

SETTLEMENT AGREEMENT

I. PARTIES

This Settlement Agreement (“Agreement”) is entered into between the United States of America (“United States”), 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”); the State of Tennessee, acting through the Attorney General’s Office and on behalf of TennCare (the “State of Tennessee”); Fentress County General Hospital f/k/a Paracelsus Fentress County General Hospital, Inc. d/b/a Fentress County General Hospital (“Hospital”); and the Relator, Health Outcomes Technologies (“Relator”) (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. Hospital is a health care provider of hospital services.
- B. The United States contends that Hospital submitted or caused to be submitted claims for payment for inpatient treatment to the Medicare Program (Medicare), Title XVIII of the Social Security Act, 42 U.S.C. §§ 1395-1395ggg and the Medicaid Program (Medicaid/TennCare), 42 U.S.C. §§ 1396-1396v.
- C. Medicare and Medicaid/TennCare payments to a hospital for inpatient treatment rendered to a beneficiary generally are based upon the beneficiary's “principal diagnosis”, as set forth by a hospital.
- D. The Medicare and Medicaid/TennCare programs rely upon participating hospitals to properly indicate the principal diagnosis through the use of standard diagnosis codes.

E. The United States conducted an investigation into inpatient payment claims submitted to Medicare and Medicaid/TennCare by Hospital with the principal diagnosis code of 482.89 (pneumonia due to "other specified bacteria").

F. The United States and the State of Tennessee contend that from 1993 through 1997, Hospital submitted or caused to be submitted claims to the Medicare and Medicaid/TennCare programs with the principal diagnosis code of 482.89 that were not supported by the corresponding medical records (hereinafter referred to as the "Covered Conduct"). The United States and/or the State of Tennessee allege that, as a result of these claims, Hospital received payments to which it was not entitled. The United States contends that it has certain civil claims against Hospital 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 5 below, and the State of Tennessee contends that it has certain civil claims under the Tennessee Medicaid False Claims Act, T.C.A. §§ 71-5-181 et seq., and other state statutes and/or common law doctrines as more specifically identified in Paragraph 6 below, for engaging in the Covered Conduct.

The United States also contends that it has certain administrative claims against Hospital under the provisions for permissive exclusion from Medicare, Medicaid and other Federal health care programs, 42 U.S.C. § 1320a-7(b), and the Civil Monetary Penalties Law, 42 U.S.C. § 1320a-7a, and the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801-3812, for the Covered Conduct.

G. Hospital has provided documents and information to the United States in response to the government's investigation of the Covered Conduct, including patient records for which

claims were submitted to the Medicare program with the principal diagnosis code of 482.89, and Hospital represents that such response has been truthful, accurate, and complete to the best of its knowledge and ability.

H. Hospital denies and disputes the allegations and contentions of the United States, the State of Tennessee, and/or the Relator as set forth above and as set forth in the action captioned United States ex rel. Health Outcomes Technologies v. Fentress County General Hospital, Civil Action No. 2:01-0053 (UNDER SEAL), originally filed in the United States District Court for the Eastern District of Pennsylvania, and transferred and now pending in the United States District Court for the Middle District of Tennessee (hereinafter the Civil Action).

I. The Parties agree that no provision of this Agreement nor any consideration exchanged pursuant to this Agreement constitutes an admission by Hospital that it or any of its affiliates violated any law in connection with the Covered Conduct. The Parties further agree that by entering into this Agreement, Hospital and its affiliates are not waiving for purposes of any other case or controversy any defenses that may be available to them unless specifically stated otherwise herein.

J. 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. Hospital agrees to pay to the United States and the State of Tennessee the total

sum of One Million, Two Hundred Seventy Thousand, Three Hundred Thirty Seven Dollars (\$1,270,337) (the "Settlement Amount") as follows: Hospital agrees to make payment of the Settlement Amount by electronic funds transfer pursuant to the written instructions already provided by the Department of Justice. Hospital agrees to make this electronic funds transfer within ten [10] days of the effective date of this Agreement. The settlement amount will be distributed in the amounts of Fifty Nine Thousand Fifty Eight Dollars (\$59,058) to the State of Tennessee on behalf of the Medicaid/TennCare Program and One Million, Two Hundred Eleven, Two Hundred Seventy Nine Dollars (\$1,211,279) to the United States.

