

SETTLEMENT AGREEMENT

I. PARTIES

(1) This Settlement Agreement ("Agreement") is entered into this ___ day of ^{February}~~January~~, 1997, by and among the following: (a) the United States of America, acting through the Civil Division of the Department of Justice and the United States Attorney's Office for the Western District of Oklahoma, on behalf of itself and the Office of Inspector General of United States Department of Health and Human Services ("HHS/OIG"), the Office of Civilian Health and Medical Program of the Uniformed Services ("OCHAMPUS"), and the Office of Personnel Management, which administers the Federal Employee Health Benefits Program ("FEHBP") (collectively the "United States"); (b) the State of Oklahoma on behalf of itself and the Oklahoma Department of Human Services (the "State of Oklahoma"); (c) Lisa Aranda and Gayle DeWitt (the "Relators"); and (d) CPC of Oklahoma, Inc., d/b/a CPC Southwind Hospital (the "Company").

II. RECITALS

(2) The United States and the State of Oklahoma contend that they have certain civil and administrative monetary claims and causes of action against the Company under the False Claims Act, 31 U.S.C. §§ 3729 et seq., as amended, under the Civil Monetary Penalties Law, 42 U.S.C. § 1320a-7a, under the Program Fraud Civil

Remedies Act, 31 U.S.C. §§ 3801-3812, under Titles XVIII and XIX of the Social Security Act, 42 U.S.C. §§ 1395 et seq. and 42 U.S.C. §§ 1396 et seq., under CHAMPUS, 10 U.S.C. §§ 1071 et seq., under FEHBP, 5 C.F.R. Part 890, and under common law for allegedly improper claims for reimbursement submitted and false statements made by the Company to the United States and the State of Oklahoma for the period January 1, 1991 through the date of this Agreement as alleged in the various complaints filed by the United States or the Relators in the civil action styled United States ex rel. Lisa Aranda and Gayle DeWitt v. CPC of Oklahoma, Inc. d/b/a CPC Southwind Hospital, Civil Action No. 94-608-A (W.D. Ok., filed April 28, 1994) (the "Civil Action").

(3) The Company denies that the United States or the State of Oklahoma has any valid claims against it.

(4) The United States, the State of Oklahoma, and the Company desire to reach an agreement that will fully and finally settle, compromise, and resolve the civil and administrative monetary claims set forth above.

(5) This Agreement does not constitute an admission by any party of any liability or wrongful conduct.

III. TERMS OF AGREEMENT

In accordance with the mutual covenants and agreements herein, and with full authority to enter into this Agreement and to be bound thereby, the parties agree as follows:

(6) Within ten days from the date of the last signature to this Agreement, the Company shall pay to the United States \$750,000 (the "Settlement Amount") by delivering a certified or cashier's check for the Settlement Amount, payable to the United States Treasury, to Michael F. Hertz, Director, Commercial Litigation Branch, Civil Division, Washington, D.C. 20530, or alternatively, by making payment of the Settlement Amount by electronic funds transfer pursuant to written instructions to be provided by Michael F. Hertz or his designated representative.

(7) Failure to pay the Settlement Amount as required by paragraph 6 above shall be grounds for the United States and the State of Oklahoma to declare this Agreement null and void.

(8) Within three days following receipt of the Settlement Amount, the United States shall file with the United States District Court for the Western District of Oklahoma a stipulated notice signed by all parties dismissing the Civil Action with prejudice.

(9) Except as provided in paragraphs 13 through 14 of this Agreement, upon receipt of the Settlement Amount, in consideration of the agreements and payments set forth herein, the United States and the State of Oklahoma hereby waive, release and forever discharge, and promise to refrain from instituting, prosecuting or maintaining any civil monetary claim, action, suit or administrative monetary proceeding against the Company, its current or former owners, parent, shareholders, officers, directors, agents, employees, affiliates, subsidiaries,

predecessors, successors, transferees and assigns for any and all claims which the United States and the State of Oklahoma have or may have against any of them under the False Claims Act, 31 U.S.C. §§ 3729 et seq., 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, Titles XVIII and XIX of the Social Security Act, 42 U.S.C. §§ 1395 et seq. and 42 U.S.C. §§ 1396 et seq., CHAMPUS, 10 U.S.C. §§ 1071 et seq., FEHBP, 5 C.F.R. Part 890, and common law for the alleged conduct described in paragraph 2 above.

