

## SETTLEMENT AGREEMENT

### I. PARTIES

This Settlement Agreement (Agreement) is entered into among the United States of America, acting through the United States Department of Justice and on behalf of the Office of Inspector General (OIG-HHS) of the United States Department of Health and Human Services (HHS) (collectively the "United States"); the West Virginia Department of Health and Human Resources (WVDHHR), Bureau for Medical Services on behalf of The West Virginia Medicaid Program (Medicaid) (collectively "the State of West Virginia"); and William Spensky ("Spensky"), (hereinafter 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. Group II Medical Supports, L.L.C. (Group II) was a West Virginia Limited Liability Company with its primary business location in Raleigh County, West Virginia. At all relevant times, Group II was a durable medical equipment supplier with a primary focus on the delivery and maintenance of group II pressure reducing support surfaces. At certain relevant times, Group II also conducted business in Maryland, Virginia, North Carolina, and South Carolina.

B. Spensky is a private citizen of West Virginia with his primary residence at 1463 Edwards St., Huntington, WV 25701.

From 2001 through 2004, Spensky was employed by Group II as a field representative. In that capacity, Spensky acted on behalf of Group II in the marketing, contracting and maintenance of alternating air pressure reducing mattresses for patients in residential settings, including assisted living facilities and private residences.

C. The United States contends that Spensky and others submitted or caused to be submitted claims by Group II for payment to the Medicare Program (Medicare), Title XVIII of the Social Security Act, 42 U.S.C. §§ 1395-1395ggg; and the Medicaid Program, Title XIX of the Social Security Act, 42 U.S.C. §§ 1396-1396v.

D. The United States contends that it has certain civil claims, as specified in Paragraph 2 below, against Spensky for engaging in the following conduct:

From February 28, 2001, and continuing through February 2004, Spensky and others engaged in a scheme to defraud Medicare and Medicaid by misrepresenting diagnoses, completing false Statements of Ordering Physician, creating false Monthly Patient Information Update Sheets, and submitting false claims for reimbursement by Group II to Medicare and Medicaid. These claims involved HCPCS code E0277 (alternating pressure mattress); HCPCS code E0277-KX (specific requirements found in the documentation section of the medical policy have been met and evidence of this is available in the supplier's records) and HCPCS code E0277-MS (maintenance and service of the alternating pressure mattress).

(hereinafter referred to as the "Covered Conduct.")

E. The United States also contends that it has certain administrative claims against Spensky for engaging in the Covered Conduct, as specified in Paragraph 3 below,

F. The State of West Virginia contends that it has certain civil and administrative claims against Spensky for engaging in the Covered Conduct, as specified in Paragraph 4 below.

G. This Agreement is neither an admission of liability by Spensky nor a concession by the United States or the State of West Virginia that their claims are not well founded.

H. 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

1. Spensky agrees to pay to the United States \$13,500 (the "Settlement Amount"). Spensky agrees to pay the Settlement Amount by electronic funds transfer pursuant to written instructions to be provided by the Financial Litigation Unit of the Office of the United States Attorney for the Southern District of West Virginia. Spensky agrees to make this electronic funds transfer no later than five business days following the Effective Date of this Agreement.

2. Subject to the exceptions in Paragraph 5 below, in consideration of the obligations of Spensky set forth in this Agreement, and conditioned upon Spensky's full payment of the Settlement Amount, the United States (on behalf of itself, its officers, agents, agencies, and departments) agrees to release

Spensky 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, and fraud, for the Covered Conduct. No individuals other than Spensky are released by this Agreement.

3. In compromise and settlement of the rights of OIG-HHS to exclude Spensky pursuant to 42 U.S.C. § 1320a-7(b)(7), Spensky agrees to be permanently excluded under this statutory provision from Medicare, Medicaid, and all other Federal health care programs as defined in 42 U.S.C. § 1320a-7b(f). Such exclusion shall have national effect and shall also apply to all other federal procurement and nonprocurement programs. Federal health care programs shall not pay Spensky or anyone else for items or services, including administrative and management services, furnished, ordered, or prescribed by Spensky in any capacity while Spensky is excluded. This payment prohibition applies to Spensky, anyone who employs or contracts with Spensky, any hospital or other provider where Spensky provide services. The exclusion applies regardless of who submits the claims or other request for payment.