2. Hospital agrees to cooperate in good faith with the United States and/or the State of Tennessee in the administrative, civil or criminal investigation or prosecution of any person concerning the Covered Conduct, and concerning similar matters involving other hospitals and others, by providing accurate, truthful, and complete information whenever, wherever, to whomever and in whatever form the United States and/or the State of Tennessee reasonably may request. Upon reasonable notice, Hospital 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 furnish to the United States and/or the State of Tennessee, upon reasonable request, all non-privileged documents and records in its possession, custody or control relating to the Covered Conduct

3. In the event Hospital commences, or a third party commences, within ninety-one (91) days of the effective date of this Agreement, any case, proceeding, or other action (a) under any law relating to bankruptcy, insolvency, reorganization, or relief of debtors, seeking to have any order for relief of Hospital's debts, or seeking to adjudicate Hospital as bankrupt or

insolvent; or (b) seeking appointment of a receiver, trustee, custodian, or other similar official for Hospital or for all or any substantial part of Hospital's assets, Hospital agrees as follows:

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

b. In the event that Hospital's obligations hereunder are avoided for any reason pursuant to this Paragraph, including, but not limited to, through the exercise of a trustee's avoidance powers under the Bankruptcy code, the United States and/or the State of Tennessee, at their sole option, may rescind the releases in this Agreement, and bring any civil and/or administrative claim, action, or proceeding against Hospital for the claims that would otherwise be covered by the releases provided in Paragraphs 5 - 6 below. If the United States and/or the State of Tennessee so chooses, Hospital agrees: (i) that any such claims, actions, or proceedings brought by the United States and/or the State of Tennessee (including any proceedings to exclude Hospital 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 that Hospital will not argue or otherwise contend that the claims, actions or proceedings of the United States and/or the State of Tennessee are subject to an automatic stay; (ii) that Hospital

will 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 which are brought by the United States and/or the State of Tennessee within ninety (90) calendar days of written notification to Hospital that the releases herein have been rescinded pursuant to this Paragraph, except to the extent such defenses were available on the effective date of this Agreement, and (iii) for the purpose of this Paragraph 3 only, without stipulation as to the underlying conduct, the United States has a claim against Hospital in the amount of \$1,993,017 as authorized under the False Claims Act for claims which were submitted during the period 1993 through 1997 and the United States 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. Hospital acknowledges that its agreements in this Paragraph are provided in exchange for valuable consideration provided in this Agreement.

4. Hospital releases the United States, HHS, the State of Tennessee, and each of their officers, agents, employees, and contractors and their employees and Relator from any and all claims, causes of action, adjustments, and set-offs of any kind arising out of or pertaining to the Covered Conduct, including the investigation of the Covered Conduct and this Agreement. The release in this Paragraph does not apply to defenses available to the Hospital in response to the assertion of any claim reserved or excluded in Paragraph 9.

5. Subject to the exceptions in Paragraph 9 below, in consideration of the obligations of Hospital set forth in this Agreement, conditioned upon Hospital's payment in full of the Settlement Amount, and subject to Paragraph 3 above (concerning bankruptcy

proceedings commenced within 91 days of the effective date of this Agreement), the United States (on behalf of itself, its officers, agents, and its agencies and departments) releases Hospital, its predecessors, successors, assigns, and affiliates, and current and former parent corporations 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 at common law, including 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 Hospital and its predecessors, successors, assigns, and affiliates, and current and former parent corporations.

6. Subject to the exceptions in Paragraph 9 below, in consideration of the obligations of Hospital set forth in this Agreement, conditioned upon Hospital's payment in full of the Settlement Amount, and subject to Paragraph 3 above (concerning bankruptcy proceedings commenced within 91 days of the effective date of this Agreement), the State of Tennessee (on behalf of itself, its officers, agents, and its agencies and departments) releases Hospital, its predecessors, successors, assigns, and affiliates, and current and former parent corporations from any civil or administrative monetary claim the State of Tennessee has or may have for the Covered Conduct.

