

In the Supreme Court of the United States

SAMUEL DAVID SILVA-RAMIREZ,
ON BEHALF OF THE UNITED STATES OF AMERICA,
Petitioner,

—v—

HOSPITAL ESPANOL AUXILIO MUTUO
DE PUERTO RICO, INC. ET AL.,
Respondents.

**On Petition for Writ of Certiorari to the
United States Court of Appeals for the First Circuit**

PETITION FOR WRIT OF CERTIORARI

RAFAEL E. SILVA ALMEYDA
COUNSEL FOR PETITIONER
SILVA ALMEYDA LAW OFFICES
P.O. BOX 363873
SAN JUAN, PR 00936-3873
(787) 274-1147
SILVA.ALMEYDA.LAW@GMAIL.COM

JULY 19, 2018

QUESTIONS PRESENTED

1. How can be properly submitted to the rigors of the dispositive effects of materiality standard of False Claims Act [FCA] violations; something hidden to the eyes of Federal agencies, and by sophistication of theories, complex legal structures and technicalities, they have defeated the basic principle of justice in the False Claims Act when Hospital Espanol Auxilio Mutuo [HEAM] of Puerto Rico, Inc. and the owners of HEAM; La Sociedad Espanola de Auxilio Mutuo [SEAM]; found the simplest way to circumvent justice, which is to hide with the truth?

2. Does a practice that unduly burdens the practice of religion, without a compelling interest, even though it might be neutral on its face, would it be unconstitutional?

PARTIES TO THE PROCEEDINGS

Petitioner and Plaintiff-Appellant-Interested Party

- U.S.A.(relator) Samuel D Silva Ramirez, on behalf of the United States of America

Respondents and Defendants-Appellees

- Hospital Espanol Auxilio Mutuo De Puerto Rico, Inc.
- Sociedad Espanola De Auxilio Mutuo Y Beneficiencia De Puerto Rico
- Enrique Fierres-Gonzalez
- Nancy Vollbehr Mend
- Conjugal Partnership Fierres-Vollbehr
- Jose A. Isado-Zardon
- Diana Vigil
- Conjugal Partnership Izado-Vigil
- Angel Cordero-Sanchez
- Berta Cordero
- Conjugal Partnership Cocero-Cordero
- Moises Suarez-Fernandez
- Mendez De Suarez
- Socorro Mendez Garcia

Respondents and Defendants

- Miguel Echenique-Iparraguirre
- Dr. Adrian Colon-Laracuente
- Ramon Delgado-Ruibal

- Luise Cid-Abradelo
- Jane Doe B
- Conjugal Partnership Echenique-Doe B
- Jane Doe E
- Conjugal Partnership Colon Doe E
- Jane Doe F
- Conjugal Partnership Delgado-Doe F
- Jane Doe H
- Conjugal Partnership Cid-Doe H

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED	i
PARTIES TO THE PROCEEDINGS	ii
TABLE OF AUTHORITIES	vi
OPINIONS BELOW	1
JURISDICTION.....	1
STATEMENT OF THE CASE.....	2
REASONS FOR GRANTING THE PETITION	11
CONCLUSION.....	11

APPENDIX TABLE OF CONTENTS

Opinion of the First Circuit (March 30, 2018).....	1a
Judgment of the District Court of Puerto Rico (July 22, 2016)	5a
Order of the District Court of Puerto Rico (July 22, 2016)	7a
Order of the District Court of Puerto Rico (March 31, 2016).....	13a
Order of the First Circuit Denying Petition for Panel Rehearing (April 20, 2018)	15a
Letter from Jay Olin (April 10, 2015)	17a
Medicare Enrollment Application, Institutional Providers—Relevant Excerpts	19a

TABLE OF CONTENTS – Continued

	Page
Motion Submitting Documents Translated to English (April 22, 2016)	31a
Letter to Marilina Sierra (July 21, 1997)	37a
Hospital Auxilio Mutuo—Protocol for Sterilization of Patients (March 25, 2016)	39a

TABLE OF AUTHORITIES

	Page
CASES	
<i>Bell Atl. Corp. v. Trombly</i> , 550 U.S. 544, 127 S.Ct. 1955, 167 L.Ed.2d 9292 (2007)	6
<i>Junius Constr. Co., v. Cohen</i> , 257 N.Y. 393, 178 N.E. 672 (1931).....	11
<i>Mikes v. Strauss</i> , 274 F.3d 687 (2nd Cir. 2001)	8
<i>Ocasio-Hernandez v. Fortuno-Burset</i> , 640 F.3d 1 (1st Cir. 2011).....	6
<i>Shaw v. AAA Engineering & Drafting, Inc.</i> , 213 F.3d 519 (10th Cir. 2000)	10
<i>Thompson v. Columbia/HCA Healthcare Corp.</i> , 125 F.3d 899 (5th Cir. 1997)	9
<i>U.S. Ex rel v. Unadilla Health Care Center, Inc.</i> , 787 F.Supp.2d 1329 (2011)	7
<i>U.S. Ex rel. Hutchenson v. Blackstone Medical, Inc.</i> , 647 F.3d 377 (1st Cir. 2011).....	5, 6, 10
<i>U.S. v. Anderson</i> , 605 F.3d 404 (2010)	7
<i>Watkins v. Mercy Medical Hospital</i> , 520 F.2d 894 (9th Cir. 1975)	8

TABLE OF AUTHORITIES—Continued

Page

STATUTES

§ 31001(1) of the Debt Collection Improvement Act	5
28 U.S.C. § 1254(1)	1
28 U.S.C. § 1295(a)(1)	2
28 U.S.C. § 1391(b)	2
28 U.S.C. § 1391(c)	2
31 U.S.C. § 3729(a)	2
31 U.S.C. § 3729(a)(1)(A)	4, 9
31 U.S.C. § 3729(a)(1)(B)	9
31 U.S.C. § 3729(a)(1)(C)	9
31 U.S.C. § 3729(a)(1)(G)	9
31 U.S.C. § 3730	2
31 U.S.C. § 3732(a)	2
31 U.S.C. § 7701(c)	5
42 U.S.C. § 1124(a)(1)	5
42 U.S.C. § 1128	5
42 U.S.C. § 1320(a)(2)	4

TABLE OF AUTHORITIES—Continued

	Page
42 U.S.C. § 1320a-3(a)(1).....	5
42 U.S.C. § 1320a-7	5
42 U.S.C. § 1320a-7b(a)(3).....	4
42 U.S.C. § 1395(1)(e)	5
42 U.S.C. § 1395f.....	5
42 U.S.C. § 1395g.....	5
42 U.S.C. § 1395u(r).....	5
42 U.S.C. § 1814	5
42 U.S.C. § 1815	5
42 U.S.C. § 1833(e)	5
42 U.S.C. § 1842(r)	5
42 U.S.C. § 300(a)(7)	7
42 U.S.C. § 300–6.....	6
42 U.S.C. § 708.....	4
42 U.S.C. § 1124A(a)(3)	5
The Civil Rights Act of 1964.....	4

JUDICIAL RULES

Rules of Evidence;

Rule 901, Article IX, Authentication or Identifying Evidence § 901(b)(7)(B)	3, 7
--	------

TABLE OF AUTHORITIES—Continued

Page

REGULATIONS

24 C.F.R. § 242.54	6
42 C.F.R. § 52c.302	7
42 C.F.R. § 53.112	6, 7
45 C.F.R. § 80.3	4
45 C.F.R. § 87.1	6
45 C.F.R. § 87.1(e)	9

OTHER AUTHORITIES

Louis Henkin, <i>Privacy and Autonomy</i> , 74 Colum. L. Rev. 1410 (1974)	11
---	----



OPINIONS BELOW

The unpublished memorandum opinion of the United States Court of Appeals for the First Circuit is included herein as App.1a. They merged Nos. 16-1577 and 16-2043. (both petition for Appeal and same case) U.S. Court of Appeals, for the First Circuit. Judgement date: March 30, 2018.

The relator petition for Panel rehearing to the U.S. Court of Appeals of the First Circuit, April 9, 2018. (App.15a).

The U.S. Court of Appeals for the First Circuit order of the Court denial, Nos. 16-1577 and 16-2043, April 20, 2018. (App.1a).

The U.S. District court for the District of Puerto Rico issued an Order on March 31, 2016 granting motion to Dismiss the Third Amended Complaint. [Document 145 filed 07/22/2016] (App.7a). Dismissal Unpublished.



