

*A. Younts*

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA, :  
EX REL. HEALTH OUTCOMES :  
TECHNOLOGIES, :  
 :  
Plaintiff, :  
 :  
v. :  
 :  
MUSKOGEE REGIONAL MEDICAL CENTER, :  
 :  
Defendant. :

FILED SEP 7 2001

U.S. DISTRICT COURT  
EASTERN DISTRICT OF PA.  
2001 SEP 11 A 10:26

CIVIL ACTION NO. 96-1552  
FILED UNDER SEAL

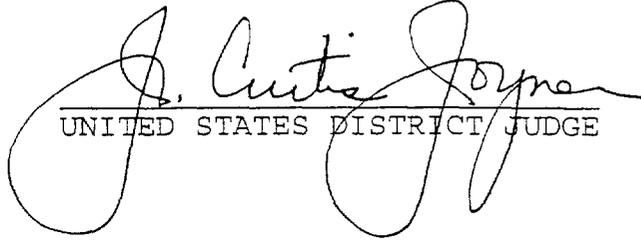
ORDER

AND NOW, this 6<sup>th</sup> day of September, 2001, it is hereby ORDERED as follows:

1. The Clerk of the Court is directed to file on the public record and not under seal the following documents filed in the above-captioned case:
  - a) Notice of Intervention in Claims Against Only Defendant Muskogee Regional Medical Center;
  - b) Stipulation and Order of Dismissal of Claims Against Only Defendant Muskogee Regional Medical Center;
  - c) a redacted version of the relator's complaint which deletes only the names of all non-settling defendants and the specific allegations relating thereto;
  - d) Praecipe noting such filings.
2. The complaint, docket entries, and all filings not otherwise unsealed by previous Orders of this Court shall REMAIN UNDER SEAL in accordance with the terms of Orders previously entered in this case and until further Order of this Court.
3. The Clerk shall deliver a copy of this Order only to counsel

for the United States and to counsel for Relator, and this Order shall  
REMAIN UNDER SEAL until further Order of this Court.

SO ORDERED:

  
UNITED STATES DISTRICT JUDGE

Dated: 9-6-01

ENTERED  
SEP 10 2001  
CLERK OF COURT

## 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 TRICARE Management Activity (TMA) (formerly the Office of Civilian Health and Medical Program of the Uniformed Services (OCHAMPUS)) (hereinafter referred to as TRICARE/CHAMPUS), through its General Counsel; and Muskogee Regional Medical Center (MRMC) (hereafter referred to as "the Parties"), through their authorized representatives.

### II. PREAMBLE

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

A. MRMC is a health care provider, and submitted or caused to be submitted, claims to Medicare and TRICARE/CHAMPUS for the inpatient treatment of Medicare and TRICARE/CHAMPUS beneficiaries.

B. The United States contends that MRMC 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. §§ 1395-1395 ddd(1997); and the TRICARE/CHAMPUS program, 10 U.S.C. § 1071 - 1106.

C. Medicare and TRICARE/CHAMPUS payments to a hospital for inpatient treatment rendered to a beneficiary generally are based upon the beneficiary's "principal diagnosis," as set forth by the hospital.

D. The Medicare and TRICARE/CHAMPUS program rely upon participating hospitals to properly indicate the principal diagnosis through the use of standard diagnosis codes.<sup>1</sup>

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

F. The United States contends that it has certain civil claims against MRMC 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 October 1, 1992 through December 31, 1997 in that MRMC submitted or caused to be submitted claims to Medicare and TRICARE/CHAMPUS with the principal diagnosis code of 482.89 that were not

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

supported by the corresponding medical records (hereinafter referred to as the "Covered Conduct"). The United States alleges that, as a result of these claims, MRMC received payments to which it was not entitled.

G. The United States also contends that it has certain administrative claims against MRMC 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, and the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801-3812, for the Covered Conduct.

H. MRMC has provided documents and information to the United States in response to the government's investigation of the Covered Conduct, including patient files for which claims were submitted to the Medicare Program with the principal diagnosis code of 482.89, and MRMC represents that such response has been truthful, accurate, and complete to the best of its knowledge and ability.

I. MRMC does not admit the contentions of the United States as set forth in Paragraphs F and G above and as set forth in [UNDER SEAL].

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. MRMC agrees to pay to the United States \$539,685 (the "Settlement Amount") as follows: MRMC agrees to make payment of the Settlement Amount by electronic funds transfer pursuant to written instructions to be provided by Michael F. Hertz, Director, Commercial Litigation Branch. MRMC agrees to make this electronic funds transfer no later than the effective date of this Agreement.