7. OIG-HHS expressly reserves all rights to institute, direct, or to maintain any administrative action seeking exclusion from Medicare, Medicaid, or other Federal health care programs (as defined in 42 U.S.C. § 1320a-7b(f)) under 42 U.S.C. § 1320a-7a (Civil Monetary Penalties Law), 42 U.S.C. § 1320a-7(a) (mandatory exclusion), or 42 U.S.C. § 1320a-7(b)

(permissive exclusion) against Hospital, and its officers, directors, employees, and agents for 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 9.

8. The State of Tennessee recognizes that this Agreement is intended to allow Hospital to continue to participate in the Medicaid/TennCare Program and is intended to release Hospital from any action to impose Medicaid/TennCare Program exclusion upon Hospital on the basis of the Covered Conduct except as reserved in Paragraphs 7 and 9. The Parties recognize, however, that participation in the Tennessee Medicaid/TennCare Program is dependent upon acceptance into a network by a Managed Care Organization (MCO) and Behavioral Health Organization (BHO) and the MCOs/BHOs have discretion, so long as consistent with federal and state law, to set policies for participation in their networks. The Office of the Tennessee Attorney General and the TennCare Bureau will not attempt to influence any MCO/BHO to exclude Hospital from participation in an MCO/BHO network due to the Covered Conduct. Hospital acknowledges that the State of Tennessee does not have the authority to release Hospital from any claims or actions for debarment or otherwise which may be asserted by private insurers or similar entities such as MCOs/BHOs that are paid on a capitated or other basis for providing health care to the State's Medicaid/TennCare recipients. However, the Department of Health, TennCare Bureau, will not exclude Hospital from participation in the Medicaid/TennCare Program based upon the Covered Conduct unless required to do so by the United States Department of Health and Human Services.

9. 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 Hospital) 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) Any administrative liability, including mandatory exclusion from Federal health care programs, except as explicitly otherwise stated in this Agreement;

(4) Any liability to the United States (or its agencies) for any conduct other than the Covered Conduct;

(5) Any liability to the State of Tennessee (or its agencies) for any conduct other than the Covered Conduct;

(6) Any claims based upon such obligations as are created by this Agreement;

(7) Any express or implied warranty claims or other claims for defective or deficient products or services, including quality of goods and services, provided by Hospital;

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

(9) Any civil claims against individuals, including current or former directors, officers, employees, or agents of Hospital. However, if such individuals are legally entitled to repayment from Hospital by claim for indemnification, contribution, reimbursement, or otherwise, as a result of a monetary claim brought by the United States or the State of Tennessee, the release provided in Paragraphs 5 -6 above shall apply to such individuals with

respect to that claim; and

(10) Claims under any consumer protection acts of the State of Tennessee.

10. Hospital 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 or Excessive Fines Clause of the United States Constitution, this settlement bars a remedy sought in such criminal prosecution or administrative action. Hospital agrees that this settlement 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.

11. The Settlement Amount that Hospital must pay pursuant to this Agreement by electronic wire transfers pursuant to Paragraph 1 above, will not be decreased as a result of the denial of claims for payment being withheld from payment by any Medicare carrier or intermediary or any state payer, related to the Covered Conduct; and Hospital 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.

12. The Hospital agrees to the following:

a. Unallowable Costs Defined: that all costs (as defined in the Federal Acquisition Regulation ("FAR") 48 § 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 the Hospital, or its

current and former parent corporations, each of their direct and indirect subsidiaries, division, affiliates, brother and sister corporations, predecessors, successors and assigns, along with the current and former employees, officers and directors of any of them, in connection with:

(1) the matters covered by this Agreement,

(2) the Government's audit(s) and civil investigation(s) of the matters covered by this Agreement,

(3) the Hospital's investigation, defense, and corrective actions undertaken in response to the Government's audit(s) and civil investigation(s) in connection with the matters covered by this Agreement (including attorneys' fees),

(4) the negotiation and performance of this Agreement, and

(5) the payments made pursuant or ancillary to this Agreement, including any costs and attorneys' fees, are unallowable costs on Government contracts and under the Medicare Program, Medicaid/TennCare Program, TRICARE Program, Veterans Affairs Program ("VA"), and FEHBP (Federal Employee Health Benefits Program). (All costs described or set forth in this Paragraph are hereafter, "unallowable costs").

