

SETTLEMENT AGREEMENT

This Settlement Agreement (Agreement) is entered into among the United States of America, 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) (collectively the “United States”) and the State of Illinois, acting through the Illinois Attorney General and on behalf of the Illinois Department of Health and Family Services (“the State”), and Dr. Michael J. Reinstein (“Reinstein”) (hereafter collectively referred to as “the Parties”), through their authorized representatives.

RECITALS

A. Michael J. Reinstein, M.D. resides in Skokie, Illinois and is a psychiatrist practicing in Chicago, Illinois, and the surrounding communities.

B. On November 15, 2012, the United States filed an action in the United States District Court for the Northern District of Illinois captioned *United States v. Michael J. Reinstein*, No. 12 C 9167 (the “Civil Action”). An Amended Complaint was filed on March 14, 2013, joining the State of Illinois as a plaintiff in the Civil Action.

C. The United States and the State of Illinois contend that Reinstein caused to be submitted claims for payment to the Medicare Program (Medicare), Title XVIII of the Social Security Act, 42 U.S.C. §§ 1395-1395kkk-1 and the Illinois Medicaid Program (Medicaid), Title XIX of the Social Security Act, 42 U.S.C. §§ 1396-1397w-5.

D. The United States and State of Illinois contend that they have certain civil claims against Reinstein as set forth in the Amended Complaint in the Civil Action. That conduct is referred to below as the Covered Conduct.

E. Except to the extent admitted in Reinstein's guilty plea in *United States v. Michael J. Reinstein*, No. 15 CR 44, this Settlement Agreement is neither an admission of liability by Reinstein nor a concession by the United States or the State of Illinois that its claims are not well founded.

To avoid the delay, uncertainty, inconvenience, and expense of protracted litigation of the above claims, and in consideration of the mutual promises and obligations of this Settlement Agreement, the Parties agree and covenant as follows:

TERMS AND CONDITIONS

1. Reinstein shall pay **\$3,794,709.89** ("Settlement Amount") no later than 10 days after the Effective Date of this Agreement. The payment shall be made as follows:

(a) Reinstein shall pay to the United States **\$1,837,968.76** by electronic funds transfer pursuant to written instructions to be provided by the Office of the United States Attorney for the Northern District of Illinois no later than ten days after the Effective Date of this Agreement.

(b) Reinstein shall pay the State of Illinois **\$1,956,741.13** by electronic funds transfer pursuant to written instructions to be provided by the Office of the Illinois Attorney General no later than ten days after the Effective Date of this Agreement.

2. Subject to the exceptions in Paragraph 4 (concerning excluded claims) below, and conditioned upon Reinstein's full payment of the Settlement Amount, the United States releases Reinstein from any civil or administrative monetary claim the United States has for the Covered Conduct 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, and fraud.

3. Subject to the exceptions in paragraph 5 below, in consideration of the obligations of Reinstein set forth in this Agreement and conditioned upon Reinstein's full payment of the Settlement Amount, the Illinois Department of Health and Family Services ("HFS") and the State of Illinois agree to release Reinstein from any civil or administrative monetary claim HFS or the State of Illinois has or may have under the Illinois False Claims Act, 740 ILCS 175/3, and the Civil Remedies Section of the Public Aid Act, 89 Ill. Adm. Code 140.16, 305 ILCS 5/8A-7 and 305 ILCS 5/12-4.25(A) or the common law theories of payment by mistake, unjust enrichment, breach of contract and fraud, for the Covered Conduct. Nothing in this paragraph precludes HFS or the State of Illinois from taking action against entities or persons, or for conduct and practices, for which civil and criminal claims have been reserved in paragraph 5.