JURISDICTION

Jurisdiction is invoked under 28 U.S.C. § 1254(1) permits any party to a case in a Federal Court of Appeals to apply to a Writ of Certiorari to the Supreme Court. The unpublished First Circuit Memorandum opinion was filed on April 2, 2018. Petition for Panel Rehearing was done on April 9, 2018, order of the Court denying petition on April 20, 2018.

The District Court had subject matter jurisdiction pursuant to 28 U.S. Code § 1295(a)(1), and 28 U.S.C. § 1391(b) and (c) and 31 U.S.C. § 3732(a). Furthermore, under 31 U.S.C. § 3729(a) provides: “Any action under Section 3730 may be brought in any Judicial District in which any defendant may be found to reside, or transact business, or in any district in which any prescribed act occurred.”



STATEMENT OF THE CASE

Hospital Espanol de Auxilio Mutuo [HEAM] a private corporation organized under the laws of Puerto Rico on April 29, 1992; is non-profit hospital, not affiliated to Church and no religious purpose.

The Hospital has a community of Catholic Sisters who give voluntary work, and no decisions inherent in the operation of HEAM.

The owners of the Hospital is la Sociedad Espanola de Auxilio Mutuo [SEAM].

They have a secret religious protocol of sterilization, that advances discrimination since June 20, 1996, outside of the bylaws or any document that is presented before the Federal Regulation Entities. (App.39a).

Bylaws of 2008 allows sterilization.

This protocol, authorizes nuns, final decision; if patients are going to be sterilized or not, despite their will. These nuns follow a liturgical calendar to the decisions of women to be sterilized. This protocol

discriminates with the community of Congregation Mita, who reside in the area of San Juan where the Hospital is. The Mita religion is a non-Catholic Christian church. In no place of the bylaws, rule and/or regulations of HEAM prohibited sterilizations based on religious or moral beliefs.

This written secret protocol requires a letter of approval from a pastor or priest; to be considered and this is more important than the patient's own decision. (App.39a). This protocol is only given to the Staff doctors members of the Obstetrics and Gynecology Department.

Dr. Samuel D. Silva-Ramirez relator [Dr Silva], citizen and residing in the Commonwealth of Puerto Rico hereafter called "relator" a Gynecologist that had privileges in HEAM until year 2009; this action by relator, representing U.S.A.

HEAM attested in a certification to the Department of Health and Human Services [D.H.H.S.] through its division of Survey and Certification, that it is aware of, and abides by all applicable statutes, regulations and program instructions when signing the Provider's Agreement. (App.19a-30a) according to the Rules of Evidence; Rule 901, Article IX, Authentication or Identifying Evidence § 901(b)(7)(B); "a purported public record or statement is from the office where items of this kind are kept." This Honorable Supreme Court can take knowledge. (App.26a-30a, example of signed parts of original of the year 2014 of PA.)

The False Statement arises out of the and False claims Act. Violation are the fraudulent Certification of compliance and False Fraudulent Certification to the [DHHS] and Medicare/Medicaid [M/M] and others.

They fail to disclose and illegal discriminatory written protocol for sterilization that voids their contract and the CMS 855-A [Providers Agreement] and CMS 2552-10 [Hospital Cost Report].

M/M forms in the Certification Statement. 42 U.S. Code § 708-Nondiscrimination provisions, and the Civil Rights Act of 1964, and related nondiscrimination statutes to ensure nondiscrimination in all programs and activities of a recipient, whether those programs and activities are federally funded or not, and 45 C.F.R. § 80.3.

Defendants falsely/or fraudulently made the certification to D.H.H.S. When it discriminated in a protocol of sterilization due to religion. (App.39a).

HEAM are in violation of 42 U.S.C. § 1320(a)(2) and 42 U.S.C. § 1320a-7b(a)(3) when it is used form CMS-2552-10, and CMS-855A. [Certification]. All these previous violations to 42 U.S.C. § 1320a-7b(a)(3) were material fact or condition of payment to M/M under the Hospital Cost Reports and the Providers Agreement.

U.S.C. § 3729(a)(1)(A), imposes liability on those presenting “false or fraudulent claims”, does not limit claims to misrepresentation about express condition of payment. Nothing in the text supports such a restriction. And under the Act’s materiality requirement, statutory, regulatory and contractual requirements are not automatically material, even if they are labeled conditions of payment. Nor is the restriction supported by the Act’s scienter requirement. A defendant can have “actual knowledge” that a condition is material even if the Government does not expressly call it a condition of payment. What

matters is not the label that the Government attaches to a requirement, but whether the defendant knowingly violated a requirement that the defendant's know is material to the Government's payment decision. Universal Health's policy arguments are unavailing, and are amply addressed through strict enforcement of the False Claims Act [FCA's] stringent materiality and scienter provisions, 136 S.Ct. 1989, Supreme Court of the U.S. at 2201-2003.

The Centers for Medicare & Medicaid Services (CMS) is authorized to collect the information requested on this form by sections 1124(a)(1), 1124A(a)(3), 1128, 1814, 1815, 1833(e), and 1842(r) of the Social Security Act, 42 U.S.C. §§ 1320a-3(a)(1), 1320a-7, 1395f, 1395g, 1395(1)(e), and 1395u(r) and section 31001(1) of the Debt Collection Improvement Act, 31 U.S.C. § 7701(c).

U.S. Ex relator Hutchenson v. Blackstone Medical, Inc., 647 F.3d 377 (1st Cir. 2011) states:

“as the Supreme Court has held, in enacting the FCA ‘Congress wrote expansively, meaning to reach all types of fraud, without qualification, that might result in financial loss to the Government.’”

U.S.A. Ex rel Hutchenson v. Blackstone Medical Inc., (*supra*) at pages 393 and 394 expresses:

“The Provider Agreement, drafted by CMS requires that hospitals and physicians acknowledge that they understand that the payment of a claim by Medicare is conditioned upon the claim and the underlying transaction complying with Medicare's laws regulations and program instructions.”

It also requires that the Hospital representative sign a statement certifying that he or she is “familiar with the laws and regulations regarding the provisions of health care services and that the services identified in this cost report were provided in compliance with such laws and regulations.

U.S.A. Ex rel Hutchenson v. Blackstone Medical Inc., (*supra*) at 394 and 395 expresses:

“In *Loughren*, this court held that a False statement is material if has “a natural tendency to influence, or [i]s capable of influencing, the decision making body to which it was addressed.”

“We cannot say, as a matter of law, the alleged misrepresentations in the hospital and physician claims were not capable of influencing’s decision to pay the claims. *See Ocasio-Hernandez v. Fortuno-Burset*, 640 F.3d 1, 16-17 (1st Circuit 2011) (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 556, 127 S.Ct. 1955, 167 L.Ed.2d 9292 (2007)).

HEAM acquired two types of hospital modernization loans:

- A. Loan from the Hospital Survey and Construction Act [Hill-Burton], in the years 1960, *id.* number 720025.; 42 C.F.R. § 53.112, *U.S. v. Blackstone Medical, Inc.*, 647 F.3d 377 (2011); 24 C.F.R. § 242.54; 42 U.S.C. § 300–6; *U.S. v. Anderson*, 605 F.3d 404 (2010); 45 C.F.R. § 87.1, non discrimination account of creed”

- B. HEAM closed a loan from HUD in May 1983 financed or guaranteed by the U.S.A. Department of Housing of Urban Development [HUD]. Amount \$3,175,000.00. The number was 056-13005 and was for Modernization and construction of the Hospital [HEAM]. It had outstanding balance years 1992, 1993 and 1994 of \$2,500,000.00. This is a violation of the Church amendment, 42 U.S.C. § 300(a)(7).

An assurance is requested under 42 C.F.R. § 53.112, *U.S. Ex rel v. Unadilla Health Care Center, Inc.*, 2010 WL 146877, page 5.

“The Court also notes that under 42 C.F.R. § 52c.302 . . .”

42 C.F.R § 53.112 is a condition of payment exists to not discriminate by Creed, when statute requires an assurance . . .