b. Future Treatment of Unallowable Costs: These unallowable costs will be separately determined and the Hospital will 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 the Hospital or any of its current and former parent corporations, each of their direct and indirect subsidiaries, divisions, affiliates, brother and sister corporations, predecessors, successors and assigns, along with the current and former employees,

officers and directors of any of them to the Medicare, Medicaid/TennCare, TRICARE, VA or FEHBP programs.

c. Treatment of Unallowable Costs Previously Submitted for Payment: The Hospital further agrees that within 180 days of the effective date of this Agreement it will 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 report, cost statements, information reports, or payment requests already submitted by the Hospital or any of its current and former parent corporations, each of their direct and indirect subsidiaries, divisions, affiliates, brother and sister corporations, predecessors, successors and assigns along with the current and former employees, officers and directors of any of them, 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. The Hospital agrees that the United States, at a minimum, will be entitled to recoup from the Hospital 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. If the Hospital fails to identify such costs in past filed cost reports in conformity with this Paragraph, the United States may seek an appropriate penalty or other sanction in addition to the recouped amount.

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 the Hospital or any of its current and former parent corporations, each of their direct and indirect subsidiaries, divisions, affiliates, brother and sister corporations, predecessors, successors and assigns, along with the current and former employees, officers and directors of any of them, on the effect of inclusion of unallowable costs (as defined in this Paragraph) on the cost reports, cost statements, or information reports of the Hospital or any of its current or former parent corporations, each of their direct and indirect subsidiaries, divisions, affiliates, brother and sister corporations, predecessors, successors and assigns, along with the current and former employees, officers and directors of any of them. 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.

13. This Agreement is intended to be for the benefit of the Parties and other persons as specifically set forth in this Agreement only, and by this instrument the Parties do not release any claims against any other person or entity. Nothing in this Agreement, express or implied, is intended to or shall be construed to give any person other than the United States, the State of Tennessee, and the Relator any right, remedy, or claim against the Hospital.

14. Hospital agrees that it will not seek payment for any of the health care billings included within the Covered Conduct covered by this Agreement from any health care beneficiaries or their parents or sponsors. Hospital waives any causes of action against these beneficiaries or their parents or sponsors based upon the claims for payment covered by this Agreement.

15. The United States and Relator agree that after signing this Agreement and no later than twenty (20) days after the Settlement Amount is received by the United States, the United

States and Relator will file a stipulation with the United States Court for the Middle District of Tennessee (“Court”) to dismiss the Hospital with prejudice from the action captioned United States ex rel. Health Outcomes Technologies v. Fentress County General Hospital, Civil Action No.2:01-0053 (UNDER SEAL). The United States shall provide Hospital with a copy of the Court’s Order dismissing Hospital.

16. By this Agreement, the Relator and Relator’s Counsel release and discharge and are deemed to have released and forever discharged Hospital, its current and former parent corporations, and its predecessors, successors, assigns, and affiliates from any and all claims or causes of actions that Relator and/or Relator’s Counsel may have against Hospital, its current and former parent corporations, and its predecessors, successors, assigns, and affiliates, including any claims under 31 U.S.C. § 3730(d) to pay Relator’s or Relator’s Counsel’s attorney’s fees, expenses or costs.

17. Conditioned on Hospital’s payment in full of the Settlement Amount, Relator shall receive from the United States a payment totaling 14% of the Settlement Amount to equal One Hundred Sixty Seven Thousand Four Hundred Thirteen Dollars (\$167,413). The United States shall pay Relator this amount within a reasonable time after receipt by the United States from Hospital of the Settlement Amount. It is expressly understood and agreed that the United States in no way promises or guarantees nor is liable to Relator for the collection or payment of any funds pursuant to this Agreement or the payment of any Relator’s share payments except as provided herein for funds actually collected and received by the United States.

18. On receipt of the payments described in Paragraph 17 above, Relator will release and will be deemed to have released and forever discharged the United States, its officers,

agents, and employees from any liability arising from the filing of the Complaint as against Hospital, including any claim pursuant to 31 U.S.C. § 3730(d) to a share of any settlement proceeds received from Hospital, and in full satisfaction and settlement of claims under this Agreement.

