

SETTLEMENT AGREEMENT

I. PARTIES

This Settlement Agreement ("Agreement") is entered into between the United States of America ("United States"), 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"); the Medicaid program of the State of Illinois; the Relator, Health Outcome Technologies and WEISS MEMORIAL HOSPITAL (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. WEISS MEMORIAL HOSPITAL is a health care provider, and submitted or caused to be submitted, claims to Medicare and Medicaid, for the inpatient treatment of Medicare and Medicaid beneficiaries.

B. The United States contends that WEISS MEMORIAL HOSPITAL 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. §§ 1395-1395 ddd(1997); and the Medicaid Program, 42 U.S.C. §§ 1396-1396v (1997).

C. Medicare and Medicaid payments to a hospital for inpatient treatment rendered to a beneficiary generally are based

upon the beneficiary's "principal diagnosis," as set forth by the hospital.

D. The Medicare and Medicaid programs rely upon participating hospitals to properly indicate the principal diagnosis through the use of standard diagnosis codes.¹

E. The United States conducted an investigation into inpatient payment claims submitted to Medicare and Medicaid by hospitals with the principal diagnosis code of 482.89 (pneumonia due to "other specified bacteria").

F. The United States contends that it has certain civil claims against WEISS MEMORIAL HOSPITAL under the False Claims Act, 31 U.S.C. §§ 3729-3733, and other federal statutes and/or common law doctrines as more specifically identified in paragraph 5 below, for engaging in the following alleged conduct during the period from June 1993 through July 1997 in that WEISS MEMORIAL HOSPITAL submitted or caused to be submitted claims to the Medicare and State of Illinois Medicaid programs with the 482.89 principal diagnosis code that were not supported by the corresponding medical records (hereinafter referred to as the "Covered Conduct"). The United States alleges that, as a result of these claims, WEISS MEMORIAL HOSPITAL received payments to which it was not entitled.

G. The United States also contends that it has certain administrative claims against WEISS MEMORIAL HOSPITAL under the provisions for permissive exclusion from the Medicare, Medicaid and

¹ International Classification of Diseases, 9th Revision, Clinical Modification ("ICD-9-CM").

other federal health care programs, 42 U.S.C. § 1320a-7(b), the provisions for civil monetary penalties, 42 U.S.C. § 1320a-7a, for the Covered Conduct.

H. WEISS MEMORIAL HOSPITAL has provided documents and information to the United States in response to the government's investigation of the Covered Conduct, including patient files for which claims were submitted to the Medicare and State of Illinois Medicaid programs with the principal diagnosis code of 482.89, and WEISS MEMORIAL HOSPITAL represents that such response has been truthful, accurate, and complete to the best of its knowledge and ability.

I. WEISS MEMORIAL HOSPITAL does not admit the contentions of the United States as set forth in Paragraphs F and G above.

J. 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. WEISS MEMORIAL HOSPITAL agrees to pay to the United States \$3,350,000.00 (the "Settlement Amount") as follows: WEISS MEMORIAL HOSPITAL agrees to make payment of the Settlement Amount by electronic funds transfer pursuant to written instructions to be provided by the United States Attorney's Office for the Northern

District of Illinois. WEISS MEMORIAL HOSPITAL agrees to make this electronic funds transfer no later than the effective date of this Agreement.

2. WEISS MEMORIAL HOSPITAL agrees to cooperate fully and in good faith with the United States in the administrative, civil or criminal investigation or prosecution of any person concerning the covered conduct, and concerning similar matters involving other hospitals and others, by providing accurate, truthful, and complete information whenever, wherever, to whomever and in whatever form the United States reasonably may request. Nothing in this Paragraph, however, affects any privilege that might be available to WEISS MEMORIAL HOSPITAL or any statutory or regulatory obligation of WEISS MEMORIAL HOSPITAL, or WEISS MEMORIAL HOSPITAL's ability to object to the request on the grounds of such privilege or obligation; the United States reserves its right to contest the assertion of any such privilege or obligation by WEISS MEMORIAL HOSPITAL. WEISS MEMORIAL HOSPITAL agrees to the following specific representations and undertakings:

a. WEISS MEMORIAL HOSPITAL will use its best efforts to provide such information, and related documents, within ten (10) working days of receipt of a request. If necessary, WEISS MEMORIAL HOSPITAL will notify the United States of any difficulty in timely complying with any such request, and will advise the United States of the additional amount of time estimated to be needed to respond to such request.

