

## SETTLEMENT AGREEMENT

### I. PARTIES

This Settlement Agreement (Agreement) is entered into between Plaintiffs 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)(collectively the United States), William Harranty, M.D. (Relator), and defendants Sherman Oaks Health System, A. Richard Grossman, M.D., and A. Richard Grossman, Inc. (collectively Defendants). The United States, the Relator, and the Defendants are referred to collectively as the Parties.

### II. PREAMBLE

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

A. Defendant Sherman Oaks Health System owns and operates the Sherman Oaks Hospital and Health Center (the Hospital), including a unit within the Hospital known as The Grossman Burn Center (the Burn Center). Defendant A. Richard Grossman, M.D. was Director of the Burn Center during the time period pertinent to this matter.

B. The Relator is an individual resident of California. On or about May 12, 1998, the Relator filed a qui tam action in the United States District Court for the Central District of California captioned U.S. ex rel. Harranty v. Sherman Oaks Health System, et al. (the Action).

C. The United States contends that the Hospital and the Defendants 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 Medicaid Program, 42 U.S.C. §§ 1396-1396v.

D. The United States contends that it has certain civil claims against the Defendants under the False Claims Act, 31 U.S.C. §§ 3729-3733, other federal statutes and/or common law

doctrines, for engaging in the following prohibited conduct during the period from 1991 to 1997: the Hospital included in its cost reports amounts that were not properly reimbursable, because defendant Grossman received payments from an entity he either owned or controlled called Culture Technology Inc. (CTI), which supplied transplant tissue for patients at the Burn Center. The conduct described in this paragraph is referred to hereafter as the Covered Conduct.

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

F. The Relator contends that he has individual claims against Defendants for interference with prospective economic advantage and for claims under the California Cartwright Act (the Individual Claims).

G. The Defendants do not admit the contentions of the United States or the Relator as set forth in Paragraphs C through F above, and nothing in this Agreement shall be used and/or construed as an admission of liability on the part of any or all of the Defendants. This Agreement is entered into by the Parties in order to avoid the delay, uncertainty, inconvenience, and expense of protracted litigation.

### **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. Defendants agree to pay to the United States two hundred twenty-five thousand dollars

(\$225,000)(the United States Settlement Amount) by electronic funds transfer pursuant to written instructions to be provided by the United States. The Defendants agree to make this electronic funds transfer by no later than three (3) days after written notification from the United States that the Agreement has been fully executed.

1.1 Defendants agree to pay the Relator seventy-five thousand dollars (\$75,000) (the Relator Settlement Amount) by electronic funds transfer to the Gradstein, Luskin & Van Dalsem Client Trust Account, c/o Wells Fargo Bank, Routing/ABA Number 121000248, Account Number 0807-039441 (the GLVD CTA). The Defendants agree to make this payment by no later than three (3) days after written notification from the United States that the Agreement has been fully executed.

1.2 Contingent upon the United States receiving the United States Settlement Amount from the Defendants and as soon as feasible after receipt, the United States agrees to pay \$33,750 to the GLVD CTA.

1.3 Defendants have not participated in any way in the allocation of the payments set forth above between the United States and the Relator.

2. Subject to the exceptions in Paragraph 4 below, in consideration of the obligations of Defendants set forth in this Agreement, conditioned upon Defendants' payment in full of the United States Settlement Amount, the United States (on behalf of itself, its officers, agents, agencies and departments) agrees to release the Defendants 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.

2.1 Except as to the obligations created by this Agreement, upon receipt of payment pursuant to Paragraph 1 above:

a. The Relator, on his own behalf and on behalf of his insurers, partnerships, joint ventures, partners, officers, directors, co-venturers, corporations, companies, business entities, agents, employees, attorneys, predecessors, successors, heirs and assigns, and all affiliates of each of the foregoing, fully and forever releases and discharges Sherman Oaks Health System, A. Richard Grossman, M.D., A. Richard Grossman, Inc., and each of their insurers, partnerships, joint ventures, partners, officers, directors, co-venturers, corporations, companies, business entities, agents, managers, representatives, employees, attorneys, predecessors, successors, heirs and assigns, and all affiliates of each of the foregoing from any and all claims, rights, damages, loss, demands, actions, obligations, liabilities, costs and expenses (including reasonable attorneys' fees), causes of action and judgments of every kind, nature and character whatsoever, at common law or in equity, whether known or unknown including, from the beginning of time to the date hereof, arising from or relating to the subject of the Action.

b. Sherman Oaks Health System, A. Richard Grossman, M.D., and A. Richard Grossman, Inc., and each of their insurers, partnerships, joint ventures, partners, officers, directors, co-venturers, corporations, companies, business entities, agents, managers, representatives, employees, attorneys, predecessors, successors, heirs and assigns, and all affiliates of each of the foregoing, hereby release the

Relator from any and all claims, rights, damages, loss, demands, actions, obligations, liabilities, costs and expenses (including reasonable attorneys' fees), causes of action and judgments of every kind, nature and character whatsoever, at common law or in equity, whether known or unknown including, from the beginning of time to the date hereof, arising from or relating to the Action.

