

SETTLEMENT AND RELEASE AGREEMENT

I. PARTIES

This Settlement and Release Agreement ("Agreement") is entered into between Plaintiff-Relator Karon O'Brien (f/k/a Karon Hill) ("Relator") and Defendant Morehouse Medical Associates, Inc. ("MMA") (hereafter referred to as "the Parties") upon the terms and conditions set forth herein.

II. PREAMBLE

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

- A. MMA is a private, not-for-profit Georgia corporation that provides physician services and ancillary medical services to patients in the Atlanta metropolitan area.
- B. Relator, an individual resident of the State of Georgia, worked as a "Biller Coder II" with supervisory responsibility in MMA's billing and coding department from June 1999 until January 2000, when she resigned. On July 21, 2000, Relator filed a *qui tam* action in the United States District Court for the Northern District of Georgia, captioned *United States ex rel. Hill v. Morehouse Medical Associates, Inc.*, Civil Action File No. 1:00-CV-1858-GET ("the Civil Action"). The government declined to intervene in the Civil Action on April 24, 2001, and Relator filed an Amended Complaint on March 26, 2002.
- C. Relator alleges in the Civil Action that MMA submitted or caused to be submitted false claims for payment to the Medicare Program ("Medicare"), Title

XVIII of the Social Security Act, 42 U.S.C. §§ 1395-1395ggg, in violation of 31 U.S.C. § 3729 as specified in Paragraphs 14 through 49 in the Amended Complaint filed in the Civil Action and further identified below:

- a. During the period from January 1, 1998 through June 21, 2000, MMA submitted certain claims to Medicare for payment that the Relator alleges were false because (A) MMA allegedly changed the diagnosis and CPT codes listed on the encounter forms for physician office visits to Medicare reimbursable codes, including without limitation changing the CPT codes for routine physical examinations to CPT codes for an established patient office visit and diagnosis codes to codes used for hypertension, pneumonia, diabetes and asthma; (B) MMA allegedly changed the diagnosis code connected with lab tests to other codes that appeared in the patient's billing history, including without limitation hypertension, pneumonia, diabetes and asthma; (C) MMA allegedly changed the diagnosis code connected with x-rays to Medicare reimbursable codes, including without limitation hypertension and pneumonia; (D) MMA allegedly changed diagnosis codes connected with breast biopsies or breast cysts to codes connected to reimbursable procedures; (E) MMA allegedly coded established office visits and consultations at a level of service that was not supported by the patient records; (F) MMA allegedly coded new patient and established patient office visits as consultations; (G) MMA allegedly used the diagnosis code for AIDS instead of HIV-positive and coded the office visit at a higher

level of service than supported by the patient's medical record; (H) MMA allegedly used the diagnosis code for AIDS instead of HIV-positive and increased the number of office visits that could be billed annually; (I) MMA allegedly billed for services provided by residents that were not appropriately supervised by teaching physicians; and (J) MMA allegedly failed to include a modifier on certain claims indicating that a resident had participated in the service.

Subparagraph a. above is hereinafter referred to as the "Covered Conduct."

D. MMA denies all of the allegations in paragraph II.C. and by participating in this Agreement, MMA does not admit that it engaged in any Covered Conduct, nor does it admit that it submitted any false claims to Medicare. This Agreement is the result of a compromise and shall never at any time for any purpose be considered as an admission of liability or responsibility of MMA, which continues to deny such liability and disclaim such responsibility.

E. To avoid the delay, uncertainty, inconvenience, and expense of protracted litigation of the above claims, and based upon the mutual understandings set forth herein, the Parties reach a full and final settlement of claims asserted against MMA in the Civil Action.

