

SETTLEMENT AGREEMENT**I. PARTIES**

This Settlement Agreement and Release ("Agreement") is entered into between the United States of America, acting through its Department of Justice and on behalf of the Office of Inspector General of the United States Department of Health and Human Services ("OIG-HHS") and the TRICARE Management Activity ("TMA"), a field activity of the Department of Defense, acting through the General Counsel of TMA (collectively, the "United States"); and the University of Texas Health Science Center at San Antonio ("UTHSCSA"); the University of Texas System ("UT"); and Benjamin Kready. Collectively, all of the above will be referred to as "the Parties."

II. PREAMBLE

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

A. UTHSCSA is a health component of UT, which is an agency of the Government of the State of Texas. UTHSCSA includes, among other component parts, (1) the University of Texas Medical School at San Antonio ("UTMSSA"), and (2) UTHSCSA's Medical Service Research and Development Plan ("MSRDP") (hereafter, UTMSSA and

MSRDP shall be included within the term "UTHSCSA"). MSRDP is the practice plan of the faculty physicians and certain other faculty employed by the UTHSCSA. It submits, or has submitted, claims for medical services performed by UTHSCSA physicians and other UTHSCSA faculty to the Medicare program (under Medicare Part B), the Medicaid program for the State of Texas, the TRICARE program, and the State Legalization Impact Assistance Grant program for the state of Texas.

B. Benjamin Kready (the "relator") is an individual resident of California. In 1996, the relator filed a qui tam action in a United States District Court entitled United States ex rel. Benjamin Kready v. The University of Texas Health Science Center at San Antonio and the University of Texas Medical School at San Antonio ("the Civil Action"). From January 1985 through May 1996, the relator served as executive director of MSRDP.

C. The United States contends that UTHSCSA 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. §§ 1395-1395ddd (1997), the Medicaid program, Title XIX of the Social Security Act, 42 U.S.C. §§ 1396-1396v (1997), which is administered in the State of Texas by the Texas Health and Human

Services Commission; the TRICARE program (also known as the Civilian Health and Medical Program of the Uniformed Services ("CHAMPUS")), 10 U.S.C. §§ 1071-1106; and the State Legalization Impact Assistance Grant ("SLIAG") program, 8 U.S.C. § 1255a (note).

D. The United States contends that it has certain civil claims against UTHSCSA under the False Claims Act, 31 U.S.C. §§ 3729-3733, and other federal statutes and/or common law doctrines, for engaging in the following conduct (hereinafter referred to as the "Covered Conduct") during the period from January 1, 1990 through December 31, 1995: the submission of claims by the MSRDp under the Medicare, Medicaid, CHAMPUS and SLIAG programs for certain services that UTHSCSA represented were personally and identifiably provided by faculty physicians employed by UTHSCSA to patients benefitted by those respective programs when, in fact, UTHSCSA does not possess sufficient documentary evidence, as required under the Medicare, CHAMPUS, Medicaid and SLIAG programs, to show with respect to those certain claims that the respective physicians were personally and identifiably involved in the performance of the services.

E. The United States also contends that it has certain administrative claims against UTHSCSA under the provisions for permissive exclusion from the Medicare, Medicaid and other federal health care programs, see e.g., 42 U.S.C. § 1320a-7(b) and 32 C.F.R. 199.9 (f), and the provisions for civil monetary penalties, 42 U.S.C. § 1320a-7a, for the Covered Conduct.

F. UTHSCSA disputes the contentions of the United States, as set forth in Paragraphs D and E above. The parties agree that no provision of this Agreement nor any consideration exchanged pursuant to this Agreement constitutes an admission by UTHSCSA that it engaged in, or violated any law in connection with the Covered Conduct. The parties further agree that by entering into this Agreement, the defendants in the Civil Action are not waiving for purposes of any other case or controversy any defenses that may be available to them under the Eleventh Amendment to the United States Constitution or under the False Claims Act.

G. In order to avoid the delay, uncertainty, inconvenience, and expense of protracted litigation of these claims, the Parties reach a full and final settlement as set forth below.