Spensky shall not submit or cause to be submitted to any Federal health care program any claim or request for payment for items or services, including administrative and management

services, furnished, ordered, or prescribed by Spensky during the exclusion. Violation of the conditions of the exclusion may result in criminal prosecution, and the imposition of civil monetary penalties and assessments. Spensky further agrees to hold the Federal health care programs, and all federal beneficiaries and/or sponsors, harmless from any financial responsibility for items or services furnished, ordered, or prescribed to such beneficiaries or sponsors after the effective date of the exclusion. Spensky waives any further notice of the exclusion and agrees not to contest such exclusion either administratively or in any state or federal court. This exclusion shall be effective upon the Effective Date of this Agreement.

4. Subject to the exceptions in Paragraph 5 below, in consideration of the obligations of Spensky set forth in this Agreement, and conditioned upon Spensky's full payment of the Settlement Amount, the State of West Virginia (on behalf of itself, its officers, agents, agencies, and departments) agrees to release Spensky from any civil or administrative monetary claim the State of West Virginia has or may have under state law and the common law theories of payment by mistake, unjust enrichment, and fraud, for the Covered Conduct. No individuals other than Spensky are released by this Agreement.

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 Spensky) are the following:

a. Any civil, criminal or administrative liability 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), or the State of West Virginia (or its agencies) for any conduct other than the Covered Conduct;

e. Any liability based upon such obligations as are created by this Agreement;

f. Any liability for express or implied warranty claims or other claims for defective or deficient products or services, including quality of goods and services;

g. Any liability for failure to deliver goods or services due;

h. Other than Spensky, any liability of individuals; and

i. Any licensing matters.

6. Spensky waives and will not assert any defenses he 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. 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. Spensky fully and finally releases the United States, its agencies, employees, servants, and agents, and the State of West Virginia, its agencies, employees, servants and agents, from any claims (including attorneys' fees, costs, and expenses of every kind and however denominated) that Spensky has asserted, could have asserted, or may assert in the future against the United States, its agencies, employees, servants, and agents, or the State of West Virginia, its agencies, employees, servants, and agents, related to the Covered Conduct and the United States' and State of West Virginia's investigation and prosecution thereof.

8. Spensky has provided sworn financial disclosure statements (Financial Statements) to the United States, and the United States has relied on the accuracy and completeness of those Financial Statements in reaching this Agreement. Spensky warrants

that the Financial Statements are complete, accurate, and current. In the event the United States learns of asset(s) in which Spensky had an interest at the time of this Agreement that were not disclosed in the Financial Statements, or in the event the United States learns of any misrepresentation by Spensky on, or in connection with, the Financial Statements, and in the event such nondisclosure or misrepresentation changes the estimated net worth set forth on the Financial Statements by \$5,000 or more, the United States may at its option: (a) rescind this Agreement and file suit based on the Covered Conduct; or (b) let the Agreement stand and collect the full Settlement Amount plus one hundred percent (100%) of the value of the net worth of Spensky previously undisclosed. Spensky agrees not to contest any collection action undertaken by the United States pursuant to this provision.

9. In the event that the United States, pursuant to Paragraph 8, above, opts to rescind this Agreement, Spensky agrees not to plead, argue or otherwise raise any defenses under the theories of statute of limitations, laches, estoppel or similar theories, to any civil or administrative claims that (1) are filed by the United States within 120 calendar days of written notification to Spensky that this Agreement has been rescinded, and (2) relate to the Covered Conduct, except to the extent these defenses were available on January 1, 2006.



10. The Settlement Amount 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, Medicaid, or any State payer, related to the Covered Conduct; and Spensky agrees not to resubmit to any Medicare carrier or intermediary, Medicaid, or any State payer any previously denied claims related to the Covered Conduct, and shall not appeal any such denials of claims.

11. Spensky agrees to the following:

a. Unallowable Costs Defined: that all costs (as defined in the Federal Acquisition Regulation, 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 Spensky in connection with the following shall be "unallowable costs" on government contracts and under the Medicare Program, Medicaid Program, TRICARE Program, and Federal Employees Health Benefits Program (FEHBP):

- (1) the matters covered by this Agreement,
- (2) the United States' audit(s) and civil and criminal investigation(s) of the matters covered by this Agreement,
- (3) Spensky's investigation, defense, and corrective actions undertaken in response to the United States' audit(s) and civil and any criminal 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 payment Spensky makes to the United States pursuant to this Agreement including costs and attorneys fees. (All costs described or set forth in this Paragraph 11.a are hereafter, "unallowable costs").

b. Future Treatment of Unallowable Costs: These unallowable costs shall be separately determined and accounted for by Spensky, and Spensky 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 Spensky to the Medicare, Medicaid, TRICARE, or FEHBP Programs.

