texas the multi-source pharmaceutical products that are the subject of this action. HOSPIRA has been served and has answered this suit.

2.4 B. BRAUN MEDICAL INC. ("B. BRAUN"), is a corporation organized under the laws of Pennsylvania with its principal offices in Bethlehem, Pennsylvania. B.BRAUN is the successor in interest to McGaw, Inc. ("McGaw"), and is liable for

the unlawful acts of McGaw that are the basis of this petition. At all times material to this civil action, B. BRAUN and/or McGaw transacted business in the State of Texas by, including but not limited to, selling and distributing to purchasers in the State of Texas the multi-source pharmaceutical products that are the subject of this action. B. BRAUN has been served and has answered this suit.

2.5 BAXTER HEALTHCARE CORPORATION ("BAXTER"), is a corporation organized under the laws of Delaware with its principal offices in Deerfield, Illinois. At all times material to this civil action, BAXTER transacted business in the State of Texas by, including but not limited to, selling and distributing to purchasers in the State of Texas the multi-source pharmaceutical products that are the subject of this action. BAXTER has been served and has answered this suit.

#### 2.6 RESPONDEAT SUPERIOR

The Defendants specified in paragraphs 2.1 to 2.4 are sometimes referred to herein collectively as the "Defendants" or "Defendant Drug Companies." Any and all acts alleged herein to have been committed by any or all of the Defendant Drug Companies were committed by said Defendants' officers, directors, employees, or agents who at all times acted on behalf of their respective companies.

### III.

#### PRELIMINARY STATEMENT AND NATURE OF THE ACTION

3.1 This is an action under the Texas Medicaid Fraud Prevention Act for restitution, damages, pre-judgment interest, civil penalties of not less than \$1,000.00 or more than \$10,000.00 for each unlawful act, two (2) times the value of the payments, and recovery of costs, attorneys' fees and expenses of the Attorney General of the State of Texas and Ven-A-Care against Defendants.

3.2 Defendants knowingly or intentionally made false representations and misrepresentations (including misrepresentations through silence and omission) of prices and costs for certain of their multi-source drugs, directly and indirectly, to the Texas Medicaid Program. Defendants knew that the Texas Medicaid Program intended and was required to base its payments of the reimbursement of claims submitted by pharmacies, physicians, and other providers for the specified drugs on estimates of acquisition costs incurred by such providers, and that the Texas Medicaid Program would rely on the price and cost representations of Defendants in making its estimates of providers' acquisition costs. The Texas Medicaid Program relied on the false statements or misrepresentations and deceptive inflated prices and costs reported by Defendants, which caused its estimates of provider acquisition costs to be excessive, and thus was defrauded into paying reimbursements in excessive amounts for the drugs in question.

3.3 Defendants marketed their specified multi-source drug products to clinics, wholesalers, distributors, group purchasing organizations, pharmacies, and other customers, through financial inducements, including but not limited to, false price markups, the difference between cost and Medicaid reimbursement (the "spread"), discounts, rebates, chargebacks, free goods, off-invoice pricing, and other financial incentives. Defendants marketed their products directly, through sales visits, telemarketing, and other presentations to their customers, and indirectly, through various pharmacy inventory software designed to identify those products with the largest spread. Defendants thus wrongfully exploited and defrauded the Texas Medicaid Program by causing it to pay the claims of Defendants' customers at grossly inflated amounts that far exceeded any reasonable estimate of the acquisition costs of the drugs in question.

#### IV. JURISDICTION & VENUE

4.1 Jurisdiction over the subject matter is founded upon the State of Texas Medicaid Fraud Prevention Act, which prohibits, and provides remedies to redress, the conduct of Defendants, and which provides for this action to be brought by the State of Texas and by Private Person Plaintiff, Ven-A-Care. Tex. Hum. Res. Code Ann. § 36.052(e).