b. WEISS MEMORIAL HOSPITAL understands that it has undertaken an obligation to provide truthful and accurate information and testimony by itself and through its employees. WEISS MEMORIAL HOSPITAL agrees that it shall take no action which could cause any person to fail to provide such testimony (other than the assertion of a privilege or statutory or regulatory obligation), or could cause any person to believe that the provision of truthful and accurate testimony could adversely affect such person's employment or any contractual relationship.

c. Should it be judged by the United States that WEISS MEMORIAL HOSPITAL has failed to cooperate fully or has intentionally given false, misleading, or incomplete information or testimony, or has otherwise violated any provision of this Agreement, WEISS MEMORIAL HOSPITAL thereafter shall be subject to prosecution for any criminal violation of which the United States has knowledge, including, but not limited to, perjury, obstruction of justice, and false statements.

3. WEISS MEMORIAL HOSPITAL has entered into a Corporate Integrity Agreement with HHS, attached as Exhibit A, which is incorporated into this Agreement by reference. WEISS MEMORIAL HOSPITAL will implement its obligations under the Corporate Integrity Agreement as set forth in the Corporate Integrity Agreement.

4. WEISS MEMORIAL HOSPITAL releases the United States, HHS, Office of Personal Management, Railroad Retirement Board, and each of their agencies, officers, agents, employees, and contractors and

their employees and Relator from any and all claims, causes of action, adjustments, and set-offs of any kind arising out of or pertaining to the Covered Conduct, including the investigation of the covered conduct and this Agreement.

5. Subject to the exceptions in Paragraph 7 below, in consideration of the obligations of WEISS MEMORIAL HOSPITAL set forth in this Agreement, conditioned upon WEISS MEMORIAL HOSPITAL'S payment in full of the Settlement Amount, and subject to Paragraph 15, below (concerning bankruptcy proceedings commenced within 91 days of the effective date of this Agreement), the United States (on behalf of itself, its officers, agents, and its agencies and departments referenced above in paragraph 4), the State of Illinois Medicaid Program, and Relator agree to release WEISS MEMORIAL HOSPITAL, its predecessors, successors, assigns, and affiliates (including the sole corporate member of WEISS MEMORIAL HOSPITAL and entities in which WEISS MEMORIAL HOSPITAL's sole corporate member, directly or indirectly, (a) holds at least 51% of the outstanding membership voting rights (in the case of not-for-profit entities); or (b) owns at least 51% of the outstanding stock, partnership, membership or other equity interest (in the case of for-profit entities)) 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 Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801-3812 or the common law theories of payment by mistake, unjust

enrichment, breach of contract and fraud, for the Covered Conduct. No individuals are released by this Agreement.

6. In consideration of the obligations of WEISS MEMORIAL HOSPITAL set forth in this Agreement, conditioned upon WEISS MEMORIAL HOSPITAL'S payment in full of the Settlement Amount, and subject to the Corporate Integrity Agreement contained in Exhibit A and paragraph 15 below (concerning bankruptcy proceedings commenced within 91 days of the effective date of this Agreement), 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 WEISS MEMORIAL HOSPITAL 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 Exhibit A, and as reserved in this Paragraph. 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.