3. In consideration of the obligations of the Defendants set forth in this Agreement and the Corporate Integrity Agreement ("CIA") and Integrity Agreement ("IA") incorporated by reference, conditioned upon the Defendants full payment of the United States Settlement Amount, the OIG-HHS agrees to release and refrain from instituting, directing, or maintaining any administrative action seeking exclusion from the Medicare, Medicaid, or other Federal health care programs (as defined in 42 U.S.C. § 1320a-7b(f)) against the Defendants under 42 U.S.C. § 1320a-7a (Civil Monetary Penalties Law), or 42 U.S.C. §1320a-7(b)(7) (permissive exclusion for fraud, kickbacks, and other prohibited activities), for the Covered Conduct, except as reserved in Paragraph 4, below. The OIG-HHS expressly reserves all rights to comply with any statutory obligations to exclude the Defendants and their subsidiaries from the Medicare, Medicaid, or other federal health care program under 42 U.S.C. §1320a-7(a)(mandatory exclusion) based upon the Covered Conduct. 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 4 below.

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 the Defendants) 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 the Defendants; and

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

5. Within 20 days following receipt of the payments described in Paragraph 1 above, the Parties shall file in the Action a stipulated notice of dismissal of the United States' and the Relator's claims against the Defendants, with prejudice, for the Covered Conduct. The Parties' notice of dismissal shall not dismiss the Relator's claims against any non-settling defendant or against the settling defendants for claims other than for the Covered Conduct.

6. The Hospital has entered into a CIA with HHS, attached as Exhibit A, which is incorporated into this Agreement by reference. Dr. Grossman has entered into an IA with HHS, attached as Exhibit B, which is incorporated into this Agreement by reference. The Hospital and

Dr. Grossman shall immediately upon execution of their respective agreements implement the obligations under those agreements.

7. The Defendants waive and will not assert any defenses they 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 Settlement bars a remedy sought in such criminal prosecution or administrative action. The Defendants agree 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.

8. The Defendants fully and finally release 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) which the Defendants have 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 and prosecution thereof.

9. In consideration of the mutual promises, covenants and obligations of this Agreement, Relator releases the United States, its agencies, departments, employees, servants, and agents from all claims which Relator has asserted, could have asserted, or may assert in the future against the United States, its agencies, departments, employees, servants and agents, related to or arising from the Complaint in this case.

10. The amount that the Defendants 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 intermediary (including TRICARE or any State payer) related to the Covered Conduct; and the Defendants and their subsidiaries agree not to resubmit to any Medicare carrier or intermediary (or TRICARE) or any State payer any previously denied claims related to the Covered Conduct, and agrees not to appeal any such denials of claims.

11. The Defendants and all subsidiaries agree 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 the Defendants, their present or former officers, directors, employees, shareholders, agents, and subsidiaries in connection with:

(1) the matters covered by this Agreement;

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

(3) the Defendants' investigation, defense, and any corrective actions undertaken in direct response to the United States' audit(s) and civil investigation(s) in connection with the matters covered by this Agreement (including attorney's fees);

(4) the negotiation and performance of this Agreement;

(5) the payments the Defendants make pursuant to this Agreement and any payments that Defendants may make to the Relator; and

(6) the negotiation of the CIA and the IA, and the obligations undertaken pursuant to the

CIA and the IA, to:

(i) retain an legal reviewer to perform annual reviews as described in the CIA and the IA;

and

(ii) prepare and submit reports to the OIG-HHS

are unallowable costs on Government contracts and under the Medicare Program, Medicaid Program, TRICARE Program, and Federal Employees Health Benefits Program (FEHBP).

However, nothing in this sub-paragraph that may apply to compliance costs affects the status of costs that are not allowable based on any other authority applicable to Defendants. The "matters covered by this agreement" include related criminal matters. (All costs described or set forth in this Paragraph are hereafter, "unallowable costs").

12. The Defendants and all their subsidiaries also agree to the following:

(a) Future Treatment of Unallowable Costs: As appropriate, these unallowable costs will be separately determined and accounted for by Defendants, and Defendants 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 Defendants or any of their subsidiaries to the Medicare, Medicaid, TRICARE, or FEHBP Programs.

(b) Treatment of Unallowable Costs Previously Submitted for Payment: As appropriate, Defendants further agree that within 60 days of the effective date of this Agreement, they 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 Paragraph 11) 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 Defendants or any of their 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. Defendants agree that the United States, at a minimum, will be entitled to recoup from Defendants or any of their subsidiaries 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 Defendants or any of their subsidiaries on the effect of inclusion of unallowable costs (as defined in Paragraph 11) on Defendants or any of their 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.

13. 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.

14. The Defendants and their subsidiaries agree that they 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. The Defendants waive any causes of action against these beneficiaries or their parents or sponsors based upon the claims for payment covered by this Agreement.

