

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA, ex. rel.)
AL REPPINE, relator,)
Plaintiff,) No. 96 C 8273
v.) Judge Kennelly
THE UNIVERSITY OF CHICAGO, THE)
UNIVERSITY OF CHICAGO PHYSICIANS)
GROUP, AND THE UNIVERSITY OF)
CHICAGO HOSPITALS,)
Defendants.)

SETTLEMENT AGREEMENT

I. Parties

This Settlement Agreement and Release ("Agreement") is entered into between the United States of America, acting through the United States Attorney's Office for the Northern District of Illinois and on behalf of the Office of Inspector General ("OIG-HHS") of the United States Department of Health and Human Services ("HHS"), the Illinois Department of Public Aid ("IDPA"), acting through its Office of Inspector General; the State of Illinois acting through the Office of the Illinois Attorney General; the Relator, Al Reppine ("Relator"); and, the University of Chicago, the University of Chicago Physicians Group, and the University of Chicago Hospitals (collectively, "University" or "University of Chicago"), through their authorized representatives. The United States and Illinois are herein referred to as the "Government."

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. The University of Chicago is a health care provider that submitted or caused to be submitted claims for the outpatient treatment of Medicare beneficiaries and Medicaid recipients and for the inpatient treatment of Medicare beneficiaries. The University of Chicago employs physician faculty who render professional services to patients and supervise residents as part of their teaching responsibilities.

B. The Relator Al Reppine, a resident of Chicago, Illinois, was at relevant times employed by Weiss Hospital, an affiliate of the University, as a Registered Nurse and Protocol Research Clinician.

C. The Medicare program ("Medicare"), which was established by Title XVIII of the Social Security Act, 42 U.S.C. §§ 1395-1395ddd (1997), allows under Part A, for the salaries of hospital residents and interns and reimbursement for the teaching activities of the clinical faculty (such as University of Chicago physicians) provided to these residents and interns, and under Part B, for reimbursement of professional services provided directly by the clinical faculty or by residents and interns under the clinical

faculty's direct, personal and identifiable supervision and control;

D. In March 1996, OIG-HHS announced that it would review several teaching hospitals in Pennsylvania for compliance with rules governing Medicare Part B payments for services rendered by teaching physicians. On June 21, 1996, the University of Chicago voluntarily notified HHS that some claims it had submitted may have violated applicable guidelines and that an initial inquiry had revealed that in some instances the attending physician may not have been physically present for each billed service. On June 21, 1996, OIG-HHS announced a nationwide initiative to review compliance with the rules governing the Medicare Part B payment for physicians at teaching hospitals (this initiative is also known as "PATH").

E. On December 13, 1996, the Relator filed a qui tam action in the United States District Court for the Northern District of Illinois ("Court"), United States ex rel. Al Reppine v. University of Chicago Hospitals, No. 96 C 8273 (the "Civil Action"). The Civil Action alleged inter alia that faculty physicians had billed Medicare Part B for services provided by residents when the faculty physicians were not physically present and that the University had upcoded claims and thus billed Medicare and Medicaid at an improper level of service for inpatient and outpatient treatment. These allegations to some extent concerned issues similar to those the

OIG-HHS was pursuing through its PATH initiative. Upon motion of the United States and with the consent of the Relator, on March 19, 1997 the Court ordered a partial lifting of the seal on the Civil Action to allow the government to advise the University that a qui tam action had been filed but no specifics were disclosed at that time.

F. On July 11, 1997, OIG-HHS announced that it would undertake PATH audits only where prior to December 30, 1992, carriers had issued clear explanations of the rules regarding reimbursement for the services of teaching physicians, and that OIG-HHS would not approach a hospital to open PATH discussions unless and until OIG-HHS had obtained carrier materials showing that clear instructions on the need for teaching physicians to be physically present were given to the institutions or physicians served by that carrier.

G. On November 7, 1997, OIG-HHS informed the University of Chicago that although it would not engage in a "PATH" audit at University of Chicago, it would conduct a "Part B audit" of the University of Chicago to inquire into the Relator's allegations. The University of Chicago fully cooperated in the ensuing audit conducted by OIG-HHS.