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 WEISS MEMORIAL HOSPITAL) are any and all of the following:

(1) Any civil, criminal or administrative claims arising under Title 26, U.S. Code (Internal Revenue Code);

(2) Any criminal liability and any related administrative action for mandatory exclusion from Medicare, Medicaid, or any other Federal health care programs;

(3) Any liability to the United States (or its agencies) for any conduct other than the Covered Conduct;

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

(5) Any express or implied warranty claims or other claims for defective or deficient products or services, including quality of goods and services, provided by WEISS MEMORIAL HOSPITAL;

(6) Any claims based on a failure to actually deliver items or services billed;

(7) Any claims against any individuals, including officers and employees; however, if such individuals are legally entitled to repayment from WEISS MEMORIAL HOSPITAL, by claim for indemnification, contribution, reimbursement or otherwise as a result of a claim brought by the United States, the releases provided in Paragraphs 5 and 6 above shall apply to such individuals with respect to that claim;

8. WEISS MEMORIAL HOSPITAL waives and will not assert any defenses 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 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*, 113 S. Ct. 2801 (1993), and agrees that the

Settlement Amount is not punitive in nature or effect for purposes of 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.

9. The Amount that WEISS MEMORIAL HOSPITAL must pay pursuant to this Agreement by electronic wire transfer pursuant to Paragraph 1 above, will 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 Medicaid, or any State payer, related to the Covered Conduct; and WEISS MEMORIAL agrees not to resubmit to any Medicare carrier or intermediary or Medicaid or any State payer any previously denied claims related to the Covered Conduct, and agrees not to appeal any such denials of claims.

10. WEISS MEMORIAL HOSPITAL agrees 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 WEISS MEMORIAL HOSPITAL 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) WEISS MEMORIAL HOSPITAL'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 (including attorney's fees and the obligations undertaken pursuant to the Corporate Integrity Agreement incorporated in this Settlement Agreement), (4) the negotiation of this Agreement, and (5) the payment made pursuant to this Agreement, are unallowable costs on Government contracts and under the Medicare and Medicaid Programs (hereafter, "unallowable costs"). These unallowable costs will be separately estimated and accounted for by WEISS MEMORIAL HOSPITAL, and WEISS MEMORIAL HOSPITAL 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 WEISS MEMORIAL HOSPITAL or any of its subsidiaries to the Medicare Medicaid programs.

11. WEISS MEMORIAL HOSPITAL further agrees to undertake a self audit of any coding work performed by Dr. Gerald Farby on behalf of WEISS MEMORIAL HOSPITAL from July 1, 1992 through July 1, 1998. WEISS MEMORIAL HOSPITAL will retain a qualified outside auditor, subject to the approval of the United States Attorney for the Northern District of Illinois, which approval shall not be unreasonably withheld, and will report the results of that audit to the OIG-HHS within six months of the effective date of this Agreement. WEISS MEMORIAL HOSPITAL will bear the costs of this audit and will in no way seek reimbursement through the Medicare or Medicaid Programs for the costs of such audit. Within eight months of the effective date of this Agreement, WEISS MEMORIAL HOSPITAL

will identify to applicable Medicare fiscal intermediaries, carriers and/or contractors, and Medicaid any unallowable costs identified by this audit which were 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 WEISS MEMORIAL HOSPITAL or any of its 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 those unallowable costs. WEISS MEMORIAL HOSPITAL agrees that the United States will be entitled to recoup from WEISS MEMORIAL HOSPITAL the actual amount of 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 WEISS MEMORIAL HOSPITAL or any of its subsidiaries on the effect of inclusion of the unallowable costs on WEISS MEMORIAL HOSPITAL or any of its subsidiaries' cost reports, cost statements or information reports. Nothing in this Agreement shall constitute a waiver of any rights or remedies of the United States, including but not limited to its rights and remedies under the False Claims Act, 31 U.S.C. §§ 3729-3733, as to Weiss Memorial Hospital or Dr.

Farby regarding the coding work of Dr. Farby or the unallowable costs described in this Paragraph.

12. This Agreement is intended to be for the benefit of the Parties only, and by this instrument the Parties do not release any claims against any other person or entity.

13. WEISS MEMORIAL HOSPITAL agrees that it 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. WEISS MEMORIAL HOSPITAL waives any causes of action against these beneficiaries or their parents or sponsors based upon the claims for payment covered by this Agreement.

