

SETTLEMENT AGREEMENT AND RELEASE

I. PARTIES

This settlement agreement ("Settlement Agreement") is entered into among 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 Service; ("HHS") (collectively the "United States"); Temple Physicians, Inc. ("TPI"); and Kristin Carlin (the "Relator") (hereafter referred to as "the Parties"), through their authorized representatives.

II. PREAMBLE

- A. WHEREAS, TPI is a non-profit corporation, organized and existing under the laws of the Commonwealth of Pennsylvania, with Temple University Health System, Inc. as its sole member, and with Temple University - Of The Commonwealth System of Higher Education as the sole member of Temple University Health System, Inc.;
- B. WHEREAS, at all relevant times, Dr. Kristin Carlin, Dr. Delfa Dumarán, Dr. Hong Tran, and Dr. Amy Bell were engaged in providing medical services as employees of TPI.
- C. WHEREAS, Dr. Kristin Carlin (the "Relator") is a doctor of osteopathic medicine and was employed by TPI from September 2004 through January 2005. On August 5, 2005, Relator filed a qui tam action in the United States District Court for the Eastern District of Pennsylvania captioned United States ex rel. Kristin Carlin, D.O. v. Temple University - Of The Commonwealth System Of Higher Education; Temple University Health System; Temple Physicians, Inc., Civil No. 05-4093, Eastern District of Pennsylvania UNDER SEAL (the "Civil Action").

D. WHEREAS, this Settlement Agreement addresses the United States' and the Relator's civil claims against TPI for the conduct described in the Complaint filed in the Civil Action, and the conduct alleged in Preamble Paragraph F, below;

E. WHEREAS, at all material times, the United States contends that TPI submitted or caused to be submitted claims for payment to the Medicare Program, Title XVIII of the Social Security Act, 42 U.S.C. §§ 1395-1395ggg ("Medicare Program");

F. WHEREAS, the United States contends that it has certain civil and administrative claims against TPI, as specified in Section III, Paragraphs 3 and 5 below for engaging in the following conduct, hereinafter referred to as the "Covered Conduct":

The United States alleges that, from January 1, 2001 through February 15, 2007, TPI submitted or caused to be submitted miscoded billing claims for payment to the Medicare Program for inpatient hospital services rendered at Jeanes Hospital under procedure codes 99223, 99232, and 99238 by TPI employee physicians Dr. Kristin Carlin (Medicare PIN# 1770648049), Dr. Delfa Dumarán (Medicare PIN# 162004JTQ), Dr. Hong Tran (Medicare PIN# 445641JTQ), and Dr. Amy Bell (Medicare PIN# 050210JTQ). The United States contends that these miscoded billing submissions constituted false claims for payment.

G. WHEREAS, this Settlement Agreement is made in compromise of disputed claims. This Settlement Agreement is neither an admission of liability by TPI, nor a concession by the United States that its claims are not well founded.

H. WHEREAS, 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. TPI agrees to pay to the United States the total amount of \$132,000 (the "Settlement Amount"). The Settlement Amount is to be paid to the United States by electronic funds transfer pursuant to written instructions to be provided by the United States Attorney's office for the Eastern District of Pennsylvania. TPI agrees to make this electronic funds transfer no later than 72 hours after the Effective Date of this Settlement Agreement.

2. Contingent upon the United States receiving the Settlement Amount from TPI, and as soon as feasible after receipt, the United States agrees to pay \$19,800 ("Relator's Share") to Relator by electronic funds transfer pursuant to the information provided by Relator, including social security number, home address, and bank account information, or alternatively, the identity and location of Relator's attorney's client trust account including counsel's tax identification number for purposes of issuing a Form 1099.

3. Subject to the exceptions in Paragraph 6 (reservation paragraph), below, in consideration of the obligations of TPI in this Settlement Agreement, conditioned upon TPI's full payment of the Settlement Amount, the United States (on behalf of itself, its officers, agents, agencies, and departments) agrees to release TPI, its parent corporations, and any individuals who are its trustees, directors, officers, or employees acting in their official capacities, from any civil or administrative monetary claim the United States ever had, has, or may have for the Covered Conduct under the False Claims Act, 31 U.S.C. §§ 3729-3733; the Civil Monetary Penalties Law, 42 U.S.C. § 1320a-7a; the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801-3812; and all common law claims for fraud, unjust enrichment, and payment by mistake for the Covered Conduct.

4. Conditioned upon receipt of the payment described in Paragraph 2, Relator, for herself and for her heirs, successors, attorneys, agents, and assigns, agrees to release TPI, Temple University – Of The Commonwealth System Of Higher Education, and Temple University

Health System, Inc., and their respective agents, affiliates, trustees, directors, officers, and employees, from any liability to Relator arising from the filing of the Civil Action, and fully and finally releases, waives and forever discharges TPI from any claim, demand, expenses, debts, liabilities, obligations, costs, damages, injuries, actions and causes of action, that the Relator ever had, has, or may have in the future.