H. On September 10, 1998, pursuant to 31 U.S.C. § 3730(b), the United States intervened in those portions of the Civil Action relating to alleged violations of the False Claims Act, 31 U.S.C.

§ 3729, arising from claims submitted by the University to Medicare and Medicaid relating to services provided to outpatients, and assumed primary responsibility for the prosecution of those portions of the Civil Action. The United States declined to intervene in the remaining claims alleged in the Civil Action. However, OIG-HHS subsequently expressed an intent to bring proceedings against the University for civil monetary penalties pursuant to 42 U.S.C. § 1320a-7a for alleged conduct relating to the submission of claims to Medicare for services provided to inpatients.

I. The United States and/or the State of Illinois contend that the University submitted or caused to be submitted claims for payment to Medicare; and the Medicaid Program ("Medicaid"), Title XIX of the Social Security Act, 42 U.S.C. §§ 1396-1396v (1997).

J. The United States and the State of Illinois contend that they have certain civil and administrative claims and monetary causes of action against the University. The United States contends that it has certain civil claims under the False Claims Act, 31 U.S.C. §§ 3729-3733, and other federal statutes and/or common law doctrines, including, but not limited to, the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801-3812, the Civil Monetary Penalties Law, 42 U.S.C. § 1320a-7a, and the permissive exclusion authorities in 42 U.S.C. § 1320a-7(b); and the State of Illinois contends that it has certain civil claims under the

Whistleblower Reward and Protection Act, 740 ILCS 175/3, and other state statutes and/or common law doctrines, for the following conduct (hereinafter referred to as the "Covered Conduct"): (1) the submission of claims by the University to Medicare through December 31, 1998 for outpatient physician services; (2) the submission of claims by the University to Medicaid through December 31, 1995 for outpatient services that were wrongly coded as Hospital Ambulatory Reform procedure code 00.80; (3) the submission of claims by the University to Medicare Part B through June 30, 1996 for inpatient physician services for which the University did not possess sufficient documentary evidence as required by Medicare, to show that the services were rendered; and (4) the submission of claims by the University to Medicare through June 30, 1996 for other inpatient physician services that were not in compliance with the rules governing coding and reimbursement for physician services under Medicare Part B. The United States and the State of Illinois contend that, as a result of these claims, the University received payments to which it was not entitled.

K. To avoid the expense, burden, and uncertainty of litigation, the Parties have agreed, with the exception of the issue of relator's fees and expenses from the University, to settle the matter as set forth below, and further have agreed that the execution of this Agreement does not constitute an admission of any wrongdoing or liability and does not constitute an adjudication of

any issue of fact or law. The University of Chicago denies any wrongdoing or liability whatsoever in connection with the submission of bills for professional services provided by physicians under Medicare Part B or Medicaid.

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. The University agrees to pay the total sum of ten million nine hundred thousand dollars (\$10,900,000.00) (hereinafter the "Settlement Amount"). The payment shall be made as follows:

a. The University shall pay \$8,275,000 to the United States by electronic funds transfer pursuant to written instructions to be provided by the United States Attorney's Office.

b. The University shall pay \$2,625,000 to the State of Illinois by electronic funds transfer pursuant to written instructions to be provided by the Office of the Illinois Attorney General.

c. Both of the payments described in subparagraphs a. and b. above shall be made no later than ten days after the effective date of this Agreement.

2. Subject to the exceptions in paragraphs 5 and 6 below, in consideration of the obligations of the University set forth in

this Agreement, and conditioned upon the University's fulfillment of its obligations to make the payment required under paragraph 1, the United States, on behalf of itself, its officers, agents, agencies and departments, agree to release and will be deemed to have released the University and its current and former physician and non-physician employees insofar as they have acted in their official capacities as University employees, and their trustees, directors, officers, agents, regents, predecessors, successors, assigns, and affiliates, together with their subsidiaries, divisions, departments, and approved faculty clinical practice plans of each of them (collectively, the "Released Parties"), from any civil or administrative monetary claim that the United States has or may have under the False Claims Act, 31 U.S.C. §§ 3729-3733, the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801-3812, the Civil Monetary Penalties Law, 42 U.S.C. § 1320a-7a, or the common law theories of payment by mistake, unjust enrichment, disgorgement, restitution, recoupment, constructive trust, breach of contract and fraud for the Covered Conduct or for failure to disclose the Covered Conduct.

