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PAUL J. FISHMAN  
United States Attorney  
ELIZABETH A. PASCAL  
Assistant U.S. Attorney  
Camden Federal Building  
and U.S. Courthouse  
401 Market Street  
P.O. Box 2098  
Camden, NJ 08101  
(856) 757-5105  
United States of America  
substituted for Defendants  
Eric Chang, D.O.,  
Neil Kaplitz, M.D.,  
Eric K. Yahav, M.D.,  
Mercy Amua-Quarshie, M.D.,  
Antoinette Falconi McCahill, CNM,  
and CAMcare Health Corporation

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY

MARY O. MENDEZ, Individually	:	
and as Mother of the Decedent	:	
in her own Right and as	:	
Administratrix of the Estate	:	HONORABLE NOEL L. HILLMAN
of Bryan Jadiel Mendez,	:	
Deceased, et al.,	:	
	:	
Plaintiffs,	:	Civil Action No. 13-2274 (NLH)(AMD)
	:	
v.	:	
	:	NOTICE OF MOTION TO DISMISS THE
ERIC CHANG, D.O.,	:	COMPLAINT AS TO DEFENDANT UNITED
et al.,	:	STATES FOR LACK OF SUBJECT MATTER
	:	JURISDICTION
Defendants.	:	
	:	

To: Clerk of the Court

Loren Finesmith, Esquire  
2915 North 5th Street  
Philadelphia, PA 19133  
Counsel for Plaintiffs

Carolyn R. Sleeper, Esquire  
Parker McCay, P.A.  
9000 Midlantic Drive, Suite 3000  
P.O. Box 5054  
Mount Laurel, NJ 08054-1539  
Counsel for the Cooper Defendants

PLEASE TAKE NOTICE that on May 20, 2013, Defendant United States shall move before the Honorable Noel L. Hillman, United States District Judge, sitting at the Mitchell H. Cohen U.S. Courthouse, One John F. Gerry Plaza, Fourth and Cooper Streets, Camden, New Jersey, for entry of an Order dismissing the Complaint pursuant to Federal Rule of Civil Procedure 12(b)(1) as to Defendant United States of America, substituted for Defendants Eric Chang, D.O., Neil Kaplitz, M.D., Eric K. Yahav, M.D., Mercy Amua-Quarshie, M.D., Antoinette Falconi McCahill, CNM, and CAMcare Health Corporation, on the grounds that the Court lacks subject matter jurisdiction because Plaintiffs failed to exhaust administrative remedies under the Federal Tort Claims Act.

PLEASE TAKE NOTICE that in support of the motion, Defendant United States shall rely on the Declaration of Meredith Torres and the exhibits attached thereto, as well as the accompanying brief. A proposed order is also submitted.

PAUL J. FISHMAN  
United States Attorney

s/Elizabeth A. Pascal  
By: ELIZABETH A. PASCAL  
Assistant U.S. Attorney

Dated: April 16, 2013

PAUL J. FISHMAN  
 United States Attorney  
 ELIZABETH A. PASCAL  
 Assistant U.S. Attorney  
 Camden Federal Building  
 and U.S. Courthouse  
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Deceased, et al.,	:	
	:	
Plaintiffs,	:	Civil Action No. 13-2274 (NLH)(AMD)
	:	
v.	:	
	:	
ERIC CHANG, D.O.,	:	<b>MOTION RETURN DATE: MAY 20, 2013</b>
et al.,	:	
	:	
Defendants.	:	
	:	

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BRIEF IN SUPPORT OF DEFENDANT UNITED STATES' MOTION TO  
 DISMISS THE COMPLAINT PURSUANT TO FED. R. CIV. P. 12(b)(1)

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On the Brief:

ELIZABETH A. PASCAL  
 Assistant U.S. Attorney

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STATEMENT OF THE CASE

On July 20, 2012, Plaintiffs Mary Mendez, Edwin Galarza, and Milatzy Mendez ("Plaintiffs") filed the present matter in the New Jersey Superior Court, Law Division, against multiple defendants seeking damages they allegedly sustained as the direct and proximate result of the Defendants' negligence (i.e., medical malpractice). See Dkt. Entry 1, Ex. A. In the Complaint, Plaintiffs named the following federal employees as defendants: Eric Chang, D.O., Neil Kaplitz, M.D., Eric K. Yahav, M.D., Mercy Amua-Quarshie, M.D., Antoinette Falconi McCahill, CNM, and CAMcare Health Corporation. Plaintiffs allege that Dr. Chang, Dr. Kaplitz, Dr. Yahav, Dr. Amua-Quarshie, and Nurse Practitioner Falconi McCahill, negligently provided Mary Mendez prenatal care. See id., Ex. A, ¶¶ 32-37. Plaintiffs further allege that Dr. Chang negligently provided Mary Mendez medical care during the labor and delivery of her and Edwin Galarza's son, Bryan Jadiel Mendez. See id. ¶¶ 42-45, 47-63.