19. 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.

20. Hospital represents that this Agreement is voluntarily entered into without duress or compulsion.

21. 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 Middle District of Tennessee, except that jurisdiction and venue for any dispute arising between the State of Tennessee and Hospital, under this Agreement, will be in the appropriate State Court of Tennessee.

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

23. The undersigned individuals signing this Agreement on behalf of Hospital and Relator represent that they are authorized to execute this Agreement on behalf of these Parties. The undersigned United States and State of Tennessee signatories represent that they are signing this Agreement in their official capacities and that they are authorized to execute this Agreement.

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 successors, transferees, and assigns.

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

THE UNITED STATES OF AMERICA

DATED: 10/24/03

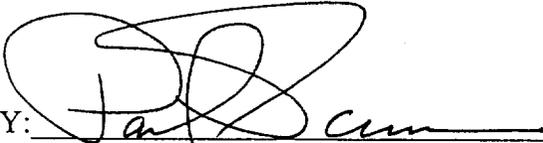
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Attorneys
U.S. Department of Justice
Commercial Litigation Branch
Civil Division

DATED: Oct. 14, 2003

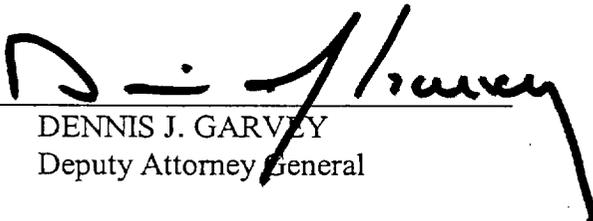
BY: *Larry J. Goldberg*
LARRY J. GOLDBERG
Assistant Inspector General
for Legal Affairs
Office of Counsel to the
Inspector General
Office of Inspector General
United States Department of,
Health and Human Services

STATE OF TENNESSEE

DATED: 10/02/03

BY: 
PAUL G. SUMMERS
Attorney General and Reporter

DATED: 10/13/03

BY: 
DENNIS J. GARVEY
Deputy Attorney General

FENTRESS COUNTY GENERAL HOSPITAL, INC.

DATED: _____

BY: _____
BERNARD S. PHILIPP
CEO, Fentress County General Hospital

DATED: _____

BY: _____
TIMOTHY R. PARRY
Sr. Vice President & General Counsel
Fentress County General Hospital

DATED: _____

BY: _____
GABRIEL L. IMPERATO, Esq.
Broad & Cassel
Fort Lauderdale, Florida

on behalf of Fentress County General Hospital

STATE OF TENNESSEE

DATED: _____

BY: _____

PAUL G. SUMMERS
Attorney General and Reporter

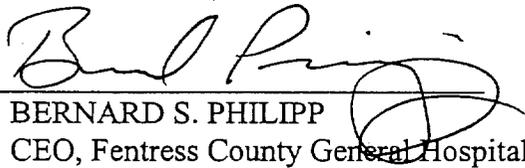
DATED: _____

BY: _____

DENNIS J. GARVEY
Deputy Attorney General

FENTRESS COUNTY GENERAL HOSPITAL, INC.

DATED: 9/12/03

BY: 
BERNARD S. PHILIPP
CEO, Fentress County General Hospital

DATED: 9-11-03

BY: 
TIMOTHY R. PARRY
Sr. Vice President & General Counsel
Fentress County General Hospital

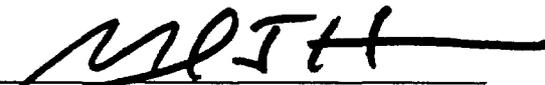
DATED: 9/17/03

BY: 
GABRIEL L. IMPERATO, Esq.
Broad & Cassel
Fort Lauderdale, Florida

on behalf of Fentress County General Hospital

RELATOR, HEALTH OUTCOMES TECHNOLOGIES

DATED: 9/14/03

BY: 

MICHAEL HOLSTON
DRINKER, BIDDLE & REATH
Attorneys for Relator,
Health Outcomes Technologies