4.2 Venue is proper in Travis County pursuant to Texas Human Resources Code § 36.052(d) in that many of the unlawful acts committed by Defendants were committed in

Travis County, including the making of false statements and misrepresentations of material fact to the State of Texas, its departments, agencies, instrumentalities and contractors, and to the Texas Medicaid Program.

V.

**BACKGROUND: HOW PHARMACEUTICAL CLAIMS ARE PAID UNDER  
THE MEDICAID PROGRAM IN TEXAS**

5.1 The Texas Medicaid Program pays for the use of approved pharmaceuticals provided to Medicaid recipients by eligible providers, including pharmacies. The Vendor Drug Program ("VDP") of the Texas Health & Human Services Commission ("HHSC") administers the Texas Medicaid Program. Providers can obtain reimbursement through the VDP only for products listed on the Texas Drug Code Index. 1 Tex. Admin. Code § 354.1921(b).<sup>1</sup> To have a particular pharmaceutical product listed on the index, a drug company or manufacturer must file and have approved a questionnaire for that product with HHSC.<sup>2</sup> *Id.* Section 2 of the questionnaire requires the manufacturer to report, for each drug submitted, the suggested wholesale price to pharmacies, the price for which the drug is sold to wholesalers and distributors, the direct price to pharmacies, the price to chain warehouses, and the price for which the drug is sold to any other special purchasing groups. Additionally,

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<sup>1</sup> Formerly 25 TEX. ADMIN. CODE § 35.201.

<sup>2</sup> The questionnaire is entitled "Request for Information for New Drug Product or for Additional Information of Products Currently Included in Texas Medicaid."

the form contains a separate question in section 4 inquiring whether the drug company sells the drug to wholesalers or distributors. The questionnaire requires a manufacturer to certify that the information it has provided is correct and that it will provide information regarding subsequent changes in pricing of the product within 15 days of such changes occurring. Further, in approving the questionnaire, HHSC expressly requires that such supplemental price information be provided.

5.2 HHSC bases its reimbursement schedule on the prices reported by the manufacturer on the questionnaire and subsequent price changes supplied by the manufacturer. Reimbursement to a pharmaceutical provider (i.e. a pharmacy or physician) is based on HHSC's best estimate of acquisition cost, (referred to as "EAC"). 1 TEX. ADMIN. CODE § 355.8541(1).

5.3 When a manufacturer reports inflated, false or misleading pricing information to HHSC, conceals truthful prices, or fails to disclose price reductions, the calculation of EAC is inflated and thus the reimbursement schedule is also inflated. This results in drug reimbursement overpayments to drug providers by the State.

## VI.

### ACTIONABLE CONDUCT OF DEFENDANTS

6.1 Defendants knew that reporting inflated prices and costs for their drugs and concealing and failing to report truthful pricing information would cause the VDP to

overestimate acquisition costs and thus to pay excessive reimbursements to Defendants' Medicaid provider customers. Notwithstanding this knowledge, Defendants reported false and misleading price and cost information and concealed and failed to disclose truthful pricing information and price reductions in order to cause the VDP to pay excessive reimbursements for their specified drugs. Defendants' actions created falsely inflated "spreads" between the acquisition costs of Defendants' drugs and the amounts reimbursed for those drugs by Medicaid. These "spreads" financially benefitted Defendants' Texas Medicaid provider customers and thus induced their customers to order, prescribe, dispense and/or administer Defendants' specified pharmaceuticals.

6.2 Defendants were each fully capable of making truthful representations about prices and costs of the specified pharmaceuticals and did so when it was economically beneficial to them, such as when they reported Average Manufacturers' Prices and Best Prices to the federal government under the Medicaid rebate program mandated by the Omnibus Budget Reconciliation Act of 1990 ("OBRA '90"), and/or when they reported pricing information for Medicaid reimbursement purposes for certain of their brand products that do not face generic or other competition.

