

SETTLEMENT AGREEMENT AND RELEASE

I. PARTIES

THIS SETTLEMENT AGREEMENT AND RELEASE ("the Agreement"), is entered into this 27th day of September, 2000, by and among the UNITED STATES OF AMERICA, acting by and through the Department of Justice and the Office of Inspector General of the United States Department of Health and Human Services ("HHS-OIG") (together "the United States"), and MEADOWS REGIONAL MEDICAL CENTER, INC., ("Meadows"), (hereafter referred to as "the Defendant"), through its authorized representatives. All of the above will be referred to collectively as "the Parties."

II. PREAMBLE

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

A. Meadows is a corporation organized and existing under the laws of the State of Georgia, with its principal place of business located in Vidalia, Georgia. Meadows provides hospital and ancillary services to patients in Vidalia and the surrounding Toombs and Montgomery counties.

B. The United States contends that Meadows submitted or caused to be submitted claims for payment to the Medicare Program ("Medicare"), Title XVIII of the Social Security Act, 42 U.S.C. §§ 1395-1395ddd(1997); and to the Medicaid Program (codified in 42

U.S.C. §§ 1396-1396v (1997), Title XIX of the Social Security Act, as amended)¹.

C. On April 29, 1998, Ronnie R. Smith, M.D., and James H. Barber, M.D., (the "Relators") both of whom maintain staff privileges at Meadows, filed a civil action, under seal, in the United States District Court for the Northern District of Georgia, under the *qui tam* provisions of the False Claims Act, 31 U.S.C. §3730. That *qui tam* lawsuit is captioned United States ex rel. Ronnie R. Smith, M.D. and James H. Barber, M.D. v. Meadows Regional Medical Center, Inc., Barry Michael, and Geoffrey Conner, M.D., and is docketed as Civil Action No. 1:98-cv-1228-JOF (N.D.Ga.) (the "Lawsuit").

D. The United States conducted an investigation into the claims set forth in the Lawsuit.

E. This Agreement governs the Relators' claims against Meadows based on the conduct alleged in the *qui tam* Lawsuit, and the claims of United States against Meadows under the False Claims Act, 31 U.S.C. §3729-3733, and other federal statutes and/or common law doctrines. The United States contends it has certain civil causes of action against Meadows for engaging in the following conduct during the period from July 1, 1994 to August 1, 2000: admitting patients to Meadows pursuant to a physician's order and billing those claims as an in-patient admission when the patient

¹ The State of Georgia, through its Department of Medical Assistance ("DMA"), participates in the Medicaid program.

should have been placed on observation status and billed as such; submitting claims for patients who were improperly diagnosed with DRG 416 and DRG 475; and filing cost reports that included salary expenses for a person who was not performing 100% of her time on reimbursable patient care. The above-noted conduct engaged in by Meadows will hereinafter be referred to as the "Covered Conduct".

F. HHS-OIG contends also that it has certain administrative claims against Meadows under the provisions for permissive exclusion from the Medicare, Medicaid and other federal health care programs, 42 U.S.C. §1320a-7(b), and the provisions for civil monetary penalties, 42 U.S.C. §1320a-7a, for the Covered Conduct.

G. Meadows denies each and every allegation set forth in the *qui tam* complaint, and denies it has any liability relating to the contentions of the United States as set forth in Paragraphs E and F above.

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

III. TERMS AND CONDITIONS

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

A. OBLIGATIONS OF MEADOWS:

1. Immediately upon execution of this Agreement by all Parties, Meadows agrees to pay to the United States the sum of

\$1,200,000 (the "Settlement Amount"), by electronic funds transfer pursuant to written instructions to be provided by the United States.

2. Meadows agrees to implement its obligations under the Corporate Integrity Agreement, which Meadows has entered into with HHS-OIG and which is attached as Exhibit A, and incorporated into this Agreement by reference.

3. Meadows 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 Meadows in connection with: (1) the matters covered by this Agreement, (2) the Government's audit(s) and any investigation(s) of the matters covered by this Agreement, (3) any of Meadow'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 consulting fees; (4) the obligations under the Corporate Integrity Agreement incorporated into this Settlement Agreement to: (i) perform Review Procedures as described in section III.D of the Corporate Integrity Agreement (except to the extent that such Review Procedures are performed by Meadows); and (ii) prepare and submit reports to the HHS-OIG; (5) the negotiation of this Agreement, and the Corporate Integrity Agreement; and (6) the payment made pursuant to this Agreement, are unallowable costs on Government contracts and under

the Medicare Program, Medicaid Program, TRICARE Program, Veterans Affairs Program (VA) and Federal Employee Health Benefits Program (FEHBP) (hereafter, "unallowable costs").

4. Meadows further agrees that within 120 days of the effective date of this Agreement it will identify to applicable Medicare and Medicaid fiscal intermediaries, carriers and/or contractors, any unallowable costs (as defined in paragraph 3) 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 Meadows 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 the unallowable costs. Meadows agrees that the United States will be entitled to recoup from Meadows 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 Meadows or any of its subsidiaries on the effect of inclusion of unallowable costs (as defined in paragraph 3) on Meadows or any of its subsidiaries' cost reports, cost statements or information reports. Nothing in this Agreement

shall constitute a waiver of the rights of the United States to examine or reexamine the unallowable costs described in this Paragraph.