III. TERMS AND CONDITIONS

NOW, THEREFORE, in consideration of the mutual promises, covenants and obligations set forth below, and for good and valuable consideration as stated herein, the Parties agree as follows:

1. UTHSCSA agrees to pay the total sum of seventeen million two hundred thousand dollars (\$17,200,000.00) (hereafter the "Settlement Amount"). The United States agrees that, pursuant to 31 U.S.C. § 3730(d)(1), the relator's share of the settlement amount is fifteen (15) percent, or two million five hundred eighty thousand dollars (\$2,580,000.00). The payments shall be made as follows:

a. UTHSCSA shall pay the Settlement Amount in four sets of separate payments of four million three hundred thousand dollars (\$ 4,300,000.00) each. Eighty-five (85) percent of each payment, or three million six hundred fifty five thousand dollars (\$3,655,000.00), shall be made to the United States of America by electronic funds transfer pursuant to written instructions to be provided by Daniel A. Spiro (or his successor), Commercial Litigation Branch, Civil Division, U.S. Department of Justice, Washington, D.C. The remaining fifteen (15) percent of each

payment, or six hundred forty five thousand dollars (\$645,000.00), shall be made directly to the undersigned attorney for the relator pursuant to written instructions to be provided by the latter. UTHSCSA will notify the Internal Revenue Service of the payments made to the relator under this Agreement by filing Form 1099s covering each payment.

b. UTHSCSA agrees to make the first of the four sets of payments by no later than five days after the effective date of this Agreement. UTHSCSA further agrees to pay the three other sets of payments (i.e., each set amounts to four million three hundred thousand dollars (\$4,300,000.00) plus interest, as discussed below), on each of the first, second and third anniversaries of the effective date of this Agreement. These amounts shall bear simple interest at the Current Value of Funds Rate ("CVFR"), which is established by the U.S. Department of Treasury, pursuant to 31 U.S.C. § 3717, on the outstanding balance accrued from the effective date of this Agreement. Any changes to the CVFR that occur during the period prior to the time that the outstanding balance is completely paid shall be incorporated into the calculation of the accrued interest owed by UTHSCSA. Interest on the outstanding balance that accrues by

the date that the second sets of payments become due shall be paid by that date. Similarly, interest on the balance that remains after the second sets of payments are made, and that accrues by the date that the third sets of payments become due, shall be paid by that latter date. Further, interest on the balance that remains after the third sets of payments are made, and that accrues by the date that the fourth sets of payments become due, shall be paid by that latter date. There will be no prepayment penalty should UTHSCSA discharge the obligations set forth in this Paragraph 1 earlier than scheduled, although interest on any outstanding balance which is the subject of any prepayment shall accrue from the effective date of this Agreement through the date of the prepayment.

c. UTHSCSA's obligations to make the second, third and fourth sets of payments described in Subparagraph 1 (b) above shall be represented by a single promissory note in the form attached hereto as Exhibit 1, which is incorporated by reference herein.

2. UTHSCSA and UT agree that:

a. The payment obligations described in Paragraph 1 of this Agreement shall be binding not only upon UTHSCSA but also upon

(i) any current or future constituent part of UTHSCSA, including but not limited to the University of Texas Medical School at San Antonio; the MSRDP, and any other school controlled or operated by UTHSCSA, regardless of whether control over that constituent part is transferred to another component of UT; and (ii) any other component of UT that acquires control of any constituent part of UTHSCSA or that assumes any function presently performed by UTHSCSA;

b. UT will do nothing that will interfere with or diminish in any way UTHSCSA's ability to discharge the payment obligations described in Paragraph 1 of this Agreement;

c. UTHSCSA shall, on September 1 of each calendar year that this Agreement is in effect, establish and maintain sufficient, unencumbered cash reserves that are restricted and earmarked for the purpose of meeting the payment obligations that shall be due on the next anniversary date of this Agreement, including all payments due or past due of principal and interest. UT shall monitor the status of these reserves to ensure that they are maintained by UTHSCSA; and

d. This Agreement, and the obligations imposed herein, shall be binding upon all successors and assigns of UTHSCSA.