6.3 Notwithstanding Defendants' knowledge that they were required to provide truthful price information vital to Texas Medicaid's ability to estimate acquisition costs of the

specified drugs, Defendants each knowingly or intentionally reported false, inflated price information about the specified pharmaceuticals and concealed or failed to disclose truthful price information.

6.4 In one or more of the following ways, Defendants acted knowingly or intentionally in making false statements and misrepresentations of material fact to the Texas Medicaid program, and in concealing from or failing to disclose the truth to the Texas Medicaid program, with regard to the specified drugs:

A. Reporting falsely inflated prices on initial questionnaires to have specified pharmaceuticals covered by Texas Medicaid;

B. Concealing or otherwise failing to disclose decreases in the prices and costs of the specified pharmaceuticals;

C. Concealing or otherwise failing to disclose events or transactions that decrease the price and cost of the specified pharmaceuticals, such as discounts, rebates, off-invoice pricing, free goods, cash payments, chargebacks, grants, and other financial incentives;

D. Reporting falsely that the price or cost of a specified pharmaceutical was increasing;

E. Reporting falsely that the price or cost of a specified pharmaceutical was unchanged;

F. Reporting falsely that specified drugs were not sold to a specific class of trade;

G. Failing to disclose that specified drugs were sold to a specific class of trade.

6.5 Defendants committed the above acts and omissions with knowledge that the Texas Medicaid program would rely upon, be deceived by, and use Defendants' false price representations as bases for calculating provider EAC and provider reimbursement.

**VII.**  
**THE FALSE PRICE AND COST REPRESENTATIONS**  
**OF DEFENDANTS**

7.1 At various times on or after January 1, 1991, and continuing through the present date, Defendants knowingly or intentionally reported to the State of Texas' Medicaid Program false statements or misrepresentations regarding their pharmaceutical products, including, but not limited to the pharmaceuticals described in the attached Exhibits "A" and "B."

7.2 Defendants have thus repeatedly and continuously violated the Texas Medicaid Fraud Prevention Act. The Act specifies 10 separate acts which are declared to be unlawful. At least three of those unlawful acts were committed by Defendants in this case on numerous occasions:

(a) The Act prohibits a person from knowingly or intentionally making or causing to be made a false statement or misrepresentation of material fact on an application for a

contract, benefit, or payment that is intended to be used to determine a person's eligibility for a payment under the Medicaid Program. TEX. HUM. RES. CODE § 36.002(1)(A) & (B).

(b) The Act prohibits a person from knowingly or intentionally concealing or failing to disclose an event that the person knows affects a continued right to a benefit or payment to a person and which permits a person to receive a benefit or payment that is not authorized or that is greater than the benefit or payment that is authorized. TEX. HUM. RES. CODE § 36.002(2).

(c) The Act prohibits a person from knowingly or intentionally making or causing to be made a false statement or misrepresentation of fact concerning information required to be provided by a federal or state law, rule, regulation or provider agreement pertaining to the Medicaid Program. TEX. HUM. RES. CODE § 36.002(4)(B).

7.3 Defendants have knowingly or intentionally made false price and cost representations and other material misrepresentations or omissions on applications for the addition of certain of their drugs to the Texas Drug Code Index, and on subsequent price updates, in violation of § 36.002(4)(B) of the Act. Further, in violation of § 36.002(1)(A) & (B) of the Act, Defendants failed to disclose prices generally and currently available to their customers in the marketplace, including Medicaid providers, due to the existence of kickbacks, inducements, discounts, rebates, chargebacks, off-invoice pricing, free goods, and grants that

reduced the prices paid by Defendants' customers for certain drugs. Defendants also failed to notify Texas Medicaid when the prices that were currently and generally available in the marketplace fell, in violation of § 36.002(2) of the Act. Defendants' false statements, misrepresentations, and omissions resulted in reimbursement overpayments to Defendants' customers by the Texas Medicaid Program.

