

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, and the TRICARE Management Activity ("TMA")(formerly the Office of Civilian Health and Medical Program of the Uniformed Services ("CHAMPUS")), through its General Counsel; Rush Foundation Hospital ("Rush"); 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. Rush is a provider of hospital services located at 1314 Nineteenth Avenue, Meridian, Mississippi.

B. Rush 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 TRICARE Program (also known as the Civilian Health and Medical Program of the Uniformed Services ("CHAMPUS")), 10 U.S.C. §§ 1071-1110 for the inpatient treatment of Medicare and CHAMPUS beneficiaries.

C. On or around August 25, 1997, the Relator filed a qui tam complaint under seal alleging violations of the False Claims Act by Rush 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 Rush submitted or caused to be submitted claims for payment to Medicare and CHAMPUS.

E. Medicare and CHAMPUS 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 and CHAMPUS Programs rely upon participating hospitals to properly indicate the principal diagnosis through the use of standard diagnosis codes.¹

G. The United States investigated the allegations in the Qui Tam Action regarding inpatient payment claims submitted to Medicare by Rush for patients with principal diagnosis codes for Diagnostic Related Group (DRG) 79 (respiratory infections & inflammations age > 17 w/ cc). The United States also investigated the allegations in the Qui Tam Action regarding inpatient payment claims submitted to CHAMPUS by Rush for patients with the principal diagnosis codes for DRG 14 (specific cerebrovascular disorders except TIA), 79 (respiratory infections & inflammations age > 17 w/ cc), 132 (atherosclerosis w/ cc), and 296 (nutritional & misc metabolic disorders age > 17 w/ cc).

H. Based on its investigation, the United States contends that it has certain civil claims against Rush 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 Article 3, Paragraph 4 below, for engaging in the following alleged conduct during the period from November 10, 1995

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

through May 22, 1997 with regard to the Medicare claims and January 1, 1993 through December 31, 1997 with regard to the CHAMPUS claims (the "Covered Period"): (i) Rush 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; and (ii) Rush submitted or caused to be submitted claims to CHAMPUS for patients with the principal diagnosis codes for DRG 14 (specific cerebrovascular disorders except TIA), 79 (respiratory infections & inflammations age > 17 w/ cc), 132 (atherosclerosis w/ cc), and 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, Rush 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. Rush 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 for patients with the principal diagnosis codes for DRG 79 (respiratory infections & inflammations age > 17 w/ cc); and (ii) to CHAMPUS for patients with the principal diagnosis codes for DRG 14 (specific cerebrovascular disorders except TIA), 79 (respiratory infections & inflammations age > 17 w/ cc), 132 (atherosclerosis w/ cc), and 296 (nutritional & misc metabolic disorders age > 17 w/ cc). Rush represents that such response has been truthful, accurate, and complete to the best of its knowledge and ability.

J. Rush does not admit, and specifically denies, the contentions of the United States as set forth in Paragraphs H above and in the Qui Tam Action.

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 6 below, in consideration of the obligations of Rush set forth in this Agreement, conditioned upon Rush 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 Rush, its past and present officers, past and present directors, past and present trustees, past and present employees, and each of their heirs, successors, assigns, and affiliates (all of the foregoing collectively referred to as the "Rush 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 Rush Released Parties.

5. Conditioned upon receipt of \$9,000 from Rush for attorney's fees under 31 U.S.C. § 3730(d), in addition to Rush's payment of the Settlement Amount described in Paragraph 1, the Relator and Relator's Counsel release and will be deemed to release the Rush Released Parties, Rush's subsidiaries and affiliated corporate entities, their principals, partners, agents, attorneys and other counsel, assigns, related organizations, persons and concerns, including insurance companies, and their heirs, executors, administrators, predecessors, successors and assigns (the "Rush Affiliates") from any and all actions, causes of actions, suits, debts, dues, sums of money,

accounts, reckonings, bonds, bills, benefits, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, extents, executions, claims and demands whatsoever, in law (federal, state and other) or equity, which Relator, Relator's Counsel and/or their heirs, executors, administrators, successors and assigns have against Rush Affiliates for the Covered Conduct, including without limitation any claim that the Relator and/or Relator's Counsel may have arising from the filing of the Qui Tam Action, or under 31 U.S.C. § 3730(d) to pay Relator and Relator's Counsel any reasonable attorney's fees and costs.