4. In consideration of the obligations of UTHSCSA and UT set forth in this Agreement, and conditioned upon UTHSCSA's fulfillment of its obligations to make the payments required under Paragraph 1 above as these payments become due, the OIG-HHS agrees to release and refrain from instituting, directing or maintaining any administrative claim or any action seeking exclusion from the Medicare, Medicaid or other Federal health care programs (as defined in 42 U.S.C. § 1320a-7b(f)) against UTHSCSA under 42 U.S.C. § 1320a-7a (Civil Monetary Penalties Law), or 42 U.S.C. § 1320a-7(b) (permissive exclusion), for the Covered Conduct, except as reserved in Paragraph 7 below, and as reserved in this Paragraph. The OIG-HHS expressly reserves all rights to comply with any statutory obligations to exclude UTHSCSA from the Medicare, Medicaid or other Federal health care program under 42 U.S.C. § 1320a-7(a) (mandatory exclusion) based upon the Covered Conduct. Nothing in this Paragraph precludes the OIG-HHS from taking action against entities or persons, or for conduct and practices, for which civil claims have been reserved in Paragraph 7, below.

5. In consideration of the obligations of UTHSCSA and UT set forth in this Agreement, and conditioned upon UTHSCSA's

fulfillment of its obligations to make the payments required under Paragraph 1 above as these payments become due, the TMA agrees to release and refrain from instituting, directing, or maintaining any administrative claim or any action seeking permissive exclusion from the TRICARE program against UTHSCSA under 32 C.F.R. § 199.9 for the Covered Conduct, except as reserved in Paragraph 7 below, and as reserved in this Paragraph. The TMA expressly reserves all rights to comply with any regulatory obligations to exclude UTHSCSA from the TRICARE program under 32 C.F.R. §§ 199.9 (f) (1) (i) (A), (f) (1) (i) (B), (f) (1) (i) (D), and (f) (1) (iii), based upon the Covered Conduct. Nothing in this Paragraph precludes the TRICARE program from taking action against entities or persons, or for conduct and practices, for which civil claims have been reserved in Paragraph 7, below.

6. Conditioned upon UTHSCSA's fulfillment of its obligations to make the payments required under Paragraph 1 above as these payments become due, the relator, and his attorneys, for themselves, their heirs, successors and assigns, will release and will be deemed to have released and forever discharged:

(1) the Released Entities and Individuals from any claims the relator or his attorneys have or may have that arise under or relate to any of the allegations in the Civil Action and/or the Covered Conduct, including, all claims pursuant to 31 U.S.C. § 3730, including those for attorneys' fees, expenses and costs; and

(2) the United States and the Released Entities and Individuals from any claims arising from or relating to the filing of the Civil Action, or, pursuant to 31 U.S.C. § 3730(d)(1), for a share of the proceeds of the settlement under this Agreement.

7. 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 UTHSCSA and UT) are any and all of the following:

(1) Any civil, criminal or administrative claims arising under Title 26, United States Code (Internal Revenue Code);

(2) Any criminal liability for any individuals, including current or former directors, officers, employees or agents of UTHSCSA or UT;

(3) Any administrative liability for mandatory exclusion from Federal health care programs, pursuant to 42 U.S.C. § 1320a-7(a);

(4) Any liability by the Released Entities and Individuals to the United States (or its agencies) for any conduct other than the Covered Conduct;

(5) Any claims against any individual physicians employed by UTHSCSA arising out of claims made to the Medicare, Medicaid, SLIAG or CHAMPUS programs, where such claims were not billed by, or on behalf of, UTHSCSA;

(6) Any claims based upon such obligations as are created by this Agreement;

(7) Any express or implied warranty claims or other claims for defective or deficient products or services, including quality of goods and services, provided by UTHSCSA; provided, however, that the mere fact that a product or service was provided by a resident rather than a faculty physician, when the product or service was not otherwise medically defective or deficient, does not render the product or service "defective or deficient" for purposes of this subparagraph; and

(8) Any civil or administrative claims against individuals, including current or former directors, officers, employees, or agents of UTHSCSA or UT who are criminally indicted or charged, or are convicted, or who enter into a criminal plea agreement related to the Covered Conduct.