III. TERMS AND CONDITIONS

1. Subject to the conditions herein, MMA agrees to pay \$1,750,000.00 (the "Settlement Amount") to the United States in full and final settlement of the claims asserted in the Civil Action. Subject to the conditions herein, MMA further agrees to pay

Relator \$987,815.00 for all attorney's fees, costs, and expenses. The foregoing payments shall be made as follows:

a. MMA will pay the full Settlement Amount to the United States by electronic funds transfer pursuant to written instructions to be provided by the United States Attorney's Office for the Northern District of Georgia.

b. MMA agrees to pay Relator for all attorney's fees, costs, and expenses, \$987,815.00 by electronic funds transfer to the account of Bothwell & Harris, P.C. ("Relator's Counsel") pursuant to written instructions to be provided by Relator's Counsel.

c. Subject to Paragraph III.6 regarding the manner in which these payments will be made, the payments specified in this paragraph shall constitute the sole payments by MMA under this Agreement, notwithstanding any payments that Relator is or may be entitled to under 31 U.S.C. § 3730(d)(2).

2. Subject to the exceptions in Paragraph 3 below, in consideration of the obligations of MMA in this Agreement, conditioned upon MMA's full payment of the Settlement Amount and subject to Paragraph III.13, below (concerning bankruptcy proceedings commenced within 91 days of the Effective Date of this Agreement or any payment made under this Agreement), Relator, for herself and for her heirs, successors, attorneys, agents, and assigns, agrees to release and forever discharge MMA, its parents, subsidiaries, related entities, officers, directors, trustees, agents, servants, employees, representatives, attorneys, consultants, successors, heirs, executors, administrators, and assigns, individually and collectively, from any civil or administrative monetary claim

the United States has or may have for the Covered Conduct under the False Claims Act, 31 U.S.C. §§ 3729-3733.

3. 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 MMA and Relator) are the following claims of the United States:

- a. Any civil, criminal, or administrative liability arising under Title 26, U.S. Code (Internal Revenue Code);
- b. Any criminal liability;
- c. Any administrative liability, including mandatory exclusion from Federal health care programs;
- d. Any liability to the United States (or its agencies) for any conduct other than the Covered Conduct;
- e. Any liability based upon such obligations as are created by this Agreement;
- f. Any liability for express or implied warranty claims or other claims for defective or deficient products or services, including quality of goods and services;
- g. Except as explicitly stated in this Agreement, any liability of individuals, including officers and employees;
- h. Any civil or administrative liability of individuals (including current or former directors, officers, employees, agents, or shareholders of MMA) who receive written notification that they are the target of a criminal investigation (as defined

in the United States Attorneys' Manual), are indicted, charged, or convicted, or who enter into a plea agreement related to the Covered Conduct.

4. The Parties will submit this Settlement and Release Agreement to the United States of America, acting through the United State Department of Justice, for approval and consent to dismissal of the Civil Action with prejudice. Subsequent to such approval and consent by the United States of America, the Parties will file a stipulated order of dismissal with prejudice and consent by the Court to such dismissal in the Civil Action. The stipulated order of dismissal with prejudice and consent by the Court to such dismissal is attached hereto as Exhibit A.

5. All obligations set forth in this Agreement, including but not limited to all obligations of payment and release, are expressly conditioned upon the entry of a final order by the United States District Court for the Northern District of Georgia dismissing with prejudice the Civil Action and all pending motions. The Parties agree that in the event MMA does not make the payments described in Paragraph III.1, MMA will not oppose a motion by Relator to reopen the Civil Action or seek relief from the stipulated order of dismissal for the purpose of reopening the Civil Action.

6. The payments described in Paragraph III.1 shall be made as follows:

a. MMA shall pay \$875,000, representing $\frac{1}{2}$ (one half) of the Settlement Amount, to the United States within three (3) business days following and conditioned on the entry of a final order dismissing with prejudice the Civil Action and all pending motions.

b. MMA shall pay \$63,000 of the total amount to be paid for Relator's attorney's fees, costs, and expenses as described in paragraph III.1.b within three (3) business days following and conditioned on the entry of a final order dismissing with prejudice the Civil Action and all pending motions, by wire transfer pursuant to instructions provided by Relator's Counsel.

c. Following and conditioned on entry of a final order dismissing with prejudice the Civil Action and all pending motions, MMA shall pay \$875,000, representing the remaining $\frac{1}{2}$ (one half) of the Settlement Amount, to the United States within three (3) business days of January 2, 2007.

d. Following and conditioned on entry of a final order dismissing with prejudice the Civil Action and all pending motions, MMA shall pay \$924,815, representing the remainder of the amount described in paragraph III.1.b less the payment described in paragraph III.6.b, within three (3) business days of January 2, 2007 by wire transfer pursuant to instructions provided by Relator's Counsel.

e. The Amounts due under this agreement shall be increased by 18% per annum compounded daily in the event that the payments are not made as described herein.