2. MRMC agrees to 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, by providing accurate, truthful, and complete information whenever, wherever, to whomever and in whatever form the United States reasonably may request. Upon reasonable notice, MRMC 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, upon reasonable request, all non-privileged

documents and records in its possession, custody or control relating to the Covered Conduct.

3. MRMC has entered into a Corporate Integrity Agreement with HHS, attached as Exhibit A, which is incorporated into this Agreement by reference. MRMC will implement its obligations under the Corporate Integrity Agreement as set forth in the Corporate Integrity Agreement.

4. MRMC releases the United States, HHS, TMA 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.

5. Subject to the exceptions in Paragraph 7 below, in consideration of the obligations of MRMC set forth in this Agreement, conditioned upon MRMC'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 4), and Relator agree to release MRMC, its predecessors, successors, assigns, and affiliates, current or former directors, officers, employees, agents or shareholders of MRMC 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, disgorgement, restitution, recoupment, and constructive trust, breach of contract and fraud, for the Covered Conduct. The United States expressly reserves any claims against any entities and individuals other than MRMC.

6. In consideration of the obligations of MRMC set forth in this Agreement, conditioned upon MRMC'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 MRMC under 42 U.S.C. § 1320a-7a (Civil Monetary Penalties Law), or 42 U.S.C. § 1320a-7(b) (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 MRMC 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.

In consideration of the obligations of MRMC set forth in this Agreement, conditioned upon MRMC's payment in full of the

Settlement Amount, the TMA agrees to release and refrain from instituting, directing, or maintaining any administrative claim or any action seeking exclusion from the TRICARE Program against MRMC under 32 C.F.R. § 199.9 for the Covered Conduct, except as reserved in Paragraph 7 below, and as reserved in this Paragraph. The TMA expressly reserves authority to exclude MRMC, from the TRICARE program under 32 C.F.R. §§ 199.9 (f) (1) (i) (A), (f) (1) (i) (B), (f) (1) (i) (D), and (f) (1) (iii), based upon the Covered Conduct. Nothing in this Paragraph precludes TMA 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 MRMC) 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 otherwise 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 MRMC;

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

(8) Any civil or administrative claims against individuals, including current or former directors, officers, employees, agents or shareholders of MRMC who receive written notification that they are the target of a criminal investigation (as defined in the United States Attorneys' Manual), are criminally indicted or charged, or are convicted, or who enter into a criminal plea agreement related to the covered conduct.

8. MRMC 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 settlement bars a remedy sought in such criminal prosecution or administrative action. MRMC 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.

9. The Amount that MRMC must pay pursuant to this Agreement by electronic wire transfer pursuant to Paragraph 1 above, will not be decreased as a result of the denial of claims for payment now being withheld from payment by any Medicare carrier or TMA carrier or intermediary, or any State payer, related to the Covered Conduct; and MRMC agrees not to resubmit to any Medicare or TMA 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. MRMC agrees that all costs (as defined in the Federal Acquisition Regulations ("FAR") § 31.205-47 and in Titles XVIII and XIX of the Social Security Act, 42 U.S.C. §§ 1395-1395ddd (1997) and 1396-1396v (1997), and the regulations promulgated thereunder) incurred by or on behalf of MRMC in connection with: (1) the matters covered by this Agreement, (2) the Government's audit(s) and civil and any criminal investigation(s) of the matters covered by this Agreement, (3) MRMC'S investigation, defense, and corrective actions undertaken in response to the Government's audit(s) and civil and any criminal investigation(s) in connection with the matters covered by this Agreement (including attorney's fees and the obligations undertaken pursuant to the Corporate Integrity Agreement ("CIA"))

incorporated in this Settlement Agreement), (4) the negotiation of this Agreement and the CIA, and the 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 HHS-OIG; (5) the payment made pursuant to this Agreement, are unallowable costs on Government contracts and under the Medicare Program, Medicaid Program, TRICARE Program, Veterans Affairs Program, and Federal Employee Health Benefits Program (hereafter, "unallowable costs"). These unallowable costs will be separately estimated and accounted for by MRMC, and MRMC 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 MRMC or any of its subsidiaries to the Medicare, Medicaid, TRICARE, VA or FEHBP programs.