8. UTHSCSA has entered into an Institutional Compliance Agreement with OIG-HHS, attached as Exhibit 2, which is incorporated into this Agreement by reference. Except as otherwise specified in the Institutional Compliance Agreement, UTHSCSA will within one hundred twenty (120) days of execution of this Agreement implement its obligations under the Institutional Compliance Agreement.

9. UTHSCSA and UT waive and will not assert any defenses that they may have to any legal proceeding relating to the Covered Conduct, which defenses may be based in whole or in part on the Double Jeopardy or Excessive Fines Clause of the Constitution or the holding or principles set forth in *United States v. Halper*, 490 U.S. 435 (1989), and *Austin v. United States*, 509 U.S. 602 (1997), and agree that the Settlement Amount is not punitive in nature or effect for purposes of such legal proceeding. 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.

10. UTHSCSA and UT fully and finally release the United States, its agencies, employees, servants, and agents from any claims (including attorneys fees, costs, and expenses of every kind and however denominated) which UTHSCSA and UT have 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.

11. In the event that on the date that this Settlement Agreement becomes effective any Medicare or TRICARE carrier or intermediary or any State payer is withholding payment to UTHSCSA or UT related to the Covered Conduct, the Settlement Amount that UTHSCSA and UT must pay pursuant to Paragraph 1 of this Agreement will not be decreased as a result of the denial of any such claims for payment; and UTHSCSA and UT agree not to resubmit to any Medicare carrier or intermediary, TMA or any State payer any

previously denied claims related to the Covered Conduct, and agree not to appeal any such denials of claims.

12. UTHSCSA and UT agree that all costs (as defined in the Federal Acquisition Regulations ("FAR") § 31.205-47 and in Titles XVIII and XIX of the Social Security Act, 42 U.S.C. §§ 1395-1395ddd (1997) and 1396-1396v (1997), and the regulations promulgated thereunder) incurred by or on behalf of UTHSCSA or UT, and their present or former officers, directors, employees, shareholders, and agents in connection with: (1) the matters covered by this Agreement, (2) the Government's audit(s) and civil and any criminal investigation(s) of the matters covered by this Agreement, (3) UTHSCSA's and MSRDP's investigation, defense, and corrective actions undertaken in response to the Government's audit(s) and civil and any criminal investigation(s) in connection with the matters covered by this Agreement and the obligations undertaken pursuant to the Institutional Compliance Agreement incorporated in this Settlement Agreement (including attorney's fees), (4) the negotiation of this Agreement, and (5) the payments made pursuant to this Agreement, are unallowable costs on Government contracts and under the Medicare program, Medicaid program, SLIAG program, TRICARE/CHAMPUS program,

Veterans Affairs program ("VA") and Federal Employee Health Benefits Program ("FEHBP") (hereafter, "unallowable costs"). These unallowable costs will be separately estimated and accounted for by UTHSCSA and UT, and UTHSCSA and UT will 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 UTHSCSA and UT or any of their subsidiaries to the Medicare, Medicaid, TRICARE/CHAMPUS, SLIAG, VA or FEHBP programs.

UTHSCSA and UT further agree that within sixty (60) days of the effective date of this Agreement, they will identify to applicable Medicare and TRICARE fiscal intermediaries, carriers and/or contractors, and Medicaid, VA, SLIAG 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 UTHSCSA or UT, or any of their subsidiaries, and will 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.

UTHSCSA and UT agree that the United States will be entitled to recoup from UTHSCSA or UT, whichever is applicable, any overpayment 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 UTHSCSA, UT, or any of their subsidiaries, on the effect of inclusion of unallowable costs (as defined in this paragraph) on UTHSCSA's, UT's, or any of their subsidiaries' 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.

13. This Agreement is intended to be for the sole benefit of the Parties and other individuals and entities whose liability is released pursuant to Paragraphs 3-6 above, and by this

instrument the Parties do not release any claims against any other person or entity.

14. UTHSCSA and UT agree that they will not seek payment for any of the health care billings covered by this Agreement from any health care beneficiaries or their parents or sponsors. UTHSCSA and UT waive any causes of action against these beneficiaries or their parents or sponsors based upon the claims for payment covered by this Agreement.