On April 11, 2013, this action was removed to the United States District Court for the District of New Jersey. At that time, the United States of America was substituted for Defendants Eric Chang, D.O., Neil Kaplitz, M.D., Eric K. Yahav, M.D., Mercy Amua-Quarshie, M.D., Antoinette Falconi McCahill, CNM, and CAMcare Health Corporation as the proper party defendant, pursuant to 28 U.S.C. § 2679(d)(1) and 42 U.S.C. § 233(c) and (g), with respect to all claims set forth against those parties in the Complaint. See

Dkt. Entry 1 (Notice of Removal), Ex. C (Scope Certification). Because Dr. Chang, Dr. Kaplitz, Dr. Yahav, Dr. Amua-Quarshie, Nurse Practitioner Falconi McCahill, and CAMcare Health Corporation were within the scope of their employment at the time of the events alleged against them in the Complaint, Plaintiff's exclusive remedy is against the United States under the Federal Tort Claims Act ("FTCA").

Defendant United States now moves to dismiss the Complaint against it for lack of subject matter jurisdiction under Federal Rule of Civil Procedure 12(b)(1) because Plaintiffs have failed to exhaust administrative remedies as required under the FTCA prior to filing suit against the United States. See Declaration of Meredith Torres ¶¶ 1-4.



ARGUMENT

THIS COURT SHOULD DISMISS PLAINTIFF'S COMPLAINT AGAINST DEFENDANT UNITED STATES BECAUSE PLAINTIFFS FAILED TO EXHAUST ADMINISTRATIVE REMEDIES UNDER THE FTCA.

The FTCA requires a party allegedly harmed by the negligence of a federal government employee to first present an administrative claim to the appropriate federal agency, and that agency must be given an opportunity to act on that claim before the injured party is authorized to bring suit. See 28 U.S.C. § 2675(a). In this case, Plaintiffs filed the present lawsuit without filing an administrative claim with the Department of Health and Human Services ("HHS").<sup>1</sup> See Declaration of Meredith Torres ¶¶ 1-4. Accordingly, this Court lacks subject matter jurisdiction over Plaintiffs' claims against Defendant United States, and therefore, the Complaint against it should be dismissed. See, e.g., Bass v. United States Dep't of Health & Human Servs., No. 11-1071, 2011 WL 4020968, at \*2 (D.N.J. Sept. 8, 2011); Dais v. Paterson Cmty. Health Ctr., No. 10-04099, 2011 WL 1467210, at \*1 (D.N.J. Apr. 18, 2011); Garcia v. United States, No. 06-2136, 2006 WL 1797497, at \*1-2 (D.N.J. June 28, 2006).

It is axiomatic that the federal government, "as sovereign, 'is immune from suit save as it consents to be sued . . . and the terms

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<sup>1</sup> HHS oversees the programs for federally supported health centers under the Federally Supported Health Centers Assistance Act ("FSHCAA") of 1992 and 1995. 42 U.S.C. § 233(a)-(n).

of its consent to be sued in any court define that court's jurisdiction to entertain the suit.'" United States v. Testan, 424 U.S. 392, 399 (1976) (quoting United States v. Sherwood, 312 U.S. 584, 586 (1941)); Bialowas v. United States, 443 F.2d 1047, 1048-49 (3d Cir. 1971). Absent a specific waiver of sovereign immunity, the courts lack subject matter jurisdiction over claims against the federal government and its agencies. See, e.g., United States v. Dalm, 494 U.S. 596, 608 (1990); In re Univ. Med. Ctr., 973 F.2d 1065, 1085 (3d Cir. 1992) (citations omitted); Jaffee v. United States, 592 F.2d 712, 718 (3d Cir. 1979); Calderon v. United States Dep't of Agric., 756 F. Supp. 181, 183 (D.N.J. 1990).

Common law tort claims against the federal government and its employees are governed by the FTCA, codified at 28 U.S.C. §§ 1346(b), 2401(b), 2671 to 2680. The FTCA is a limited, qualified waiver of sovereign immunity. The Act permits an action against the United States itself for the alleged wrongful acts or omissions of federal employees acting within the scope of their employment. Suit against the United States under the FTCA provides the exclusive remedy for such alleged wrongful conduct. 28 U.S.C. § 2679(b)(1).

