

## CIVIL SETTLEMENT AGREEMENT

### I. PARTIES

This Civil Settlement Agreement (Agreement) is entered into between the United States of America, acting through the United States Department of Justice and on behalf of the Office of Inspector General (OIG-HHS) of the Department of Health and Human Services (HHS) (collectively the “United States”); and Rakesh Sahni, M.D. (“Sahni”) (hereafter referred to as “the Parties”), through their authorized representatives.

### II. PREAMBLE

As a preamble to this Agreement, the Parties agree to the following:

- A. Sahni is an individual who resides in the State of New Jersey. At all times relevant herein, Sahni was a Medical Doctor licensed in the State of New Jersey.
- B. The United States contends that Sahni submitted or caused to be submitted claims for payment to the Medicare Program (Medicare), Title XVIII of the Social Security Act, 42 U.S.C. §§ 1395-1395hhh.
- C. The United States contends that it has certain civil claims, as specified in Paragraph 3, below, for engaging in the following conduct from on or about January 1, 2004 through December 31, 2006:
  - i. During the relevant time period, Sahni received payments from The University of Medicine and Dentistry of New Jersey (“UMDNJ”) which is located in Newark, New Jersey. Said payments were purportedly for Sahni’s services as a Clinical Associate Professor for UMDNJ. However, it was understood that said services would not be rendered by Sahni and that in return for said payments, Sahni would instead refer cardiac patients

to UMDNJ's hospital, University Hospital, which is also located in Newark, New Jersey (the "Hospital").

- ii. Sahni then submitted or caused to be submitted claims for cardiac services rendered at the Hospital to agents of the Medicare program through the Hospital's cost reports. Said claims resulted from the improper referrals of patients by Sahni to the Hospital.

(hereinafter referred to as the "Covered Conduct").

D. Sahni vehemently denies the contentions of the United States set out in Paragraphs B and C and asserts that his conduct was appropriate. This Agreement is neither an admission of liability by Sahni, nor a concession by the United States that its claims are not well founded.

E. To avoid the delay, uncertainty, inconvenience, and expense of protracted litigation of the above claims, the Parties reach a full and final settlement pursuant to the Terms and Conditions below.

### III. TERMS AND CONDITIONS

1. Sahni agrees to pay to the United States \$360,000.00 (the "Settlement Amount"). Sahni agrees to pay the Settlement Amount by electronic funds transfer pursuant to written instructions to be provided by the United States Attorney's Office, District of New Jersey. The full payment of the Settlement Amount shall be due within five days of the Effective Date of this Agreement.

2. If Sahni fails to make any of the payments at the specified times described in Paragraph 1, above, then upon written notice to Sahni of this default, Sahni shall have ten (10)

calendar days to cure the default. If the default is not cured within the ten-day period, the United States may elect any of the following non-exclusive options: (a) the remaining unpaid principal portion of the Settlement Amount shall become accelerated and immediately due and payable, with interest at a simple rate of 4.75% from the Effective Date of this Agreement to the date of default, and at a simple rate of 12% per annum from the date of default until the date of payment; (b) file an action for specific performance of the Agreement; (c) offset the remaining unpaid balance of the Settlement Amount (inclusive of interest) from any amounts due and owing to Sahni by any department, agency, or agent of the United States; or (d) rescind this Agreement and file suit based on the Covered Conduct. Sahni agrees not to contest any collection action undertaken by the United States pursuant to this Paragraph, and to pay the United States all reasonable costs of collection and enforcement of this Agreement, including reasonable attorney's fees and expenses. In the event that the United States opts to rescind this Agreement following a default, Sahni agrees not to plead, argue, or otherwise raise any defenses under the theories of statute of limitations, laches, estoppel, or similar theories, to any civil or administrative claims that (i) are filed by the United States within 120 calendar days of written notification to Sahni that this Agreement has been rescinded, and (ii) relate to the Covered Conduct.

3. Subject to the exceptions in Paragraph 5, below, in consideration of the obligations of Sahni set forth in this Agreement, conditioned upon Sahni's full payment of the Settlement Amount, the United States (on behalf of itself, its officers, agents, agencies, and departments) agrees to release Sahni from any civil or administrative monetary claim the United States has or may have under the False Claims Act, 31 U.S.C. §§ 3729-3733; the Civil Monetary



Penalties Law, 42 U.S.C. § 1320a-7a; the civil monetary penalty provisions of the Stark Statute, 42 U.S.C. §§ 1395nn(g)(3) and (4); the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801-3812; and the common law theories of payment by mistake, unjust enrichment, and fraud, for the Covered Conduct.

