

## SETTLEMENT AGREEMENT

### I. PARTIES

This Settlement Agreement ("Agreement") is made by and among the United States of America, acting through its Department of Justice (the "Department of Justice"), the Office of Inspector General of the United States Department of Health and Human Services ("HHS-OIG"), (collectively, the "United States"), Relator James Montagano ("Relator"), and Summit Healthcare Ltd. ("Summit"), OrNda Healthcorp ("OrNda") and each of the hospitals listed in paragraph A hereof (collectively the "Companies"), with all of the above referred to collectively as the "Parties."

### II. PREAMBLE

A. By virtue of its merger in April, 1994, with Summit, OrNda, a corporation organized and incorporated under the laws of Delaware, came to own the following hospitals: Midway Hospital Medical Center, Los Angeles, California; Doctors/Santa Ana Hospital Medical Center, Santa Ana, California; Whittier Hospital Medical Center, Whittier, California; Community Hospital Medical Center, Phoenix, Arizona; Tuscon General Hospital, Tuscon, Arizona; St. Luke Medical Center, Pasadena, California; Davenport Medical Center, Davenport, Iowa; South Park Hospital and Medical Center, Lubbock, Texas; Valley Community Medical Center, Santa Maria, California; French Hospital Medical Center, San Luis Obispo, California; Mesa General Hospital Medical Center, Mesa, Arizona (collectively the "Hospitals"). The Hospitals are participating Medicare providers.

B. By virtue of a merger between OrNda and Tenet Healthcare Corporation ("Tenet"), effective January 31, 1997, Tenet became the successor in interest to OrNda.

C. This Agreement addresses (1) the United States' civil claims against the Companies based on the alleged conduct detailed below in paragraphs D-F, and (2) Relator's claims against the Companies asserted under the False Claims Act in Relator's qui tam complaint, United States ex rel. Montagano v. Midway Hosp. Medical Ctr., Inc., et al., No. 95-4948 (C.D. Cal.) (under seal).

D. The United States alleges that between 1992-1996, the Hospitals were engaged in directorship, consulting and other contracts, or other financial arrangements with certain physicians and physician entities.

E. The United States further alleges that certain of the contracts and arrangements referred to in paragraph D were intended to induce patient referrals in violation of the Anti-Kickback Statute, section 1128B(b) of the Social Security Act, 42 U.S.C. § 1320a-7b(b), and that the Hospitals submitted or caused to be submitted claims for payment for patients referred pursuant to these allegedly unlawful contracts and arrangements, to the Medicare program, Title XVIII of the Social Security Act, 42 U.S.C. §§ 1395-1395ccc, which is administered by the United States Department of Health and Human Services ("HHS"). The United States further alleges that as a result of certain of the contracts and arrangements referred to in paragraph D, referrals were made to the Hospitals in violation of 42 U.S.C. § 1395nn(a)(1) and the Hospitals presented or caused to be presented claims in violation of 42 U.S.C. § 1395nn(a)(2).

F. The United States alleges that these claims, as described above in paragraph E, accordingly were submitted by the Hospitals in violation of the False Claims Act, 31 U.S.C. §§ 3729-3733; the Civil Monetary Penalties Law, 42 U.S.C. § 1320a-7a; 42

U.S.C. § 1395nn; the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801-3812; the provisions for exclusion from the Medicare and State health care programs, 42 U.S.C. § 1320a-7(b), 42 U.S.C. § 1320a-7(d), 42 U.S.C. § 1320a-7a; common law, and the Medicare program regulations.

G. The Companies deny the respective allegations of the United States and Relator.

H. The Parties mutually desire to settle these disputes and avoid the expense and uncertainty of litigation.

### **TERMS AND CONDITIONS**

NOW, THEREFORE, in reliance on the representations contained herein and in consideration of the mutual promises, covenants, and obligations in this Agreement, and for good and valuable consideration, receipt of which is hereby acknowledged, the Parties hereby agree as follows:

1. Payment to the United States. OrNda agrees to pay to the United States the sum of Twelve million Six Hundred Fifty-four Thousand Two Hundred Eighty-seven dollars (\$12,654,287) (the "Settlement Amount"), within 10 days of the final execution of this Agreement by the Parties. Payment will be made by electronic funds transfer in accordance with instructions to be provided by the United States.

2. United States' Release of the Companies. In consideration of this Agreement and payment set forth herein, the United States hereby releases the Companies, and each of them, and any of their respective shareholders, officers, directors,

employees, subsidiaries, predecessors, successors and assigns, ("Released Parties") from any civil or administrative monetary claims the United States has or may have under the False Claims Act, 31 U.S.C. §§ 3729-33, as amended; the common law; the Civil Monetary Penalties Law, 42 U.S.C. § 1320a-7a; the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801-3812; 42 U.S.C. § 1395nn; and the Medicare program regulations, for the conduct alleged in paragraphs C through F. In consideration of this Agreement and payment set forth herein, HHS-OIG agrees to refrain from instituting or maintaining any administrative action seeking permissive exclusion of the Released Parties from the Medicare program or State health care programs under 42 U.S.C. § 1320a-7a; 42 U.S.C. § 1320a-7(b); or 42 U.S.C. § 1320a-7(d), for the conduct alleged in Paragraphs C through F of this Agreement.

