

## SETTLEMENT AGREEMENT

### I. PARTIES

This Settlement Agreement ("Agreement") is entered into among 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, the Office of Inspector General of the Department of Health and Human Services ("OIG-HHS"), and the TRICARE Management Activity ("TMA") (formerly the Office of Civilian Health and Medical Program of the Uniformed Services ("CHAMPUS")), through its General Counsel; Regional Medical Center of Orangeburg & Calhoun Counties ("Orangeburg"); 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. Orangeburg is a provider of hospital services located at 3000 St. Matthews Road, Orangeburg, South Carolina 29115.

B. Orangeburg 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 the

identified in Article 3, Paragraph 4 below, for engaging in the following alleged conduct during the period from May 10, 1996 through December 31, 1999 with regard to the Medicare claims and January 1, 1993 through December 31, 1997 with regard to the CHAMPUS claims (the "Covered Period"): (i) Orangeburg submitted or caused to be submitted claims to Medicare with the principal diagnosis codes of 038.10 (staphylococc septicemia NOS); 038.42 (E coli septicemia); and 038.90 (septicemia NOS) that were not supported by the corresponding medical records; and (ii) Orangeburg submitted or caused to be submitted claims to CHAMPUS for patients with the principal diagnosis codes for DRG 127 (heart failure and shock), 132 (atherosclerosis w/ cc), 138 (cardiac arrhythmia & conduction disorders w/ cc), 235 (fractures of femur), 296 (nutritional & misc metabolic disorders age > 17 w/ cc) that were not supported by the corresponding medical records. The United States alleges that, as a result of these claims, Orangeburg received payments from Medicare and CHAMPUS to which it was not entitled. The conduct referenced in this paragraph is hereinafter referred to as the "Covered Conduct."

I. The United States also contends that it has certain administrative claims against Orangeburg 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. Orangeburg has provided documents and information in response to the United States' investigation of the Covered Conduct, including patient files for which claims were submitted (i) to the Medicare Program (a) with the following principal diagnosis codes for DRG 79 (respiratory infections & inflammations age > 17 w/ cc) - 482.83 (pneumonia due to gram negative bacteria); 482.89 (pneumonia other specified bacteria); 507.0 (food/vomit pneumonitis); (b) with the following principal diagnosis codes for DRG 127 (heart failure and shock) - 402.91 (hyperten heart dis w/ chf); 404.93 (hyp ht/ren NOS w/ chf & rf); 428.0 (congestive heart failure); (c) with the following principal diagnosis codes for DRG 296 (nutritional & misc metabolic disorders age > 17 w/ cc) - 276.1 (hyposmolality); 276.5 (hypovolemia); 276.7 (hyperpotassemia); and (d) with the following principal diagnosis codes for DRG 416 (septicemia age > 17) - 038.10 (staphylococc septicemia NOS); 038.42 (E coli septicemia); and 038.90 (septicemia NOS); and (ii) to CHAMPUS for patients with the principal diagnosis codes for DRG 127 (heart failure and shock), 132 (atherosclerosis w/ cc), 138 (cardiac arrhythmia & conduction disorders w/ cc), 235 (fractures of femur), 296 (nutritional & misc metabolic disorders age > 17 w/ cc). Orangeburg represents that such response has been truthful, accurate, and complete to the best of its knowledge and ability.

K. Orangeburg does not admit, and specifically denies, the contentions of the United States as set forth in Paragraphs H and I above and 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. Orangeburg shall pay to the United States \$284,500 (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. Orangeburg 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. Orangeburg 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, Orangeburg 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. Orangeburg releases the United States, the Department of Health and Human Services (HHS), TRICARE Management Activity (TMA), 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.

4. Subject to the exceptions in Paragraph 5 below, in consideration of the obligations of Orangeburg set forth in this Agreement, conditioned upon Orangeburg'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 (i) Orangeburg, and each of its predecessors, successors, assigns, and county government affiliates, and (ii) any of their current or former directors, officers and employees (all of the foregoing referenced in (i)

and (ii) collectively referred to as the "Orangeburg Released Parties") from any civil or administrative monetary claim or action 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 Orangeburg Released Parties.