Any action under the FTCA requires scrupulous adherence to all of the FTCA's terms and procedural requirements. Because the FTCA represents a conditional, limited waiver of sovereign immunity, these statutory requirements are jurisdictional and cannot be waived. See, e.g., Roma v. United States, 344 F.3d 352, 362 (3d Cir. 2003); Livera v. First Nat'l State Bank, 879 F.2d 1186, 1194-95 (3d Cir. 1989);

Bradley v. United States, 856 F.2d 575, 577-79 (3d Cir. 1988),  
vacated on other grounds, 490 U.S. 1002 (1989); Bialowas, 443 F.2d at  
1049 (citations omitted).

In 28 U.S.C. § 2401(b), Congress has specifically provided that:

(b) A tort claim against the United States shall  
be forever barred unless it is presented in  
writing to the appropriate Federal agency within  
two years after such claim accrues . . . .

(emphasis added). The requirement that an administrative claim first  
be submitted to the federal agency in question, as a precondition to  
a tort suit against the United States, is reiterated at 28 U.S.C. §  
2675(a):

An action shall not be instituted upon a claim  
against the United States for money damages for  
injury or loss of property or personal injury or  
death caused by the negligent or wrongful act or  
omission of any employee of the Government while  
acting with the scope of his office or  
employment unless the claimant shall have first  
presented the claim to the appropriate Federal  
agency and his claim shall have been finally  
denied by the agency in writing and sent by  
certified or registered mail. The failure of an  
agency to make a final disposition of a claim  
within six months after it is filed, shall at  
the option of the claimant any time thereafter,  
be deemed a final denial of the claim for  
purposes of this section.

By requiring the filing of an administrative claim, Congress  
intended to "ease court congestion and avoid unnecessary litigation,  
while making it possible for the Government to expedite the fair  
settlement of tort claims asserted against the United States.'" Tucker v. United States, 676 F.2d 954, 958 (3d Cir. 1982) (quoting S.

Rep. No. 1327, 89th Cong., 2d Sess. 6, reprinted in 1966 U.S.S.C.A.N. 2515, 2516); see also McNeil v. United States, 508 U.S. 106, 112 n.8 (1993).

These provisions are clear and mandatory. McNeil, 508 U.S. at 111-13; Melo v. United States, 505 F.2d 1026, 1028 (8th Cir. 1974). Every tort claim against the United States first must be presented to the federal agency concerned, within two years after the claim accrues, as a condition precedent to suit. Bernard v. U.S. Lines, Inc., 475 F.2d 1134, 1136 (4th Cir. 1973); Claremont Aircraft, Inc. v. United States, 420 F.2d 896, 897 (9th Cir. 1969). If a plaintiff files suit without first having submitted a timely claim for administrative adjustment, the suit must be dismissed. McNeil, 508 U.S. at 112-13; Bernard, 475 F.2d at 1136; Wilder v. Luzinski, 123 F. Supp. 2d 312, 313-14 (E.D. Pa. 2000).

Here, Plaintiffs have failed to comply with the straightforward statutory requirement of § 2675(a); that is, before commencing an action, a plaintiff must present a timely written claim to the appropriate federal agency and the agency must be afforded at least six months to consider the claim. See Declaration of Meredith Torres ¶¶ 1-4. Accordingly, the Complaint against Defendant United States must be dismissed for lack of subject matter jurisdiction.

CONCLUSION

For the reasons set forth above, Defendant United States respectfully requests that this Court dismiss the Complaint against it for lack of subject matter jurisdiction.

Respectfully submitted,

PAUL J. FISHMAN  
United States Attorney

s/Elizabeth A. Pascal  
By: ELIZABETH A. PASCAL  
Assistant U.S. Attorney

Date: April 16, 2013

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY

Mary O. Mendez and Edwin Galarza, )  
Individually and Parents of the Decedent for the )  
Estate of Bryan Jadiel Mendez, Deceased )  
and Milatzy Mendez, )

Plaintiffs, )

v. )

Case No. 13-2274 (NLH) (AMD)

Eric Chang, D.O., )  
Dr. C. Aves, )  
Dr. Crawford, )  
Neil Kaplitz, M.D., )  
Eric K. Yahav, M.D., )  
Mercy Amua-Quarshie, M.D., )  
Antoinette Falconi McCahill, RNNP, )  
Dhiren Soni, D.O., )  
Dr. John/Jane Doe Anesthesiologist, )  
Suzanne Panayiotou, )  
Ms. Murphy, R.N., )  
Ms. Kelley, R.N., )  
Joanne Keally, R.N., )  
Ms./Mr. Profico, R.N., )  
Ms./Mr. Chavous-Gibson, R.N., )  
Ms./Mr. Nece, R.N., )  
Ms. Ward, R.N., )  
Ms./Mr. Alice, R.N., )  
Ms./Mr. Holmes a/k/a Ms./Mr. Helmes, R.N., )  
Kellyann Carter, R.N., )  
John/Jane Doe., R.N., Nos. 1-10, )  
Camcare a/k/a Camcare OB/GYN, )  
Cooper University Hospital, )  
University of Medicine and )  
Dentistry of New Jersey-Robert Wood Johnson )  
Medical School d/b/a Cooper University Hospital, )  
Cooper Anesthesia Associates, P.C., )  
and Cooper University Physicians, )