3. Corporate Integrity Requirements. On January 31, 1997, all OrNda hospitals were acquired by Tenet, and thus are currently subject to a 1994 Corporate Integrity Agreement between HHS and Tenet (formerly National Medical Enterprises) (the "1994 Corporate Integrity Agreement"). As a consequence of the conduct described in paragraphs C through F, and because the Hospitals were previously subject to a compliance plan established in 1995 by OrNda that disposed of the majority of the financial agreements with physicians questioned by the Government prior to OrNda's knowledge of the investigation, HHS and the Companies agree that the Hospitals will be governed by the 1994 Corporate Integrity Agreement for its duration. The 1994 Corporate Integrity Agreement is attached as Exhibit 1 and is incorporated herein by reference.

4. Exceptions to the United States' Release. Notwithstanding any term of this Agreement, specifically reserved and excluded from the scope and terms of the United States' release of the Companies are any and all of the following claims the United States may have:

- (a) Claims that may arise under Title 26, United States Code, Internal Revenue Code, or Internal Revenue Service regulations or under securities laws;
- (b) Claim for defective or deficient services;
- (c) Claims relating to obligations created by this Agreement;
- (d) Claims against any physicians or their professional corporations alleged to have entered into unlawful arrangements with OrNda or the Hospitals; and
- (e) Any criminal liability that may arise from the conduct described in paragraphs C through F, inclusive, and any related administrative action for mandatory exclusion from the Medicare and State health care programs pursuant to 42 U.S.C. § 1320a-7(a).

5. Relator's and Companies' Mutual Release. In consideration of the mutual promises and obligations of this Agreement and those set forth in a separate agreement between the Companies and the Relator, Relator hereby releases the Companies, and each of their subsidiaries, affiliates and partners, and any of their respective present and former shareholders, officers, directors, employees, subsidiaries,

predecessors, successors and assigns, from any and all causes of action, known or unknown, including but not limited to any and all causes of action related to:

- (a) any civil claims which Relator asserts or could have asserted under the False Claims Act, common law, the Program Fraud Civil Remedies Act, or any other statute creating causes of action for civil relief for the conduct alleged in Relator's qui tam complaint in the case styled United States ex rel. Montagano v. Midway Hosp. Medical Ctr., Inc., et al., No. 95-4948 (C.D. Cal.); and
- (b) any liability or claim for relief arising from the claims which Relator asserts or could have asserted in his Second Claim for Relief in Relator's Complaint in the case styled United States ex rel. Montagano v. Midway Hosp. Medical Ctr., Inc., et al., No. 95-4948 (C.D. Cal.);
- (c) Any other causes of action he has or may assert against the Companies, or any of them, whether known or unknown as of the date of this Agreement;
- (d) The Companies on their own behalf and on behalf of their agents, attorneys, predecessors, successors, and assigns hereby release the Relator, his agents, attorneys, predecessors, successors, and assigns from any and all claims, or causes of action whether known or unknown as of the date of this Agreement;

- (e) Notwithstanding any provision in this Agreement to the contrary, Relator and the Companies do not release each other for claims for indemnity, if any there be, if either the Relator or the Companies or both are sued for medical malpractice or professional negligence for services provided at Midway Hospital Medical Center; and
- (f) Relator's Release shall be effective upon receipt by the Relator of (1) the sum of \$2,339,814.00 from the United States pursuant to paragraph 7 of this Agreement; (2) the sum of \$380,500 from the Companies pursuant to that certain Settlement Agreement between the Companies and Relator; and (3) a fully executed copy of the Settlement Agreement between the Companies and the Relator.

6. Relator's Statement as to Adequacy of Settlement. Relator agrees that the settlement between the United States and the Companies in this action is fair, adequate and reasonable pursuant to 31 U.S.C. § 3730(c)(2)(B).

7. Relator's Release of the United States. Pursuant to 31 U.S.C. § 3730, the United States will pay Relator's share, in the amount of \$2,339,814, within a reasonable amount of time after the United States' receipt of payment from the Companies. The United States shall not be obligated to pay Relator unless and until the United States receives payment from the Companies.

8. In exchange for the United States' promise to pay Relator the above-noted share, Relator agrees to relinquish any and all claims he might bring against the United States, arising out of this action, including any claim under 31 U.S.C. § 3730(d),

and agrees herein to execute a Joint Stipulation of Dismissal as to the First Claim for Relief.

9. Relator and the Companies hereby warrant, represent and agree that each of them is fully aware of the provisions of California Civil Code § 1542, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.

Relator and the Companies voluntarily waive the provisions of California Civil Code § 1542, and any other similar law, as to any and all claims, demands, causes of action, or charges of whatever nature, known or unknown, which are related or are in any manner incidental to the subject matter of the case styled United States ex rel. Montagano v. Midway Hosp. Medical Ctr., No. 95-4948 (C.D. Cal.) (under seal), and further agree that this waiver is a material aspect of the consideration for entering into this Agreement.

