

## 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"); Fort Hamilton Hospital ("Fort Hamilton"); 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. Fort Hamilton is a provider of hospital services located at 630 Eaton Avenue, Hamilton, Ohio 45013.
- B. Fort Hamilton 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 for the inpatient treatment of Medicare beneficiaries.
- C. On or around August 25, 1997, the Relator filed a qui tam complaint under seal alleging violations of the False Claims Act.

Act by Fort Hamilton in the case styled United States ex rel. Barry Steeley v. [UNDER SEAL], et al., Civil Action No. 3:97-0893 (M.D. Tenn.) (UNDER SEAL) (the "Qui Tam Action").

D. The United States contends that Fort Hamilton submitted or caused to be submitted claims for payment to Medicare.

E. 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.

F. The Medicare Program relies upon participating hospitals to properly indicate the principal diagnosis through the use of standard diagnosis codes contained in the International Classification of Diseases, 9th Revision, Clinical Modification ("ICD-9-CM").

G. The United States investigated the allegations in the Qui Tam Action regarding inpatient payment claims submitted to Medicare by Fort Hamilton for patients with the principal diagnosis codes for Diagnostic Related Group (DRG) 79 (respiratory infections & inflammations age > 17 W CC).

H. Based on its investigation, the United States contends that it has certain civil claims against Fort Hamilton 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, for engaging in the following

alleged conduct during the period from January 1, 1995 through May 28, 2000 (the "Covered Period"): Fort Hamilton submitted or caused to be submitted claims to Medicare with the principal diagnosis codes for DRG 79 (respiratory infections & inflammations age > 17 W CC) 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, Fort Hamilton received payments from Medicare to which it was not entitled.

I. The United States also contends that it has certain administrative claims against Fort Hamilton under the provisions for permissive exclusion from 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.

J. Fort Hamilton has provided documents and information in response to the United States' investigation of the Covered Conduct, including patient files for which claims were submitted to the Medicare Program with the principal diagnosis codes for DRG 79 (respiratory infections & inflammations age > 17 W CC). Fort Hamilton represents that such response has been truthful, accurate, and complete to the best of its knowledge and ability.

K. Fort Hamilton does not admit the contentions of the United States as set forth in Paragraphs H and/or I above and as

set forth in the Qui Tam Action.

L. 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. Fort Hamilton shall pay to the United States \$102,000 (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. Fort Hamilton shall make this electronic funds transfer by no later than three o'clock (3:00) p.m. on the effective date of this Agreement.

2. Fort Hamilton shall cooperate fully and in good faith with the United States 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 in connection with the Qui Tam Action, by providing accurate, truthful, and complete information whenever, wherever, to whomever and in whatever form the United States reasonably request. Upon reasonable notice, Fort Hamilton shall 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 shall furnish to the United States, upon reasonable request, all non-privileged documents and records in its possession, custody or control relating to the Covered Conduct.

3. Fort Hamilton agrees to the following:

(a) Fort Hamilton agrees that it shall maintain its current compliance measures for at least three years, beginning with the final signature of this Settlement Agreement.

Additionally, Fort Hamilton shall provide all new and existing employees with a written summary of its compliance measures as well as the contact information for Fort Hamilton's Compliance contact;

(b) Fort Hamilton agrees that it shall provide one hour of annual training to all employees, agents, and independent contractors engaged in the delivery of patient care or billing services on: (i) Fort Hamilton's commitment to full compliance with all Federal health care program requirements, including its commitment to prepare and submit accurate claims, and (ii) the consequences of false or improper coding and submissions to Federal health care programs. In addition, Fort Hamilton shall provide at least two hours annually of training to all employees or agents involved in coding or billing on the proper

documentation for coding DRGs.

(c) Fort Hamilton agrees that it shall perform periodic audits (at least semi-annually) on DRG code 79 to assess whether this code has the proper documentation for the code level at which it is billed to the Federal health care programs.

(d) Fort Hamilton agrees that it shall make reasonable efforts to identify any overpayments involving Federal health care program payments, and shall repay any overpayments to the appropriate Federal health care program within 60 days of identification. Such repayment shall be made in accordance with the policies of the payor.