15. In exchange for the valuable consideration provided in this Agreement, UTHSCSA and UT agree that in the event that UTHSCSA fails to fulfill its obligations to make any of the payments required under Paragraph 1 above as these payments become due, the United States Department of Health and Human Services ("HHS") and the United States Department of Defense ("DOD"), shall hereby have the right, which UTHSCSA and UT shall not contest in any judicial or administrative forum, unilaterally and without any subsequent Court approval, to withhold any funds, up to the amount of any funds that UTHSCSA has failed to pay to the United States or to the relator pursuant to Paragraph 1 of this Agreement, that (a) HHS, DOD, or any of their divisions or independent contractors were legally obliged, but for this

Agreement, to pay to UTHSCSA, any constituent part of UTHSCSA (regardless of whether control over that constituent part is transferred to another component of UT), any component of UT that acquires control of any constituent part of UTHSCSA or that assumes any function presently performed by UTHSCSA, any successor or assign of UTHSCSA, or any of the subsidiaries, divisions, departments, or approved faculty clinical practice plans of any of the above, or (b) HHS, DOD, or any of their divisions or independent contractors would otherwise have paid to any individual or entity for the benefit of UTHSCSA, any constituent part of UTHSCSA (regardless of whether control over that constituent part is transferred to another component of UT), any component of UT that acquires control of any constituent part of UTHSCSA or that assumes any function presently performed by UTHSCSA, any successor or assign of UTHSCSA, or any of the subsidiaries, divisions, departments, or approved faculty clinical practice plans of any of the above. The parties agree that any funds withheld by any agency or contractor of the United States pursuant to this Paragraph shall be applied to the outstanding indebtedness of UTHSCSA and immediately become the permanent property of the United States, except that 15 percent

of such funds shall be paid to relator as his share of the Settlement Amount. Provided, further, that any rights of withholding granted to agencies of the United States pursuant to this Paragraph are in addition to any other rights provided by law to the United States to enforce the obligations of UTHSCSA to make the payments required under Paragraph 1 of this Agreement.

16. Unless otherwise agreed to in writing between or among any of the parties, each party to this Agreement will bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

17. UTHSCSA, UT and the relator represent that this Agreement is freely and voluntarily entered into without any degree of duress or compulsion whatsoever. Pursuant to 31 U.S.C. § 3730(c)(2)(B), the relator asserts that the settlement of the allegations to the most recently filed amended complaint in the Civil Action is fair, adequate and reasonable under all the circumstances.

18. This Agreement is governed by the laws of the United States. The Parties agree that, except for matters arising under the Institutional Compliance Agreement pursuant to Paragraph 8

above, the exclusive jurisdiction and venue for any dispute arising between and among the Parties under this Agreement will be the United States District Court for the Western District of Texas, where the Civil Action was filed.

19. Promptly after this Agreement is executed, the Parties will notify the Court in the Civil Action, simultaneously, that (a) the United States is intervening in the Civil Action, (b) notwithstanding such intervention, the Parties have reached a settlement, and pursuant to this settlement all Parties have stipulated that the Civil Action be dismissed with prejudice and with no additional costs.

20. After the initial set of payments have been made by UTHSCSA pursuant to Paragraph 1 and the Court has dismissed the Civil Action, UTHSCSA and UT and their respective attorneys, will release and will be deemed to have released and forever discharged the relator and his counsel from any claims or counterclaims arising from their prosecution of the Civil Action; provided, however, that nothing in this paragraph:

(a) prohibits the United States, UTHSCSA or UT from taking action to enforce the terms or provisions of this Agreement.

(b) resolves or in any manner affects any claims the United States has or may have against the relator arising under Title 26, U.S. Code (Internal Revenue Code), or any claims arising under this Agreement.

21. This Settlement Agreement and the Institutional Compliance Agreement that is incorporated herein by reference constitute the complete agreement between the Parties that involves the United States or any of its agencies. This Agreement may not be amended except by written consent of the Parties, except that only UTHSCSA and OIG-HHS must agree in writing to modification of the Institutional Compliance Agreement, as specified in the Institutional Compliance Agreement. A separate agreement has been entered into between Benjamin Kready and UTHSCSA that resolves Mr. Kready's claims for attorneys fees, expenses and costs pertaining to the subject of this Agreement. The United States is not a party to that separate agreement.