14. WEISS MEMORIAL HOSPITAL expressly warrants that it has reviewed its financial situation and that it currently is solvent within the meaning of 11 U.S.C. Section 547(b)(3), and will remain solvent following its payment to the United States hereunder. Further, the Parties expressly warrant that, in evaluating whether to execute this Agreement, the Parties (1) have intended that the mutual promises, covenants and obligations set forth herein constitute a contemporaneous exchange for new value given to WEISS MEMORIAL HOSPITAL, within the meaning of 11 U.S.C. Section 547(c)(1), and (2) have concluded that these mutual promises, covenants and obligations do, in fact, constitute such a contemporaneous exchange.

15. In the event WEISS MEMORIAL HOSPITAL commences, or a thirty party commences, within 91 days of the effective date of this Agreement, any case, proceeding, or other action (a) under any

law relating to bankruptcy, insolvency, reorganization or relief of debtors, seeking to have any order for relief of WEISS MEMORIAL HOSPITAL'S debts, or seeking to adjudicate WEISS MEMORIAL HOSPITAL as bankrupt or insolvent, or (b) seeking appointment of a receiver, trustee, custodian or other similar official for WEISS MEMORIAL HOSPITAL or for all or any substantial part of WEISS MEMORIAL HOSPITAL'S assets, WEISS MEMORIAL HOSPITAL agrees as follows:

a. WEISS MEMORIAL HOSPITAL'S obligations under this Agreement may not be avoided pursuant to 11 U.S.C. Section 547, and WEISS MEMORIAL HOSPITAL will not argue or otherwise take the position in any such case, proceeding or action that: (i) WEISS MEMORIAL HOSPITAL'S obligations under this Agreement may be avoided under 11 U.S.C. Section 547; (ii) WEISS MEMORIAL HOSPITAL was insolvent at the time this Agreement was entered into, or became insolvent as a result of the payment made to the United States hereunder; or (iii) the mutual promises, covenants and obligations set forth in this Agreement do not constitute a contemporaneous exchange for new value given to WEISS MEMORIAL HOSPITAL.

b. In the event that WEISS MEMORIAL HOSPITAL'S obligations hereunder are avoided pursuant to 11 U.S.C. Section 547, the United States, at its sole option, may rescind the releases in this Agreement, and bring any civil and/or administrative claim, action or proceeding against WEISS MEMORIAL HOSPITAL for the claims that would otherwise be covered by the releases provided in Paragraphs 5-6, above. If the United States chooses to do so, WEISS MEMORIAL HOSPITAL agrees that (i) any such claims, actions or proceedings

brought by the United States (including any proceedings to exclude WEISS MEMORIAL HOSPITAL from participation in Medicare, Medicaid, or other federal health care programs) are not subject to an "automatic stay" pursuant to 11 U.S.C. Section 362(a) as a result of the action, case or proceeding described in the first clause of this Paragraph, and that WEISS MEMORIAL HOSPITAL will not argue or otherwise contend that the United States' claims, actions or proceedings are subject to an automatic stay; (ii) that WEISS MEMORIAL HOSPITAL will not plead, argue or otherwise raise any defenses under the theories of statute of limitations, laches, estoppel or similar theories, to any such civil or administrative claims, actions or proceeding which are brought by the United States within 180 calendar days of written notification to WEISS MEMORIAL HOSPITAL that the releases herein have been rescinded pursuant to this Paragraph, except to the extent such defenses were available on April 15, 1998; and (iii) the United States has a valid claim against WEISS MEMORIAL HOSPITAL in the amount of \$9,566,618.10 as authorized under the false Claims Act which were submitted during the period of June 1993 through July 1997 plus interest. The United States may pursue its claim, inter alia, in the case, action or proceeding referenced in the first clause of this Paragraph, as well as in any other case, action, or proceeding.

c. WEISS MEMORIAL HOSPITAL acknowledges that its agreements in this Paragraph are provided in exchange for valuable consideration provided in this Agreement.