7. MMA will support Relator's claim to a 30% share of the Settlement Amount pursuant to 31 U.S.C. § 3730(d)(2).

8. Relator and MMA hereto agree that any and all disputes, claims, actions or proceedings arising between them directly, indirectly or otherwise in connection with, out of, related to or from this Agreement shall be settled by mandatory

and binding arbitration. The Parties agree that Terrence L. Croft, Esq., of Atlanta, Georgia, will serve as the sole arbiter of any such disputes, claims, actions or proceedings. Relator and MMA waive the right to commence an action in connection with this Agreement in any court and expressly agree to be bound by the arbiter's decision. Nothing contained in this Section shall prevent either party from commencing an action for the sole purpose of enforcing the obligation of the other party to submit to binding arbitration or the enforcement of an award granted by arbitration herein. Relator and MMA agree that the exclusive jurisdiction and venue for any such action is the United States District Court for the Northern District of Georgia.

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

10. MMA agrees to the following:

a. Unallowable Costs Defined: if applicable, that all costs (as defined in the Federal Acquisition Regulation, 48 C.F.R. § 31.205-47, and in Titles XVIII and XIX of the Social Security Act, 42 U.S.C. §§ 1395-1395ggg and 1396-1396v, and the regulations and official program directives promulgated thereunder) incurred by or on behalf of MMA, its present or former officers, directors, employees, shareholders, and agents in connection with the following shall be "Unallowable Costs" on government

contracts and under the Medicare Program, Medicaid Program, TRICARE Program, and Federal Employees Health Benefits Program (FEHBP):

- (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) MMA'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 MMA makes to the United States pursuant to this Agreement and any payments that MMA may make to Relator, including costs and attorneys fees.

All costs described or set forth in this Paragraph III.10.a are hereafter, "Unallowable Costs".

b. Future Treatment of Unallowable Costs: These Unallowable Costs shall be separately determined and accounted for in nonreimbursable cost centers by MMA, and MMA shall not charge such Unallowable Costs directly or indirectly to any contracts with the United States or any state Medicaid program, or seek payment for such Unallowable Costs through any cost report, cost statement, information statement,

or payment request submitted by MMA or any of its subsidiaries or affiliates to the Medicare, Medicaid, TRICARE, or FEHBP Programs.

c. Treatment of Unallowable Costs Previously Submitted for

Payment: MMA further agrees that within 90 days of the Effective Date of this Agreement it shall identify to applicable Medicare and TRICARE fiscal intermediaries, carriers, and/or contractors, and Medicaid, VA and FEHBP fiscal agents, any Unallowable Costs 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 MMA or any of its subsidiaries or affiliates, and shall request, and agree, that such cost reports, cost statements, information reports, or payment requests, even if already settled, be adjusted to account for the effect of the inclusion of the Unallowable Costs. MMA agrees that the United States, at a minimum, shall be entitled to recoup from MMA 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 MMA or any of its subsidiaries or affiliates on the effect of inclusion of Unallowable Costs on MMA or any of its subsidiaries or affiliates' 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 re-examine MMA's books and records to determine that no Unallowable Costs have been claimed in accordance with the provisions of this Paragraph.