4. Notwithstanding the release given in paragraph 2 of this Agreement, or any other term of this Agreement, the following claims of the United States are specifically reserved and are not released:

- a. Any liability arising under Title 26, U.S. Code (Internal Revenue Code);
- b. Any criminal liability;
- c. Except as explicitly stated in this Agreement, any administrative liability, including mandatory or permissive 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 obligations 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. Any liability for failure to deliver goods or services due;
- h. Any liability for personal injury or property damage or for other consequential damages arising from the Covered Conduct;

5. Notwithstanding any term of this Agreement, the State of Illinois specifically does not release any person or entity from any of the following liabilities:

- a. Any criminal, civil, or administrative claims arising under state revenue codes;
- b. Any criminal liability;
- c. Any civil liability under any state statute, regulation, or rule not expressly covered by this Agreement, including, but not limited to any civil liability for state antitrust violations; any liability for claims involving unfair and/or deceptive acts and practices; any liability under the State's consumer protection laws which any person or entity has or may have to individual consumers or state program payors other than the Medicaid Program;
- d. Any liability to the State (or any agencies thereof) for any conduct other than the Covered Conduct;

- e. Any liability based upon obligations created by this Agreement;
- f. Except as explicitly stated in this Agreement, any administrative liability, including mandatory exclusion from the State's Medicaid program;
- g. Any express or implied warranty claims or other claims for defective or deficient products and services provided by Reinstein;
- h. Any liability for personal injury or property damage or for other consequential damages arising from the Covered Conduct;
- i. Any liability based on a failure to deliver items or services due;
- j. Any liability which may be asserted by private payors or insurers, including those that are paid by a state's Medicaid program on a capitated basis; or
- k. Any liability related to the improper inflation of Average Wholesale Prices and Wholesale Acquisition costs.

6. Reinstein waives and shall not assert any defenses Reinstein may have to any criminal prosecution or administrative action relating to the Covered Conduct that 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 in the Eighth Amendment of the Constitution, this Agreement 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 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.

7. Reinstein fully and finally releases the United States and the State of Illinois, their agencies, officers, agents, employees, and servants, from any claims (including attorney's fees, costs, and expenses of every kind and however denominated) that Reinstein has asserted, could have asserted, or may assert in the future against the United States or the State of Illinois, and their agencies, employees, servants, and agents, related to the Covered Conduct and the United States' and the State of Illinois' investigation and prosecution thereof.

8. 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 contractor (e.g., Medicare Administrative Contractor, fiscal intermediary, carrier) or any State payer, related to the Covered Conduct; and Reinstein agrees not to resubmit or cause others to resubmit to any Medicare contractor or any State payer any previously denied claims related to the Covered Conduct, and agrees not to appeal any such denials of claims.

9. Reinstein agrees to the following:

(a) Unallowable Costs Defined: 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. §§ 1395-1395kkk-1 and 1396-1396w-5; and the regulations and official program directives promulgated thereunder) incurred by or on behalf of Reinstein in connection with:

- (1) the matters covered by this Agreement and any related plea agreement;

- (2) the United States' audit(s) and civil and criminal investigation(s) of the matters covered by this Agreement;
- (3) Reinstein's investigation, defense, and corrective actions undertaken in response to the United States' audit(s) and civil and criminal investigation(s) in connection with the matters covered by this Agreement (including attorney's fees);
- (4) the negotiation and performance of this Agreement and any plea agreement; and
- (5) the payment Reinstein makes to the United States pursuant to this Agreement;

are unallowable costs for government contracting purposes and under the Medicare Program, Medicaid Program, TRICARE Program, and Federal Employees Health Benefits Program (FEHBP) (hereinafter referred to as Unallowable Costs).

b. Future Treatment of Unallowable Costs: Unallowable Costs shall be separately determined and accounted for by Reinstein, and Reinstein 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 Reinstein or any of its subsidiaries or affiliates to the Medicare, Medicaid, TRICARE, or FEHBP Programs.

c. Treatment of Unallowable Costs Previously Submitted for Payment: Reinstein 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 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 Reinstein 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. Reinstein agrees that the United States, at a minimum, shall be entitled to recoup from Reinstein 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 Reinstein on the effect of inclusion of Unallowable Costs (as defined in this Paragraph) on Reinstein 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 Reinstein's books and records to determine that no Unallowable Costs have been claimed in accordance with the provisions of this Paragraph.

10. Reinstein agrees to cooperate fully and truthfully with the United States' and State of Illinois' investigation of individuals and entities not released in this

Agreement. Upon reasonable notice, Reinstein shall encourage, and agrees not to impair, the cooperation of his current and former employees, and shall use his best efforts to make available, and encourage, the cooperation of his current and former employees for interviews and testimony, consistent with the rights and privileges of such individuals. Reinstein further agrees to furnish to the United States and State of Illinois, upon request, complete and unredacted copies of all non-privileged documents, reports, memoranda of interviews, and records in his possession, custody, or control concerning any investigation of the Covered Conduct that he has undertaken, or that has been performed by another on his behalf.