4.     OIG-HHS expressly reserves all rights to institute, direct, or to maintain any administrative action seeking exclusion against Sahni from Medicare, Medicaid, or other Federal health care programs (as defined in 42 U.S.C. § 1320a-7b(f)) under 42 U.S.C. § 1320a-7(a) (mandatory exclusion), or 42 U.S.C. § 1320a-7(b) (permissive exclusion).

5.     Notwithstanding any term of this Agreement, specifically reserved and excluded from the scope and terms of this Agreement as to any entity or person (including Sahni) are the following:

- a.     Any civil, criminal, or administrative liability arising under Title 26, U.S. Code (Internal Revenue Code);
- b.     Any criminal liability;
- c.     Any administrative liability, including mandatory and permissive exclusion from Federal health care programs;
- d.     Any liability to the United States (or its agencies) for any conduct other than the Covered Conduct;
- e.     Any liability based upon such obligations as are created by this Agreement;
- f.     Any liability for express or implied warranty claims or other claims for defective or deficient products or services, including quality of goods and services; and

g. Any liability for personal injury or property damage or for other consequential damages arising from the Covered Conduct.

6. Sahni waives and shall not assert any defenses Sahni may have to any criminal prosecution or administrative action relating to the Covered Conduct, which defenses may be based in whole or in part on a contention that, under the Double Jeopardy Clause in the Fifth Amendment of the Constitution, or under the Excessive Fines Clause in the Eighth Amendment of the Constitution, this Agreement bars a remedy sought in such criminal prosecution or administrative action. Nothing in this Paragraph or any other provision of this Agreement constitutes an agreement by the United States concerning the characterization of the Settlement Amount for purposes of the Internal Revenue laws, Title 26 of the United States Code.

7. Sahni fully and finally releases the United States, its agencies, employees, servants, and agents from any claims (including attorney's fees, costs, and expenses of every kind and however denominated) that Sahni has asserted, could have asserted, or may assert in the future against the United States, its agencies, employees, servants, and agents, related to the Covered Conduct and the United States' investigation and prosecution thereof.

8. The Settlement Amount shall not be decreased as a result of the denial of claims for payment now being withheld from payment by any Medicare carrier or intermediary or any state payer, related to the Covered Conduct; and Sahni agrees not to resubmit to any Medicare carrier or intermediary or any state payer any previously denied claims related to the Covered Conduct, and agrees not to appeal any such denials of claims.

9. Sahni agrees to the following:

a. Unallowable Costs Defined: that all costs (as defined in the Federal Acquisition Regulation, 48 C.F.R. § 31.205-47; and in Titles XVIII and XIX of the Social Security Act, 42 U.S.C. §§ 1395-1395hhh and 1396-1396v; and the regulations and official program directives promulgated thereunder) incurred by or on behalf of Sahni, his companies, his present or former employees and agents in connection with the following shall be “unallowable costs” on government contracts and under the Medicare Program, Medicaid Program, TRICARE Program, and Federal Employees Health Benefits Program (FEHBP):

- (1) the matters covered by this Agreement and any related plea agreement;
- (2) the United States’ audit(s) and civil and any criminal investigation(s) of the matters covered by this Agreement;
- (3) Sahni’s investigation, defense, and corrective actions undertaken in response to the United States’ audit(s) and civil and any criminal investigation(s) in connection with the matters covered by this Agreement (including attorney’s fees);
- (4) the negotiation and performance of this Agreement and any plea agreement;
- (5) the payments Sahni makes to the United States pursuant to this Agreement, including any costs and attorneys fees.

b. Future Treatment of Unallowable Costs: If applicable, these unallowable costs shall be separately determined and accounted for by Sahni, and Sahni shall not charge such unallowable costs directly or indirectly to any contracts with the United States or any state Medicaid program, or seek payment for such unallowable costs through any cost report, cost



statement, information statement, or payment request submitted by Sahni or any of his subsidiaries or affiliates to the Medicare, Medicaid, TRICARE, or FEHBP Programs.

c. Treatment of Unallowable Costs Previously Submitted for Payment: If applicable, Sahni further agrees that within 90 days of the Effective Date of this Agreement he shall identify to applicable Medicare and TRICARE fiscal intermediaries, carriers, and/or contractors, and Medicaid and FEHBP fiscal agents, any unallowable costs (as defined in this Paragraph) included in payments previously sought from the United States, or any state Medicaid program, including, but not limited to, payments sought in any cost reports, cost statements, information reports, or payment requests already submitted by Sahni or any of his subsidiaries or affiliates, and shall request, and agree, that such cost reports, cost statements, information reports, or payment requests, even if already settled, be adjusted to account for the effect of the inclusion of the unallowable costs. Sahni agrees that the United States, at a minimum, shall be entitled to recoup from Sahni any overpayment plus applicable interest and penalties as a result of the inclusion of such unallowable costs on previously-submitted cost reports, information reports, cost statements, or requests for payment.

