

COPY

SETTLEMENT AGREEMENT

I. PARTIES

1. This Settlement Agreement ("Agreement") is entered into by the United States of America, acting through the United States Department of Justice and on behalf of the Department of Health and Human Services ("HHS") and the TRICARE Management Activity ("TRICARE") (formerly the Office of Civilian Health and Medical Program of the Uniformed Services ("OCHAMPUS")) (collectively referred to herein as the "United States"); the relator Stanley Mason ("Relator"); and defendant St. Joseph's Hospital ("St. Joseph's Hospital"), (hereafter referred to as "the Parties"), through their authorized representatives, to settle claims made in a *qui tam* suit filed by Relator entitled *United States ex rel. Stanley Mason v. Bon Secours, Inc., et al.*, Civil No. 98-72-CIV-T-23T (M.D. Fla., Tampa Div.) ("the *qui tam* case").

II. PREAMBLE

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

2. St. Joseph's Hospital is a health care provider located in Port Charlotte, Florida. Bon Secours, Inc. owns and operates St. Joseph's Hospital.

3. St. Joseph's Hospital 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); and the TRICARE Program (also known as the Civilian Health and

Medical Program of the Uniformed Services ("CHAMPUS")), 10 U.S.C. §§ 1071-1106, for physical and occupational therapy services for its outpatients.

4. The United States contends that it has certain civil claims against St. Joseph's Hospital under the False Claims Act, 31 U.S.C. §§ 3729-3733, and the common law, for claims that St. Joseph's Hospital submitted to the Medicare and TRICARE Programs, during the period June 1, 1992 to June 1, 1996, for physical and occupational therapy services by St. Joseph's Hospital's subcontractor, Therapy Plus, Inc. ("Therapy Plus"). The United States contends that St. Joseph's Hospital and Therapy Plus failed to supervise properly persons providing physical and occupational therapy to St. Joseph's Hospital outpatients; failed to document properly when and if care was provided to those outpatients, including failing to include current and proper plans of treatment, and physician orders; and submitted claims for physical and occupational therapy in excess of physical and occupational therapy actually provided. The United States' contentions in this Paragraph 4 will hereafter be referred to as the "Covered Conduct".

5. St. Joseph's Hospital does not admit the contentions of the United States as set forth in Paragraph 4 above.

6. In order to avoid the delay, uncertainty, inconvenience and expense of protracted litigation of the *qui tam* case, the Parties reach a full and final settlement of this matter 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:

7. St. Joseph's Hospital agrees to pay the United States, no later than the effective date of this Agreement, \$60,000.00 (sixty thousand dollars) (the "Settlement Amount") by electronic funds transfer pursuant to written instructions to be provided by the United States prior to the execution of this Settlement Agreement.

8. In consideration of the obligations of St. Joseph's Hospital set forth in this Agreement, conditioned upon St. Joseph's Hospital's payment in full of the Settlement Amount, the United States and Relator will execute a Stipulation of Dismissal with Prejudice of the *qui tam* case against St. Joseph's Hospital, and will file that document with the Court for its approval within five (5) business days of the date of execution of this Settlement Agreement. The United States and Relator will simultaneously file a Stipulation of Dismissal without Prejudice as to defendant Therapy Plus, Inc.

9. In consideration of the obligations of St. Joseph's Hospital set forth in this Agreement, conditioned upon St. Joseph's Hospital's payment in full of the Settlement Amount, the United States (on behalf of itself, its officers, agents, agencies and departments) releases St. Joseph's Hospital from any claim the United States has or may have under the False Claims Act, 31 U.S.C.

§§ 3729-3733; or the common law theories of payment by mistake, unjust enrichment, breach of contract and fraud, for the Covered Conduct. No individuals are released by this Agreement.

10. In consideration of the obligations of St. Joseph's Hospital set forth in this Agreement, conditioned upon St. Joseph's Hospital's payment in full of the Settlement Amount, TRICARE agrees to release and refrain from instituting, directing, or maintaining any administrative claim or any action seeking exclusion from the TRICARE Program against St. Joseph's Hospital under 32 C.F.R.

§ 199.9 for the Covered Conduct, as reserved in this Paragraph. TRICARE expressly reserves authority to exclude St. Joseph's Hospital from the TRICARE Program under 32 C.F.R. §§ 199.9 (f) (1) (i) (A), (f) (1) (i) (B), (f) (1) (i) (D), and (f) (1) (iii), based upon the Covered Conduct. Nothing in this Paragraph precludes the TRICARE Program from taking action against entities or persons, or for conduct and practices, for which civil claims have been reserved below.

11. The United States agrees to pay Relator 22% of the Settlement Amount, within thirty (30) days of the United States' receipt of full payment of the Settlement Amount from St. Joseph's Hospital, as set forth in paragraph 7.

12. Relator agrees that the settlement is fair, adequate and reasonable and that he will not challenge the Settlement Agreement pursuant to 31 U.S.C. § 3730(c) (2) (B). Relator further agrees to release the United States, its officers, agents and employees, from any liability arising from the filing of the complaint in this

case, including any claims to a share of the proceeds of the settlement pursuant to 31 U.S.C. § 3730(d).