5. Meadows covenants to cooperate reasonably and truthfully with the United States' investigation of individuals and entities not specifically released in this Agreement, for the Covered Conduct. Upon reasonable notice, Meadows 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 make available to the United States, upon reasonable request, all non-privileged documents and records in its possession, custody or control relating to the Covered Conduct.

B. OBLIGATIONS OF THE UNITED STATES:

6. In consideration of this Agreement, including the terms of payment and other obligations set forth herein, the United States: shall intervene in the civil action of United States ex rel. Ronnie R. Smith, M.D. and James H. Barber, M.D. v. Meadows Regional Medical Center, Inc., Barry Michael, and Geoffrey Conner, M.D., and is docketed as Civil Action No. 1:98-cv-1228-JOF (N.D.Ga.); thereafter shall file a Stipulation of Dismissal, with prejudice, of that action, which shall be signed by counsel for the United States and the Relators; and release Meadows, and any of its predecessors, successors and assigns, from any civil or administrative monetary claims the United States has or may have under the False Claims Act, 31 U.S.C. §§ 3729-33, as amended; 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 fraud, payment by mistake of fact or unjust enrichment that are based upon the Covered Conduct.

7. In consideration of the obligations of Meadows set forth in this Agreement, conditioned upon Meadows' payment in full of the Settlement Amounts, the HHS-OIG 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 Meadows under 42 U.S.C. § 1320a-7a (Civil Monetary Penalties Law), or 42 U.S.C. § 1320a-7(b) (permissive exclusion), for the Covered Conduct, except as reserved in Paragraph 8 below, and as reserved in this Paragraph. The HHS-OIG expressly reserves all rights to comply with any statutory obligations to exclude Meadows from the Medicare, Medicaid or other Federal health care program under 42 U.S.C. Section 1320a-7(a) (mandatory exclusion) based upon the Covered Conduct. Nothing in this Paragraph precludes the HHS-OIG from taking action against entities or persons, or for conduct and practices, for which civil claims have been reserved in Paragraph 8 below.

IV. MISCELLANEOUS PROVISIONS

8. 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 Meadows) 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;

(3) Except as explicitly stated in this Agreement, any administrative liability, including mandatory 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 claims based upon such obligations as are created by this Agreement;

(6) Any claims against any individuals, including officers and employees.

9. 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, except as expressly provided for herein.

10. Meadows 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. Meadows waives any causes of action against these beneficiaries or their parents or sponsors based upon the claims for payment covered by this Agreement.

11. Meadows 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 their payment to the United States hereunder. Further,

the Parties expressly warrant that, in evaluating whether to execute this Agreement, the Parties (i) have intended that the mutual promises, covenants and obligations set forth herein constitute a contemporaneous exchange for new value given to Meadows, within the meaning of 11 U.S.C. Section 547(c)(1), and (ii) have concluded that these mutual promises, covenants and obligations do, in fact, constitute such a contemporaneous exchange.

12. 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.

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

14. 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 Georgia. Notwithstanding the above, disputes arising under the Corporate Integrity Agreement shall be resolved exclusively under the dispute resolution provisions of the Corporate Integrity Agreement.

15. This Agreement and the Corporate Integrity Agreement constitute the complete agreement between the Parties. This Agreement may not be amended except by written consent of the

Parties, except that only Meadows and HHS-OIG need to agree in writing to modification of the Corporate Integrity Agreement.

16. The individuals signing this Agreement on behalf of Meadows represent and warrant that they are authorized to execute this Agreement. The United States signatories represent that they are signing this Agreement in their official capacities and that they are authorized to execute this Agreement.

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

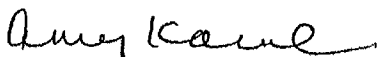
18. This Agreement is effective on the date of signature of the last signatory to the Agreement.

19. This Agreement is binding on all successors, transferees, heirs and assigns.


THE UNITED STATES OF AMERICA

RICHARD H. DEANE, JR.
UNITED STATES ATTORNEY

DATED: 9/29/00

BY: 
AMY BERNE KAMINSHINE
Assistant U.S. Attorney
Northern District of Georgia

DATED: 9/28/00

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

MEADOWS REGIONAL MEDICAL CENTER

DATED: _____

BY: _____
ALAN KENT
Chief Executive Officer
Meadows Regional Medical Center

DATED: _____

BY: _____
WILLIAM R. MITCHELSON, Esq.
Alston & Bird LLP

19. This Agreement is binding on all successors, transferees, heirs and assigns.

THE UNITED STATES OF AMERICA

RICHARD H. DEANE, JR.
UNITED STATES ATTORNEY

DATED: _____

BY: _____
AMY BERNE KAMINSKY
Assistant U.S. Attorney
Northern District of Georgia

DATED: _____

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

MEADOWS REGIONAL MEDICAL CENTER

DATED: 9/27/00

BY: Alan Kent
ALAN KENT
Chief Executive Officer
Meadows Regional Medical Center

DATED: 9/27/00

BY: William R. Mitchelson
WILLIAM R. MITCHELSON, Esq.
Alston & Bird LLP
Counsel for Meadows