16. 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. WEISS MEMORIAL HOSPITAL represents that this Agreement is freely and voluntarily entered into without any degree of duress or compulsion whatsoever.

18. 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 will be the United States District Court for the Northern District of Illinois.

19. This Agreement, including Exhibit A which is incorporated by reference, constitutes the complete agreement between the Parties. This Agreement may not be amended except by written consent of the Parties, except that only WEISS MEMORIAL HOSPITAL and OIG-HHS must agree in writing to modification of the Corporate Integrity Agreement contained in Exhibit A.

20. After this Agreement is executed and the Settlement Amount is received by the United States, the United States and Relator will notify the Court that the parties stipulate and request that Weiss Memorial Hospital be dismissed with prejudice from the action captioned United States ex rel. Health Outcomes Technologies v. [NAMED HOSPITALS], Civil Action No. 96-1552 (UNDER SEAL), in the United States District Court for the Eastern District of Pennsylvania.

21. By this Agreement, the Relator and Relator's Counsel will release and will be deemed to release WEISS MEMORIAL HOSPITAL, from any claim that the Relator, and/or Relator's Counsel may have under 31 U.S.C. § 3730(d) to pay Relator's or Relator's Counsel attorneys' fees, expenses and costs.

22. Conditioned on Weiss Memorial Hospital's payment in full of the Settlement Amount, Relator shall receive from the United States a payment amounting to \$434,236.91. The United States shall pay relator this amount within a reasonable time after receipt by the United States from Weiss Memorial Hospital of the Settlement Amount. It is expressly understood and agreed that the United States in no way promises or guarantees nor is liable to relator for the collection or payment of any funds pursuant to this Agreement or the payment or any relator's share payments except as provided herein for funds actually collected and received by the United States.

23. On receipt of the payment described in Paragraph 22 above, Relator will release and will be deemed to have released and forever discharged the United States, its officers, agents, and employees from any liability arising from the filing of the Complaint as against Weiss Memorial Hospital, including any claim pursuant to 31 U.S.C. § 3730(d) to a share of any settlement proceeds received from Weiss Memorial Hospital or other proceeds received from Weiss Memorial Hospital as a result of the audit described in Paragraph 11, and in full satisfaction and settlement of claims under this Agreement.

24. The undersigned individuals signing this Agreement on behalf of WEISS MEMORIAL HOSPITAL and Relator, Health Outcomes Technologies, represent and warrant that they are authorized to execute this Agreement on behalf of those entities. The undersigned United States and State of Illinois signatories represent that they are signing this Agreement in their official capacities and that they are authorized to execute this Agreement.

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

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

THE UNITED STATES OF AMERICA

DATED:

10-14-98

BY:

Daniel E. May

DANIEL E. MAY
Assistant United States Attorney
Northern District of Illinois

DATED:

10-27-98

BY:

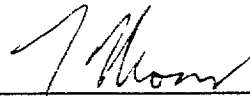
Jamranzaer

MICHAEL F. HERTZ
JOYCE R. BRANDA
JAMIE ANN YAVELBERG
Civil Division
U.S. Department of Justice

DATED:

10/20/98

BY:



LEWIS MORRIS
Assistant Inspector General
office of Counsel to the
Inspector General
Office of Inspector General
United States Department of
Health and Human Services

STATE OF ILLINOIS ~~MEDICAID PROGRAM~~

DATED:

10.15.98

BY:

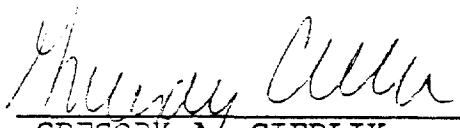


Michael C. Rosenblatt
Assistant Attorney General
State of Illinois

WEISS MEMORIAL HOSPITAL


DATED: 10-9-98

BY:


GREGORY A. CIERLIK,
President & CEO
WEISS MEMORIAL HOSPITAL

DATED: 10-9-98


BY:


HOWARD M. PEARL, Counsel for
WEISS MEMORIAL HOSPITAL

RELATOR HEALTH OUTCOMES TECHNOLOGIES

DATED: 10-19-98

BY:


DRINKER, BIDDLE & REATH
Attorneys for Relator
Health Outcomes Technologies

SETTLEMENT AGREEMENT

I. PARTIES

This Settlement Agreement ("Agreement") is entered into among the United States of America ("United States"), 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"); Relator Health Outcomes Technologies, Inc.; and St. Vincent's Health System (including St. Vincent's Medical Center and Riverside Hospital) ("SVHS"), through their authorized representatives. The United States, Relator and SVHS are hereafter referred to as "the Parties."

II. PREAMBLE

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

- A. SVHS is a health care provider, and submitted or caused to be submitted, claims to Medicare for the inpatient treatment of Medicare beneficiaries.
- B. The United States contends that SVHS 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. §§ 1395-1395 ggg(1997).
- C. Medicare payments to a hospital for inpatient treatment rendered to a beneficiary generally are based upon the beneficiary's "principal diagnosis," as set forth by the hospital.
- D. The Medicare program relies upon participating hospitals to properly indicate the

principal diagnosis through the use of standard diagnosis codes.¹

E. The United States conducted an investigation into inpatient payment claims submitted to Medicare by St. Vincent's Medical Center and Riverside Hospital with the principal diagnosis code of 482.89 (pneumonia due to "other specified bacteria").

F. The United States contends that it has certain civil claims against SVHS under the False Claims Act, 31 U.S.C. §§ 3729-3733, and other federal statutes and/or common law doctrines as more specifically identified in paragraph 4 below, for engaging in the following alleged conduct during the period from October 1, 1992 through September 30, 1997: St. Vincent's Medical Center and Riverside Hospital submitted or caused to be submitted claims to Medicare with the principal diagnosis code of 482.89 that were not supported by the corresponding medical records (hereinafter referred to as the "Covered Conduct"). The United States alleges that, as a result of these claims, St. Vincent's Medical Center and Riverside Hospital received payments to which they were not entitled.

G. SVHS has provided documents and information to the United States in response to the government's investigation of the Covered Conduct, including patient files for which claims were submitted to the Medicare Program with the principal diagnosis code of 482.89, and SVHS represents that such response has been truthful, accurate, and complete to the best of its knowledge and ability.

H. By entering into this Agreement, SVHS does not admit the contentions of the United States as set forth in Paragraph F above and as set forth in *United States ex rel. Health*

¹ International Classification of Diseases, 9th Revision, Clinical Modification ("ICD-9-CM").

Outcomes Technologies, Inc. v. St. Vincent's Medical Center and Riverside Hospital (M.D. Fla.), and the United States does not concede that its claims are not well founded.

J. 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. SVHS agrees to pay to the United States \$1,650,000 (the "Settlement Amount") by electronic funds transfer pursuant to written instructions to be provided by the Civil Division of the United States Department of Justice. SVHS agrees to make this electronic funds transfer no later than three days from the Effective Date of this Agreement.

2. SVHS agrees to cooperate fully and truthfully with the United States' investigation of individuals and entities not released in this Agreement, for the Covered Conduct. Upon reasonable notice, SVHS will make reasonable efforts to facilitate access to, and encourage the cooperation of, its 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 non-privileged documents and records in its possession, custody, or control relating to the Covered Conduct.

3. SVHS releases the United States, HHS, and each of their agencies, officers, agents, employees, and contractors and their employees and Relator from any and all claims, causes of action, adjustments, and set-offs of any kind arising out of or pertaining to the Covered

Conduct, including the investigation of the Covered Conduct and this Agreement.