Defendants. )

-2-

DECLARATION OF  
MEREDITH TORRES

1. I am a Senior Attorney in the General Law Division, Office of the General Counsel, Department of Health and Human Services (the "Department"). I am familiar with the official records of administrative tort claims maintained by the Department as well as with the system by which those records are maintained.

2. The Department has a Claims Branch that maintains in a computerized database a record of administrative tort claims filed with the Department, including those filed with respect to federally supported health centers that have been deemed to be eligible for Federal Tort Claims Act malpractice coverage.

3. As a consequence, if a tort claim had been filed with the Department with respect to Camcare Health Corporation, its approved delivery sites, or its employees or qualified contractors, a record of that filing would be maintained in the Claims Branch's database.

4. I caused a search of the Claims Branch's database to be conducted and found no record of an administrative tort claim filed by Mary O. Mendez, Edwin Galarza, Milatzy Mendez, Bryan Jadiel Mendez, or an authorized representative relating to Camcare Health Corporation, Dr. Mercy Amua-Quarshie, Dr. Eric Chang, Antoinette Falconi-McCahill, CNM, Dr. Neil Kaplitz and/or Dr. Eric Yahav.

5. I have also reviewed official agency records and determined that Camcare Health Corporation was deemed eligible for Federal Tort Claims Act malpractice coverage effective January 1, 2009, and that its coverage has continued without interruption since that time. The Secretary of Health and Human Services' authority to deem entities as Public Health Service

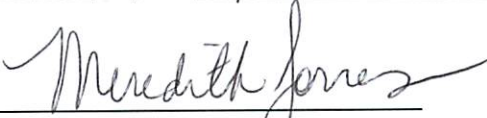
-3-

employees under 42 U.S.C. § 233(g) has been delegated to the Associate Administrator, Bureau of Primary Health Care, Health Resources and Services Administration. Copies of the notifications by the Associate Administrator, Bureau of Primary Health Care, Health Resources and Services Administration, Department of Health and Human Services, to Camcare Health Corporation are attached to this declaration as Exhibit 1.

6. Official agency records further indicate that Dr. Mercy Amua-Quarshie, Dr. Eric Chang, Antoinette Falconi-McCahill, CNM, Dr. Neil Kaplitz and Dr. Eric Yahav, were employees of Camcare Health Corporation at all times relevant to the complaint in this case.

I declare under penalty of perjury that the foregoing is true and correct. 28 U.S.C. § 1746.

Dated at Washington, D.C., this 14<sup>th</sup> day of March, 2013.

  
\_\_\_\_\_  
MEREDITH TORRES  
Senior Attorney, Claims and Employment Law Branch  
General Law Division  
Office of the General Counsel  
Department of Health and Human Services



# Exhibit 1



DEPARTMENT OF HEALTH & HUMAN SERVICES

Health Resources and Services  
Administration

DEC 16 2008

Bureau of Primary Health Care  
Rockville MD 20857

Executive Director  
CAMcare Health Corporation  
UDS# 021280  
817 Federal Street  
Camden, NJ 08103

Reference: Malpractice Liability Coverage - Renewal Health  
Center Deeming Letter Coverage Effective  
January 1, 2009 through December 31, 2009

Dear Executive Director:

The Health Resources and Services Administration (HRSA) in accordance with Section 224(g) of the Public Health Service (PHS) Act, 42 U.S.C. §233(g), as amended by the Federally Supported Health Centers Assistance Act of 1995 (FSHCAA), (P.L. 104-73), deems the above named entity to be an employee of the PHS, for the purposes of section 224, effective January 1, 2009. Section 224(a) provides liability protection under the Federal Tort Claims Act (FTCA) for damage for personal injury, including death, resulting from the performance of medical, surgical, dental, and related functions and is exclusive of any other civil action or proceeding.

The 1995 amendments to FSHCAA clarified that FTCA coverage extends to deemed health centers and their: (1) officers; (2) governing board members; (3) full- and part-time health center employees; (4) licensed or certified health care practitioner contractors (who are not corporations) providing full-time services (i.e., on average at least 32 ½ hours per week); and (5) licensed or certified health care practitioner contractors (who are not corporations) providing part-time services in the fields of family practice, general internal medicine, general pediatrics, or obstetrics/gynecology. Volunteers are neither employees nor contractors and, therefore, are not eligible for FTCA coverage.