10. Joint Stipulation of Dismissal. Concurrent with the execution of this Settlement Agreement and payment by the Companies to the United States, the Parties shall execute a Joint Stipulation of Dismissal in the form attached hereto as Exhibit 2. The Joint Stipulation of Dismissal will request that the Court, inter alia, enter an order unsealing and dismissing the case styled United States ex rel. Montagano v. Midway Hosp. Medical Ctr., No. 95-4948 (C.D. Cal.) (under seal) with prejudice as to the Relator, and

without prejudice as to the United States except that such claims that are released pursuant to this Agreement shall be dismissed with prejudice. The Parties will request, however, that the Court retain jurisdiction to enforce the terms of the Agreement.

11. Unallowable Costs. It is agreed 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 and 1396, and the regulations promulgated thereunder) incurred by or on behalf of the Companies in connection with (a) the matters covered by this Agreement; (b) the government's audits and investigations of the allegations which are the subject of this Agreement; (c) any of the Companies' investigation, defense and corrective actions with respect to matters specifically covered by this Agreement; (d) the negotiation of this Agreement; and (e) the payments made to the United States and the Relator pursuant to this Agreement, shall be unallowable costs for government contract accounting purposes and for purposes of seeking reimbursement from either the Medicare or Medicaid Programs. The Companies shall account separately for these costs for government contract accounting purposes and for purposes of seeking reimbursement from the Medicare and Medicaid Programs. Any sums owed by the Companies or the Hospitals to the United States for payments made to the Companies or the Hospitals by Medicare and/or Medicaid (federal share) for costs that are unallowable (as defined in this paragraph) shall be paid by the Companies to HHS at HHS' direction.

12. Waiver of Double Jeopardy Defense. With respect to the conduct alleged in paragraphs D through F of this Agreement, the Companies hereby waive any defenses they may have to any criminal prosecution, which defenses may be based in

whole or in part on the Double Jeopardy Clause of the Constitution or the holding or principles set forth in United States v. Halper, 490 U.S. 435 (1989), and agree not to argue that the amounts paid under this Agreement are punitive in nature or effect in any such criminal prosecution.

13. Venue for Enforcement, Interpretation or Dispute Resolution. Should any action to enforce or interpret this Agreement, or to resolve any dispute hereunder be required, the parties acknowledge the jurisdiction of the federal courts and agree that venue for any such action shall be in the United States District Court for the Central District of California.

14. Capacity to Execute Agreement. Each Party signing this Agreement in a representative capacity warrants that he or she is duly authorized to do so.

15. Costs. Except as otherwise provided, the parties shall bear their own costs.

16. Entire Agreement. This Agreement, with the attached Exhibits, constitutes the entire agreement between the Parties with respect to the matters contained herein, and may not be modified except by a writing signed by all Parties affected by the modification. No other additional promises, conditions or agreements have been entered into other than those stated in this Agreement.

17. Effective Date. This Agreement is binding on the Parties' successors and assigns and shall be effective on the date of signing by the Parties.

UNITED STATES OF AMERICA

Dated: \_\_\_\_\_

**LAURIE A. OBEREMBT**  
Trial Attorney  
Civil Division  
United States Department of Justice



Dated: 6/11/97

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

RELATOR

Dated: \_\_\_\_\_

Relator  
James Montagano, M.D.

OrNda Health Corp., Inc.

Dated: \_\_\_\_\_

Summit Health, Ltd.

Dated: \_\_\_\_\_

UNITED STATES OF AMERICA

Dated: \_\_\_\_\_

**LAURIE A. OBEREMBT**  
Trial Attorney  
Civil Division  
United States Department of Justice

Dated: \_\_\_\_\_

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

**RELATOR**

*James Montagano* Dated: 5/23/97

Relator  
James Montagano, M.D.

**OrNda Health Corp., Inc.**

Dated: \_\_\_\_\_

**Summit Health, Ltd.**

Dated: \_\_\_\_\_

Tenet Healthcare Corporation

Christi L. Seibach Dated: 6/19/97

[Signature] Dated: 6/23/97  
Jones, Day, Reavis & Pogue  
Attorneys for the Companies

Midway Hospital Medical Center

[Signature] Dated: 6-19-97  
[Title]

Doctors/Santa Ana Hospital Medical Center

[Signature] Dated: 6-19-97  
[Title]

Whittier Hospital Medical Center

[Signature] Dated: 6-19-97  
[Title]

Community Hospital Medical Center

[Signature] Dated: 6-19-97  
[Title]

Tucson General Hospital

[Signature] Dated: 6-19-97

[Title]

St. Luke Medical Center

Sean M. Brown Dated: 6-19-97  
[Title]

Davenport Medical Center

Sean M. Brown Dated: 6-19-97  
[Title]

South Park Hospital and Medical  
Center

Sean M. Brown Dated: 6-19-97  
[Title]

Valley Community Medical Center

Sean M. Brown Dated: 6-19-97  
[Title]

French Hospital Medical Center

Sean M. Brown Dated: 6-19-97  
[Title]

Mesa General Hospital Center

Sean M. Brown Dated: 6-19-97  
[Title]