c. Treatment of Unallowable Costs Previously Submitted for Payment: Spensky further agrees that within 90 days of the Effective Date of this Agreement he 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 Spensky 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. Spensky agrees that the United States, at a minimum, shall be entitled to recoup from Spensky any overpayment plus applicable interest and penalties 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 Spensky on the effect of inclusion of unallowable costs (as defined in this Paragraph) on Spensky's cost reports, cost statements, or information reports.

d. Nothing in this Agreement shall constitute a waiver of the rights of the United States to audit, examine, or re-examine Spensky's books and records to determine that no unallowable costs have been claimed in accordance with the provisions of this Paragraph.

12. Spensky agrees to cooperate fully and truthfully with the United States and State of West Virginia's investigation

of individuals and entities not released in this Agreement. Upon reasonable notice, Spensky will encourage, and agree not to impair, the cooperation of current members, employees and sales representatives of Group II, and use his best efforts to make available, and encourage the cooperation of former members, employees and sales representatives of Group II for interviews and testimony, consistent with the rights and privileges of such individuals. Spensky also agrees to furnish to the United States complete and unredacted copies of all documents, reports, memoranda of interviews, and records in his possession, custody, or control concerning any investigation of the Covered Conduct that he has undertaken, or that has been performed by his counsel or other agent, and waives any rights or privileges that otherwise may apply to such production.

13. 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 14 below.

14. Spensky waives and shall not seek payment for any of the health care billings covered by this Agreement from any health care beneficiaries or recipients or their parents, sponsors, legally responsible individuals or third party payers based upon the claims defined as Covered Conduct.

15. Spensky warrants that he has reviewed his financial situation and that he 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 of the Settlement Amount made to the United States pursuant to this Agreement. 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 Spensky, 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 that is not intended to hinder, delay, or defraud any entity to which Spensky was or became indebted, on or after the date of this transfer, all within the meaning of 11 U.S.C. § 548(a)(1).

16. Each party to this Agreement shall bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

17. Spensky 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 West Virginia.

19. The United States and the State of West Virginia signatories represent that they are signing this Agreement in their official capacities and that they are authorized to execute this Agreement.

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

21. This Agreement is binding on Spensky's successors, transferees, heirs, and assigns.

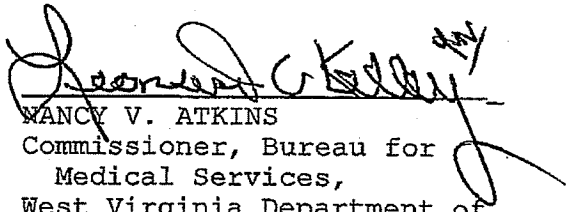
22. This Agreement is subject to public disclosure.

23. The "Effective Date" of this Agreement shall be the date of signature of the last signatory to the Agreement. Facsimiles of signatures shall constitute acceptable, binding signatures for purposes of this Agreement.

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

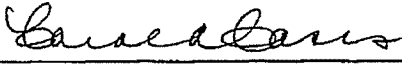
STATE OF WEST VIRGINIA

DATED: 8-2-00

BY:   
NANCY V. ATKINS  
Commissioner, Bureau for  
Medical Services,  
West Virginia Department of  
Health and Human Resources and  
West Virginia Medicaid

THE UNITED STATES OF AMERICA


DATED: 8/2/04

BY:   
CAROL A. CASTO  
Assistant United States Attorney

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

BY: \_\_\_\_\_  
KEITH E. DOBBINS  
Trial Attorney  
Commercial Litigation Branch  
Civil Division  
United States Department of Justice

DATED: 7/24/06

BY:   
GREGORY E. DEMSKE  
Assistant Inspector General  
for Legal Affairs  
Office of Inspector General  
United States Department of  
Health and Human Services



THE UNITED STATES OF AMERICA


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

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

CAROL A. CASTO  
Assistant United States Attorney

DATED: 7/18/06

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

  
KEITH E. DOBBINS  
Trial Attorney  
Commercial Litigation Branch  
Civil Division  
United States Department of Justice

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

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

GREGORY E. DEMSKE  
Assistant Inspector General  
for Legal Affairs  
Office of Inspector General  
United States Department of  
Health and Human Services

William Spensky

DATED: 7-10-06

BY: William Spensky  
William Spensky, Individually

DATED: July 10, 2006

BY: S. Benjamin Bryant  
S. Benjamin Bryant, Esquire  
Counsel for William Spensky