In addition, FTCA coverage is comparable to an "occurrence" policy without a monetary cap. Therefore, any coverage limits that may be mandated by other organizations are met.

This action is based on the assurances provided in your FTCA deeming application, as required under 42 U.S.C. §233(h), with regard to: (1) implementation of appropriate policies and procedures to reduce the risk of malpractice; (2) implementation of a system whereby professional credentials and privileges, references, claims history, fitness, professional review organization findings, and licensure status of health professionals are reviewed and verified; (3) cooperation with the Department of Justice (DOJ) in the defense of claims and actions to prevent claims in the future; and (4) cooperation with DOJ in providing information related to previous malpractice claims history.

Deemed health centers must continue to receive funding under Section 330 of the PHS Act, 42 U.S.C. §254(b), in order to maintain FTCA coverage. If the deemed entity loses its Section 330 funding, its coverage under the FTCA will end immediately upon termination of the grant.

In addition to the FTCA statutory and regulatory requirements, every deemed health center is expected to follow HRSA's FTCA-related policies and procedures included on the enclosed list. These documents can be found online at <http://www.bphc.hrsa.gov/pinspals/default.htm>.

For further information, please contact the Office of Quality and Data at 301-594-0818.

Sincerely,

*Donald L. Blum, M.D.*

*for* James Macrae  
Associate Administrator

Enclosure

**Health Resources and Services Administration  
Federal Tort Claims Act (FTCA)-Related  
Program Assistance Letters (PALs)  
And  
Policy Information Notices (PINs)**


This list highlights the PALs and PINs most relevant for FTCA-related matters. Please consult HRSA's Web Site at <http://www.bphc.hrsa.gov/pinspals/default.htm> for a listing of all HRSA PALs and PINs.


**PALs**

- 1999-15 Questions and Answers on the Federal Tort Claims Act Coverage for Section 330 Deemed Grantees
- 2005-01 Federal Tort Claims Act Policy Clarification on Coverage of Corporations Under Contract with Health Centers


**PINs**


- 1999-08 Health Centers and the Federal Tort Claims Act
- 2001-11 Clarification of Policy for Health Centers Deemed Covered Under the Federal Tort Claims Act for Medical Malpractice
- 2001-16 Credentialing and Privileging of Health Center Practitioners
- 2001-19 Procedure for Handling Subpoenas and Other Requests for Testimony of Health Center Employees in Private Litigation
- 2002-07 Scope of Project Policy
- 2002-22 Clarification of Bureau of Primary Health Care Credentialing and Privileging Policy Outlined in Policy Information Notice 2001-16
- 2002-23 New Requirements for Deeming Under the Federally Supported Health Centers Assistance Act

<p>1. ISSUE DATE: 12/1/2009</p>	<p style="text-align: center;">DEPARTMENT OF HEALTH AND HUMAN SERVICES HEALTH RESOURCES AND SERVICES ADMINISTRATION</p>  <p style="text-align: center;"><b>HRSA</b></p> <p style="text-align: center;"><b>NOTICE OF DEEMING ACTION</b></p> <p style="text-align: center;"><b>FEDERAL TORT CLAIMS ACT AUTHORIZATION:</b> Federally Supported Health Centers Assistance Act (FSHCAA), as amended, Sections 224(g)-(n) of the Public Health Service (PHS) Act, 42 U.S.C. § 233(g)-(n)</p>
<p>2. FTCA DEEMING NOTICE NO.: 1-F00000553-09-01</p>	
<p>3. COVERAGE PERIOD: <b>FROM: 1/1/2010 THROUGH: 12/31/2010</b></p>	
<p>4. NOTICE TYPE: Renewal</p>	
<p>5a. ENTITY NAME AND ADDRESS: CAMCARE HEALTH CORPORATION 817 FEDERAL STREET CAMDEN, NJ 08103-1539</p>	
<p>5b. DBA NAME: N/A</p>	
<p>6. ENTITY TYPE: Grantee</p>	
<p>7. EXECUTIVE DIRECTOR: Mark K Bryant</p>	
<p>8a. GRANTEE ORGANIZATION: CAMCARE HEALTH CORPORATION</p>	
<p>8b. GRANT NUMBER: H80CS00172</p>	
<p><b>9. THIS ACTION IS BASED ON THE INFORMATION SUBMITTED TO, AND AS APPROVED BY HRSA, AS REQUIRED UNDER 42 U.S.C. § 233(H) FOR THE ABOVE TITLED ENTITY AND IS SUBJECT TO THE TERMS AND CONDITIONS INCORPORATED EITHER DIRECTLY OR BY REFERENCE IN THE FOLLOWING:</b></p> <ul style="list-style-type: none"> <li>a. The authorizing program legislation cited above.</li> <li>b. The program regulation cited above, and,</li> <li>c. HRSA's FTCA-related policies and procedures.</li> </ul> <p>In the event there are conflicting or otherwise inconsistent policies applicable to the program, the above order of precedence shall prevail.</p> <p><i>Electronically signed by Jim Macrae, Associate Administrator for Primary Health Care on: 12/1/2009 1:57:47 PM</i></p>	

