

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA
ex rel. HEALTH OUTCOMES
TECHNOLOGIES, INC.,

Plaintiff,

v.

PALM SPRINGS GENERAL HOSPITAL,
INC.

Defendant.

CASE NO. 96-1552

FILED UNDER SEAL

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 Relator, Health Outcome Technologies, and Palm Springs General Hospital, Inc. ("Palm Springs") (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. Palm Springs is a health care provider, and submitted or caused to be submitted, claims to Medicare, for the inpatient

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treatment of Medicare beneficiaries.

B. The United States contends that Palm Springs 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. §§ 1395-1395ddd (1997).

C. Medicare 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 programs rely upon participating hospitals to indicate properly the principal diagnosis through the use of standard diagnosis codes.¹

E. The United States conducted an investigation into inpatient payment claims submitted to Medicare by hospitals 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 Palm Springs 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 6 below, for engaging in the following alleged conduct during the period from 1993 through 1997 in that Palm Springs submitted or caused to be submitted claims to the Medicare program with the principal

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

diagnosis code of 482.89 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, Palm Springs received payments to which it was not entitled.

G. The United States also contends that it has certain administrative claims against Palm Springs under the provisions for permissive exclusion from the Medicare, Medicaid and other federal health care programs, 42 U.S.C. § 1320a-7(b), the provisions for civil monetary penalties, 42 U.S.C. § 1320a-7a, for the Covered Conduct.

H. Palm Springs 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 programs with the principal diagnosis codes of 482.89, and Palm Springs represents that such response has been truthful, accurate, and complete to the best of its knowledge and ability.

I. Palm Springs does not admit the contentions of the United States as set forth in Paragraphs F and G above and denies any wrongdoing in connection therewith.

J. Palm Springs also conducted a self audit of patient records from January 1993 to May 1998, at the request of the United States, in which the principal diagnosis was ICD-9 code

482.83 (pneumonia due to gram negative bacteria) or DRG 416 (septicemia). As a result of the self-audit, it was determined that certain of the claims Palm Springs submitted or caused to be submitted to the Medicare program with the principal diagnosis code of 482.83 or DRG 416 were not supported by the corresponding medical records (the "self audit claims").

K. In order to avoid the delay, uncertainty, inconvenience and expense of protracted litigation of these claims, the Parties reach a full and final settlement as set forth below.

III. TERMS AND CONDITIONS

NOW, THEREFORE, in consideration of the mutual promises, covenants, and obligations set forth below, and for good and valuable consideration as stated herein, the Parties agree as follows:

1. Palm Springs agrees to pay to the United States the sum of two million eighty eight thousand seven hundred forty six dollars (\$2,088,746) (the "Initial Settlement Amount") as follows: Palm Springs agrees to make payment of the Initial Settlement Amount by electronic funds transfer pursuant to written instructions to be provided by the United States Attorney's Office for the Southern District of Florida. Palm Springs agrees to make this electronic funds transfer at the time of execution of this agreement.

2. Palm Springs agrees to pay to the United States the sum

of two hundred eighty two thousand three hundred twenty three dollars (\$282,323) (the "Secondary Settlement Amount") as follows: Palm Springs agrees to make payment of the Secondary Settlement Amount by electronic funds transfer pursuant to written instructions to be provided by the United States Attorney's Office for the Southern District of Florida. Palm Springs agrees to make this electronic funds transfer at the time of execution of this agreement.

3. Palm Springs 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. Nothing in this Paragraph, however, affects any privilege that might be available to Palm Springs or any statutory or regulatory obligation of Palm Springs, or Palm Springs' ability to object to the request on the grounds of such privilege or obligation; the United States reserves its right to contest the assertion of any such privilege or obligation by Palm Springs.

Palm Springs agrees to the following specific representations and undertakings:

a.. Palm Springs will use its best efforts to provide

such information, and related documents, within ten (10) working days of receipt of a request. If necessary, Palm Springs will notify the United States of any difficulty in timely complying with any such request, and will advise the United States of the additional amount of time estimated to be needed to respond to such request.

b. Palm Springs understands that it has undertaken an obligation to provide truthful and accurate information and testimony by itself and through its employees. Palm Springs agrees that it shall take no action which could cause any person to fail to provide such testimony (other than the assertion of a privilege or statutory or regulatory obligation), or could cause any person to believe that the provision of truthful and accurate testimony could adversely affect such person's employment or any contractual relationship.

c. Should it be judged by the United States that Palm Springs has failed to cooperate fully or has intentionally given false, misleading, or incomplete information or testimony, or has otherwise violated any provision of this Agreement, Palm Springs thereafter shall be subject to prosecution for any criminal violation of which the United States has knowledge, including, but not limited to, perjury, obstruction of justice, and false statements.