According to the Rules of Evidence; Rule 901, Article IX, Authentication or Identifying Evidence § 901(b)(7)(B) *supra*; This Honorable Supreme Court can take knowledge of a letter from U.S. D.H.H.R. Dated July 21, 1997 addressed to Marilina Sierra, Financial Department Director of Auxilio Mutuo Hospital, making reference to Hill-Burton ID # 720025. Third paragraph, second sentence says:

“However, please be advised your facility’s Community Service obligation, as specified in Subpart G of the regulations, remains in effect in perpetuity.” (This part speaks about creed discrimination among others.) [Hill-Burton Act]. (App.37a, 38a).

Defendants had actual knowledge of the information; acted with deliberate ignorance of the truth or falsity of the information, and/or in reckless disregard of the truth or falsity of the information based on the facts stated in this document. Defendants knowingly assisted in causing Medicare/Medicaid to pay claims which were grounded in fraud. This states a claim against HEAM. The Third Amended Complaint is all well pleaded and with sufficient specificity to state a claim.

In HEAM's facilities, a patient name E.M. requested to be sterilized and consent. She gave a letter from the Mita Church. She has history of various medical conditions. In the written decision of HEAM protocol Ethics Committee to deny the request on a written letter by Sor Claribel Camacho HEAM nun (not a Doctor or nurse) wrote; to get her cesarean at HEAM and sterilization at another hospital. (App.31a-36a).

False Claims may take many forms, the most common been a claim for goods and services not provided, or provided in violation of contract terms, specifications, statutes or regulations. *Mikes v. Strauss*, 274 F.3d 687, 697 (2nd Cir. 2001).

In order to HEAM not discriminate with a religious protocol it needs an affiliation with the Catholic Church and the religious affiliation be stated within the bylaws of the Medical Staff of HEAM. *See Watkins v. Mercy Medical Hospital*, 520 F.2d 894 11 Empl. Prac. Dec. P. 10, 671. HEAM is not affiliated to the Catholic Church.

False Claims Action are allowed due to discriminating protocol of religious nature, under 31 U.S.C.

§ 3729(1)(A), 31 U.S.C. § 3729(a)(1)(B), 31 U.S.C. § 3729(a)(1)(C) and 31 U.S.C. § 3729(a)(1)(G).

45 C.F.R. § 87.1(e) Discretionary Grants states:

“An organization that participates in programs funded by direct financial assistance from the Department shall not in providing services, discriminate against a program beneficiary or prospective program beneficiary on the basis of religion . . . ”

When a government contract is tainted with a violation of a statute or regulation, courts are generally bound to strike down the illegal contract by declaring it “Void AB INITIO.”

The False representation, statement or False Certification made to the D.H.H.S. was because they knew it discriminates. It was a material fact because a condition of payment was within the Hospital Cost Reports and Providers Agreement. *Thompson v. Columbia/HCA Healthcare Corp.*, 125 F.3d 899, 902 (5th Cir. 1997).

Violations of 31 U.S.C. § 3729(a)(1)(C), 31 U.S.C. § 3729(a)(1)(A), and 31 U.S.C. § 3729(a)(1)(B), because they conspired to make a violation, for knowingly causing to present, a False or fraudulent claim for payment or approval and for causing or using or used, a false record or statement material to an obligation to pay or transmit money or property to the government.

In October 27, 2011, on a meeting with former Administrator of HEAM Mr. Ivan Colon, Relator, and during a conditional in the presence of other witness, Mr. Colon stated “I advised the Board Director of

HEAM Mr. Enrique Fierres of the wrongfulness of the Religious protocol, but the HEAM decision was to keep it and they will deal with it when somebody complains.” (Doc. 42-2, 3rd Amended Complaint, p.44).

The defendants had knowledge, knew, acted knowing or knowingly, it is formally alleged that defendants had actual knowledge of the information, acted in deliberate ignorance of the truth or falsity of the information or acted in reckless disregard of the truth or falsity of the information, and require no proof of specific intent to defraud.

HEAM collected from Medicare/Medicaid from 2002 to 2012 approximately \$919,401,353.00. (Doc. 42-2, 3rd Amended Complaint, p.54, 87).

Implied Certification. The U.S. Court of Appeals for the 10th Circuit states that liability under the F.C.A. may be premised on Implied Certification of Contractual Compliance (May 18, 2000). In a May 2000 decision, the 10th Circuit held that a FC may be either expressed or implied. *Shaw v. AAA Engineering & Drafting, Inc.*, No. 97-6265 & 97-6266 (10th Cir. 2000).

The First Circuit does not want to establish the categories of express and implied in the in *U.S. Ex rel. Hutchenson v. Blackstone Medical, Inc.*, (*supra*) at 392 it continue stating that these formal categories are nowhere mentioned in the statute.

This is incongruence between the two Circuits, (1st and 10th).



REASONS FOR GRANTING THE PETITION

The FCA's materiality requirement is demanding. An undisclosed fact is material if, for instance," [n]o one can say with reason that the plaintiff would have signed this contract if informed of the likelihood" of the undisclosed fact." *Junius Constr. Co., v. Cohen*, 257 N.Y. 393, 400, 178 N.E. 672, 674.

The government keep paying because the truth was unknown, plain and simple is by this FCA that the government had an arm of the law in the interiority of the Corporation [HEAM].



CONCLUSION

"Whether as substantive due process or as Privacy, 'fundamentality' needs elaboration, especially with respect to the weight particular rights are to enjoy in the balance against public good. Justices Stone and Cardozo suggested that the freedom of speech, press and religion require extraordinary judicial protection against invasion even for the public good, because of their place at the foundations of democracy and because of the unreliability of the political process in regard to them."

Louis Henkin, *Privacy and Autonomy*, 74 Colum. L. Rev. 1410, 1428-29 (1974).

In the alternative this case is not discussed by this Honorable Supreme Court; it could give way to perpetuate religious discrimination by the way of deception.

The dilemma is: to allow continue the discrimination, or to use the FCA to stop the religious discrimination on a free Nation?

For the above and foregoing reasons, Petitioner request the granting of this Petition for Writ of Cetiorari to the United States First Circuit Court of Appeals.

Respectfully submitted,

RAFAEL E. SILVA ALMEYDA
COUNSEL FOR PETITIONER
SILVA ALMEYDA LAW OFFICES
P.O. Box 363873
SAN JUAN, PR 00936-3873
(787) 274-1147
SILVA.ALMEYDA.LAW@GMAIL.COM

JULY 19, 2018

APPENDIX TABLE OF CONTENTS

Opinion of the First Circuit (March 30, 2018).....	1a
Judgment of the District Court of Puerto Rico (July 22, 2016)	5a
Order of the District Court of Puerto Rico (July 22, 2016)	7a
Order of the District Court of Puerto Rico (March 31, 2016).....	13a
Order of the First Circuit Denying Petition for Panel Rehearing (April 20, 2018)	15a
Letter from Jay Olin (April 10, 2015)	17a
Medicare Enrollment Application, Institutional Providers—Relevant Excerpts.....	19a
Motion Submitting Documents Translated to English (April 22, 2016)	31a
Letter to Marilina Sierra (July 21, 1997)	37a
Hospital Auxilio Mutuo—Protocol for Sterilization of Patients (March 25, 2016).....	39a

OPINION OF THE FIRST CIRCUIT
(MARCH 30, 2018)

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

UNITED STATES, EX REL.,

Plaintiff,

SAMUEL DAVID SILVA-RAMIREZ,
on behalf of UNITED STATES OF AMERICA,

*Interested Party-
Appellant,*

v.

HOSPITAL ESPANOL AUXILIO MUTUO DE
PUERTO RICO, INC.; SOCIEDAD ESPANOLA DE
AUXILIO MUTUO Y BENEFICIENCIA DE
PUERTO RICO; ENRIQUE FIERRES-GONZALEZ;
NANCY VOLLBEHR MEND; CONJUGAL
PARTNERSHIP FIERRES-VOLLBEHR; JOSE A.
ISADO-ZARDON; DIANA VIGIL; CONJUGAL
PARTNERSHIP IZADO-VIGIL; ANGEL CORDERO-
SANCHEZ; BERTA CORDERO; CONJUGAL
PARTNERSHIP COCERO-CORDERO; MOISES
SUAREZ-FERNANDEZ; MENDEZ DE SUAREZ;
SOCORRO MENDEZ GARCIA,

Defendants-Appellees,

MIGUEL ECHENIQUE-IPARRAGUIERRE;
DR. ADRIAN COLON-LARACUENTE;

RAMON DELGADO-RUIBAL; LUIS E. CID-
ABRADELO; JANE DOE B; CONJUGAL
PARTNERSHIP ECHENIQUE-DOE B;
JANE DOE E; CONJUGAL PARTNERSHIP
COLON-DOE E; JANE DOE F; CONJUGAL
PARTNERSHIP DELGADO-DOE F; JANE DOE H;
CONJUGAL PARTNERSHIP CID-DOE H,

Defendants.