4. Subject to the exceptions in Paragraph 5 below, in consideration of the obligations of SVHS set forth in this Agreement, and conditioned upon SVHS's payment in full of the Settlement Amount, the United States (on behalf of itself, its officers, agents, agencies and departments), and Relator agree to release SVHS, its subsidiaries, predecessors, successors, assigns, affiliates, current and former directors, officers and employees 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 Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801-3812 or the common law theories of payment by mistake, unjust enrichment, breach of contract and fraud, for the Covered Conduct. The United States expressly reserves any claims against any other entities and individuals.

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 SVHS and Relator) are the following claims of the United States:

- (1) Any civil, criminal or administrative liability arising under Title 26, U.S. Code (Internal Revenue Code);
- (2) Any criminal liability;
- (3) Except as explicitly otherwise stated in this Agreement, any administrative liability, including mandatory and permissive exclusion from Federal health care programs;
- (4) Any liability to the United States (or its agencies) for any conduct other than the Covered Conduct;

(5) Any liability based upon such obligations as are created by this Agreement;

(6) Any liability for express or implied warranty claims or other claims for defective or deficient products or services, including quality of goods and services, provided by SVHS;

(7) Any liability for claims based on a failure to deliver items or services billed.

6. SVHS waives and will not assert any defenses it may have to any criminal prosecution or administrative action relating to the Covered Conduct that are based in whole or in part on a contention that, under the Double Jeopardy or Excessive Fines Clauses of the Constitution, this settlement bars a remedy sought in such criminal prosecution or administrative action. SVHS agrees that this settlement is not punitive in purpose or effect. 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. The Amount that SVHS must pay pursuant to this Agreement by electronic wire transfer, pursuant to Paragraph 1 above, 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 SVHS agrees not to resubmit to any Medicare carrier or intermediary or any State payer any claims related to the Covered Conduct, and agrees not to appeal any denials of any previously submitted claims.

8. SVHS agrees to the following:

(a) Unallowable Costs Defined: that all costs (as defined in the Federal Acquisition Regulations 42 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 SVHS, its present or former officers, directors, employees, shareholders, and agents in connection with the following shall be "unallowable costs":

(1) the matters covered by this Agreement;

(2) the United States' audit(s) and civil investigation(s) of the matters covered by this Agreement;

(3) SVHS'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 Agreement (including attorney's fees);

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

(5) the payment made pursuant to this Agreement.

All costs described or set forth in this Paragraph are hereafter, "unallowable costs").

(b) Future Treatment of Unallowable Costs: These unallowable costs will be separately determined and accounted for in non-reimbursable cost centers by SVHS, and SVHS 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 SVHS or any of its subsidiaries to the Medicare, Medicaid, TRICARE, VA or FEHBP programs.

(c) Treatment of Unallowable Costs Previously Submitted for Payment: SVHS further agrees that within 90 days of the effective date of this Agreement it will identify to applicable Medicare and TRICARE fiscal intermediaries, carriers and/or contractors, and Medicaid, VA 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 SVHS or any of its subsidiaries or affiliates, 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. SVHS agrees that the United States, at a minimum, shall be entitled to recoup from SVHS 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 SVHS or any of its subsidiaries on the effect of inclusion of unallowable costs (as defined in this paragraph) on SVHS or any of its subsidiaries' cost reports, cost statements or information reports.

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

9. 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 Paragraphs 4 and 10.

10. SVHS 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. SVHS waives any causes of action against these beneficiaries or their parents, sponsors, legally responsible individuals or third party payors based upon the claims defined as the Covered Conduct.

11. After this Agreement is executed and the Settlement Amount is received by the United States, the United States and Relator will notify the Court that the parties stipulate and request that St. Vincent's Hospital and Riverside Hospital be dismissed with prejudice pursuant to the terms of this Agreement from the action captioned United States ex rel. Health Outcomes Technologies v. St. Vincent's Hospital and Riverside Hospital, Civil Action No. 8:01-CV-1384-T-24EAJ (UNDER SEAL), in the United States District Court for the Middle District of Florida.

12. By this Agreement, the Relator and Relator's Counsel will release and will be deemed to release SVHS, from any claim that the Relator and/or Relator's Counsel may have under 31 U.S.C. § 3730(d) to pay Relator's or Relator's Counsel attorneys' fees, expenses and costs.