**VIII.**  
**DAMAGES**

9.1 Pursuant to the terms of the Medicaid Fraud Prevention Act, each Defendant is liable to the State of Texas for damages in excess of the minimum jurisdictional limits of the Court.

**IX.**  
**JURY DEMAND**

10.1 The State respectfully requests a trial by jury pursuant to Texas Rule of Civil Procedure 216.

**PRAYER**

Plaintiffs ask that they recover from Defendants restitution of overpayments, prejudgment interest, statutory additional double damages, civil penalties, expenses, costs and attorneys' fees as provided in TEX. HUM. RES. CODE ANN., chapter 36. Plaintiffs ask that judgment be entered upon trial of this case in favor of the State and against the named defendants to the maximum extent allowed by law. The Relator further asks that it be

awarded its costs and expenses, its attorneys' fees, and the maximum Relator's share provided by the Texas Medicaid Fraud Prevention Act. Plaintiffs pray for such other and further relief to which they may show themselves entitled, either at law or in equity.

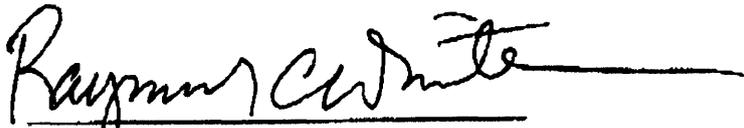
Respectfully submitted,

GREG ABBOTT  
Attorney General of Texas

BARRY R. MCBEE  
First Assistant Attorney General

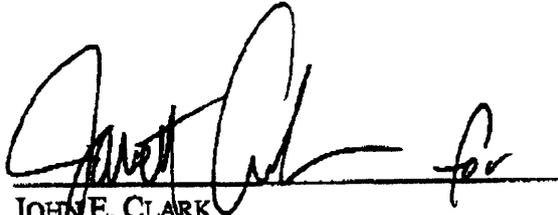
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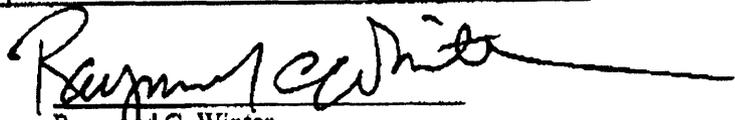
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Attorneys for the Private Person Plaintiff,  
Ven-A-Care of the Florida Keys, Inc.

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing Plaintiffs' Fourth Amended Petition was sent in accordance with the Texas Rules of Civil Procedure on this the 18<sup>th</sup> day of February, 2005, to the following:

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 Raymond C. Winter

## Fourth Amended Petition - Exhibit A

NDC	Description
00074115112	HEPARIN LOCK FLUSH
00074115212	HEPARIN LOCK FLUSH
00074115270	HeparinLock Flush 100u/ml10 ml
00074115278	HeparinLock Flush 100u/ml30 ml
00074120703	GENTAMICIN SULFATE SOLUTION INJECTION USP
00074128111	HEPARIN LOCK FLUSH SOLUTION USP
00074148301	NALBUPHINE HYDROCHLORIDE INJECTION
00074152202	DEXTROSE INJECTION
00074152203	DEXTROSE INJECTION
00074159005	Waterfor Injection1000 ml
00074195801	AMIKACIN SULFATE INJECTION
00074196604	BACTERIOSTATIC NACL INJECTION
00074196607	BACTERIOSTATIC NACL INJECTION
00074196612	BACTERIOSTATIC NACL INJECTION
00074196614	BACTERIOSTATIC NACL INJECTION
00074202520	DOBUTAMINE INJECTION USP
00074234402	DOBUTAMINE HYDROCHLORIDE INJECTION
00074258913	ERYTHR ETH TAB
00074258953	ERYTHR ETH TAB
00074321032	DIAZEPAM INJECTION
00074321301	DIAZEPAM INJECTION
00074321302	DIAZEPAM INJECTION
00074341301	METOCLOPRAMIDE
00074357801	TobramycinSulfate 80 mg
00074359002	TobramycinSulfate2000 mg
00074374716	ERYTHROMYCIN ETHYLSUCCINATE ORAL SUSPENSION
00074374816	ERYTHROMYCIN ETHYLSUCCINATE ORAL SUSPENSION
00074379601	KETOROLAC TROMETHAMINE SOLUTION INJECTION USP
00074379649	KETOROLAC TROMETHAMINE SOLUTION INJECTION USP
00074397703	Waterfor Injection30 ml
00074405001	ClindamycinPhosphate 300 mg
00074405101	ClindamycinPhosphate 600 mg
00074405201	ClindamycinPhosphate900 mg
00074427601	LIDOCAINE HYDROCHLORIDE INJECTION
00074442701	ACYCLOVIR SODIUM POWDER FOR INJECTION 500MGFLIPTOP VIAL
00074488720	Waterfor Injection 20 ml
00074488750	STERILE WATER FOR INJECTION