3. IDPA agrees to release and will be deemed to have released the Released Parties from any civil or administrative monetary claims the State of Illinois has or may have under the Whistleblower Reward and Protection Act, 740 ILCS 175/3 and the Civil Remedies Section of the Public Aid Act, 89 Ill. Adm. Code

140.15, 305 ILCS 5/12-4.25(E) or the common law theories of payment by mistake, unjust enrichment, breach of contract and fraud, for the Covered Conduct.

4. In consideration of the obligations of the University set forth in this Agreement, and conditioned upon the University's fulfillment of its obligations to make the payment required under paragraph 1, and the obligations of the United States and the State of Illinois, the Relator, for himself, his heirs, his successors and his assigns, agrees to release and will be deemed to have released and forever discharged the Released Parties from any claims, as of the date of this Agreement, the Relator has or may have, including but not limited to claims 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 et seq., but not for attorneys' fees, expenses and costs pursuant to 31 U.S.C. § 3730(d) as to which the Parties agree that this Court retains jurisdiction to determine in the Civil Action.

5. In consideration of the obligations of the University set forth in this Agreement, and conditioned upon the University's fulfillment of its obligations to make the payment required under paragraph 1, OIG-HHS and IDPA agree to release and refrain from instituting, directing or maintaining any administrative claim or any action against the Released Parties seeking civil monetary penalties, assessments, and exclusion 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-7a (Civil Monetary Penalties Law), or 42 U.S.C. § 1320a-7(b) (permissive exclusion) and the Medicaid program under 305 ILCS 5/12-4.25(E) (Civil Remedies) or 305 ILCS 5/12-4.25(A) (permissive exclusion), for the Covered Conduct, except as reserved in paragraph 6 below, and as reserved in this paragraph. OIG-HHS expressly reserves all rights to comply with any statutory obligations to exclude the Released Parties from the Medicare, Medicaid or other government health care programs under 42 U.S.C. § 1320a-7(a) (mandatory exclusion) based on the Covered Conduct. The State of Illinois expressly reserves all rights to comply with any statutory obligations to exclude the Released Parties from the Medicaid program under 305 ILCS 5/12-4.25(B) (mandatory exclusion) based on the Covered Conduct.

5. Notwithstanding any term of this Agreement, specifically reserved and excluded from the scope of this Agreement are any and all of the following:

a. Any civil, criminal or administrative claims arising under Title 26, United States Code (Internal Revenue Code), and related regulations, and any civil, criminal, or administrative claims, arising under Chapter 35 or Chapter 820 Illinois Compiled Statutes or any regulations promulgated under the authority of any statute contained therein;

b. Any criminal liability of the Released Parties, including

any liability to make restitution;

c. Any administrative liability for mandatory exclusion from Medicare, Medicaid or other government health care programs, pursuant to 42 U.S.C. § 1320a-7(a) and 305 ILCS 5/12-4.25(B);

d. Any liability of the Released Parties for any conduct other than the Covered Conduct;

e. Any claims against any individual physicians employed by the University arising out of claims for payment made to the Medicare and/or the Medicaid program, where such claims were not billed by, or on behalf of, the University;

f. Any claims based upon such obligations as are created by this Agreement;

g. Any medical malpractice claim involving services provided by the University of Chicago Physicians Group (UCPG) members acting within the scope of their employment at the University and from the Covered Conduct; and,

h. Any civil, criminal, or administrative claims against any individuals who are not covered as Released Parties and who are criminally indicted or charged, or are convicted, or who enter into a criminal plea agreement related to the Covered Conduct.

i. Any claims by the Relator against the University for attorneys fees, expenses and costs pursuant to 31 U.S.C. § 3730(d).

7. Pursuant to 31 U.S.C. § 3720(c)(2)(B), the Relator asserts that the settlement of claims in the Civil Action is fair, adequate

and reasonable under all the circumstances.