13. Conditioned on SVHS's payment in full of the Settlement Amount, Relator shall receive from the United States a payment amounting to \$231,000. The United States shall pay relator this amount within a reasonable time after receipt by the United States from SVHS of the Settlement Amount. It is expressly understood and agreed that the United States in no way promises or guarantees nor is liable to relator for the collection or payment of any funds pursuant

to this Agreement or the payment or any relator's share payments except as provided herein for funds actually collected and received by the United States.

14. On receipt of the payment described in Paragraph 13 above, Relator, for itself and its heirs, successors, attorneys, agents, and assigns, agrees to release the United States, its officers, agents, and employees, from any claims arising from or relating to 31 U.S.C. § 3730 in connection with the claims in this Civil Action against St. Vincent's Medical Center and Riverside Hospital, or arising from the filing of the Civil Action against St. Vincent's Medical Center and Riverside Hospital, including 31 U.S.C. §§ 3730(b), (c), (c)(5), (d), and (d)(1) in connection with this Civil Action. The relator agrees and confirms that this Agreement is fair, adequate, and reasonable under all the circumstances, pursuant to 31 U.S.C. § 3730(c)(2)(B).

15. Except as expressly provided to the contrary in this Agreement, 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.

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

17. 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 will be the United States District Court for the Middle District of Florida.

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

19. The undersigned individuals signing this Agreement on behalf of SVHS and Relator represent and warrant that they are authorized to execute this Agreement on behalf of

those entities. 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.


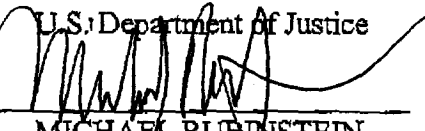
20. This Agreement may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same agreement.

21. This Agreement is binding on SVHS's and Relator's successors, transferees, and assigns.

22. This Agreement is effective on the date of signature of the last signatory to the Agreement. Facsimiles of signatures shall constitute acceptable, binding signatures for purposes of this Agreement.

THE UNITED STATES OF AMERICA

DATED: 1-12-04

BY: 
MICHAEL F. HERTZ
JOYCE R. BRANDA
JAMIE ANN YAVELBERG
KEITH E. DOBBINS
Civil Division
U.S. Department of Justice
BY: 
MICHAEL RUBINSTEIN
Assistant United States Attorney

ST. VINCENT'S HEALTH SYSTEM

DATED: _____

BY: _____
JOHN MAHER
Chief Executive Officer
St. Vincent's Health System

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MICHAEL F. HERTZ
JOYCE R. BRANDA
JAMIE ANN YAVELBERG
KEITH E. DOBBINS
Civil Division
U.S. Department of Justice

BY: _____
MICHAEL RUBINSTEIN
Assistant United States Attorney

ST. VINCENT'S HEALTH SYSTEM

DATED: > Jan 04

BY: *J. Maher*
JOHN MAHER
Chief Executive Officer
St. Vincent's Health System

DATED: _____

BY: Christopher A. Myers
CHRISTOPHER A. MYERS, ESQ.
JENNIFER A. SHORT, ESQ.
Counsel for SVHS

RELATOR HEALTH OUTCOMES TECHNOLOGIES

DATED: _____

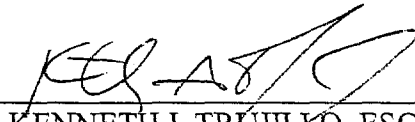
BY: _____
KENNETH I. TRUJILLO, ESQ.
Attorney for Relator
Health Outcomes Technologies

DATED: _____

BY: _____
CHRISTOPHER A. MYERS, ESQ.
JENNIFER A. SHORT, ESQ.
Counsel for SVHS

RELATOR HEALTH OUTCOMES TECHNOLOGIES

DATED: 12-22-03

BY: 
KENNETH I. TRUJILLO, ESQ.
Attorney for Relator
Health Outcomes Technologies