Nos. 16-1577, 16-2043

JUDGMENT

Entered: March 30, 2018

Before: HOWARD, Chief Judge,
TORRUELLA and KAYATTA, Circuit Judges.

Relator-appellant Samuel David Silva-Ramirez filed a qui tam complaint, alleging that the defendant hospital had obtained federal payments from the United States government in violation of the False Claims Act (FCA). 31 U.S.C. § 3729 *et seq.* Relator amended the complaint three times, but the district court still found the complaint inadequate, and dismissed it for failure to state a claim. These appeals followed. The parties have submitted briefs, and, via separate motion, relator requests oral argument.

Relator contends that, since 1996, the hospital adhered to an undisclosed policy on providing sterilization to patients that was discriminatory on the basis of creed or religion. Relator alleged that the hospital had, years previously, obtained loans under federal programs that required provision of medical services on a non-discriminatory basis. More recently, the hos-

pital is alleged to have submitted documentation to the federal government under the Medicare and Medicaid programs which included certifications of compliance “with the laws and regulations regarding the provision of health care services.” Relator argues that the allegedly discriminatory sterilization policy renders false the Medicare and Medicaid certifications, making the corresponding receipt of payments actionable under the FCA.

The United States Supreme Court recently issued a decision in an FCA case originating in this circuit and concerning federal payments for medical services. *Universal Health Services, Inc. v. United States*, 136 S.Ct. 1989 (2016). The Court explained that, to give rise to a claim under the FCA, an alleged misrepresentation must meet a test of “materiality.” A misrepresentation is material if the government would “attach importance to it” when agreeing to make payment. *Id.* at 2002-2003. The Supreme Court emphasized that the materiality standard was “demanding” and “rigorous,” and would be enforced under the Federal Rules of Civil Procedure by the requirements of plausibility and particularity at the pleading stage. *Id.* at 2003, 2004 & n.6.

The connection between the falsehoods alleged and the payments received according to relator’s complaint is exceedingly attenuated, and falls well short of the “plausibility” requisite to federal pleading. *See Saldivar v. Racine*, 818 F.3d 14, 18, 23 (1st Cir. 2016). We assume, for the sake of argument, that the alleged non-discrimination commitments of the defendant hospital were still operative. Still, the facts alleged do not even subtly indicate that the government would be inclined to withhold Medicare and

Medicaid payments because of a compartmentalized violation of terms under an unrelated loan program that a hospital used many years in the past.

The defense offers a selection of additional arguments in support of the judgment of dismissal, but, in light of the dispositive effect of the materiality standard, we need not address them. To the extent that relator's complaint may be understood to invoke grounds for liability in addition to the FCA, liability has not been plausibly alleged under any alternative theory. The denial of a fourth opportunity to amend the complaint, and the denial of procedural motions to strike or to order production of materials, were well within the proper bounds of the district court's discretion. *See Ayala-Gerena v. Bristol Myers-Squibb Co.*, 95 F.3d 86, 91 (1st Cir. 1996).

The request for oral argument is denied.

The judgment of the district court is summarily affirmed. *See* 1st Cir. Local Rule 27.0(c).

By the Court:

/s/ Margaret Carter
Clerk

cc: Mariana E. Bauza Almonte
Hector E. Ramirez-Carbo
Glenn Carl James Hernandez
Ramon E. Dapena
Juan Antonio Pedrero-Lozada
Pedro J. Manzano-Yates
Nicole Marie Rodriguez-Ugarte
Luis Francisco Colon-Conde

**JUDGMENT OF THE
DISTRICT COURT OF PUERTO RICO
(JULY 22, 2016)**

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

UNITED STATES, Ex. Relator,
SAMUEL DAVID SILVA-RAMIREZ, Relator,

Brings This Action on Behalf of
THE UNITED STATES OF AMERICA,

Plaintiff,

v.

HOSPITAL ESPANOL AUXILIO MUTUO DE
PUERTO RICO, INC.; SOCIEDAD ESPANOLA DE
AUXILIO MUTUO Y BENEFICIENCIA DE
PUERTO RICO; ENRIQUE FIERRES-GONZALEZ,
BY HIM; CONJUGAL PARTNERSHIP OF
ENRIQUE FIERRES-GONZALEZ AND NANCY
FIERRES; NANCY FIERRES, BY HER; DR. JOSE
A. ISADO-ZARDON; DIANA VIGIL; DIANA VIGIL,
BY HER; ANGEL CORDERO-SANCHEZ, BY HIM;
CONJUGAL PARTNERSHIP OF ANGEL
CORDERO-SANCHEZ AND BERTA CORDERO;
BERTA CORDERO, BY HER; CONJUGAL
PARTNERSHIP OF MOISES SUAREZ-
FERNANDEZ AND MENDEZ DE SUAREZ;
MENDEZ DE SUAREZ, BY HER,

Defendants.

Civil 13-1813CCC

Before: Carmen Consuelo CEREZO,
United States District Judge.

For the reasons stated in the Order issued today, it is ORDERED and ADJUDGED that the relator's Third Amended Qui Tarn Complaint (d.e. 52) be and is hereby DISMISSED, with prejudice.

SO ORDERED AND ADJUDGED.

At San Juan, Puerto Rico, on July 22, 2016.

/s/ Carmen Consuelo Cerezo
United States District Judge

**ORDER OF THE
DISTRICT COURT OF PUERTO RICO
(JULY 22, 2016)**

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

UNITED STATES, Ex. Relator,
SAMUEL DAVID SILVA-RAMIREZ, Relator,

Brings This Action on Behalf of
THE UNITED STATES OF AMERICA,

Plaintiff,

v.

HOSPITAL ESPANOL AUXILIO MUTUO DE
PUERTO RICO, INC.; SOCIEDAD ESPANOLA DE
AUXILIO MUTUO Y BENEFICIENCIA DE
PUERTO RICO; ENRIQUE FIERRES-GONZALEZ,
BY HIM; CONJUGAL PARTNERSHIP OF
ENRIQUE FIERRES-GONZALEZ AND NANCY
FIERRES; NANCY FIERRES, BY HER; DR. JOSE
A. ISADO-ZARDON; DIANA VIGIL; DIANA VIGIL,
BY HER; ANGEL CORDERO-SANCHEZ, BY HIM;
CONJUGAL PARTNERSHIP OF ANGEL
CORDERO-SANCHEZ AND BERTA CORDERO;
BERTA CORDERO, BY HER; CONJUGAL
PARTNERSHIP OF MOISES SUAREZ-
FERNANDEZ AND MENDEZ DE SUAREZ;
MENDEZ DE SUAREZ, BY HER,

Defendants.

Civil 13-1813CCC

Before: Carmen CONSUELO CEREZO,
United States District Judge.

On March 31, 2016, the Court issued an Order (d.e. 128) granting the Motion to Dismiss the “Third Amended Qui Tam Complaint” filed by defendants Hospital Espanol Auxilio Mutuo de Puerto Rico, Inc., Sociedad Espanola de Auxilio Mutuo y Beneficencia de Puerto Rico, Enrique Fierres-Gonzalez and his conjugal partnership, Dr. Jose A. Isado-Zardon and his conjugal partnership, Angel Cordero-Sanchez and his conjugal partnership and Moises Suarez-Fernandez and his conjugal partnership (d.e. 70). The following is the statement of reasons in support of that Order.