## Fourth Amended Petition - Exhibit A

NDC	Description
00074488810	SODIUM CHLORIDE INJECTION
00074488812	SODIUM CHLORIDE INJECTION
00074488820	SODIUM CHLORIDE INJECTION
00074488899	SODIUM CHLORIDE INJECTION
00074563004	A-METHAPRED INJECTION 500MG 4ML UNIVIAL (SODIUMSUCCINATE)
00074563108	A-METHAPRED INJECTION 1000MG ADD-VANTAGE VIAL
00074568401	A-METHAPRED INJECTION 40MG 1ML UNIVIAL (SODIUMSUCCINATE)
00074568502	A-METHAPRED INJECTION 125MG 2ML UNIVIAL (SODIUMSUCCINATE)
00074592201	AMINOPHYLLINE INJECTION
00074610102	FUROSEMIDE INJECTION
00074610104	FUROSEMIDE INJECTION
00074610110	FUROSEMIDE INJECTION
00074610204	Furosemide 40 mg 4 ml
00074610211	FUROSEMIDE INJECTION
00074613802	SODIUM CHLORIDE IRRIGATION
00074613803	SODIUM CHLORIDE IRRIGATION
00074613902	STERILE WATER FOR IRRIGATION
00074614309	ACETIC ACID IRRIGATION .25% IRRIG USP(AQUALITE) 1000ML
00074614708	SODIUM CHLORIDE IRRIGATION
00074622713	ERYTHROMYCIN BASE
00074624801	LIDOCAINE HYDROCHLORIDE INJECTION
00074630113	ERYTHROMYCIN BASE 250MG 100'S
00074630153	ERYTHROMYCIN BASE 250MG 500'S
00074630413	ERY-TAB/C250 mg 100's
00074630616	E.E.S. 200 LIQ
00074631613	ErythromycinStearate500 mg Tab 100's
00074632013	ERY-TAB 333MG
00074632053	ERY-TAB 333MG
00074632113	ERY-TAB 500MG E
00074632613	ErythromycinBase 250 mg Tab 100's
00074632653	ErythromycinBase 250 mg Tab 500's
00074634620	ErythromycinStearate250 mg Tab 100's
00074634653	ErythromycinStearate250 mg Tab 500's
00074637316	E.E.S. 400 LIQ
00074647844	ERYTHROCIN LACTOBIONATE I.V.
00074647844	ERYTHROCIN LACTOBIONATE -I.V.
00074648201	ERYTHROCIN LACTOBIONATE-I.V. INJECTION