4. Palm Springs has entered into a Corporate Integrity

Agreement with HHS, attached as Exhibit A, which is incorporated into this Agreement by reference. Palm Springs will implement its obligations under the Corporate Integrity Agreement as set forth in the Corporate Integrity Agreement.

5. Palm Springs releases the United States, 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 or the self-audit, including the investigation of the Covered Conduct, the self-audit, and this Agreement.

6. Subject to the exceptions in Paragraph 8 below, in consideration of the obligations of Palm Springs set forth in this Agreement, conditioned upon Palm Springs' payment in full of the Initial Settlement Amount, and subject to Paragraph 15, below (concerning bankruptcy proceedings commenced within 91 days of the effective date of this Agreement),

a) the United States (on behalf of itself, its officers, agents, and its agencies and departments referenced above in paragraph 5) and relator agree to release Palm Springs, its predecessors, successors, assigns, and affiliates 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; and

b) the OIG-HHS agrees to release and refrain from instituting, directing or maintaining any administrative claim or any action seeking exclusion from the Medicare, Medicaid or other Federal health care programs (as defined in 42 U.S.C. § 1320a-7b(f)) against Palm Springs 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 Exhibit A, and as reserved in this Paragraph and Paragraph 8. The OIG-HHS expressly reserves all right to comply with any statutory obligations to exclude Palm Springs or others from Medicare, Medicaid, or other federal health care programs under 42 U.S.C. § 1320a-7(a) (mandatory exclusion); and

c) No individuals are released by this Agreement.

7. Subject to the exceptions in Paragraph 8 below, in consideration of the obligations of Palm Springs set forth in this Agreement, conditioned upon Palm Springs' payment in full of the Secondary Settlement Amount, and subject to Paragraph 15, below (concerning bankruptcy proceedings commenced within 91 days of the effective date of this Agreement),

a) the United States (on behalf of itself, its officers, agents, and its agencies and departments referenced

above in paragraph 5) and relator agree to release Palm Springs, its predecessors, successors, assigns, and affiliates from any monetary claim the United States has or may have under the common law theories of payment by mistake, unjust enrichment, breach of contract and fraud, for the self-audit claims; and

b) HHS agrees to release Palm Springs, its predecessors, successors, assigns, and affiliates from any administrative monetary claim for recoupment that it has or may have under 42 U.S.C. § 1395gg or 42 C.F.R. Part 405, Subpart C for the self-audit claims.

8. 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 Palm Springs) 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 Palm Springs;

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

(8) Any claims against any individuals, including officers and employees.

9. Palm Springs waives and will not assert any defenses 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 any criminal prosecution or administrative action related to the Covered Conduct. Palm Springs agrees that this settlement is not punitive in purpose or effect for the purposes of any such criminal prosecution or administrative action. 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.

10. The Initial and Secondary Settlement Amounts that Palm Springs must pay pursuant to this Agreement by electronic wire transfer pursuant to Paragraphs 1 and 2 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 intermediary, related to the Covered Conduct or the self audit; and Palm Springs agrees not to resubmit to any Medicare carrier or intermediary any previously denied claims related to the Covered Conduct or self audit, and agrees not to appeal any such denials of claims.

11. Palm Springs 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 Palm Springs 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) Palm Springs' self audit, 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 incorporated in this Settlement Agreement), (4) the negotiation of this Agreement, and (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 Palm Springs, and Palm Springs 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 Palm Springs or any of its subsidiaries to the Medicare or Medicaid programs.

Palm Springs further agrees that within 60 days of the effective date of this Agreement it will identify to applicable Medicare fiscal intermediaries, carriers and/or contractors, any unallowable costs (as defined in this paragraph) included in payments previously sought from the United States, including, but not limited to, payments sought in any cost reports, cost statements, information reports, or payment requests already submitted by Palm Springs 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. Palm Springs agrees that the United States will be entitled to recoup from Palm Springs 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 Palm Springs or any of its subsidiaries on the effect of inclusion of unallowable costs (as defined in this paragraph) in Palm Springs' 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.