(e) Fort Hamilton shall provide an annual certification to the OIG-HHS for each of the three years following execution of this Agreement regarding the specifications in paragraphs 3(a) - 3(d).

4. Fort Hamilton releases the United States, the Department of Health and Human Services (HHS), and each of their agencies, 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.

5. Subject to the exceptions in Paragraph 7 below, in consideration of the obligations of Fort Hamilton set forth in

this Agreement, conditioned upon Fort Hamilton'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 Fort Hamilton, and each of its predecessors, successors, assigns, and affiliates (all of the foregoing collectively referred to as the "Fort Hamilton Released Parties") 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 Fort Hamilton Released Parties.

6. In consideration of the obligations of Fort Hamilton set forth in this Agreement, conditioned upon Fort Hamilton's payment in full of the Settlement Amount, the OIG-HHS agrees to release and refrain, from instituting, directing or maintaining any administrative claim or any action seeking exclusion from Medicare, Medicaid or other Federal health care programs (as defined in 42 U.S.C. § 1320a-7b(f)) against the Fort Hamilton Released Parties 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 this Paragraph. The OIG-HHS expressly reserves all rights to comply with any statutory obligations to exclude Fort Hamilton or others from Medicare, Medicaid or other federal health care programs under 42 U.S.C. § 1320a-7(a) (mandatory exclusion). 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 7, below.

7. 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 Fort Hamilton 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 claims based upon such obligations as are created by this Agreement;
- (6) Any express or implied warranty claims or other claims for defective or deficient products or services.

including quality of goods and services, provided by Fort Hamilton; and

(7) Any claims based on a failure to deliver items or services billed.

8. Fort Hamilton 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 Constitution, this Agreement bars a remedy sought in such criminal prosecution or administrative action. Fort Hamilton 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 Fort Hamilton 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 Fort Hamilton 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. Fort Hamilton 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 with respect to the Covered Conduct by or on behalf of Fort Hamilton, its present or former officers, directors, employees, shareholders, and agents in connection with:

(1) the matters covered by this Agreement,

(2) the United States' audit(s) and investigations(s) of the matters covered by this Agreement,

(3) Fort Hamilton'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,

(5) the payment Fort Hamilton makes to the United States pursuant to this Agreement and any payments that Fort Hamilton may make to Relator, including costs and attorneys fees, and

(6) the negotiation of, and obligations undertaken pursuant to paragraph 3 above to:

(i) retain an independent review organization

perform annual reviews; and

(ii) prepare and submit reports to the OIG-HHS, are unallowable costs on Government contracts and under the Medicare Program, Medicaid Program, TRICARE Program, Veterans Affairs Program (VA), and Federal Employees Health Benefits Program (FEHBP).

(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 estimated and accounted for by Fort Hamilton, and Fort Hamilton 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 Fort Hamilton or any of its subsidiaries to the Medicare, Medicaid, TRICARE, VA, or FEHBP Programs.

(c) Treatment of Unallowable Costs Previously Submitted for Payment: Fort Hamilton 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 t...

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 Fort Hamilton 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. Fort Hamilton agrees that the United States, at a minimum, shall be entitled to recoup from Fort Hamilton any overpayment plus applicable interest as a result of the inclusion of such unallowable costs on previously-submitted cost reports, information reports, cost statements, or request 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 Fort Hamilton or any of its subsidiaries on the effect of inclusion of unallowable costs (as defined in this Paragraph) on Fort Hamilton 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 Fort Hamilton Released Parties). This agreement is not intended to be for the benefit of Birman Managed Care, Inc., Birman & Associates, Inc., and David N. Birman, MD, and by this instrument the United States does not release any claims against Birman Managed Care, Inc., Birman & Associates, Inc., and David N. Birman, MD.

12. Fort Hamilton agrees that it shall not seek payment for any of the health care billings for the Covered Conduct from any health care beneficiaries or their parents or sponsors. Fort Hamilton waives any causes of action against these beneficiaries or their parents or sponsors based upon the claims for the Covered Conduct.

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 United States is partially intervening in the Qui Tam Action with respect to claims against Fort Hamilton related to the Covered Conduct; (b) notwithstanding such intervention, the Parties have reached a settlement; and (c) 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 Fort Hamilton, and the claims in the Qui Tam Action unrelated to the Covered Conduct are dismissed without prejudice as to the United States.