Statement of Reasons

The Court has carefully reviewed the Third Amended Qui Tam Complaint (Complaint) filed by relator Samuel David Silva-Ramirez on March 19, 2015 (d.e. 52). The first allegation sets forth the jurisdictional grounds as follows:

1. This Honorable Court has jurisdiction over the present actions pursuant to 28 U.S.C. 1331 over federal law claims under 31 U.S.C. § 3729(a)(1)(A), 31 U.S.C. § 3729(a)(1)(B), 31 U.S.C. § 3729(a)(1)(C), 31 U.S.C. § 3729(a)(1)(G), 31 U.S.C. § 3730(h), *United States ex rel. Mikes vs. Straus*, 274 F.3d 687, 697(2d Cir. 2001), 31 U.S.C. § 3729(a)(1)(G); 45 CFR 87.1, 45 CFR 87.2; 42 CFR 53.112; 42 U.S.C. § 708; 42

U.S.C. 300 a-7; 42 U.S.C.A. § 1320a-7b; 42 CFR § 53.154; 42 USC §§ 291 *et seq.*; 42 CFR 124.9(C); 42 CFR 124.4(h) and (i); 24 CFR 242.54; *United States ex. rel. Angela Parato vs. Unadilla Health Care Center, Inc.*, 2010 WL 146877; *United States ex. rel. Hutcheson vs. Blackstone Medical, Inc.*, 647 F.3d 377 (2011); 18 U.S.C.A. § 1347; 21 CFR 9841 Dec 12, 1956; 42 CFR 483.75(b); *Watkins vs. Mercy Medical Hospital*, 520 F.2d 894, 18 U.S.C. § 371, and case law, statutes and regulations stated within this document and others . . . Furthermore, this Honorable Court has jurisdiction over the actions under 31 U.S.C § 3732(a) and 28 USC § 3130 in that this action arises under the laws of [the] United States.

As may be gleaned from the allegation, the relator also included multiple references to the Code of Federal Regulations and case law which are not a basis of federal jurisdiction.

While plaintiff also makes reference at paragraph 3 of the Complaint to his compliance with the provisions of 31 U.S.C. § 3730(b)(2) which requires “that the Complaint is to be filed in camera and remain under seal for a period of at least sixty (60) days and shall not be served on the Hospital Auxilio Mutuo de Puerto Rico, Inc., Sociedad Espanola de Auxilio Mutuo y Beneficiencia de Puerto Rico and other defendants, until the Court so orders [as t]he Government may elect to intervene and proceed with the action within sixty (60) days after it receives both the Complaint and the material evidence and information.” Section 3730 is no longer relevant for on February 18, 2014

the United States declined to intervene in this action (*see d.e. 11*).

Throughout the complaint, relator Samuel Silva-Ramirez claims violations by defendants the Hospital Auxilio Mutuo and four members of its Board of Directors to the False Claims Act, 31 U.S.C. § 3729(a)(1)(A)(B)(C) by allegedly submitting false certifications thereby fraudulently representing to the Department of Health and Human Services that they had complied with statutes, rules and regulations while failing to disclose discrimination by creed in its protocol of sterilization. He alleges at paragraph 33 that these false certifications were made by defendant Hospital Espanol Auxilio Mutuo de Puerto Rico, Inc. (HEAM) to the Department of Health and Human Services after the discriminatory protocol of sterilization was created in 1996 and after it obtained a HUD loan in 1983 and a Hill-Burton grant in 1960. It should be noted that at paragraph 29 relator asserts that the “medical protocol of sterilization that advances religious discrimination was created on June 20, 1996 at the Auxilio Mutuo Hospital” and that before the creation of the “protocol of sterilization. . . in the year 1996 in Auxilio Mutuo Hospital . . . they had no sterilization policy.” *See* ¶ 35. That is, the discriminatory protocol of sterilization, according to the Complaint at paragraphs 29 and 33, was created 36 years after obtaining a Hill-Burton grant, 13 years after receiving the HUD loan, and did not exist at all before 1996. This notwithstanding, it is averred at paragraph 34 that “the Department of Health and Human Services would never have given funds from federal programs to defendants if they knew of the discriminatory protocol of sterilization due to creed,” referring to the HUD

loan and the Hill-Burton program grant used to remodel and/or to construct the hospital's facilities.

Allegations 38, 39, 40 and 41 all refer to 42 C.F.R. § 53.112, which provides that an applicant for a Hill-Burton grant must give assurance that all services of the facility that requests aid under the Act will remain available without discrimination on account of creed. Although the only alleged discrimination on account of creed in the facilities of the Auxilio Mutuo's hospital purportedly stemmed from the discriminatory protocol of sterilization established in 1996, allegations 38 through 41, anchored on violations of 42 C.F.R. § 53.112, fail to mention that at the time of said application and the corresponding assurance there was no sterilization protocol in existence at the Hospital. Additionally, the clear language of § 53.112 requires as a condition of participation that "before an application is recommended by a State agency to the Secretary for approval, the State agency shall obtain an assurance from the applicant that . . . services of the facility for the construction or modernization of which . . . aid is sought will be made available without discrimination on account of creed." Even disregarding the data provided in the Complaint that the "discriminatory sterilization protocol" did not come into existence until 1996, the assurance requirement of § 53.112 refers to a condition of participation imposed on an applicant for a Hill-Burton grant, not to a condition of payment which is a stage subsequent to approvals.

The Complaint, in its allegations 75, 76, 179 and 181, also asserts that false statements and representations were made by defendants when seeking payment from the federal Medicaid and Medicare programs by

certifying in forms CMS-2552-10 that the services therein identified were provided or procured without the payment of kickbacks. These allegations include legal averments such as that the “case law states that it is abundantly clear that AKS [Anti-Kickback Statute] compliance is a precondition of Medicare and Medicaid payment” or that “AKS compliance is regulated pursuant to 1320a-7b(b).” However, the Complaint is devoid of any specific and plausible factual allegations establishing that kickbacks were in fact paid to defendants in order to procure or obtain services from Auxilio Mutuo’s hospital or that the Anti-Kickback statute was infringed in any concrete manner by the defendants.

Given the reasons stated above, the Court concludes that the factual allegations in the relator’s Complaint fail to satisfy the pleading standard of plausibility under Fed. R. Civ. P. 8 as interpreted in *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007) and *Ashcroft v. Iqbal*, 556 U.S. 662 (2009). Thus, it granted defendants’ Motion to Dismiss (d.e. 70) on March 31, 2016 (d.e. 128). Accordingly, judgment will be entered in conformity with the above DISMISSING the relator’s Third Amended Qui Tam Complaint (d.e. 52), with prejudice.

SO ORDERED.

At San Juan, Puerto Rico, on July 22, 2016.

/s/ Carmen Consuelo Cerezo
United States District Judge

**ORDER OF THE
DISTRICT COURT OF PUERTO RICO
(MARCH 31, 2016)**

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

UNITED STATES, Ex. Relator,
SAMUEL DAVID SILVA-RAMIREZ, Relator,

Brings This Action on Behalf of
THE UNITED STATES OF AMERICA,

Plaintiff,

v.

HOSPITAL ESPANOL AUXILIO MUTUO DE
PUERTO RICO, INC.; SOCIEDAD ESPANOLA DE
AUXILIO MUTUO Y BENEFICIENCIA DE
PUERTO RICO, INC.; ENRIQUE FIERRES-
GONZALEZ, BY HIM; CONJUGAL PARTNERSHIP
OF ENRIQUE FIERRES-GONZALEZ AND NANCY
FIERRES; NANCY FIERRES, BY HER; DR. JOSE
A. ISADO-ZARDON; DIANA VIGIL; DIANA VIGIL,
BY HER; ANGEL CORDERO-SANCHEZ, BY HIM;
CONJUGAL PARTNERSHIP OF ANGEL
CORDERO-SANCHEZ AND BERTA CORDERO;
BERTA CORDERO, BY HER; CONJUGAL
PARTNERSHIP OF MOISES SUAREZ-
FERNANDEZ AND MENDEZ DE SUAREZ;
MENDEZ DE SUAREZ, BY HER,

Defendants.

Civil 13-1813CCC

Before: Carmen CONSUELO CEREZO,
United States District Judge.

Having considered the Motion to Dismiss the “Third Amended Qui Tam Complaint” filed by defendants Hospital Espanol Auxilio Mutuo de Puerto Rico, Inc., Sociedad Espanola de Auxilio Mutuo y Beneficiencia de Puerto Rico, Enrique Fierres-Gonzalez and his conjugal partnership, Dr. Jose A. Isado-Zardon and his conjugal partnership, Angel Cordero-Sanchez and his conjugal partnership and Moises Suarez-Fernandez and his conjugal partnership (d.e. 70), the Opposition filed by Relator Samuel David Silva-Ramirez (d.e. 77), defendants’ reply (d.e. 82-1), the Relator’s tendered Sur-Reply (d.e. 85-1), which is ORDERED FILED,¹ and the Relator’s Supplement to the Opposition and Sur-Reply (d.e. 86), said Motion to Dismiss is GRANTED. A statement of reasons and judgment will be issued by separate order.