12. 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.

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

14. Palm Springs expressly warrants that it has reviewed its financial situation and that it currently is solvent within the meaning of 11 U.S.C. Section 547(b)(3), and will remain solvent following its payment to the United States hereunder.

Further, the Parties expressly warrant that, in evaluating whether to execute this Agreement, the Parties (1) have intended that the mutual promises, covenants and obligations set forth herein constitute a contemporaneous exchange for new value given to Palm Springs, within the meaning of 11 U.S.C. Section 547(c)(1), and (2) have concluded that these mutual promises, covenants and obligations do, in fact, constitute such a contemporaneous exchange.

15. In the event Palm Springs commences, or a third party commences, within 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 Palm Springs' debts, or seeking to adjudicate Palm Springs as bankrupt or insolvent, or (b) seeking appointment of a receiver, trustee, custodian or other similar official for Palm Springs or for all or any substantial part of Palm Springs' assets, Palm Springs agrees as follows:

a. Palm Springs' obligations under this Agreement may not be avoided pursuant to 11 U.S.C. Section 547, and Palm Springs will not argue or otherwise take the position in any such case, proceeding or action that: (i) Palm Springs' obligations under this Agreement may be avoided under 11 U.S.C. Section 547; (ii) Palm Springs was insolvent at the time this Agreement was entered

into, or became insolvent as a result of the payment 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 Palm Springs.

b. In the event that Palm Springs' obligations hereunder are avoided pursuant to 11 U.S.C. Section 547, the United States, at its sole option, may rescind the releases in this Agreement, and bring any civil and/or administrative claim, action or proceeding against Palm Springs for the claims that would otherwise be covered by the releases provided in Paragraphs 6 and 7 above. If the United States chooses to do so, Palm Springs agrees that (i) any such claims, actions or proceedings brought by the United States (including any proceedings to exclude Palm Springs from participation in Medicare, Medicaid, or other federal health care programs) are not subject to an "automatic stay" pursuant to 11 U.S.C. Section 362(a) as a result of the action, case or proceeding described in the first clause of this Paragraph, and that Palm Springs will not argue or otherwise contend that the United States' claims, actions or proceedings are subject to an automatic stay; (ii) that Palm Springs 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 within 180 calendar days

of written notification to Palm Springs that the releases herein have been rescinded pursuant to this Paragraph, except to the extent such defenses were available on December 1, 1998; and (iii) the United States has a valid claim against Palm Springs in the amount of \$5,508,119 as authorized under the False Claims Act, for claims which were submitted during the period of 1993 through 1997, plus interest. The United States may pursue its claim, inter alia, 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. Palm Springs acknowledges that its agreements in this Paragraph are provided in exchange for valuable consideration provided in this Agreement.

16. 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.

17. Palm Springs 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 will be the United States District Court for the Southern District of Florida, except that disputes arising under

the corporate integrity agreement (Exhibit A) shall be resolved exclusively under the dispute resolution provisions in the corporate integrity agreement.

19. 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 Palm Springs and OIG-HHS must agree in writing to modification of the Corporate Integrity Agreement contained in Exhibit A.

20. After this Agreement is executed and the Initial and Secondary Settlement Amounts are received by the United States, the United States will notify the Court that the parties stipulate and request that Palm Springs be dismissed with prejudice from the action captioned United States ex rel. Health Outcomes Technologies, Inc. v. [NAMED DEFENDANTS], Civil Action No. 96-1552, in the United States District Court for the Eastern District of Pennsylvania.

21. By this Agreement, the Relator and Relator's Counsel will release and will be deemed to release Palm Springs 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.

22. Conditioned on Palm Springs' payment in full of the Settlement Amount, Relator shall receive from the United States a payment amounting to \$292,424.44. The United States shall pay

relator this amount within a reasonable time after receipt by the United States from Palm Springs 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.

23. On receipt of the payment described in Paragraph 22 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 Palm Springs, including any claim pursuant to 31 U.S.C. § 3730(d) or 31 U.S.C. §3730(c)(5) to a share of any settlement proceeds received from Palm Springs or other proceeds received from Palm Springs as a result of the Secondary Settlement Amount described in Paragraph 2 or of the audit described in Paragraph 11, and in full satisfaction and settlement of claims under this Agreement.