MRMC further agrees that within 60 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

reports, cost statements, information reports, or payment requests already submitted by MRMC or any of its subsidiaries, 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. MRMC agrees that the United States will be entitled to recoup from MRMC any overpayment as a result of the inclusion of such unallowable costs on previously-submitted cost reports, information reports, cost statements or requests for payment. Any payments due after the adjustments have been made shall be paid to the United States pursuant to the direction of the Department of Justice, and/or the affected agencies. The United States reserves its rights to disagree with any calculations submitted by MRMC or any of its subsidiaries on the effect of inclusion of unallowable costs (as defined in this paragraph) on MRMC 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 only, and by this instrument the Parties do not release any claims against any other person or entity.

12. MRMC agrees that it will not seek payment for any of

the health care billings covered by this Agreement from any health care beneficiaries or their parents or sponsors. MRMC 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 Court that the parties stipulate and request that MRMC be dismissed with prejudice from the action captioned United States ex rel. Health Outcomes Technologies v. Muskogee Regional Medical Center, Civil Action No. 96-1552 (UNDER SEAL), in the United States District Court for the Eastern District of Pennsylvania.

14. By this Agreement, the Relator and Relator's Counsel will release and will be deemed to release MRMC, from any claim that the Relator, and/or Relator's Counsel may have under 31 U.S.C. § 3730(d) to pay Relator's or Relator's Counsel attorneys' fees, expenses and costs.

15. Conditioned on MRMC's payment in full of the Settlement Amount, Relator shall receive from the United States a payment amounting to \$75,556. The United States shall pay relator this amount within a reasonable time after receipt by the United States from MRMC 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 or 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 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 MRMC, including any claim pursuant to 31 U.S.C. § 3730(d) to a share of any settlement proceeds received from MRMC, and in full satisfaction and settlement of claims under this Agreement.

17. 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.

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

19. 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 Eastern District of Oklahoma, except that disputes arising under the Corporate Integrity Agreement (attached as Exhibit A) shall

be resolved exclusively under the dispute resolution provisions set forth in the Corporate Integrity Agreement.

20. This Agreement, including Exhibit A which is incorporated by reference, constitutes the complete agreement between the Parties. This Agreement may not be amended except by written consent of the Parties, except that only MRMC and OIG-HHS must agree in writing to modification of the Corporate Integrity Agreement attached as Exhibit A.

21. The undersigned individual signing this Agreement on behalf of MRMC represents and warrants that (s)he is authorized to execute this Agreement on behalf of that entity. 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.

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

23. This Agreement is binding on successors, transferees, and assigns.

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

THE UNITED STATES OF AMERICA

DATED: 7/10/01

BY: Diana F. Hertz  
MICHAEL F. HERTZ  
JOYCE R. BRANDA  
DIANA J. YOUNTS  
JAMIE ANN YAVELBERG  
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: \_\_\_\_\_

MICHAEL F. HERTZ  
JOYCE R. BRANDA  
DIANA J. YOUNTS  
JAMIE ANN YAVELBERG  
Civil Division  
U.S. Department of Justice

DATED: 8/8/01

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

DATED: July 23, 2001

BY: Robert L. Shepherd acting Deputy  
for ROBERT L. SHEPHERD  
Deputy General Counsel  
TRICARE Management Activity  
United States Department  
of Defense

MRMC

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

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

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

BY: \_\_\_\_\_  
Counsel for MRMC

RELATOR HEALTH OUTCOMES TECHNOLOGIES

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

BY: \_\_\_\_\_  
DRINKER, BIDDLE & REATH  
Attorneys for Relator  
Health Outcomes Technologies

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

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

ROBERT L. SHEPHERD  
Deputy General Counsel  
TRICARE Management Activity  
United States Department  
of Defense

MRMC

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

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

NAME

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

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

Counsel for MRMC

RELATOR HEALTH OUTCOMES TECHNOLOGIES

DATED: 7/23/01

BY: 

DRINKER, BIDDLE & REATH  
Attorneys for Relator  
Health Outcomes Technologies

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

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

ROBERT L. SHEPHERD  
Deputy General Counsel  
TRICARE Management Activity  
United States Department  
of Defense

MRMC

DATED: 8/28/01

BY:   
NAME

DATED: 8/28/01

BY:   
Counsel for MRMC

RELATOR HEALTH OUTCOMES TECHNOLOGIES

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

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

DRINKER, BIDDLE & REATH  
Attorneys for Relator  
Health Outcomes Technologies