SO ORDERED.

At San Juan, Puerto Rico, on March 31, 2016.

/s/ Carmen Consuelo Cerezo
United States District Judge

¹ The Relator’s Motion Requesting Leave to File Sur-Reply (d.e. 85) is GRANTED.

**ORDER OF THE FIRST CIRCUIT DENYING
PETITION FOR PANEL REHEARING
(APRIL 20, 2018)**

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

UNITED STATES, Ex Rel.,

Plaintiff,

SAMUEL DAVID SILVA-RAMIREZ,
on behalf of UNITED STATES OF AMERICA,

*Interested Party-
Appellant.*

v.

HOSPITAL ESPANOL AUXILIO MUTUO DE
PUERTO RICO, INC.; SOCIEDAD ESPANOLA DE
AUXILIO MUTUO Y BENEFICIENCIA DE
PUERTO RICO; ENRIQUE FIERRES-GONZALEZ;
NANCY VOLLBEHR MEND; CONJUGAL
PARTNERSHIP FIERRES-VOLLBEHR; JOSE A.
ISADO-ZARDON; DIANA VIGIL; CONJUGAL
PARTNERSHIP IZADO-VIGIL; ANGEL CORDERO-
SANCHEZ; BERTA CORDERO; CONJUGAL
PARTNERSHIP COCERO-CORDERO; MOISES
SUAREZ-FERNANDEZ; MENDEZ DE SUAREZ;
SOCORRO MENDEZ GARCIA,

Defendants-Appellees,

MIGUEL ECHENIQUE-IPARRAGUIERRE;
DR. ADRIAN COLON-LARACUENTE;
RAMON DELGADO-RUIBAL; LUIS E. CID-
ABRADELO; JANE DOE B; CONJUGAL
PARTNERSHIP ECHENIQUE-DOE B;
JANE DOE E; CONJUGAL PARTNERSHIP
COLON-DOE E; JANE DOE F; CONJUGAL
PARTNERSHIP DELGADO-DOE F; JANE DOE H;
CONJUGAL PARTNERSHIP CID-DOE H,

Defendants.

Nos. 16-1577, 16-2043

Before: HOWARD, Chief Judge,
TORRUELLA and KAYATTA, Circuit Judges.

The petition for panel rehearing has been considered by the panel of judges who decided the case, and it is ordered that the petition for panel rehearing be denied.

By the Court:

/s/ Margaret Carter
Clerk

**LETTER FROM JAY OLIN
(APRIL 10, 2015)**

DEPARTMENT OF HEALTH AND HUMAN SERVICES
Centers for Medicare & Medicaid Services
7500 Security Boulevard, Mail Stop N2-20-16
Baltimore, Maryland 21244-1850

Office of Strategic Operations and Regulatory Affairs/
Freedom of Information Group

Refer to: Control Number 100120147004 and PIN 8SB8

Mr. Samuel D. Silva-Ramirez
243 Paris St PMB 1834
San Juan, PR 00917

Dear Mr. Silva-Ramirez:

This letter is the final response to your amended Freedom of information Act (5 U.S.C. § 552) request dated September 9, 2014 to the Department of Health and Human Services (DHHS) requesting the Hospital Cost Reports and the Providers Agreement Documents of Hospital Auxilio Mutuo, San Juan, Puerto Rico since the year 1992 up to 2014.

DHHS forwarded your request to the Centers for Medicare and Medicaid Services (CMS) to search for responsive records. The CMS, New York Regional Office searched for responsive records and released certified copies of the Cost Reports directly to you and forwarded the Provider Agreement documents, a total of 78 pages, to me because of my responsibility under the FOIA. We are releasing certified copies of the Provider Agreement documents to you in their entirety, without deletions.

App.18a

Sincerely yours,

/s/ Jay Olin

Director, Division of FOIA Analysis-C
Freedom of information Group

Enclosure

**MEDICARE ENROLLMENT APPLICATION,
INSTITUTIONAL PROVIDERS—
RELEVANT EXCERPTS**

Section 14: Penalties for Falsifying Information

This section explains the penalties for deliberately furnishing false information in this application to gain or maintain enrollment in the Medicare program.

1. 18 U.S.C. § 1001 authorizes criminal penalties against an individual who, in any matter within the jurisdiction of any department or agency of the United States, knowingly and willfully falsifies, conceals or covers up by any trick, scheme or device a material fact, or makes any false, fictitious, or fraudulent statements or representations, or makes any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry. Individual offenders are subject to fines of up to \$250,000 and imprisonment for up to five years. Offenders that are organizations are subject to fines of up to \$500,000 (18 U.S.C. § 3571). Section 3571(d) also authorizes fines of up to twice the gross gain derived by the offender if it is greater than the amount specifically authorized by the sentencing statute.

2. Section 1128B(a)(1) of the Social Security Act authorizes criminal penalties against any individual who, “knowingly and willfully,” makes or causes to be made any false statement or representation of a material fact in any application for any benefit or payment under a Federal health care program. The offender is subject to fines of up to \$25,000 and/or imprisonment for up to five years.

3. The Civil False Claims Act. 31 U.S.C. § 3729, imposes civil liability, in part, on any person who:

- a) knowingly presents, or causes to be presented, to an officer or any employee of the United States Government a false or fraudulent claim for payment or approval:
- b) 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; or
- c) conspires to defraud the Government by getting a false or fraudulent claim allowed or paid.

The Act imposes a civil penalty of \$5,000 to \$10,000 per violation, plus three times the amount of damages sustained by the Government

4. Section 1128A(a)(1) of the Social Security Act imposes civil liability, in part, on any person (including an organization, agency or other entity) that knowingly presents or causes to be presented to an officer, employee, or agent of the United States, or of any, department or agency thereof, or of any State agency . . . a claim . . . that the Secretary determines is for a medical or other item or service that the person knows or should know:

- a) was not provided as claimed; and/or
- b) the claim is false or fraudulent.

This provision authorizes a civil monetary penalty of up to \$10,000 for each item or service, an assessment of up to three times the amount claimed, and exclusion

from participation in the Medicare program and State health care programs.

5. 18 U.S.C. § 1035 authorizes criminal penalties against individuals in any matter involving a health care benefit program who knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact; or makes any materially false, fictitious, or fraudulent statements or representations, or makes or uses any materially false fictitious, or fraudulent statement or entry, in connection with the delivery of or payment for health care benefits, items or services. The individual shall be fined or imprisoned up to 5 years or both.

6. 18 U.S.C. § 1347 authorizes criminal penalties against individuals who knowing and willfully execute, or attempt, to execute a scheme or artifice to defraud any health care benefit program, or to obtain, by means of false or fraudulent pretenses, representations, or promises, any of the money or property owned by or under the control of any, health care benefit program in connection with the delivery of or payment for health care benefits, items, or services. Individuals shall be fined or imprisoned up to 10 years or both. If the violation results in serious bodily injury, an individual will be fined or imprisoned up to 20 years, or both. If the violation results in death, the individual shall be fined or imprisoned for any term of years or for life, or both.

7. The government may assert common law claims such as “common law fraud,” “money paid by mistake,” and “unjust enrichment” Remedies include compensatory and punitive damages, restitution, and recovery of the amount of the unjust profit.

Section 15: Certification Statement

An AUTHORIZED OFFICIAL means an appointed official (for example, chief executive officer, chief financial officer, general partner, chairman of the board, or direct owner) to whom the organization has granted the legal authority to enroll it in the Medicare program. to make changes or updates to the organization's status in the Medicare program, and to commit the organization to fully abide by the statutes, regulations, and program instructions of the Medicare program,

A DELEGATED OFFICIAL means an individual who is delegated by an authorized official the authority to report changes and updates to the provider's enrollment record. A delegated official must be an individual with an "ownership or control interest in" (as that term is defined in Section 1124(a)(3) of the Social Security Act), or be a W-2 managing employee, of, the provider.

Delegated officials may not delegate their authority to any other individual. Only an authorized official may delegate the authority to make changes and/or updates to the provider's Medicare status. Even when delegated officials are reported in this application, an authorized official retains the authority to make any such changes and/or updates by providing his or her printed name, signature. and date of signature as required in Section 15B.