(10) Effective on full execution of this Agreement and provided no default occurs, the Office of Inspector General of HHS agrees to release and refrain from instituting, directing, or maintaining any administrative claim or any action seeking exclusion from the Medicare program or State health care programs (as defined in 42 U.S.C. § 1320a-7(h)) against the Company, its current or former owners, parent, shareholders, officers, directors, agents, employees, affiliates, subsidiaries, predecessors, successors, transferees and assigns under 42 U.S.C. § 1320a-7(b) (permissive exclusion) for the alleged conduct described in paragraph 2 above, except as reserved in paragraph 14 below. The Office of Inspector General of HHS expressly reserves all rights and statutory obligations to exclude the Company, or any of its current or former owners, parent, shareholders, officers, directors, agents, employees, affiliates, subsidiaries, predecessors, successors, transferees and assigns, from the Medicare program or a State health care program under 42 U.S.C.

§ 1320a-7(a) (mandatory exclusion). Nothing in this paragraph precludes the Office of Inspector General of HHS from taking action against any entities or persons, or for conduct and practices, for which civil claims have been reserved in paragraph 14 below.

(11) Effective on full execution of this Agreement and provided no default occurs, OCHAMPUS agrees to release and refrain from instituting, directing, or maintaining any administrative claim or any action seeking exclusion from the CHAMPUS program against the Company, its current or former owners, parent, shareholders, officers, directors, agents, employees, affiliates, subsidiaries, predecessors, successors, transferees and assigns under 32 C.F.R. § 199.9, or 31 U.S.C. §§ 3801-3812 (Program Fraud and Civil Remedies Act) for the alleged conduct described in paragraph 2 above, except as reserved in paragraph 14 below. OCHAMPUS expressly reserves all rights and statutory obligations to exclude the Company, or any of its current or former owners, parent, shareholders, officers, directors, agents, employees, affiliates, subsidiaries, predecessors, successors, transferees and assigns, from the CHAMPUS program under its mandatory exclusion authority, set forth at 32 C.F.R. §§ 199.9 (f)(1)(i)(A), (f)(1)(i)(B), (f)(1)(iii). Nothing in this paragraph precludes OCHAMPUS from taking action against any entities or persons, or for conduct and practices, for which civil claims have been reserved in paragraph 14 below.

(12) Effective on full execution of this Agreement and provided no default occurs, OPM agrees to release and refrain from instituting, directing, or maintaining any administrative claim or any action seeking exclusion from the FEHBP program against the Company, its current or former owners, parent, shareholders, officers, directors, agents, employees, affiliates, subsidiaries, predecessors, successors, transferees and assigns, under 5 U.S.C. § 8902a, 5 C.F.R. Part 970 or 31 U.S.C. §§ 3801-3812 (Program Fraud and Civil Remedies Act) for the alleged conduct described in paragraph 2 above, except as reserved in paragraph 14 below and except if excluded by the Office of Inspector General of HHS pursuant to 42 U.S.C. § 1320a-7(a). Nothing in this paragraph precludes OPM from taking action against entities or persons, or for conduct and practices, for which civil claims have been reserved in paragraph 14 below.

(13) The release contained in paragraph 9 and the agreements contained in paragraph 10-12 are limited to the conduct described in paragraph 2 above.

