

SETTLEMENT AGREEMENT

I. PARTIES

This Settlement Agreement ("Agreement") is entered into between the United States of America ("United States"), acting through the Civil Division of the United States Department of Justice, the United States Attorney for the Middle District of Tennessee, and the Office of Inspector General of the Department of Health and Human Services ("OIG-HHS"); Community Medical Center ("Community"); and the qui tam relator, Barry Steeley ("Relator") (the United States and all of the foregoing persons or entities are hereafter collectively referred to as "the Parties"), through their authorized representatives.

II. PREAMBLE

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

- A. Community is provider of hospital services located at 99 Highway 37 West, Toms River, New Jersey.
- B. The United States contends that Community 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. §§ 1395-1395ggg and to the Medicaid program (codified in 42 U.S.C. §§ 1396-1396v, Title XIX of the Social Security Act, as amended) for the inpatient treatment of Medicare beneficiaries.
- C. On or around August 25, 1997, Barry Steeley (the "Relator") filed a qui tam complaint under seal alleging violations of the False Claims Act by Community in the case styled United States ex rel. Barry Steeley v. Birman Managed Care, Inc., et al., Civil Action No. 3:97-0893 (M.D. Tenn.) (the "Qui Tam Action").

D. Medicare payments to a hospital for inpatient treatment rendered to a beneficiary generally are based upon the beneficiary's "principal diagnosis," as determined by the hospital.

E. The Medicare Program relies upon participating hospitals to properly indicate the principal diagnosis through the use of standard diagnosis codes.¹

F. The United States investigated the allegations in the Qui Tam Action regarding inpatient payment claims submitted to Medicare by Community for patients with the principal diagnosis codes of 482.83 (pneumonia due to gram negative bacteria); 482.89 (pneumonia other specified bacteria); 507.0 (food/vomit pneumonitis); 038.9 (unspecified septicemia); and 038.42 (escherichia coli septicemia).

G. This Agreement governs the Relator's claims against Community based on the conduct alleged in the Qui Tam Action, and the civil claims the United States contends that it has against Community 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 December 1, 1996 through April 30, 1998 (the "Covered Period"): Community submitted or caused to be submitted claims to Medicare with the principal diagnosis codes 482.83 (pneumonia due to gram negative bacteria); 482.89 (pneumonia other specified bacteria); 507.0 (food/vomit pneumonitis); 038.9 (unspecified septicemia); and 038.42 (escherichia coli septicemia) 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, Community received payments from Medicare to which it was not entitled.

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

H. Community has provided documents and information in response to the United States' investigation of the Covered Conduct. Specifically, in response to a government subpoena, Community supplied several hundred medical records, including patient files for which claims were submitted to the Medicare Program with the principal diagnosis codes of 482.83 (pneumonia due to gram negative bacteria); 482.89 (pneumonia other specified bacteria); 507.0 (food/vomit pneumonitis); 038.9 (unspecified septicemia); and 038.42 (escherichia coli septicemia). Community represents that such response has been truthful, accurate, and complete to the best of its knowledge and ability.

I. Community does not admit the contentions of the United States as set forth in Paragraph G above and as set forth in the Qui Tam Action.

J. 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:

1. Immediately upon execution of this Agreement by all Parties, Community shall pay to the United States \$516,974.21 (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.

2. Community agrees to cooperate fully and truthfully with the United States' investigation of individuals and entities not released in this Agreement. Upon reasonable notice, Community shall encourage, and agrees not to impair, the cooperation of its directors, officers, and employees, and shall use its best efforts to make available, and encourage the cooperation of former directors, officers, and employees for interviews and testimony, consistent with the rights and privileges of such individuals.

3. Community fully and finally releases the United States, its agencies, employees, servants, and agents, and Relator from any claims (including attorney's fees, costs, and expenses of every kind and however denominated) which Community has asserted, could have asserted, or may assert in the future against the United States, its agencies, employees, servants, and agents, or Relator related to the Covered Conduct and the United States' investigation and prosecution thereof.

4. Subject to the exceptions in Paragraph 6 below, in consideration of the obligations of Community set forth in this Agreement, conditioned upon Community's payment in full of the Settlement Amount, the United States (on behalf of itself, its officers, agents, and its agencies and departments referenced above in Paragraph 3), agrees to release Community 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 entities and individuals other than the Community.