<b>FTCA DEEMING NOTICE NO.:</b> 1-F00000553-09-01	<b>GRANT NUMBER:</b> H80CS00172	
<p><b>CAMCARE HEALTH CORPORATION</b>  <b>817 FEDERAL STREET</b>  <b>CAMDEN, NJ 08103-1539</b></p> <p>The Health Resources and Services Administration (HRSA), in accordance with the Federally Supported Health Centers Assistance Act (FSHCAA), as amended, Sections 224(g)-(n) of the Public Health Service (PHS) Act, 42 U.S.C. § 233(g)-(n), deems CAMCARE HEALTH CORPORATION to be an employee of the PHS, for the purposes of section 224, effective 1/1/2010 through 12/31/2010.</p> <p>Section 224(a) provides liability protection under the Federal Tort Claims Act (FTCA), 28 U.S.C. §§ 1346(b), 2672, or by alternative benefits provided by the United States where the availability of such benefits precludes a remedy under the FTCA, for damage for personal injury, including death, resulting from the performance of medical surgical, dental, or related functions by PHS employees while acting within the scope of such employment. This protection is exclusive of any other civil action or proceeding. Coverage extends to deemed entities and their (1) officers; (2) governing board members; (3) full- and part-time employees; and (4) contractors who are licensed or certified individual health care practitioners providing full-time services (i.e., on average at least 32½ hours per week for the entity for the period of the contract), or, if providing an average of less than 32½ hours per week of such service, is a licensed or certified provider in the fields of family practice, general internal medicine, general pediatrics, or obstetrics/gynecology. Volunteers are neither employees nor contractors and therefore are not eligible for FTCA coverage under FSHCAA.</p> <p>In addition, FTCA coverage is comparable to an "occurrence" policy without a monetary cap. Therefore, any coverage limits that may be mandated by other organizations are met.</p> <p>This action is based on the information provided in your FTCA deeming application, as required under 42 U.S.C. § 233(h), with regard to your entity's: (1) implementation of appropriate policies and procedures to reduce the risk of malpractice and litigation; (2) review and verification of professional credentials and privileges, references, claims history, fitness, professional review organization findings, and licensure status of health professionals; (3) cooperation with the Department of Justice (DOJ) in the defense of claims and actions to prevent claims in the future; and (4) cooperation with DOJ in providing information related to previous malpractice claims history.</p> <p>Deemed health centers must continue to receive funding under Section 330 of the PHS Act, 42 U.S.C. § 254b, in order to maintain coverage as a deemed PHS employee. If the deemed entity loses its Section 330 funding, such coverage will end immediately upon termination of the grant. In addition to the relevant statutory and regulatory requirements, every deemed health center is expected to follow HRSA's FTCA-related policies and procedures, which may be found online at <a href="http://www.bphc.hrsa.gov">http://www.bphc.hrsa.gov</a>.</p> <p>For further information, please contact your HRSA Project Officer as listed on your Notice of Grant Award or the FTCA Help Line at 1-877-464-4772.</p>		



<p>1. ISSUE DATE: 11/4/2010</p>	<p>DEPARTMENT OF HEALTH AND HUMAN SERVICES HEALTH RESOURCES AND SERVICES ADMINISTRATION</p>  <p><b>HRSA</b></p> <p>NOTICE OF DEEMING ACTION</p> <p><b>FEDERAL TORT CLAIMS ACT AUTHORIZATION:</b> Federally Supported Health Centers Assistance Act (FSHCAA), as amended, Sections 224(g)-(n) of the Public Health Service (PHS) Act, 42 U.S.C. § 233(g)-(n)</p>
<p>2. FTCA DEEMING NOTICE NO.: 1-F00000553-10-1</p>	
<p>3. COVERAGE PERIOD: <b>FROM: 1/1/2011 THROUGH: 12/31/2011</b></p>	
<p>4. NOTICE TYPE: Renewal</p>	
<p>5a. ENTITY NAME AND ADDRESS: CAMCARE HEALTH CORPORATION 817 FEDERAL STREET CAMDEN, NJ 08103-1539</p>	
<p>5b. DBA NAME:</p>	
<p>6. ENTITY TYPE: Grantee</p>	
<p>7. EXECUTIVE DIRECTOR: Mark K Bryant</p>	
<p>8a. GRANTEE ORGANIZATION: CAMCARE HEALTH CORPORATION</p>	
<p>8b. GRANT NUMBER: H80CS00172</p>	
<p><b>9. THIS ACTION IS BASED ON THE INFORMATION SUBMITTED TO, AND AS APPROVED BY HRSA, AS REQUIRED UNDER 42 U.S.C. § 233(h) FOR THE ABOVE TITLED ENTITY AND IS SUBJECT TO THE TERMS AND CONDITIONS INCORPORATED EITHER DIRECTLY OR BY REFERENCE IN THE FOLLOWING:</b></p> <ul style="list-style-type: none"> <li>a. The authorizing program legislation cited above.</li> <li>b. The program regulation cited above, and,</li> <li>c. HRSA's FTCA-related policies and procedures.</li> </ul> <p>In the event there are conflicting or otherwise inconsistent policies applicable to the program, the above order of precedence shall prevail.</p>	
<p><i>Electronically signed by Cheryl Dammons, Deputy Associate Administrator for Primary Health Care on:</i> 11/4/2010 11:33:16 AM</p>	