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

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

13. If within 91 days of the Effective Date of this Agreement or of any payment made under this Agreement, MMA commences, or a third party commences, any case, proceeding, or other action under any law relating to bankruptcy, insolvency, reorganization, or relief of debtors (a) seeking to have any order for relief of MMA's debts, or seeking to adjudicate MMA as bankrupt or insolvent; or (b) seeking appointment of a receiver, trustee, custodian, or other similar official for MMA or for all or any substantial part of MMA's assets, MMA agrees as follows:

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

b. If MMA's obligations under this Agreement are avoided for any reason, including, but not limited to, through the exercise of a trustee's avoidance powers under the Bankruptcy Code, the United States or Relator may rescind the release in this Agreement, and bring any civil and/or administrative claim, action, or proceeding against MMA for the claims that would otherwise be covered by the releases provided in Paragraph 2, above. MMA agrees that (i) any such claims, actions, or proceedings brought by the Relator or United States (including any proceedings to exclude MMA from participation in Medicare, Medicaid, or other Federal health care programs) are not

subject to an "automatic stay" pursuant to 11 U.S.C. § 362(a) as a result of the action, case, or proceeding described in the first clause of this Paragraph, and MMA shall not argue or otherwise contend that the Relator's or United States' claims, actions, or proceedings are subject to an automatic stay; (ii) MMA shall 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 that are brought by the Relator or United States within 60 calendar days of written notification to MMA that the releases have been rescinded pursuant to this Paragraph, except to the extent such defenses were available on July 21, 2000; and (iii) the United States or Relator has a valid claim against MMA in the amount of \$1,750,000.00, and the United States or Relator may pursue its claim 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. MMA acknowledges that its agreements in this Paragraph are provided in exchange for valuable consideration provided in this Agreement.

14. This Agreement shall inure to the benefit of each Party hereto, their present and former officers, directors, trustees, insurers, representatives, attorneys, agents, employees, owners, successors and assigns, partners, attorneys, parent companies, subsidiaries, and affiliates, including all entities presently or formerly related to or affiliated with them in any way and all other persons, predecessors, firms, associations, insurers, limited partnerships or corporations, and their respective heirs, successors and assigns, and each of them, past, present and/or future.

15. This Agreement shall be governed by and construed in accordance with the laws of the State of Georgia.

16. The Parties to this Agreement agree that no particular Party shall be deemed to be the author of this Agreement or any particular term, provision or condition of this Agreement. The Parties further agree that any ambiguities in this Agreement shall be resolved, and the terms, provisions, and conditions of this Agreement shall be construed and interpreted, without regard to which Party may have suggested, drafted, revised, or otherwise authorized this Agreement or any of its particular terms, provisions, or conditions. The Parties further agree that this Agreement shall be construed and interpreted as if drafted jointly.

17. Except as expressly provided to the contrary in this Agreement, each Party shall bear its own legal and other costs incurred in connection with or as a result of the Civil Action and this Agreement.

18. Each Party to this Agreement represents and warrants that such Party has the full right and authority to execute this Agreement. The signatories for the Parties hereto represent and warrant that they have been granted specific authority by their respective principals to execute the Agreement on behalf of the Party. Where applicable, all corporate, partnership, or other organizational action necessary to authorize such execution has been taken and completed. The signatory of each Party to this Agreement has the full right and authority to commit and bind each respective Party to the fullest extent of the law.

19. The Parties acknowledge that they have obtained the advice of legal counsel before signing this Agreement. The Parties acknowledge that they made the decision to execute this Agreement freely and without coercion by any person, party or individual. The Parties acknowledge that, in entering into this Agreement, they are not relying on any statements or representations except those set forth in this Agreement.

20. This Agreement may be executed in one or more counterparts. All executed counterparts and each of them shall be deemed to be one and the same instrument. Counsel for the Parties shall exchange among themselves original signed counterparts. For purposes of this Agreement, a facsimile of a signed counterpart shall be deemed an original.

21. This Agreement may not be amended except by written consent of the Parties and with written approval of the United States.

(Continued on next page)

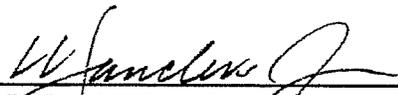
Karon O'Brien - RELATOR

DATED: 10/3/06

BY: 
KARON O'BRIEN, Relator

MOREHOUSE MEDICAL ASSOCIATES, INC.

DATED: 10-03-06

BY: 

DR. L. SANDERS, JR.
Morehouse Medical Associates, Inc.