22. The undersigned individuals signing this Agreement on behalf of UTHSCSA, UT and the relator represent and warrant that they are authorized by those parties to execute this Agreement. The undersigned United States signatories represent that they are

signing this Agreement in their official capacities and that they are authorized to execute this Agreement.

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

24. This Agreement is effective on the date of signature of the last signatory to the Agreement.

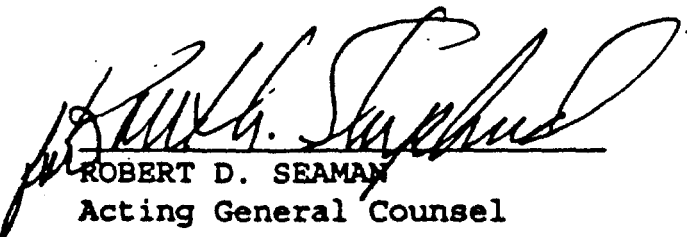
THE UNITED STATES OF AMERICA


DANIEL A. SPIRO
Trial Attorney
Commercial Litigation Branch
Civil Division
U. S. Department of Justice

Dated: June 10, 1998

LEWIS MORRIS
Assistant Inspector General
for Legal Affairs
Office of Counsel to the
Inspector General
Office of Inspector General
U.S. Department of Health and
Human Services

Dated: _____


ROBERT D. SEAMAN
Acting General Counsel
TRICARE Management Activity
U.S. Department of Defense


Dated: June 9, 1998

24. This Agreement is effective on the date of signature of the last signatory to the Agreement.

THE UNITED STATES OF AMERICA

DANIEL A. SPIRO
Trial Attorney
Commercial Litigation Branch
Civil Division
U. S. Department of Justice

Dated: _____



LEWIS MORRIS
Assistant Inspector General
for Legal Affairs
Office of Counsel to the
Inspector General
Office of Inspector General
U.S. Department of Health and
Human Services

Dated: 6/9/98

ROBERT D. SEAMAN
Acting General Counsel
TRICARE Management Activity
U.S. Department of Defense

Dated: _____

THE RELATOR - BENJAMIN KREADY

Curtis L. Cukjati

CURTIS L. CUKJATI, ESQ.

MARLENE MARTIN, ESQ.

Cacheaux, Cavazos, Newton,
Martin & Cukjati, L.L.P.

Dated: June 9, 1998

Benjamin Kready

Dated: _____

THE RELATOR - BENJAMIN KREADY

CURTIS L. CUKJATI, ESQ.
MARLENE MARTIN, ESQ.
Cacheaux, Cavazos, Newton,
Martin & Cukjati, L.L.P.

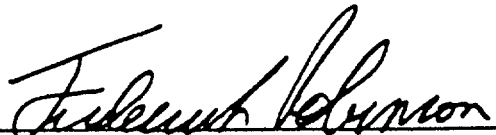
Dated: _____


Benjamin Kready

Dated: 6/9/98

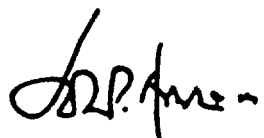
THE UNIVERSITY OF TEXAS HEALTH SCIENCE CENTER AT SAN ANTONIO

(UTHSCSA)


FREDERICK ROBINSON, ESQ.
Fulbright & Jaworski, L.L.P.


Dated: 6/10/98

Counsel for UTHSCSA


JOHN P. HOWE, III
President
UTHSCSA

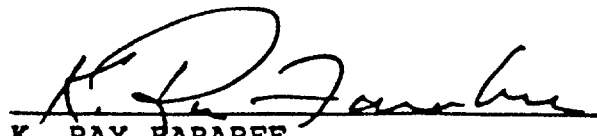
Dated: 6/9/98

THE UNIVERSITY OF TEXAS SYSTEM ("UT")


FREDERICK ROBINSON, ESQ.
Fulbright & Jaworski, L.L.P.

Dated: 6/10/98

Counsel for UT


K. RAY HARABEE
Vice Chancellor and General
Counsel
UT

Dated: 6/9/98