13. St. Joseph's Hospital fully and finally releases the United States, its agencies, employees, servants, and agents from any claims (including attorneys fees, costs, and expenses of every kind and however denominated) which St. Joseph's Hospital has asserted, could have asserted, or may assert in the future against the United States, its agencies, employees, servants, and agents, related to the *qui tam* case or the Covered Conduct, and the United States' investigation and prosecution thereof.

14. Relator fully and finally releases St. Joseph's Hospital from any claims (other than for attorney fees and costs as separately agreed upon by Relator and St. Joseph's Hospital as set forth in Paragraph 15) which Relator has asserted, could have asserted, or may assert in the future against St. Joseph's Hospital related to the *qui tam* case.

15. St. Joseph's Hospital agrees to pay Relator's attorney fees, pursuant to 31 U.S.C. § 3730(d). St. Joseph's Hospital and Relator have agreed upon the amount of Relator's attorney fees, as set forth in a separate agreement between St. Joseph's Hospital and Relator. St. Joseph's Hospital and Relator have informed the United States as to the amount of Relator's attorney fees that St. Joseph's Hospital will pay.

16. 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 St. Joseph's Hospital) 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 claims for personal injury or property damage or for other consequential damages arising from the Covered Conduct, and
- (7) Any claims against any individuals.

17. St. Joseph's Hospital waives and will not assert any defenses St. Joseph's Hospital 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. St. Joseph's Hospital agrees 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.

18. The Amount that St. Joseph's Hospital must pay pursuant to this Agreement by electronic wire transfer pursuant to Paragraph 7 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, TRICARE, or any State payer, related to the Covered Conduct; and St. Joseph's Hospital agrees not to resubmit to any Medicare carrier or intermediary, TRICARE, or any State payer any previously denied claims related to the Covered Conduct, and agrees not to appeal any such denials of claims.

19. St. Joseph's Hospital 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 St. Joseph's Hospital in connection with: (1) the matters covered by this Agreement, (2) the Government's audits and civil and any criminal investigation of the matters covered by this Agreement, (3) St. Joseph's Hospital's investigation, defense, and corrective actions undertaken in response to the Government's audits and civil and any criminal investigation in connection with the matters covered by this Agreement (including attorney's fees), (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 (VA) and Federal Employee Health Benefits Program (FEHBP) (hereafter, "unallowable costs"). These unallowable costs will be separately estimated and accounted for by St. Joseph's Hospital and St. Joseph's Hospital 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 St. Joseph's Hospital or any of its subsidiaries to the Medicare, Medicaid, TRICARE, VA or FEHBP Programs.

20. St. Joseph's Hospital further agrees that within 60 days of the effective date of this Agreement it 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 19) 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 St. Joseph's Hospital 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. St. Joseph's Hospital agrees that the United States will be entitled to recoup from St. Joseph's Hospital 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 St. Joseph's Hospital or any of its subsidiaries on the effect of inclusion of unallowable costs (as defined in Paragraph 19) on St. Joseph's Hospital 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 and the previous Paragraphs.

21. St. Joseph's Hospital covenants to cooperate fully and truthfully with the United States' investigation of individuals and entities not specifically released in this Agreement, for the Covered Conduct. Upon reasonable notice, St. Joseph's Hospital will make reasonable efforts to facilitate access to, and encourage the cooperation of, its directors, officers, and employees for interviews and testimony, consistent with the rights and privileges of such individuals, and will furnish to the United States, upon reasonable request, all non-privileged documents and records in its possession, custody or control relating to the Covered Conduct.

22. 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.

23. St. Joseph's Hospital 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. St. Joseph's Hospital waives any causes of action against these beneficiaries or their parents or sponsors based upon the claims for payment covered by this Agreement.

24. St. Joseph's Hospital 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 St. Joseph's Hospital, 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.

25. 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.

26. St. Joseph's Hospital represents that this Agreement is freely and voluntarily entered into without any degree of duress or compulsion whatsoever.

27. 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 Middle District of Florida, Tampa Division.

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

29. The undersigned individuals signing this Agreement on behalf of St. Joseph's Hospital represent and warrant that they are authorized by St. Joseph's Hospital to execute this Agreement. The undersigned individuals signing this Agreement on behalf of Relator represent and warrant that they are authorized by Relator 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.

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

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

THE UNITED STATES OF AMERICA

DATED: 9/22/99

BY: Rosemary A. Bilou
Rosemary A. Bilou
Trial Attorney
Commercial Litigation Branch
Civil Division
U.S. Department of Justice

DATED: 9-13-99

BY: 
Robert L. Shepherd
Deputy General Counsel
TRICARE Management Activity
United States Department
of Defense

St. Joseph's Hospital - DEFENDANT

DATED: _____

BY: _____
St. Joseph's Hospital, Inc.

DATED: _____

BY: _____
James Graham
Counsel for
St. Joseph's Hospital, Inc.

RELATOR

DATED: _____

BY: _____
Stanley Mason
Relator

DATED: _____

BY: _____
W. Christian Hoyer
Counsel for Relator

St. Joseph's Hospital - DEFENDANT

DATED: 9/23/99

BY: James J. Graham
St. Joseph's Hospital, Inc.

DATED: 9/23/99

BY: James J. Graham
James Graham
Counsel for
St. Joseph's Hospital, Inc.

RELATOR

DATED: 9/28/99

BY: Stanley Mason
Stanley Mason
Relator

DATED: 10/4/99

BY: W. Christian Hoyer
W. Christian Hoyer
Counsel for Relator