5. OIG-HHS expressly reserves all rights to institute, direct, or to maintain any administrative action seeking exclusion against TPI, and/or its officers, directors, and employees 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).

6. Notwithstanding any term of this Settlement Agreement, and specifically reserved and excluded from the scope and terms of this Settlement Agreement as to any entity or person (including TPI and Relator) are the following claims of the United States:

- a. Any civil, criminal, or administrative liability arising under Title 26, U.S. Code (Internal Revenue Code);
- b. Any criminal liability;
- c. Except as explicitly stated in this Settlement Agreement, any administrative liability, including mandatory 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 Settlement 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;

g. Any liability of individuals, other than those named at section III. 3.

7. Conditioned upon receipt of Relator's Share described in Paragraph 2, above, and subject to the exceptions stated in paragraph 6, above, Relator and her heirs, successors, attorneys, agents, and assigns agree not to object to this Settlement Agreement and agree and confirm that this Settlement Agreement is fair, adequate, and reasonable under all the circumstances, pursuant to 31 U.S.C. § 3730(c)(2)(B) and Relator, for herself individually, and for her heirs, successors, agents, and assigns, fully and finally releases, waives, and forever discharges the United States, its officers, agents, and employees, from any claims arising from or relating to 31 U.S.C. § 3730; from any claims arising from the filing of the Civil Action; and from any other claims for a share of the Settlement Amount; and in full settlement of any claims Relator may have under this Settlement Agreement. This Settlement Agreement does not resolve or in any manner affect any claims the Government has or may have against the Relator arising under Title 26, U.S. Code (Internal Revenue Code), or any claims arising under this Settlement Agreement. Relator consents to the Government's disclosure of this Settlement Agreement, and information about this Settlement Agreement, to the public.

8. TPI waives and shall not assert any defenses TPI may have to any criminal prosecution or administrative action relating to the Covered Conduct which defense 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 Settlement Agreement bars a remedy sought in such criminal prosecution or administrative action. TPI, its parent corporations, and any individuals who are its trustees, directors, officers, or employees acting in their official capacities, does not waive other defenses against the United States' claims reserved in Paragraph 6. Nothing in this Paragraph or any other provision of this Settlement 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.

9. TPI 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 TPI has asserted or 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.

10. 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 TRICARE or FEHB carrier or payer, or any state payer, related to the Covered Conduct; and TPI shall not resubmit to any Medicare carrier or intermediary, or any TRICARE or FEHB carrier or payer, or any state payer any previously denied claims related to the Covered Conduct, and shall not appeal any such denials of claims.

11. TPI 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. §§ 1395-1395ggg and 1396-1396v; and the regulations and official program directives promulgated thereunder) incurred by or on behalf of TPI, its present or former officers, directors, employees, shareholders, and agents in connection with the following shall be "unallowable costs" on government contracts and under the Medicare Program, Medicaid Program, TRICARE Program, Federal Employees Health Benefits Program (FEHBP) and VA (hereafter, United States Programs):

- (1) the matters covered by this Settlement Agreement;
- (2) the United States' audit(s) and civil investigation(s) of the matters covered by this Settlement Agreement;
- (3) TPI's investigation, defense, and corrective actions undertaken in response to the United States' audit(s) and civil investigation(s) in connection with the matters covered by

this Settlement Agreement (including attorney's fees);

(4) the negotiation and performance of this Settlement Agreement;

(5) the payment TPI makes to the United States pursuant to this Settlement Agreement and any payment that TPI may make to Relator, if any, including costs and attorneys fees.

All costs described or set forth in this Paragraph 11.a. are hereafter "unallowable costs."

b. **Future Treatment of Unallowable Costs:** These unallowable costs shall be separately determined and accounted for by TPI, and TPI shall not charge such unallowable costs directly or indirectly to any contracts with United States Programs, or seek payment for such unallowable costs through any cost report, cost statement, information statement, or payment request submitted by TPI, or any individuals who are its trustees, directors, officers, employees, agents or representatives acting in their official capacities to the Medicare, Medicaid, TRICARE, FEHB Programs, or VA Programs.

c. **Treatment of Unallowable Costs Previously Submitted for Payment:** TPI further agrees that within 90 days of the Effective Date of this Settlement Agreement it shall identify to applicable Medicare and TRICARE fiscal intermediaries, carriers, and/or contractors, Medicaid, FEHBP, and VA fiscal agents, any unallowable costs (as defined in this Paragraph) included in payments previously sought from United States Programs, including, but not limited to, payments sought in any cost reports, cost statements, information reports, or payment requests already submitted by TPI or any of its 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. TPI agrees that the United States, at a minimum, shall be entitled to recoup from TPI 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 TPI or any of its subsidiaries or affiliates on the effect of inclusion of unallowable costs (as defined in this Paragraph) on TPI or any of its subsidiaries or affiliates' cost reports, cost statements, or information reports.

d. Nothing in this Settlement Agreement shall constitute a waiver of the rights of the United States to audit, examine, or re-examine TPI's books and records to determine that no unallowable costs have been claimed in accordance with the provisions of this Paragraph.