8. The University has entered into an Institutional Compliance Agreement with OIG-HHS, attached as Exhibit 1, which is incorporated into this Agreement by reference.

9. The University waives and will not assert any defenses that it 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 of the Eighth Amendment of the Constitution, this Settlement 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 and/or the State of Illinois concerning the characterization of the Settlement Amount for purposes of the Internal Revenue Laws, Title 26 of the United States Code and/or Chapter 35 or Chapter 320 of the Illinois Compiled Statutes.

10. The University fully and finally releases the United States and the State of Illinois, their agencies, officers, agents and departments, and the Relator and his successors, heirs, assigns and attorneys, from any claims (including attorneys fees, costs, and expenses of every kind and however denominated) which the University has asserted, could have asserted, or may assert in the future against the United States and the State of Illinois, their

agencies, officers, agents, and departments, and the Relator and his successors, heirs, assigns and attorneys, related to the Covered Conduct and the United States' and IDPA's investigation and prosecution thereof.

11. The University agrees that all costs (as defined in the Federal Acquisition Regulations ("FAR") 48 C.F.R. § 31.205-47 and in Titles XVIII and XIX of the Social Security Act, 42 U.S.C. §§ 1395-1395ddd and 1396-1396v (1997), and the regulations promulgated thereunder) incurred by or on behalf of the University, and their present or former officers, directors, employees, and agents in connection with: (1) the matters covered by this Agreement; (2) the audit, investigation, and defense of the matters covered by this Agreement and any corrective actions undertaken in response to the government's audit and investigation; (3) the obligations undertaken pursuant to the Institutional Compliance Agreement incorporated in this Agreement (including attorneys fees); (4) the negotiation of this Agreement, the Institutional Compliance Agreement, and any agreement with the Relator; and (5) the payments made pursuant to this Agreement, including payments made to the Relator and/or his attorney(s), are unallowable costs on Government contracts and under the Medicare program. These unallowable costs (1-5) will be estimated and accounted for by the University, and the University will not charge such unallowable costs directly or indirectly to any contracts with the Government, or seek payment

for such unallowable costs through any cost report, cost statement, information statement or payment request submitted by the University to the Medicare program. The University further agrees that within 60 days of the effective date of this Agreement it will identify to Health Care Financing Administration ("HCFA") any unallowable costs (as defined herein) included in payments previously sought from the United States. The University agrees that any such payments be adjusted to account for the effect of the inclusion of the unallowable costs. The University agrees that the United States will be entitled to recoup any overpayment as a result of the inclusion of such unallowable costs. 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, OIG-HHS, and/or HCFA. The United States reserves its rights to disagree with any calculations submitted by the University on the effect of inclusion of unallowable costs (as defined herein). Nothing in this Agreement shall constitute a waiver of the United States' right to examine or reexamine the unallowable costs described herein.

12. 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 2, 3, and 4 above, and by this instrument the Parties do not release any claims against any other person or entity.

13. The University agrees that it will not initiate requests for payment after the date of this Agreement for any of the claims submitted to the Medicare and Medicaid programs and included within the definition of Covered Conduct from any Medicare beneficiaries, Medicaid recipients, their respective parents or sponsors, legally responsible individuals or third-party payors. The University waives any causes of action against these beneficiaries or recipients, their respective parents or sponsors, legally responsible individuals or third party payors, based upon the claims submitted to the Medicare and Medicaid programs and defined as Covered Conduct.

14. In exchange for the valuable consideration provided in this Agreement, the University agrees that, in addition to any and all other rights and remedies available to the Government and/or the Relator to enforce or seek a remedy for non-compliance with the terms of this Agreement, in the event that the University fails to fulfill its obligations to make the payment required under paragraph 1, HHS and/or IDPA shall hereby have the right, which the University 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 the University has failed to pay to the United States and/or IDPA pursuant to paragraph 1 of this Agreement, that (a) HHS and/or IDPA or any of their divisions or independent contractors were legally

obliged, but for this Agreement, to pay to the University, or (b) HHS and/or IDPA or any of their divisions or independent contractors would otherwise have paid to any individual or entity for the benefit of the University. The Parties agree that any funds withheld by any agency or contractor of the United States and/or IDPA pursuant to this paragraph shall be applied to the outstanding indebtedness of the University and immediately become the permanent property of the United States and/or IDPA. Furthermore, any rights of withholding granted to agencies of the United States and/or IDPA pursuant to this paragraph are in addition to any other rights provided by law to the United States and/or IDPA to enforce the obligations of the University to make the payments required under paragraph 1 of this agreement.