## Fourth Amended Petition - Exhibit A

NDC	Description
00074650901	VancomycinHCl 5 gm
00074653301	VancomycinHCl 1 gm
00074653401	STERILE VANCOMYCIN HYDROCHLORIDE ADD-VANTAGEVIALS
00074653501	VancomycinHCl 1 gm
00074662502	SodiumBicarbonate 50 ml
00074665106	POTASSIUM CHLORIDE INJECTION
00074665305	POTASSIUM CHLORIDE INJECTION
00074665773	SODIUM CHLORIDE INJECTION
00074677801	LORAZEPAM INJECTION
00074677701	LORAZEPAM INJECTION
00074677801	LORAZEPAM INJECTION
00074677901	LORAZEPAM INJECTION
00074678001	LORAZEPAM INJECTION
00074678101	LORAZEPAM INJECTION
00074710002	5%Dextrose in Water250 ml
00074710066	DEXTROSE INJECTION
00074710067	DEXTROSE INJECTION
00074710102	SODIUM CHLORIDE INJECTION
00074710123	SodiumChloride0.9% 100 ml
00074710166	SODIUM CHLORIDE INJECTION
00074710167	SODIUM CHLORIDE INJECTION
00074711509	POTASSIUM CHLORIDE IN 0.9% SODIUM CHLORIDEInjection
00074713809	SODIUM CHLORIDE IRRIGATION
00074713909	STERILE WATER FOR IRRIGATION
00074715613	EES/Sulfisoxazole200 mg, 100 ml
00074715643	EES/Sulfisoxazole200 mg 150 ml
00074715653	EES/Sulfisoxazole200 mg 200 ml
00074765062	HEPARIN SODIUM IN 0.45% SODIUM CHLOR. Injection
00074780822	DOPAMINE HYDROCHLORIDE IN 5% DEXTROSE Injection
00074788423	GENTAMICIN SULFATE IN 0.9% NACL Injection
00074792202	DEXTROSE INJECTION.
00074792209	5%Dextrose in Water1000 ml
00074792261	DEXTROSE INJECTION
00074792336	DEXTROSE INJECTION
00074792337	DEXTROSE INJECTION
00074792609	DEXTROSE 5% AND 0.45% NACL INJECTION
00074792909	DEXTROSE AND LACTATED RINGERS INJECTION
00074793009	DEXTROSE INJECTION

**Fourth Amended Petition - Exhibit A**

NDC	Description
00074798302	SodiumChloride 0.9%250 ml
00074798303	SodiumChloride 0.9%500 ml
00074798309	SodiumChloride 0.9%1000 ml
00074798361	SODIUM CHLORIDE INJECTION
00074798423	SODIUM CHLORIDE INJECTION
00074798436	SODIUM CHLORIDE INJECTION
00074798437	SODIUM CHLORIDE INJECTION
00074803013	PEDIAZOLE SUSP
00074803043	PEDIAZOLE SUSP
00074803053	PEDIAZOLE SUSP
00074915801	VITAMIN K1 INJECTION

## Fourth Amended Petition - Exhibit B

MANUFACTURER	DRUG	SIZE	NDC
Baxter	Sodium Chloride 0.9%, Irrigation	1000 mls, 12s	00338-0048-04
Baxter	Dextrose/Sodium Chloride 5%-0.45%	1000 mls, 12s	00338-0085-04
Baxter	Water for Irrigation	1000 mls, 12s	00338-0004-04
Baxter	Sodium Chloride 0.9%	100mls, 96s	00338-0049-18
Baxter	Sodium Chloride 0.9%	1000 mls, 12s	00338-0049-04
McGaw/B.Braun	Procalamine	1000 mls	00264-1915-00
McGaw/B.Braun	Water for Irrigation	1000 mls	00264-2101-00
McGaw/B.Braun	Sodium Chloride 0.9%	100 mls	00264-1800-32
McGaw/B.Braun	Sodium Chloride 0.9%, Irrigation	1000 mls	00264-2201-00
McGaw/B.Braun	Dextrose/Sodium Chloride 5%- 0.45%	1000 mls	00264-7612-00
McGaw/B.Braun	Sodium Chloride 0.9%	1000 mls	00264-7800-00