6. 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 Rush 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 Rush; and

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

7. Rush 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. Rush 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.

8. The Settlement Amount that Rush 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 Rush 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.

9. Rush 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 Rush, 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) Rush 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 Rush makes to the United States pursuant to this Agreement and any payments that Rush 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 Rush, and Rush 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 Rush or any of its subsidiaries to the Medicare, Medicaid, TRICARE, VA, or FEHBP Programs.

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

10. 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 Rush Released Parties, and as to the Relator and the Relator's counsel, consistent with Paragraph 5, the Rush Affiliates). This agreement is not intended to be for the benefit of Birman Managed Care, Inc., Birman & Associates, Inc., or David N. Birman, MD, and by this instrument the United States does not release any claims

against Birman Managed Care, Inc., Birman & Associates, Inc., or David N. Birman, MD.

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

12. 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 Parties have reached a settlement; and (b) 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 Rush, and the claims in the Qui Tam Action unrelated to the Covered Conduct are dismissed without prejudice as to the United States.

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

14. Conditioned on Rush 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 Rush 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.

15. On receipt of the payment described in Paragraph 14 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 Rush, including any claim pursuant to 31 U.S.C. § 3730(d) to a share of any settlement proceeds received from Rush, 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).

16. Except as provided in Paragraph 5, the Parties shall bear their own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

17. Rush and Relator represent 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 Rush represent and warrant that they are authorized to execute this Agreement on behalf of Rush. 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 Relator represents that he has the capacity to execute this Agreement, and that he has read it in its entirety.

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 the date of signature of the last signatory to the Agreement.

THE UNITED STATES OF AMERICA

DATED: _____

BY: _____
ELLEN BOWDEN MCENTYRE
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: _____

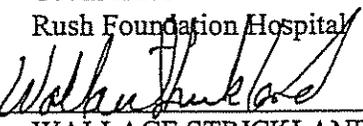
BY: _____
LAUREL C. GILLESPIE
Deputy General Counsel
TRICARE Management Activity
United States Department of
Defense

RUSH FOUNDATION HOSPITAL

DATED: _____

BY: _____
DINETIA NEWMAN
Phelps Dunbar LLP
Seventh Floor
One Mississippi Plaza
Tupelo, MS 38804

DATED: 12-2-2003

Counsel for
Rush Foundation Hospital
BY: 
WALLACE STRICKLAND
President
Rush Medical Foundation
dba Rush Foundation Hospital

RUSH FOUNDATION HOSPITAL

DATED: 12/4/2003 BY: *Dinetia Newman*
DINETIA NEWMAN
Phelps Dunbar LLP
Seventh Floor
One Mississippi Plaza
Tupelo, MS 38804

Counsel for
Rush Foundation Hospital
DATED: 12-2-2003 BY: *Wallace Strickland*
WALLACE STRICKLAND
President
Rush Medical Foundation
dba Rush Foundation Hospital

RELATOR BARRY STEELEY

DATED: _____

BARRY STEELEY

DATED: _____

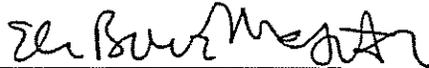
BY:

W. CHARLES BAILEY, JR.
Simms Showers LLP.
Twenty South Charles Street
Baltimore, Maryland 21201

Counsel for Relator
Barry Steeley

THE UNITED STATES OF AMERICA

DATED: 12/5/03

BY: 
ELLEN BOWDEN MCENTYRE
Assistant United States Attorney
Office of the
United States Attorney
Middle District of Tennessee

DATED: 12/5/03

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

DATED: _____

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

THE UNITED STATES OF AMERICA

DATED: _____

BY: _____

ELLEN BOWDEN MCENTYRE
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

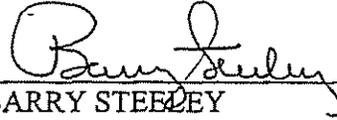
DATED: 21 Nov 03

BY: 

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

RELATOR BARRY STEELEY

DATED: 11/21/03


BARRY STEELEY

DATED: 4/24/03

BY: 
W. CHARLES BAILEY, JR.
Simms Showers LLP.
Twenty South Charles Street
Baltimore, Maryland 21201

Counsel for Relator
Barry Steeley