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

13. TPI agrees to cooperate fully and truthfully with the United States' investigation of individuals and entities not released in this Settlement Agreement for the Covered Conduct. Upon reasonable notice, TPI will make reasonable efforts to facilitate access to, and encourage the cooperation of their directors, officers, and employees for interviews and testimony, consistent with the rights and privileges of such individuals, and will furnish to the United States, upon reasonable request, all nonprivileged documents and records in their possession, custody or control relating to the Covered Conduct.

14. This Settlement Agreement is intended to be for the benefit of the Parties only. Other than as set forth in this Settlement Agreement, the Parties do not release any claims against any other person or entity.

15. TPI warrants that it has reviewed its financial situation and that it currently is solvent within the meaning of 11 U.S.C. §§ 547(b)(3) and 548(a)(1)(B)(ii)(I), and that payment to the United States of the Settlement Amount shall not render TPI insolvent. Further, the Parties

warrant that, in evaluating whether to execute this Settlement Agreement, they (a) have intended that the mutual promises, covenants, and obligations set forth constitute a contemporaneous exchange for new value given to TPI, 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 TPI was or became indebted to on or after the date of this transfer, within the meaning of 11 U.S.C. § 548(a)(1).

16. Except as expressly provided to the contrary in this Settlement Agreement, each Party to this Settlement Agreement shall bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Settlement Agreement

17. TPI represents that this Settlement Agreement is freely and voluntarily entered into without any degree of duress or compulsion whatsoever.

18. Relator Kristin Carlin represents that this Settlement Agreement is freely and voluntarily entered into without any degree of duress or compulsion whatsoever.

19. This Settlement 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 Settlement Agreement is the United States District Court for the Eastern District of Pennsylvania.

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

21. Within two business days of the Effective Date of the Settlement Agreement, the United States shall file a Notice of Intervention and the United States and the Relator will file a Joint Stipulation of Dismissal with prejudice of the Civil Action consistent with the Notice of Intervention. The United States and the Relator will notify the Court that all pertinent Parties have stipulated that the Civil Action pending in the Eastern District of Pennsylvania shall be dismissed as described effective upon receipt by the United States of the Federal Settlement Amount pursuant to and consistent with the terms of this Settlement Agreement. Attorneys for the United States and Relator shall provide TPI with a copy of such Notice of Intervention and Joint Stipulation of Dismissal with prejudice.
22. The individuals signing this Settlement Agreement on behalf of TPI represent and warrant that they are authorized by TPI to execute this Settlement Agreement. The individual(s) signing this Settlement Agreement on behalf of Relator represent and warrant that they are authorized by Relator to execute this Settlement Agreement. The United States signatories represent that they are signing this Settlement Agreement in their official capacities and that they are authorized to execute this Settlement Agreement.
23. This Settlement Agreement may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same Settlement Agreement. Facsimiles of signatures shall constitute acceptable, binding signatures for purposes of this Settlement Agreement.
24. This Settlement Agreement is binding on TPI's successors, transferees, heirs, and assigns.
25. This Settlement Agreement is binding on Relator's successors, transferees, heirs, and assigns.
26. All parties consent to the disclosure, including without limitation the Government's

27. As used in this Settlement Agreement, the "Effective Date" shall mean the date of the signature of the last signatory to the Settlement Agreement.

THE UNITED STATES OF AMERICA

DATED:

BY: Virginia A. Gibson
VIRGINIA A. GIBSON *MAA*

Assistant United States Attorney
Chief, Civil Division
Eastern District of Pennsylvania

BY: Viveca D. Parker
VIVECA D. PARKER
Assistant United
States Attorney

DATED:

6/4/08

BY: [Signature]
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

27. As used in this Settlement Agreement, the "Effective Date" shall mean the date of the signature of the last signatory to the Settlement Agreement.

THE UNITED STATES OF AMERICA

DATED: _____ BY: _____
VIRGINIA A. GIBSON
Assistant United States Attorney
Chief, Civil Division
Eastern District of Pennsylvania

DATED: _____ 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

TPI - DEFENDANT

DATED: _____ BY: 
Eric Mankin, M.D.
Chief Executive Officer
Temple Physicians, Inc.

DATED:

BY: Paul Neimeyer
Paul Neimeyer

Counsel for TPI - signing as to form only

CARLIN - RELATOR

DATED:

Relator

BY: _____

Kristin Carlin, D.O.

DATED:

Counsel for Carlin

BY: _____

Mark B. Frost