Any payments due after the adjustments have been made shall be paid to the United States pursuant to the direction of the Department of Justice and/or the affected agencies. The United States reserves its rights to disagree with any calculations submitted by Sahni or any of his subsidiaries or affiliates on the effect of inclusion of unallowable costs (as defined in this Paragraph) on Sahni or any of his subsidiaries or affiliates' cost reports, cost statements, or information reports. Nothing in this Agreement shall constitute a waiver of the rights of the United States to examine or reexamine the unallowable costs described in this Paragraph.

10. This Agreement is intended to be for the benefit of the Parties, only. The Parties do not release any claims against any other person or entity, except to the extent provided for in Paragraph 11, below.

11. Sahni waives and shall not seek payment for any of the health care billings covered by this Agreement from any health care beneficiaries or their parents, sponsors, legally responsible individuals, or third party payors based upon the claims defined as Covered Conduct.

12. Sahni warrants that he has reviewed his financial situation and that he currently is solvent within the meaning of 11 U.S.C. §§ 547(b)(3) and 548(a)(1)(B)(ii)(I), and shall remain solvent following his payment to the United States of the Settlement Amount. Further, the Parties warrant that, in evaluating whether to execute this Agreement, they (a) have intended that the mutual promises, covenants, and obligations set forth constitute a contemporaneous exchange for new value given to Sahni, within the meaning of 11 U.S.C. § 547(c)(1); and (b) conclude that these mutual promises, covenants, and obligations do, in fact, constitute such a contemporaneous exchange. Further, the Parties warrant that the mutual promises, covenants, and obligations set forth herein are intended to and do, in fact, represent a reasonably equivalent exchange of value that is not intended to hinder, delay, or defraud any entity to which Sahni was or became indebted, on or after the date of this transfer, all within the meaning of 11 U.S.C. § 548(a)(1).

13. Each Party to this Agreement shall bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

14. Sahni represents that this Agreement is freely and voluntarily entered into without any degree of duress or compulsion whatsoever.



15. This Agreement is governed by the laws of the United States. The Parties agree that the exclusive jurisdiction and venue for any dispute arising between and among the Parties under this Agreement is the United States District Court for the District of New Jersey.

16. This Agreement constitutes the complete agreement between the Parties. This Agreement may not be amended except by written consent of the Parties.

17. The individuals signing this Agreement on behalf of Sahni represent and warrant that they are authorized by Sahni to execute this Agreement. The United States signatories represent that they are signing this Agreement in their official capacities and that they are authorized to execute this Agreement.

18. This Agreement may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same Agreement.

19. This Agreement is binding on Sahni's successors, transferees, heirs, and assigns.

20. All Parties consent to the United States' disclosure of this Agreement, and information about this Agreement, to the public.

21. This Agreement is effective on the date of signature of the last signatory to the Agreement (Effective Date of this Agreement). Facsimiles of signatures shall constitute acceptable, binding signatures for purposes of this Agreement.

[SIGNATURE BLOCKS ON FOLLOWING PAGES]

THE UNITED STATES OF AMERICA

RALPH J. MARRA, JR.  
Acting United States Attorney  
District of New Jersey

DATED: 8/7/09

BY: 

ALEX KRIEGSMAN  
Assistant United States Attorney

DATED: 8/6/09

BY: 

GREGORY E. DEMSKE  
Assistant Inspector General for  
Legal Affairs  
Office of Counsel to the  
Inspector General  
Office of Inspector General  
United States Department of  
Health and Human Services

RAKESH SAHNI - DEFENDANT

DATED: July 16, 2009

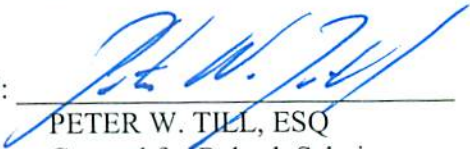
BY: \_\_\_\_\_

  
RAKESH SAHNI

LAW OFFICES OF PETER W. TILL

DATED: July 16, 2009

BY: \_\_\_\_\_

  
PETER W. TILL, ESQ  
Counsel for Rakesh Sahni