<b>FTCA DEEMING NOTICE NO.:</b> 1-F00000553-10-1	<b>GRANT NUMBER:</b> H80CS00172	
<p><b>CAMCARE HEALTH CORPORATION</b>  <b>817 FEDERAL STREET</b>  <b>CAMDEN, NJ 08103-1539</b></p> <p>Dear Mark K Bryant:</p> <p>The Health Resources and Services Administration (HRSA), in accordance with the Federally Supported Health Centers Assistance Act (FSHCAA), as amended, sections 224(g)-(n) of the Public Health Service (PHS) Act, 42 U.S.C. §§ 233(g)-(n), deems CAMCARE HEALTH CORPORATION to be an employee of the PHS, for the purposes of section 224, effective 1/1/2011 through 12/31/2011.</p> <p>Section 224(a) of the PHS Act provides liability protection under the Federal Tort Claims Act (FTCA), 28 U.S.C. §§ 1346(b), 2672, or by alternative benefits provided by the United States where the availability of such benefits precludes a remedy under the FTCA, for damage for personal injury, including death, resulting from the performance of medical, surgical, dental, or related functions by PHS employees while acting within the scope of such employment. This protection is exclusive of any other civil action or proceeding. Coverage extends to deemed entities and their (1) officers; (2) governing board members; (3) full- and part-time employees; and (4) contractors who are licensed or certified individual health care practitioners providing full-time services (i.e., on average at least 32½ hours per week for the entity for the period of the contract), or, if providing an average of less than 32½ hours per week of such service, are licensed or certified providers in the fields of family practice, general internal medicine, general pediatrics, or obstetrics/gynecology. Volunteers are neither employees nor contractors and therefore are not eligible for FTCA coverage under FSHCAA.</p> <p>This Notice of Deeming Action (NDA) is also confirmation of medical malpractice coverage for both CAMCARE HEALTH CORPORATION and its covered individuals as described above. This NDA, along with documentation confirming employment or contractor status with the deemed entity, may be used to show liability coverage for damage for personal injury, including death, resulting from the performance of medical, surgical, dental, or related functions by PHS employees while acting within the scope of such employment.</p> <p>In addition, FTCA coverage is comparable to an "occurrence" policy without a monetary cap. Therefore, any coverage limits that may be mandated by other organizations are met.</p> <p>This action is based on the information provided in your FTCA deeming application, as required under 42 U.S.C. § 233(h), with regard to your entity's: (1) implementation of appropriate policies and procedures to reduce the risk of malpractice and litigation; (2) review and verification of professional credentials and privileges, references, claims history, fitness, professional review organization findings, and licensure status of health professionals; (3) cooperation with the Department of Justice (DOJ) in the defense of claims and actions to prevent claims in the future; and (4) cooperation with DOJ in providing information related to previous malpractice claims history.</p> <p>Deemed health centers must continue to receive funding under Section 330 of the PHS Act, 42 U.S.C. § 254b, in order to maintain coverage as a deemed PHS employee. If the deemed entity loses its Section 330 funding, such coverage will end immediately upon termination of the grant. In addition to the relevant statutory and regulatory requirements, every deemed health center is expected to follow HRSA's FTCA-related policies and procedures, which may be found online at <a href="http://www.bphc.hrsa.gov">http://www.bphc.hrsa.gov</a>.</p> <p>For further information, please contact your HRSA Project Officer as listed on your Notice of Grant Award or the Bureau of Primary Health Care (BPHC) Help Line at 1-877-974-2742 or <a href="mailto:bphchelp@hrsa.gov">bphchelp@hrsa.gov</a>.</p>		