5. In consideration of the obligations of Community in this Agreement, including the requirements of Community under the Corporate Integrity Agreement (CIA) incorporated by reference, conditioned upon Community's full payment of the Settlement Amount, the OIG-HHS releases Community and agrees to refrain from instituting, directing, or maintaining any administrative action seeking exclusion from the Medicare, Medicaid, or other Federal health care programs (as defined in 42 U.S.C. § 1320a-7b(f)) against Community under 42 U.S.C. § 1320a-7a (Civil Monetary Penalties Law), or 42 U.S.C. § 1320a-7(b)(7) (permissive exclusion), for the Covered Conduct, except as reserved in Paragraph 6 below, and as reserved in this Paragraph. The OIG-HHS expressly reserves all rights to comply with any statutory obligations to exclude Community from Medicare, Medicaid, or other Federal health care programs under 42 U.S.C. § 1320a-7(a)(mandatory exclusion) based upon the Covered Conduct. 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 6, below.

6. 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 Community and the Relator) 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 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 Community;

(7) Any liability for personal injury or property damage or for other consequential damages arising from the Covered Conduct;

(8) Any liability based on a failure to deliver items or services billed; and

(9) Any liability of individuals, including officers and employees.

7. Community has entered into a CIA with OIG-HHS, attached as Exhibit A, which is incorporated into this Agreement by reference. Community will immediately upon execution of this Agreement implement its obligations under the CIA.

8. Community 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 a contention that, under the Double

Jeopardy Clause in the Fifth Amendment or Excessive Fines Clause in the Eighth Amendment of the Constitution, this Agreement bars a remedy sought in such criminal prosecution or administrative action. Community agrees that this Agreement 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.

9. The Settlement Amount that Community 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 Community agrees not to resubmit to any Medicare carrier or intermediary or any state payer any previously denied claims related to the Covered Conduct, and agrees not to appeal any such denials of claims.

10. Community agrees to the following:

(a) Unallowable Costs Defined: that all costs (as defined in the Federal Acquisition Regulation (FAR) 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 Community, 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 investigations(s) of the matters covered by this Agreement,
- (3) Community's investigation, defense, and any corrective actions undertaken in direct response to the United States' audit(s) and investigation 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 Community makes to the United States pursuant to this Agreement and any payments that Community may make to Relator, including costs and attorneys fees, and
- (6) the negotiation of, and obligations undertaken pursuant to the CIA to:
 - (i) Retain an independent review organization to perform annual reviews as described in Section III of the CIA; and
 - (ii) prepare and submit reports to the OIG-HHS.

However, nothing in this Paragraph 10 that may apply to the obligations undertaken pursuant to the CIA affects the status of costs that are not allowable based on any other authority applicable to Community. (All costs described or set forth in this Paragraph 10(a) are hereafter, "unallowable costs").

(b) Future Treatment of Unallowable Costs: These unallowable costs shall be separately determined and accounted for by Community, and Community 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 Community or any of its subsidiaries to the Medicare, Medicaid, TRICARE, VA, or FEHBP Programs.

(c) Treatment of Unallowable Costs Previously Submitted for Payment: Community 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 (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 Community or any of its subsidiaries, 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. Community agrees that the United States, at a minimum, shall be entitled to recoup from Community 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 payment 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 Community or any of its subsidiaries on the effect of inclusion of unallowable costs (as defined in this Paragraph) on Community 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.

11. This Agreement is intended to be for the benefit of the Parties, and their successors and assigns, only and by this instrument the Parties do not release any claims against any other person or entity (other than the Community). This agreement is not intended to be for the benefit of Birman Managed Care, Inc., Birman & Associates, Inc., and David N. Birman, M.D., and by this instrument the United States does not release any claims against Birman Managed Care, Inc., Birman & Associates, Inc., and David N. Birman, M.D.

12. Community agrees that it shall not seek payment for any of the health care billings covered by this Agreement from any health care beneficiaries or their parents or sponsors. Community waives any causes of action against these beneficiaries or their parents or sponsors based upon the claims for payment covered by this Agreement.

13. After this Agreement is executed and the Settlement Amount is received by the United States, the United States and Relator will notify the United States District Court for the Middle District of Tennessee that (a) the Parties have reached a settlement; and (b) pursuant to this settlement the Parties have stipulated that: (i) the Relator dismisses all claims in the Qui Tam Action with prejudice as to him, and (ii) the United States dismisses with prejudice only those claims in the Qui Tam Action related to the Covered Conduct against Community, and the claims in the Qui Tam Action unrelated to the Covered Conduct are dismissed without prejudice as to the United States.