11. 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 Paragraph 12 (waiver for beneficiaries paragraph), below.

12. Reinstein agrees that he 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.

13. Upon receipt of the payment described in Paragraph 1, above, the Parties shall promptly sign and file in the Civil Action a Joint Stipulation of Dismissal of the Civil Action pursuant to Rule 41(a)(1).

14. Each Party shall bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

15. Each party and signatory to this Agreement represents that it freely and voluntarily enters in to this Agreement without any degree of duress or compulsion.

16. This Agreement is governed by the laws of the United States. The exclusive jurisdiction and venue for any dispute relating to this Agreement is the United States District Court for the District for the Northern District of Illinois. For purposes of construing this Agreement, this Agreement shall be deemed to have been drafted by all Parties to this Agreement and shall not, therefore, be construed against any Party for that reason in any subsequent dispute.

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

18. The undersigned counsel represent and warrant that they are fully authorized to execute this Agreement on behalf of the persons and entities indicated below.

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

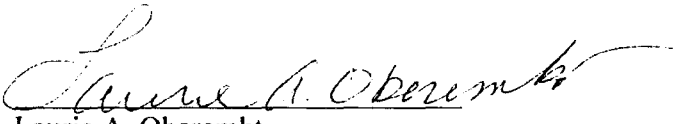
20. This Agreement is binding on Reinstein's successors, transferees, heirs, and assigns.

21. All parties consent to the United States' and State of Illinois' disclosure of this Agreement, and information about this Agreement, to the public.

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

THE UNITED STATES OF AMERICA

DATED: 2/6/15

BY: 
Laurie A. Oberembt
Civil Division
United States Department of Justice

DATED: ____

BY: _____
ERIC S. PRUITT
Assistant United States Attorney
United States Attorney's Office
Northern District of Illinois

DATED: ____

BY: _____
ROBERT K. DECONTI
Assistant Inspector General for Legal Affairs
Office of Counsel to the Inspector General
Office of Inspector General
United States Department of Health and Human Services

THE UNITED STATES OF AMERICA

DATED: ____

BY:

Laurie A. Oberembt
Civil Division
United States Department of Justice

DATED: 2/12/15

BY:

Eric S. Pruitt
ERIC S. PRUITT
Assistant United States Attorney
United States Attorney's Office
Northern District of Illinois

DATED: ____

BY:

ROBERT K. DECONTI
Assistant Inspector General for Legal Affairs
Office of Counsel to the Inspector General
Office of Inspector General
United States Department of Health and Human Services

Laurie A. Oberembt
Civil Division
United States Department of Justice

DATED: ____

BY:

ERIC S. PRUITT
Assistant United States Attorney
United States Attorney's Office
Northern District of Illinois

DATED: 1/16/15

BY:

Robert K. DeConti
ROBERT K. DECONTI
Assistant Inspector General for Legal Affairs
Office of Counsel to the Inspector General
Office of Inspector General
United States Department of Health and Human Services

STATE OF ILLINOIS

DATED: Jan 14, 2015 BY:



ROBERT BARBA
Assistant Attorney General
Office of the Illinois Attorney General

STATE OF ILLINOIS

DATED: 12/30/14

BY:



JULIE HAMOS, Director
Illinois Department of Healthcare and
Family Services
State of Illinois

DR. MICHAEL J. REINSTEIN

DATED:

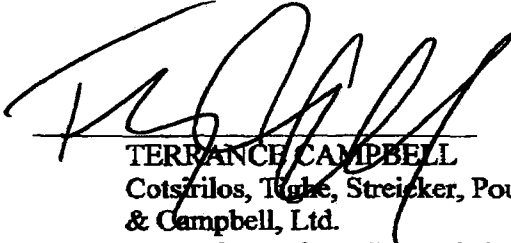
BY:



DR. MICHAEL J. REINSTEIN

DATED:

BY:



TERRANCE CAMPBELL
Cotsirilos, Tuge, Streicker, Poulos
& Campbell, Ltd.
33 North Dearborn Street, Suite 600
Chicago, Illinois 60602

Counsel for Dr. Michael J. Reinstein