PAUL J. FISHMAN  
United States Attorney  
ELIZABETH A. PASCAL  
Assistant U.S. Attorney  
Camden Federal Building  
and U.S. Courthouse  
401 Market Street  
P.O. Box 2098  
Camden, NJ 08101  
(856) 757-5105  
United States of America  
substituted for Defendants  
Eric Chang, D.O.,  
Neil Kaplitz, M.D.,  
Eric K. Yahav, M.D.,  
Mercy Amua-Quarshie, M.D.,  
Antoinette Falconi McCahill, CNM,  
and CAMcare Health Corporation

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY

_____	:	
MARY O. MENDEZ, Individually	:	
and as Mother of the Decedent	:	
in her own Right and as	:	
Administratrix of the Estate	:	HONORABLE NOEL L. HILLMAN
of Bryan Jadiel Mendez,	:	
Deceased, et al.,	:	
	:	
Plaintiffs,	:	Civil Action No. 13-2274 (NLH)(AMD)
	:	
v.	:	
	:	
ERIC CHANG, D.O.,	:	ORDER DISMISSING THE COMPLAINT
et al.,	:	AGAINST DEFENDANT UNITED STATES
	:	
Defendants.	:	
_____	:	

This matter having come before the Court on the Motion of Paul J. Fishman, the United States Attorney for the District of New Jersey, by Elizabeth A. Pascal, Assistant United States Attorney, appearing on behalf of Defendant United States, seeking an Order to dismiss the Complaint against it for lack of

subject matter jurisdiction, and the Court having considered the moving papers and any opposition papers submitted thereto, and this matter being decided pursuant to Fed. R. Civ. P. 78, and for good cause shown;

IT IS on this \_\_\_\_ day of \_\_\_\_\_, 2013;

ORDERED that the Complaint against Defendant United States of America is hereby dismissed for lack of subject matter jurisdiction.

---

NOEL L. HILLMAN, U.S.D.J.

At Camden, New Jersey

PAUL J. FISHMAN  
United States Attorney  
ELIZABETH A. PASCAL  
Assistant U.S. Attorney  
Camden Federal Building  
and U.S. Courthouse  
401 Market Street  
P.O. Box 2098  
Camden, NJ 08101  
(856) 757-5105  
United States of America  
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Eric Chang, D.O.,  
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Mercy Amua-Quarshie, M.D.,  
Antoinette Falconi McCahill, CNM,  
and CAMcare Health Corporation

Document Electronically Filed

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY

_____	:	
MARY O. MENDEZ, Individually	:	
and as Mother of the Decedent	:	
in her own Right and as	:	
Administratrix of the Estate	:	HONORABLE NOEL L. HILLMAN
of Bryan Jadiel Mendez,	:	
Deceased, et al.,	:	
	:	
Plaintiffs,	:	Civil Action No. 13-2274 (NLH)(AMD)
	:	
v.	:	
	:	
ERIC CHANG, D.O.,	:	CERTIFICATE OF SERVICE
et al.,	:	
	:	
Defendants.	:	
_____	:	

I hereby certify that on April 16, 2013, I caused a copy of Defendant's Notice of Motion to Dismiss the Complaint for Lack of Subject Matter Jurisdiction; Brief; the Declaration of Meredith Torres and attached exhibits; a proposed form of Order; and this Certificate of Service to be filed electronically with

the Clerk of the United States District Court and that copies of these documents have been sent in conformance with the electronic filing rules to the following:

Loren Finesmith, Esquire  
2915 North 5th Street  
Philadelphia, PA 19133  
Counsel for Plaintiffs

I further certify that on April 16, 2013, I caused a copy of the foregoing documents to be placed in the United States mail, first class, postage prepaid, addressed to the following:

Carolyn R. Sleeper, Esquire  
Parker McCay, P.A.  
9000 Midlantic Drive, Suite 3000  
P.O. Box 5054  
Mount Laurel, NJ 08054-1539  
Counsel for the Cooper Defendants:

DR. C. AVES, DHIREN SONI, D.O., MS. MURPHY,  
R.N., MS./MR. CHAVOUS-GIBSON, R.N., MS./MR.  
NECE, R.N., MS. WARD, R.N., MS./MR. ALICE,  
R.N., MS./MR. HOLMES A/K/A MS./MR. HELMES,  
R.N., KELLYANN CARTER, R.N., COOPER  
UNIVERSITY HOSPITAL, COOPER ANESTHESIA  
ASSOCIATES, P.C., and COOPER UNIVERSITY  
PHYSICIANS

PAUL J. FISHMAN  
United States Attorney

s/Elizabeth A. Pascal  
By: ELIZABETH A. PASCAL  
Assistant U.S. Attorney