15. The Defendants expressly warrant that they have reviewed their financial situation

and that they currently are solvent within the meaning of 11 U.S.C. Section 547(b)(3), and will remain solvent following their payment to the United States hereunder. Further, the Parties expressly warrant that, in evaluating whether to execute this Agreement, the Parties (i) have intended that the mutual promises, covenants and obligations set forth herein constitute a contemporaneous exchange for new value given to the Defendants, within the meaning of 11 U.S.C. Section 547(c)(1), and (ii) have concluded that these mutual promises, covenants and obligations do, in fact, constitute such a contemporaneous exchange.

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. The Defendants 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 will be the United States District Court for the Central District of California, except that disputes arising under the CIA and the IA, shall be resolved exclusively under the dispute resolution provisions in the CIA and the IA.

19. This Agreement and the CIA and the IA, which are incorporated herein by reference, constitute the complete agreements between the Parties. This Agreement may not be amended except by written consent of the Parties except that only the Hospital and OIG-HHS and Dr. Grossman and OIG-HHS, must agree in writing to modification of their respective agreements pursuant to the provisions of those agreements.

20. The undersigned individuals signing this Agreement on behalf of the Defendants

represent and warrant that they are authorized by the Defendants to execute this Agreement. 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 undersigned individuals signing this Agreement on behalf of the Relator represent and warrant that they are authorized by the Relator to execute this Agreement.

21. This Agreement may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same agreement. Signatures by facsimile shall be of the same force and effect as if in original ink.

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

23. The Defendants hereby consent to the United States' disclosure of this Agreement and information about this Agreement to the public.

UNITED STATES

DATED: 12/23/02 BY: Dee Lord  
DEE LORD  
Trial Attorney  
Commercial Litigation Branch  
Civil Division  
U.S. Department of Justice

DATED: 12/17/02 BY: L Morris  
LEWIS MORRIS  
Assistant Inspector General for Legal Affairs  
Office of Counsel to the  
Inspector General  
Office of Inspector General  
United States Department of

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

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

LEWIS MORRIS  
Assistant Inspector General for Legal Affairs  
Office of Counsel to the  
Inspector General  
Office of Inspector General  
United States Department of  
Health and Human Services

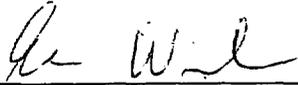
DEFENDANTS

DATED: 8/29/02

BY: 

DAVID LEVINSOHN  
President and Chief Executive Officer  
Sherman Oaks Health System,  
a California not- for-profit corporation

DATED: 9/23/02

BY: 

ELIA WEINBACH  
Mitchell Silberberg & Knupp  
Attorneys for:  
Sherman Oaks Health System  
a California not-for-profit corporation

DATED: 11/8/2002

BY: 

D. BARCLAY EDMUNDSON  
Howrey & Simon  
Attorneys for:  
A. Richard Grossman and  
A. Richard Grossman, Inc.

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

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

A. RICHARD GROSSMAN, M.D.

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

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

LEWIS MORRIS  
Assistant Inspector General for Legal Affairs  
Office of Counsel to the  
Inspector General  
Office of Inspector General  
United States Department of  
Health and Human Services

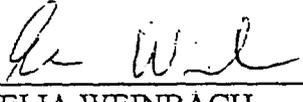
DEFENDANTS

DATED: 8/29/02

BY: 

DAVID LEVINSOHN  
President and Chief Executive Officer  
Sherman Oaks Health System,  
a California not- for-profit corporation

DATED: 9/23/02

BY: 

ELIA WEINBACH  
Mitchell Silberberg & Knupp  
Attorneys for:  
Sherman Oaks Health System  
a California not-for-profit corporation

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

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

D. BARCLAY EDMUNDSON  
Howrey & Simon  
Attorneys for:  
A. Richard Grossman and  
A. Richard Grossman, Inc.

DATED: 11/08/02

BY: 

A. RICHARD GROSSMAN, M.D.

RELATOR

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

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

WILLIAM HARRITY, M.D.

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

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

BRUCE E. VAN DALSEM  
Gradstein, Luskin &  
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Attorneys for:  
William Harrity, M.D.

Health and Human Services

DEFENDANTS

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

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

DAVID LEVINSOHN  
President and Chief Executive Officer  
Sherman Oaks Health System

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

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

ELIA WEINBACH  
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Attorneys for:  
Sherman Oaks Health System

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

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

D. BARCLAY EDMUNDSON  
Howrey & Simon  
Attorneys for:  
A. Richard Grossman and  
A. Richard Grossman, Inc.

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

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

A. RICHARD GROSSMAN, M.D.

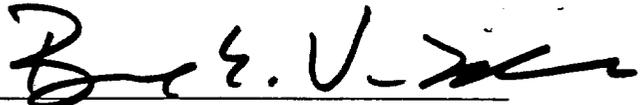
RELATOR

DATED: 7/22/02

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

WILLIAM HARRITY, M.D.

DATED: 7/24/02

BY: 

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