(14) Notwithstanding any other provision in this Agreement, the United States in this Agreement specifically does not release the Company or any other entity or individual under this Agreement from (a) any potential criminal liability arising from the subject matter of this Agreement; (b) any potential criminal, civil or administrative claims arising under Title 26 U.S. Code (Internal Revenue Code); (c) any potential liability to the United States (or any agencies thereof) for any alleged conduct other than that

described in paragraph 2 above; (d) any claims against individuals, including current or former directors, officers, and employees who are criminally indicted or convicted of an offense, or who enter a criminal plea or administrative agreement, related to the alleged conduct described in paragraph 2 above; or (e) any obligations created by this Agreement.

(15) Each of the Relators has agreed and does agree that the settlement of her Civil Action against the Company (or successors thereto), is fair, adequate and reasonable under all the circumstances, pursuant to 31 U.S.C. § 3730(c)(2)(B). Each of the Relators hereby releases, on full receipt of the payments described in paragraph 6 above by the United States, the Company and Community Psychiatric Centers, Inc., their current or former owners, parent, shareholders, officers, directors, agents, employees, affiliates, subsidiaries, predecessors, successors, transferees and assigns from any and all claims (a) that may arise under or relate to any of the alleged conduct described in paragraph 2 above, (b) that may relate to a statutory claim for attorneys' fees, costs, and expenses, pursuant to 31 U.S.C. § 3730(d), or (c) that may arise under any other state or federal statutes or common law.

(16) The United States agrees to pay the Relators \$150,000 from the payment described in paragraph 6 above within a reasonable time after receipt by the United States of such payment. The Relators, for themselves, and for their heirs, successors, and assigns, will release and will be deemed to have

released and forever discharged the United States from any claims pursuant to 31 U.S.C. § 3730(d)(1) for a share of the proceeds of the Civil Action, from any claims arising from the filing of their Civil Action, and in full settlement of claims under this Agreement. This Agreement does not resolve or in any manner affect any claims the United States has or may have against the Relators arising under Title 26, U.S. Code (Internal Revenue Code), or any claims arising under this Agreement.

(17) The Company hereby agrees that it will waive and will not assert any defense, which may be based in whole or in part on the Double Jeopardy Clause of the Constitution as set forth in the holding or principles in United States v. Halper, 490 U.S. 435 (1989), in any criminal prosecution based on the alleged conduct described in paragraph 2 above, and it agrees that the amounts paid under this Agreement are not punitive in nature or effect for purposes of such criminal prosecution. Nothing in this Agreement constitutes an agreement by the United States concerning the characterization of the amounts paid hereunder for purposes of any proceeding under Title 26 of the Internal Revenue Code.

(18) The payments from the Company to the United States under paragraph 6 above shall not be offset by any claims for payment now being withheld from payment by any Medicare carrier or intermediary, by any CHAMPUS or FEHBP carrier or payor, or by any state payor, related to any services in connection with the alleged conduct described in paragraph 2 above.

(19) For government contracting purposes and for Medicare, FEHBP, CHAMPUS, and state Medicaid purposes, the Company agrees following the effective date of this Agreement to treat as unallowable all costs (as defined in the Federal Acquisition Regulations ("FAR") §31.205-47(a)) incurred by or on behalf of the Company and/or its current or former owners, parent, shareholders, officers, directors, agents, employees, affiliates, subsidiaries, predecessors, successors, transferees and assigns in connection with (a) the matters covered by this Agreement; (b) the United States' investigation of the matters covered by this Agreement; (c) the Company's (or its parent's) investigation, defense, and corrective actions; (d) the negotiation and performance of this Agreement; and (e) the payments made to the United States provided for in this Agreement. These amounts shall be separately estimated and accounted for by these corporate entities, and they will not charge such costs directly or indirectly to any contracts with the United States, or to any cost report submitted to the Medicare, FEHBP, CHAMPUS, or state Medicaid programs.

(20) Except in connection with any criminal action in the related criminal matter, the Company, its current or former owners, parent, shareholders, officers, directors, agents, employees, affiliates, successors and assigns agree not to initiate any action against the United States, its agents or employees, for initiating, investigating, or prosecuting the Civil Action, including the issuance of any press releases by the United States, the participation by the Civil Division attorneys or their

agents in the preparation of the search warrant affidavit in the related criminal matter, or the use in the Civil Action of documents obtained via the search warrant.