NOTE: Authorized officials and delegated officials must be reported in Section 6. either on this application or on a previous application to this same Medicare fee-for-service contractor. If this is the first time an

authorized and/or delegated official has been reported on the CMS-855A, you must complete Section 6 for that individual.

By his/her signature(s), an authorized official binds the provider to all of the requirements listed in the Certification Statement and acknowledges that the provider may be denied entry to or revoked from the Medicare program if any requirements are not met. All signatures must be original and in ink. Faxed, photocopied, or stamped signatures will not be accepted.

Only an authorized official has the authority to sign (1) the initial enrollment application on behalf of the provider or (2) the enrollment application that must be submitted as part of the periodic revalidation process. A delegated official does not have this authority.

By signing this application, an authorized official agrees to immediately notify the Medicare fee-for-service contractor if any information furnished on this application is not true, correct, or complete. In addition, an authorized official, by his/her signature, agrees to notify the Medicare fee-for-service contractor of any future changes to the information contained in this form, after the provider is enrolled in Medicare, in accordance with the timeframes established in 42 C.F.R. 424.516(e).

The provider can have as many authorized officials as it wants. If the provider has more than two authorized officials, it should copy and complete this section as needed.

Each authorized and delegated official must have and disclose his/her social security number.

A. Requirements for Medicare Enrollment

These are additional requirements that the provider must meet and maintain in order to bill the Medicare program. Read these requirements carefully. By signing, the provider is attesting to having read the requirements and understanding them.

By his/her signature(s), the authorized official(s) named below and the delegated official(s) named in Section 16 agree to adhere to the following requirements stated in this Certification Statement:

1. I agree to notify the Medicare contractor of any future changes to the information contained in this application in accordance with the time frames established in 42 C.F.R. § 424.516(e). I understand that any change in the business structure of this provider may require the submission of a new application.
2. I have read and understand the Penalties for Falsifying Information, as printed in this application. I understand that any deliberate omission, misrepresentation, or falsification of any information contained in this application or contained in any communication supplying information to Medicare. or any deliberate alteration of any text on this application form, may be punished by criminal, civil, or administrative penalties including, but not limited to, the denial or revocation of Medicare billing privileges, and/or the imposition of fines, civil damages, and/or imprisonment,

3. I agree to abide by the Medicare laws, regulations and program instructions that apply to this provider. The Medicare laws, regulations, and program instructions are available through the Medicare contractor. I understand that payment of a claim by Medicare is conditioned upon the claim and the underlying transaction complying with such laws, regulations, and program instructions (including, but not limited to, the Federal anti-kickback statute and the Stark law), and on the provider's compliance with all applicable conditions of participation in Medicare.
4. Neither this provider, nor any physician owner or investor or any other owner, partner, officer, director, managing employee, authorized official, or delegated official thereof is currently sanctioned, suspended, debarred, or excluded by the Medicare or State Health Care Program, *e.g.*, Medicaid program, or any other Federal program, or is otherwise prohibited from supplying services to Medicare or other Federal program beneficiaries.
5. I agree that any existing or future overpayment made to the provider by the Medicare program may be recouped by Medicare through the withholding of future payments.
6. I will not knowingly present or cause to be presented a false or fraudulent claim for payment by Medicare, and I will not submit claims with deliberate ignorance or reckless disregard of their truth or falsity.

7. I authorize any national accrediting body whose standards are recognized by the Secretary as meeting the Medicare program participation requirements, to release to any authorized representative, employee, or agent of the Centers for Medicare & Medicaid Services (CMS), a copy of my most recent accreditation survey, together with any information related to the survey that CMS may require (including corrective action plans).

B. 1st Authorized Official Signature

I have read the contents of this application. My signature legally and financially binds this provider to the laws, regulations, and program instructions of the Medicare program. By my signature, I certify that the information Contained herein is true, correct, and complete, and I authorize the Medicare fee-for-service contractor to verify this information. If I become aware that any information in this application is not true, correct, or complete, I agree to notify the Medicare fee-for-service contactor of this fact in accordance with the time frames established in 42 CFR § 424520(b).

If you are changing, adding, or deleting information, check the applicable box, furnish the effective date, and complete the appropriate fields in this section.

- Change
Date: 02/03/2014

Authorized Official's Information and Signature

First Name: Angel

Last Name: Cocero

Telephone Number: (787) 758-2000

Title/Position: Board of Director President

/s/ Angel Cocero

Authorized Official Signature

2/25/2014

C. 2nd Authorized Official Signature

I have read the contents of this application. My signature legally and financially binds this provider to the laws, regulations, and program instructions of the Medicare program. By my signature, I certify that the information contained herein is true, correct, and complete, and I authorize the Medicare fee-for-service contractor to verify this information. If I become aware that any information in this application is not true, correct, or complete. I agree to notify the Medicare fee-for-service contractor of this fact in accordance with the time frames established in 42 CFR § 424.520(b).

If you are changing, adding, or deleting information, check the applicable box, furnish the effective date, and complete the appropriate fields in this section.

- Change

Date: 02/03/2014

Authorized Official's Information and Signature

First Name: Jorge

Middle Name: L

Last Name: Matta

Suffix (e.g., Jr., Sr.): MHSA

Telephone Number: (787) 758-2000

Title/Position: Administrator

/s/ Jorge L. Matta

Authorized Official Signature

2/25/2014

All signatures must be original and signed in ink. Applications with signatures deemed not original will not be processed. Stamped, faxed or copied signatures will not be accepted.

Section 16: Delegated official(s) (Optional)

- You are not required to have a delegated official. However, if no delegated official is assigned, the authorized official(s) will be the only person(s) who can make changes and/or updates to the provider's status in the Medicare program.
- The signature of a delegated official shall have the same force and effect as that of an authorized official, and shall legally and financially bind the provider to the laws, regulations, and program instructions of the Medicare program. By his or her signature, the delegated official certifies that he or she has read the Certification Statement in

Section 15 and agrees to adhere to all of the stated requirements. The delegated official also certifies that he/she meets the definition of a delegated official. When making changes and/or updates to the provider's enrollment information maintained by the Medicare program, the delegated official certifies that the information provided is true, correct, and complete.

- Delegated officials being deleted do not have to sign or date this application.
- Independent contractors are not considered "employed" by the provider and, therefore, cannot be delegated officials.
- The signature(s) of an authorized official in Section 16 constitutes a legal delegation of authority to any and all delegated official(s) assigned in Section 16.
- If there are more than two individuals, copy and complete this section for each individual.

A. 1st Delegated Official Signature

If you are changing, adding, or deleting information, check the applicable box, furnish the effective date, and complete the appropriate fields in this section.

- Change
Date: 02/03/2014

App.30a

Authorized Official's Information and Signature

Delegated Official First Name: Rafael

Last Name: Jaca

Telephone Number: (787) 771-7934

Authorized Official Signature (First, Middle,
Last Name, Jr., Sr., M.D., D.O., etc.)

/s/ Rafael Jaca

Authorized Official Signature

2/25/2014

- Delegated Official is a W-2 Employee

**MOTION SUBMITTING DOCUMENTS
TRANSLATED TO ENGLISH
(APRIL 22, 2016)**

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

UNITED STATES OF AMERICA, Ex. Relator,
SAMUEL DAVID SILVA-RAMIREZ, Relator,

Brings This Action on Behalf of
THE UNITED STATES OF AMERICA,

Plaintiff,

v.

HOSPITAL ESPANOL AUXILIO MUTUO DE
PUERTO RICO, INC. ET. ALS.,

Defendants.

Civil Num. 13-CV-1813 (CCC)

COMES NOW, Relator on behalf of plaintiff through its (his) undersigned attorney and very respectfully states, alleges and prays:

1. At docket 98, relator filed a motion requesting an extension of time in order to submit translations until April 22, 2016. The Honorable Court granted it at docket 106.

2. Plaintiff hereby attached the documents translated.

3. The documents translated form part of the Exhibits attached at docket 97.

WHEREFORE, the appearing party requests to the Honorable Court to accept the documents translated.

I HEREBY CERTIFY: that a true and exact copy of this document was forwarded by regular mail to Assistant U.S. Attorney Hector E. Ramirez Carbo, U.S. Department of Justice, Torre Chardon, Suite 1201, 350 Carlos Chardon Street, San Juan, P.R. 00918; Marie V. Bonkowski, Senior Trial Counsel, Commercial Litigation Branch, Civil Division, 601 D. Street, N.W., Room 9116, Washington, D.C., 20004.