14. Subject to the exceptions in Paragraph 6 above, in consideration of the obligations of Community in this Agreement, conditioned upon Community's full payment of the Settlement Amount, Relator, for himself and for his heirs, successors, attorneys, agents, and assigns, agrees to release Community from any civil monetary claim the United States has or may have for the Covered Conduct under the False Claims Act, 31 U.S.C. §§ 3729-3733.

15. Conditioned upon receipt of \$19,482.38 from Community for attorney's fees and costs under 31 U.S.C. § 3730(d), Relator, for himself and for his heirs, successors, attorneys, agents, and assigns, agrees to release Community from any liability to Relator arising from the filing of the Qui Tam Action, or under 31 U.S.C. § 3730(d) for expenses or attorney's fees and costs.

16. Conditioned upon Community's payment in full of the Settlement Amount, Relator shall receive from the United States a payment amounting to 17% of the Settlement Amount. The United States shall pay Relator this amount within a reasonable time after Community pays the Settlement Amount. It is expressly understood and agreed that the United States in no way promises, 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.

17. On receipt of the payment described in Paragraph 16 above, Relator, for himself and for his 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 this Qui Tam Action, or arising from the

filing of the Qui Tam Action, including 31 U.S.C. §§ 3730(b), (c), (c)(5), (d), and (d)(1) in connection with this Qui Tam 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).

18. Except as provided in Paragraph 15, the Parties shall bear their own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

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

20. 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 shall be the United States District Court for the Middle District of Tennessee, except that disputes arising under the CIA shall be resolved exclusively under the dispute resolution provisions contained in Paragraph X of the CIA.

21. This Agreement constitutes the complete agreement between the Parties. This Agreement may not be amended except by written consent of the Parties, except that only Community and OIG-HHS must agree in writing to modification of the CIA.

22. All Parties consent to the United States' disclosure of this Agreement, and information about this Agreement, to the public.

23. The undersigned individuals signing this Agreement on behalf of Community represent and warrant that they are authorized to execute this Agreement on behalf of Community. 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. The Relator represents that he has the capacity to execute this Agreement, and that he has read it in its entirety.

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

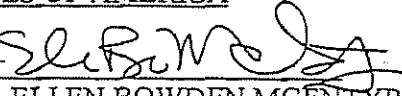
25. This Agreement is binding on the successors, transferees, and assigns of the Parties.

26. 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

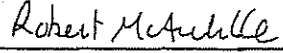
DATED: _____

BY: _____


ELLEN BOWDEN MCENTYRE
Assistant United States Attorney
Office of the
United States Attorney
Middle District of Tennessee

DATED: 6/16/04

BY: _____


ROBERT J. MCAULIFFE
Trial Attorney
Civil Division
U.S. Department of Justice

DATED: _____

BY: _____

LARRY J. GOLDBERG
Assistant Inspector General
Office of Counsel to the Inspector General
Office of Inspector General
United States Department of Health and
Human Services

THE UNITED STATES OF AMERICA

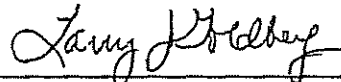
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BY: _____
ELLEN BOWDEN MCENTYRE
Assistant United States Attorney
Office of the
United States Attorney
Middle District of Tennessee

DATED: _____

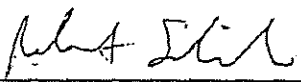
BY: _____
ROBERT J. MCAULIFFE
Trial Attorney
Civil Division
U.S. Department of Justice

DATED: 10 June 2004

BY: 
LARRY J. GOLDBERG
Assistant Inspector General
Office of Counsel to the Inspector General
Office of Inspector General
United States Department of Health and
Human Services

COMMUNITY MEDICAL CENTER

DATED: 6/4/04

BY: 

ROBERT SALCIDO, Esq.
Akin Gump Strauss Hauer & Feld, LLP
1333 New Hampshire Avenue, NW
Washington, DC 20036-1564

Counsel for Community Medical Center

DATED: _____

BY: 

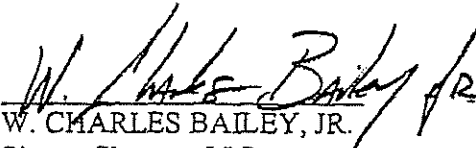
NANCY WOLLEN
Executive Director
Community Medical Center

RELATOR BARRY STEELEY

DATED: 03/25/04


BARRY STEELEY

DATED: 3-29-2004

BY: 
W. CHARLES BAILEY, JR.
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Twenty South Charles Street
Baltimore, Maryland 21201

Counsel for Relator
Barry Steeley