5. 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 Orangeburg and the Relator) are any and all of the following:

- (a) Any civil, criminal, or administrative claims arising under Title 26, U.S. Code (Internal Revenue Code);
- (b) Any criminal liability;
- (c) Except as explicitly stated in this Agreement, any administrative liability, including mandatory exclusion from Federal health care programs;
- (d) Any liability to the United States (or its agencies) for any conduct other than the Covered Conduct;
- (e) Any claims based upon such obligations as created by this Agreement;

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

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

6. Orangeburg 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 5th Amendment to, or the Excessive Fines Clause in the 8th Amendment to, the Constitution, this Agreement bars a remedy sought in such criminal prosecution or administrative action. Orangeburg 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.

7. The Settlement Amount that Orangeburg 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 Orangeburg 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.

8. Orangeburg 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 Orangeburg, 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) Orangeburg'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 Orangeburg makes to the United States pursuant to this Agreement and any payments that Orangeburg may make to Relator, including costs and attorneys fees,



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 8(a) are hereafter, "unallowable costs").

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

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

9. 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 Orangeburg 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.

10. Orangeburg 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. Orangeburg waives any causes of action against these beneficiaries or their parents or sponsors based upon the claims for payment covered by this Agreement.

11. 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 Orangeburg 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 shall move to dismiss all claims in the Qui Tam Action with prejudice as to him, and (ii) the United States shall move to dismiss with prejudice only the claims in the Qui Tam Action related to the Covered Conduct

against Orangeburg, and the claims in the Qui Tam Action unrelated to the Covered Conduct are dismissed without prejudice as to the United States.

12. In consideration of the obligations of Orangeburg set forth in this Agreement, conditioned upon Orangeburg's payment in full of the Settlement Amount and attorney's fees, Relator, for his heirs, successors, attorneys, agents, and assigns, shall release and will be deemed to have released and forever discharged the Orangeburg Released Parties from any civil or administrative monetary claim Relator 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 Orangeburg Released Parties.

13. Conditioned on Orangeburg's payment in full of the Settlement Amount, Relator shall receive from the United States a payment of \$71,125 ("Relator's Share"). The United States shall pay Relator this amount within a reasonable time after Orangeburg 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 Relator's Share except as provided herein for funds actually collected and received by the United States.

14. On receipt of the Relator's Share described in

Paragraph 13 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 Orangeburg, including any claim pursuant to 31 U.S.C. § 3730(d) to a share of any settlement proceeds received from Orangeburg, 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.

15. Orangeburg 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 \$10,500 from Orangeburg, in addition to the Relator's Share described in Paragraph 13, the Relator, for himself and for his heirs, successors, attorneys, agents and assigns, agrees to release the Orangeburg 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.

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

17. The Relator represents that this Agreement is freely and voluntarily entered into without any degree of duress or

compulsion whatsoever.

18. 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.

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

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

21. The undersigned individuals signing this Agreement on behalf of Orangeburg represent and warrant that they are authorized to execute this Agreement on behalf of Orangeburg. 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.

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 the successors,  
transferees, and assigns of the Parties.

24. This Agreement is effective on February 27, 2002.

THE UNITED STATES OF AMERICA

DATED: February 22, 2002

BY: William L. Deneke  
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: \_\_\_\_\_  
LAUREL GILLESPIE  
Deputy General Counsel  
TRICARE Management Activity  
United States Department of  
Defense



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: 2/2/02

BY: Robert McAuliffe

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

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

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

LAUREL GILLESPIE  
Deputy General Counsel  
TRICARE Management Activity  
United States Department of  
Defense

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: 22 FEB 02

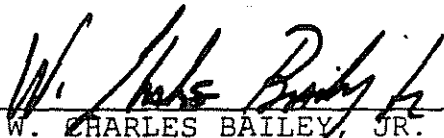
BY:   
LAUREL C. GILLESPIE  
**Acting** Deputy General Counsel  
TRICARE Management Activity  
United States Department of  
Defense

RELATOR BARRY STEELEY

DATED: 02/21/02

  
BARRY STEELEY

DATED: 2/21/2002

BY:   
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