(21) The Company and Community Psychiatric Centers, Inc., their current and former owners, parent, shareholders, officers, directors, agents, employees, affiliates, subsidiaries, predecessors, successors, transferees, and assigns agree not to initiate any civil action against Relators in connection with the filing by the Relators of the Civil Action.

(22) This Agreement shall not be construed as an admission of law, fact, liability, misconduct, or wrongdoing on the part of the Company or CPC; the same being expressly denied by them.

(23) Nothing in this Agreement is intended to settle any liability that the Company or CPC has or may have to the State of Oklahoma Department of Revenue.

(24) Each party to this Agreement agrees to bear its own legal and other costs.

(25) This Agreement shall be binding upon the parties and their successors, assigns and heirs. The United States warrants that this Agreement is binding on itself, HHS, OIG, CHAMPUS, and FEHBP. The State of Oklahoma warrants that this Agreement is binding on itself and the Oklahoma ^{Health Care Authority} ~~Department of Human Services~~. *JMM*

~~(26) Each person who signs this Agreement in a representative capacity, warrants that he or she is duly authorized to do so.~~

(27) This Agreement constitutes the full and complete agreement among the parties.

(28) This Agreement may be executed in counterparts each of which shall constitute an original and all of which shall constitute one and the same agreement.

(29) This Agreement is effective on the date of signature of the last signatory to it.

IN WITNESS WHEREOF, the parties hereto affix their signatures.

UNITED STATES OF AMERICA

FRANK W. HUNGER
Assistant Attorney General
Civil Division

PATRICK M. RYAN
United States Attorney
Western District of Oklahoma

ROBERT BRADFORD
Assistant U.S. Attorney
Western District of Oklahoma


DATED: 1-21-97

By: 

SCOTT S. DAHL
DANIEL S. ANDERSON
Trial Attorneys
Commercial Litigation Branch
Civil Division
U.S. Department of Justice
P.O. Box 261
Ben Franklin Station
Washington, D.C. 20044

US Draft 12/10

DATED: 1/31/97

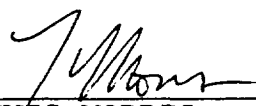
BY: 
LEWIS MORRIS
Asst. Inspector General
Office of Counsel to the
Inspector General
United States Department of
Health and Human Services

DATED: _____

BY: _____
ROBERT D. SEAMAN
General Counsel
Office of Civilian Health and
Medical Program of the
Uniformed Services

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LEWIS MORRIS
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ROBERT D. SEAMAN
General Counsel
Office of Civilian Health and
Medical Program of the
Uniformed Services

DATED: _____

BY: _____

LEWIS MORRIS
Asst. Inspector General
Office of Litigation Counsel
Office of Inspector General
United States Department of
Health and Human Services

DATED: January 23, 1997

BY: Robert D. Seaman

ROBERT D. SEAMAN
General Counsel
Office of Civilian Health and
Medical Program of the
Uniformed Services

THE STATE OF OKLAHOMA

DATED: 2-7-97

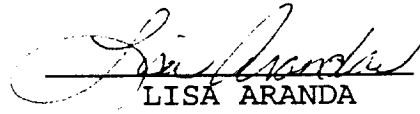
Tully McCoy
on behalf of
THE STATE OF OKLAHOMA

APPROVED AS TO FORM AND CONTENT:

DATED: _____

RELATORS

DATED: 1/25/97


LISA ARANDA

DATED: 1/25/97


GAIL DEWITT

CPC OF OKLAHOMA, INC.

DATED: 2-3-97

By: *Julia Kopta, Secretary*
Julia Kopta
Secretary

APPROVED AS TO FORM AND CONTENT:

DATED: 2-4-97

By: *Eugene Tillman*