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

16. This Agreement and the Institutional Compliance Agreement that is incorporated herein by reference constitute the complete agreement between the Parties that involves the United States, the State of Illinois, or any of their agencies. This Agreement may not be amended except by written consent of the Parties, except that only the University and OIG-HHS must agree in writing to

modification of the Institutional Compliance Agreement, as specified in the Institutional Compliance Agreement.

17. Should any action to enforce or interpret this Agreement, or to resolve any dispute hereunder be required, the Parties acknowledge the jurisdiction of the federal courts and agree that venue for any such action shall be in the United States District Court for the Northern District of Illinois, except that matters or disputes arising under the Institutional Compliance Agreement shall be addressed pursuant solely to the provisions therein.

18. Within ten (10) days after this Agreement is executed and the Settlement Amount is received by the United States and the State of Illinois, the United States, the State of Illinois, and Relator will notify the court that the parties stipulate and request that the Relator's complaint and the complaint filed by the United States in this cause be dismissed with prejudice, except the court shall retain jurisdiction over the issue of attorneys fees, costs, and expenses the Relator's counsel may be entitled to from the University.

19. Conditioned on the University's payment in full of the Settlement Amount, Relator shall receive from the United States a payment amounting to \$1,404,473 and from the State of Illinois a payment amounting to \$445,527. The United States and the State of Illinois shall pay Relator and Relator's attorneys these amounts by wire transfer pursuant to relator's instructions as soon as

practicable after receipt by the United States and the State of Illinois of the Settlement Amount. It is expressly understood and agreed that the United States and the State of Illinois in no way promise or guarantee nor are they liable to Relator for the collection or payment of any funds pursuant to this Agreement or the payment of any Relator's share except as provided herein for funds actually collected and received by the United States and the State of Illinois.

20. On receipt of the payments described in paragraph 19 above, Relator will release and will be deemed to have released and forever discharged the United States and Illinois, their officers, agents, and employees from any liability arising from the filing of the complaint as against the University, including any claim pursuant to 31 U.S.C. § 3730(d) or § 3730(c)(5) and in full satisfaction and settlement of claims under this Agreement.

21. The undersigned individuals signing this Agreement on behalf of the University and Relator, Al Reppine, represent and warrant that they are authorized to execute this Agreement on their behalf. The undersigned United States and Illinois signatories represent that they are signing this Agreement in their official capacities and that they are authorized to execute this Agreement.

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

the same Agreement.

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

THE UNITED STATES OF AMERICA

BY:

Linda A Wawzenki DATED: 2/10/00

Linda A. Wawzenki
Assistant United States Attorney
Northern District of Illinois

By: L. Morris

DATED: 1/13/00

Lewis Morris, Esq.
Office of Inspector General
U.S. Department of Health and Human Services

THE STATE OF ILLINOIS

BY:

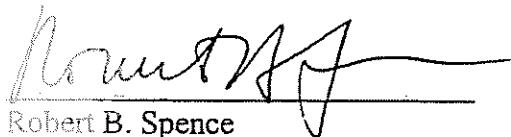
Ann Patla

Illinois Department of Public Aid
Ann Patla, Director

DATED: 1-27-00

THE STATE OF ILLINOIS

BY:



Robert B. Spence

Deputy Attorney General, Criminal Justice

DATED: 2/1/2007

RELATOR AL REPPINE

BY:

Al Reppine

STEVEN COHEN, ONE OF RELATORS
ATTORNEY

DATED:

January 26, 2001

THE UNIVERSITY OF CHICAGO

BY:

Arthur Sasse

DATED: 17 Jan 00

THE UNIVERSITY OF CHICAGO HOSPITALS

BY:

Jeff Myerson

DATED: 12 Feb 2000