In San Juan, Puerto Rico, 22th of April, 2016.

/s/ Glenn Carl James, Esq.

USDC-PR 207,706

JAMES LAW OFFICE

PMB 501

1353 Ave. Luis Vigoreaux

Guaynabo, PR 00966-2700

Tel. (787)763-2888

E-mail:

jameslawoffices@centennialpr.net

glennccarljameslawoffices@gmail.com

EXHIBIT LIST

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

UNITED STATES OF AMERICA, Ex. Relator,
SAMUEL DAVID SILVA-RAMIREZ, Relator,

Brings This Action on Behalf of
THE UNITED STATES OF AMERICA,

Plaintiff,

v.

HOSPITAL ESPANOL AUXILIO MUTUO DE
PUERTO RICO, INC. ET. ALS.,

Defendants.

Civil Num. 13-CV-1813 (CCC)

Plaintiff Demands Trial by Jury

- Exhibit 1 Medical Record of Elizabeth Morales
- Exhibit 2 Medical Record of Yelena Padilla Bengochea
- Exhibit 3 Medical Record of Elizabeth Agosto
- Exhibit 4 Medical Record of Moraima Ocasio
- Exhibit 5 Medical Record Marisol Morales

**DR. SILVA'S MEMORANDUM REGARDING
ELIZABETH MORALES
(SEPTEMBER 19, 2002)**

I, Carlos Lao Davila, a Federally certified interpreter, number 03-052, hereby certify that the attached document is a true and exact translation of the original

**HOSPITAL AUXILIO MUTUO
RISK MANAGEMENT
(787) 758-2000 EXT. 3110**

FAX TRANSMITTAL SHEET

**TO: DR. SAMUEL SILVA
FROM: BRENDA LEE ROSA MARTINEZ, MHSA
FAX NUMBER: (787) [HW] 753-5034
DATE: SEPTEMBER 19, 2002
TOTAL PAGE INCLUDING COVER: 3**

RE: ELIZABETH MORALES

**DELIVER TO DR. SILVA
PLEASE CALL WHEN YOU RECEIVE THE FAX
DEAR DOCTOR SILVA:**

**THROUGH THIS DOCUMENT YOU ARE
INFORMED THAT THE REQUEST FOR STERILIZA-
TION OF PATIENT ELIZABETH MORALES WAS
NOT APPROVED**

**SINCERELY,
[Illegible signature]
BRENDA LEE ROSA MARTINEZ, MHSA
RISK ADMINISTRATION MANAGER**

I, Carlos Lao Davila, a Federally certified interpreter, number 03-052, hereby certify that the attached document is a true and exact translation of the original

Hato Rey OB-GYN CENTER
HR OB-GYN

Date: 8/07/02

Patient Name: Elizabeth Morales

Pregnancy Number: 03

Live Babies: 01

Miscarriages: 01

Stillborn:

Systematic Illnesses: B. asthma, Endometriosis

RISK MANAGEMENT

Samuel D. Silva Ramirez

2002 SEP 12 A 11:28

151 America St Floral Park

Hato Rey, Puerto Rico 00917

Off. 753-2015/Fax. 753-5034

Allergies: ()

Surgeries: [illegible]

Pregnancy complications and Risks:

Medical Reason for Sterilization:

[Illegible] document of patient [illegible]

Delivery Date: 9/27/02

Date of Elective Cesarean: 9118/02

To Whom It May Concern:

Please authorize sterilization for this patient who will give birth vaginally/elective cesarean in the Auxilio Mutuo Hospital.

App.36a

Thanks!

[Illegible]

9/16/2002

The reason for the sterilization is not medical.
[Illegible] I think that if your want sterilization you
can do so somewhere else after the birth. [Illegible]
Claribel [Illegible]

Dr. Samuel D. Silva Ramirez 12,158

[Illegible]

**LETTER TO MARILINA SIERRA
(JULY 21, 1997)**

U.S. DEPARTMENT OF HEALTH & HUMAN SERVICES
Health Resources & Services Administration
New York HRSA Field Office
26 Federal Plaza, RM. 3337
New York, New York 1027B

Marilina Sierra
Director, Financial Department
Auxilio Mutuo hospital
Apartado 1227
Hato Rey, PR 00919-1227

Re: Hill Burton ID # 720025

Dear Ms. Sierra;

This letter is an reference to the Hill-Burton uncompensated services substantial compliance review conducted on Auxilio Mutuo hospital's records covering Fiscal year 1996.

Your facility is Certified as having provided \$981,591 in creditable uncompensated services in Fiscal year 1996; Enclosed for your information is a subsequent substantial compliance summary which shows the amounts credited for the year reviewed. It also shows how excess and deficit amounts have accumulated, as adjusted by the consumer price index. As of the end of Fiscal year 1996, your facility has an accumulated excess of \$216,800. The hospital's 20 year eligible use period has an expiration date of April 29, 1995. The accumulated excess through the

end of Fiscal year 1996 is more than sufficient to place the hospital in buy-out status.

Therefore, Auxilio Mutuo Hospital is Certified as having completed its uncompensated services obligation and is no longer required to provide uncompensated services in accordance with subpart F of the regulations. However please be advised that your facility's community services obligations, as specified in Subpart G of the regulations, remains in effect in perpetuity. Further information on your facility's community services obligations can be obtained from the office for civil rights, the agency which administrator this portion of the regulations. If you have any questions concerning the community service assurance, the office for civil rights toll free number 1-800-942-5577.

Any records pertinent to the provision of uncompensated services for the period covered by this review must be maintained for a minimum of 180 days from the date of this letter. If you wish to appeal this certification decision, you may do so by writing to Dr. Joseph O'Neill; Director, Bureau of health Resources Development, Parklawn Building, 5600 Fishers lane, Rockville, Maryland 20857, Within 60 days of receipt of this decision.

Should you have any question concerning the audit findings, please contact Steven Wong at (212) 264-3354.

Sincerely,

/s/ Mark Siegel

Senior Health Facilities Consultant

**HOSPITAL AUXILIO MUTUO—PROTOCOL FOR
STERILIZATION OF PATIENTS
(MARCH 25, 2016)**

Purpose:

Establish the steps to follow in the cases where the doctor considers it medically indicated to carry out a sterilization.

Procedure:

Introduction:

Every doctor that considers it necessary to carry out this procedure on his patient must comply with the following the following steps:

1. File a request for approval to carry out the procedure of sterilization by an official letter to the Head of the OB-Gyn Department. The same should include the following information:
 - a. Name of the patient with the two last names.
 - b. Age
 - c. Number of pregnancies, abortions
 - d. Risks/complications of the patient
 - e. Other medical reasons to effect said procedure.
2. The doctor shall file said request at least two (2) months in advance, a reasonable time so that the Ethics Committee can process the same,

3. The doctor shall advise the patient about the process to be followed for the consideration of the request.
4. The request has to be accompanied by a letter from the priest/pastor of the patient's parish, where approval is given, after the appropriate religious orientation.
5. The doctor refers both letters to the Head of the OB-Gyn Department for its endorsement. It will be the Head of the Obstetrics and Gynecology who refers said correspondence to the Ethics Committee.
6. The Ethics Committee will refer the petition to the Head of the OB-Gyn Department to the Sister Servant of the Religious Community and the Medical Director of the Institution for the corresponding approval.
7. The Ethics Committee will proceed with the final consideration of the request for approval or denial and will notify the head doctor of its determination to that regard.
8. The Ethics Committee will send a copy of its decision to the Head of the Department, Operations Room and the institutional personnel that intervened in the process.
9. The Ethics Committee will receive a report in its regular meeting of the proceedings held during the previous month. Said Committee will maintain a register of the patients and the head doctors that effected the procedures and of the cases that were denied.

App.41a

Approved by:

(Illegible signature)
Adrian Colon Laracuente, MD
Head, OB-Gyn Department

June 20, 1996
Date of Approval

(Illegible signature)
Ibrahim Perez, MD
Medical Director

June 20, 1996

(Illegible signature)
Angel L. Rivera, MD
President, Ethics Committee

June 20, 1996

(Illegible signature)
Sister Juanita Flores, HC
Sister Servant Religious Community

June 20, 1996