24. The undersigned individuals signing this Agreement on behalf of Palm Springs represent and warrant that they are authorized to execute this Agreement on behalf of those entities. 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.

25. This Agreement may be executed in counterparts, each of

which constitutes an original and all of which constitute one and the same agreement.

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

THE UNITED STATES OF AMERICA

DATED: 8 February 1999

BY: Barbara K. Bisno
BARBARA K. BISNO
Assistant United States
Attorney

DATED: 3/3/99

BY: Michael F. Hertz
MICHAEL F. HERTZ
JOYCE R. BRANDA
DIANA YOUNTS
JAMIE ANN YAVELBERG
Civil Division
U.S. Department of Justice

DATED: 2/12/99

BY: Lewis Morris
LEWIS MORRIS
Assistant Inspector General
office of Counsel to the
Inspector General
Office of Inspector General
United States Department of
Health and Human Services

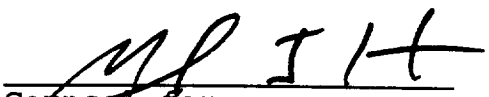
Health Outcomes Technologies, Inc.

DATED: 2/26/99

BY: MP JH
FOR Relator,
Health Outcomes Technologies,
Inc.

BKS
SHE

DATED: 2/26/99


BY: 
Counsel for
Health Outcomes Technologies,
Inc.

Palm Springs General Hospital, Inc.

DATED: 2/5/99

BY: 
(PRINT NAME AND TITLE)
CARLOS MILANES, ADMINISTRATOR

DATED: 2/5/98

BY: 
Counsel for Palm Springs
General
Hospital,
Inc.

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 Kent County Memorial Hospital ("Kent"), (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. Kent is a health care provider and submitted, or caused to be submitted, claims to Medicare for the inpatient treatment of Medicare beneficiaries.
- B. The United States contends that Kent 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.
- C. Medicare 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 program relies upon participating hospitals to properly indicate the principal diagnosis through the use of standard diagnosis codes.¹
- E. The United States conducted an investigation into inpatient payment claims submitted to Medicare by hospitals with the principal diagnosis code of 482.89 (pneumonia due

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

to "other specified bacteria").

F. The United States contends that it has certain claims against Kent under common law doctrines as more specifically identified in paragraph 4 below, for engaging in the following alleged conduct during the period from October 1, 1992 through September 30, 1995 in that Kent submitted or caused to be submitted claims to Medicare with the principal diagnosis code of 482.89 that were not adequately supported by the corresponding medical records (hereinafter referred to as the "Covered Conduct"). The United States alleges that, as a result of these claims, Kent received payments to which it was not entitled.

G. Kent 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 Kent represents that such response has been truthful, accurate, and complete to the best of its knowledge and ability.

H. This Agreement is neither an admission of liability by Kent nor a concession by the United States that its claims are not well founded. Kent contends that its actions relating to the Covered Conduct were appropriate and did not violate federal or state law, regulations, common law, or equitable doctrines. Kent also denies the allegations in the complaint filed in United States ex rel. Health Outcomes Technologies v. Kent County Memorial Hospital, C.A. 01-243-ML [UNDER SEAL], in the United States District Court for the District of Rhode Island.

I. To avoid the delay, uncertainty, inconvenience and expense of protracted litigation of the above claims, the Parties reach a full and final settlement pursuant to the Terms

and Conditions 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. Kent agrees to pay to the United States \$360,000 (the "Settlement Amount") as follows: Kent agrees to make payment of 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. Kent agrees to make this electronic funds transfer no later than five days from the Effective Date of this Agreement.

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

3. Subject to the exceptions in Paragraph 4 below, in consideration of the obligations of Kent set forth in this Agreement, and conditioned upon Kent's payment in full of the Settlement Amount, the United States (on behalf of itself, its officers, agents, agencies, and departments) agrees to release Kent, its predecessors, successors, assigns, parent, and affiliates from any civil claim the United States has or may have for the Covered Conduct under the common law theories of payment by mistake, unjust enrichment, and breach of contract. The

United States expressly reserves any claims against any entities and individuals other than Kent.