14. In consideration of the obligations of Fort Hamilton set forth in this Agreement, conditioned upon Fort Hamilton's payment in full of the Settlement Amount, Relator, and Relator's Counsel, agrees to release the Fort Hamilton Released Parties 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. Relator expressly reserves any claims against any entities and individuals other than the Fort Hamilton Released Parties.

15. Conditioned on Fort Hamilton'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 Fort Hamilton 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 of any Relator's share payments except as provided herein for funds actually collected and received by the United States.

16. On receipt of the payment described in Paragraph 15:

above, Relator shall release and shall 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 in the Qui Tam Action as against Fort Hamilton, including any claim pursuant to 31 U.S.C. § 3730(d) to a share of any settlement proceeds received from Fort Hamilton, and in full satisfaction and settlement of claims under this Agreement. 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).

17. Fort Hamilton and the United States shall bear their own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement. Conditioned upon receipt of \$3,771 from Fort Hamilton, in addition to the settlement amount described in Paragraph 15, the Relator, for himself and for his heirs, successors, attorneys, agents and assigns, agrees to release the Fort Hamilton Released Parties from any liability to Relator arising from the filing of the Qui Tam Action, or under 31 U.S.C. § 3730(d), for expenses and attorney's fees and costs. Fort Hamilton shall pay Three Thousand Seven Hundred Seventy One Dollars (\$3,771.00) to Relator's attorney on the effective date of this Agreement pursuant to written instructions to be provided by Relator's attorney.

18. Fort Hamilton represents that this Agreement is freely and voluntarily entered into without any degree of duress or compulsion whatsoever.

19. The Relator 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.

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

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 Fort Hamilton represent and warrant that they are authorized to execute this Agreement on behalf of Fort Hamilton. 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 individuals signing this Agreement on behalf of the Relator represent and

warrant that they are authorized by Relator 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 the successors, transferees, and assigns of the Parties.

26. This Agreement is effective on February 8, 2002.

THE UNITED STATES OF AMERICA

DATED: 2/5/02

BY:   
WILLIAM L. DENEKE  
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: \_\_\_\_\_

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

THE UNITED STATES OF AMERICA

DATED: \_\_\_\_\_

BY: \_\_\_\_\_

WILLIAM L. DENEKE  
Assistant United States  
Attorney  
Office of the  
United States Attorney  
Middle District of Tennessee

DATED: 2/7/02

BY: Robert McAuliffe

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

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

THE UNITED STATES OF AMERICA

DATED: \_\_\_\_\_

BY: \_\_\_\_\_

WILLIAM L. DENEKE  
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

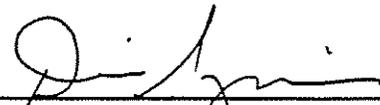
DATED: 2/1/02

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

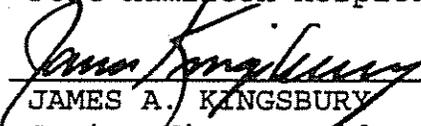
FORT HAMILTON HOSPITAL

DATED: 2/1/02

BY:   
DIANE SIGNORACCI, ESQ.  
Bricker & Eckler LLP  
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Columbus, Ohio 43215-4291  
614-227-2300

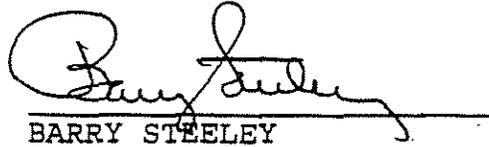
Counsel for  
Fort Hamilton Hospital

DATED: 02/5/02

BY:   
JAMES A. KINGSBURY  
Senior Vice President  
Fort Hamilton Hospital

RELATOR BARRY STEELEY

DATED: 02/04/02

  
BARRY STEELEY

DATED: 2/4/2002

BY:   
W. CHARLES BAILEY, JR.  
Greber & Simms  
Suite 702  
Twenty South Charles  
Street  
Baltimore, Maryland 21201  
  
Counsel for Relator  
Barry Steeley