4. 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 Kent) are any and all of the following:

(1) Any civil, criminal or administrative liability 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;

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

(5) Any liability based upon such obligations as are created by this Agreement;

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

(7) Except to the extent expressly released herein, any liability for claims based on a failure to deliver goods or services due;

(8) Any liability of any individuals, including officers and employees;

(9) Any civil claims by the United States under the False Claims Act, 31 U.S.C. §§3729-3733 and common law fraud for the Covered Conduct.

5. Kent waives and will not assert any defenses Kent may have to any criminal prosecution or administrative action relating to the Covered Conduct, which defenses may be based in whole or in part on a contention that, under the Double Jeopardy Clause in the Fifth Amendment of the Constitution, or under the Excessive Fines Clause in the Eighth Amendment of the Constitution, this Agreement bars a remedy sought in such criminal prosecution or administrative action. Kent 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.

6. Kent shall not resubmit to any Medicare carrier or intermediary or any State payer any previously denied claims related to the Covered Conduct, and shall not appeal any such denials of claims.

7. This Agreement is intended to be for the benefit of the Parties only. The Parties do not release any claims against any other person or entity, except to the extent provided for in Paragraph 8 below.

8. Kent waives and shall not seek in the future payment for any of the health care claims arising from the Covered Conduct from any health care beneficiaries or their parents, sponsors, legally responsible individuals, or third party payors.

9. Kent warrants that it has reviewed its financial situation and that it currently is solvent within the meaning of 11 U.S.C. §§ 547(b)(3) and 548(a)(1)(B)(ii)(I), and will remain solvent following payment to the United States of the Settlement Amount. Further, the Parties

warrant that, in evaluating whether to execute this Agreement, they (a) have intended that the mutual promises, covenants, and obligations set forth constitute a contemporaneous exchange for new value given to Kent, within the meaning of 11 U.S.C. § 547(c)(1); and (b) conclude that these mutual promises, covenants, and obligations do, in fact, constitute such a contemporaneous exchange. Further, the Parties warrant that the mutual promises, covenants, and obligations set forth herein are intended and do, in fact, represent a reasonably equivalent exchange of value which is not intended to hinder, delay, or defraud any entity to which Kent was or became indebted to on or after the date of this transfer, within the meaning of 11 U.S.C. § 548(a)(1).

10. After this Agreement is executed and the Settlement Amount is received by the United States, the United States will notify the Court that the United States declines to intervene in the action captioned United States ex rel. Health Outcomes Technologies v. Kent County Memorial Hospital, Civil Action No. 01-243 (UNDER SEAL), in the United States District Court for the District of Rhode Island. The United States will also consent to the dismissal of Kent from the action captioned United States ex rel. Health Outcomes Technologies v. Kent County Memorial Hospital, Civil Action No. 01-243 (UNDER SEAL), in the United States District Court for the District of Rhode Island with prejudice to the claims of the Relator, but without prejudice to the claims of the United States, by filing a notice in the form attached, within 10 days of receipt of the Settlement Amount by the United States.

11. 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.

12. Kent represents that this Agreement is freely and voluntarily entered into without

any degree of duress or compulsion whatsoever.

13. 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 the Parties under this Agreement will be the United States District Court for the District of Rhode Island.

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

15. The undersigned individual signing this Agreement on behalf of Kent 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.

16. This Agreement may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same agreement. Facsimiles of signatures shall constitute acceptable, binding signatures for purposes of this Agreement.

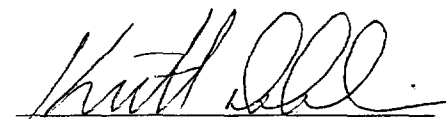
17. This Agreement is binding on successors, transferees, and assigns.

18. This Agreement is effective on the date of signature of the last signatory to the Agreement ("Effective Date").

THE UNITED STATES OF AMERICA

DATED: December 24, 2003

BY:



MICHAEL F. HERTZ
JOYCE R. BRANDA
KEITH E. DOBBINS
Civil Division
U.S. Department of Justice

KENT COUNTY MEMORIAL HOSPITAL

DATED: December 26, 2003 BY: Robert E. Baute
DR. ROBERT BAUTE *RS*
Kent County Memorial Hospital

ACKNOWLEDGED:

DATED: December 21, 2003 BY: Michael K. Fee
MICHAEL K. FEE
ROPES & GRAY, LLP
One International Place
Boston, MA 02110
Counsel for Kent County Memorial Hospital