

**SETTLEMENT AGREEMENT****I. PARTIES**

This Settlement Agreement and Release ("Agreement") is entered into between the United States of America, acting through its Department of Justice and on behalf of the Office of Inspector General of the United States Department of Health and Human Services ("OIG-HHS") and the TRICARE Management Activity ("TMA"), a field activity of the Department of Defense, acting through the General Counsel of TMA (collectively, the "United States"); and the University of Texas Health Science Center at San Antonio ("UTHSCSA"); the University of Texas System ("UT"); and Benjamin Kready. Collectively, all of the above will be referred to as "the Parties."

**II. PREAMBLE**

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

A. UTHSCSA is a health component of UT, which is an agency of the Government of the State of Texas. UTHSCSA includes, among other component parts, (1) the University of Texas Medical School at San Antonio ("UTMSSA"), and (2) UTHSCSA's Medical Service Research and Development Plan ("MSRDP") (hereafter, UTMSSA and

MSRDP shall be included within the term "UTHSCSA"). MSRDP is the practice plan of the faculty physicians and certain other faculty employed by the UTHSCSA. It submits, or has submitted, claims for medical services performed by UTHSCSA physicians and other UTHSCSA faculty to the Medicare program (under Medicare Part B), the Medicaid program for the State of Texas, the TRICARE program, and the State Legalization Impact Assistance Grant program for the state of Texas.

B. Benjamin Kready (the "relator") is an individual resident of California. In 1996, the relator filed a qui tam action in a United States District Court entitled United States ex rel. Benjamin Kready v. The University of Texas Health Science Center at San Antonio and the University of Texas Medical School at San Antonio ("the Civil Action"). From January 1985 through May 1996, the relator served as executive director of MSRDP.

C. The United States contends that UTHSCSA 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), the Medicaid program, Title XIX of the Social Security Act, 42 U.S.C. §§ 1396-1396v (1997), which is administered in the State of Texas by the Texas Health and Human

Services Commission; the TRICARE program (also known as the Civilian Health and Medical Program of the Uniformed Services ("CHAMPUS")), 10 U.S.C. §§ 1071-1106; and the State Legalization Impact Assistance Grant ("SLIAG") program, 8 U.S.C. § 1255a (note).

D. The United States contends that it has certain civil claims against UTHSCSA under the False Claims Act, 31 U.S.C. §§ 3729-3733, and other federal statutes and/or common law doctrines, for engaging in the following conduct (hereinafter referred to as the "Covered Conduct") during the period from January 1, 1990 through December 31, 1995: the submission of claims by the MSRDP under the Medicare, Medicaid, CHAMPUS and SLIAG programs for certain services that UTHSCSA represented were personally and identifiably provided by faculty physicians employed by UTHSCSA to patients benefitted by those respective programs when, in fact, UTHSCSA does not possess sufficient documentary evidence, as required under the Medicare, CHAMPUS, Medicaid and SLIAG programs, to show with respect to those certain claims that the respective physicians were personally and identifiably involved in the performance of the services.

E. The United States also contends that it has certain administrative claims against UTHSCSA under the provisions for permissive exclusion from the Medicare, Medicaid and other federal health care programs, see e.g., 42 U.S.C. § 1320a-7(b) and 32 C.F.R. 199.9 (f), and the provisions for civil monetary penalties, 42 U.S.C. § 1320a-7a, for the Covered Conduct.

F. UTHSCSA disputes the contentions of the United States, as set forth in Paragraphs D and E above. The parties agree that no provision of this Agreement nor any consideration exchanged pursuant to this Agreement constitutes an admission by UTHSCSA that it engaged in, or violated any law in connection with the Covered Conduct. The parties further agree that by entering into this Agreement, the defendants in the Civil Action are not waiving for purposes of any other case or controversy any defenses that may be available to them under the Eleventh Amendment to the United States Constitution or under the False Claims Act.

G. In order to avoid the delay, uncertainty, inconvenience, and expense of protracted litigation of these claims, the Parties reach a full and final settlement 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:

1. UTHSCSA agrees to pay the total sum of seventeen million two hundred thousand dollars (\$17,200,000.00) (hereafter the "Settlement Amount"). The United States agrees that, pursuant to 31 U.S.C. § 3730(d)(1), the relator's share of the settlement amount is fifteen (15) percent, or two million five hundred eighty thousand dollars (\$2,580,000.00). The payments shall be made as follows:

a. UTHSCSA shall pay the Settlement Amount in four sets of separate payments of four million three hundred thousand dollars (\$ 4,300,000.00) each. Eighty-five (85) percent of each payment, or three million six hundred fifty five thousand dollars (\$3,655,000.00), shall be made to the United States of America by electronic funds transfer pursuant to written instructions to be provided by Daniel A. Spiro (or his successor), Commercial Litigation Branch, Civil Division, U.S. Department of Justice, Washington, D.C. The remaining fifteen (15) percent of each





















































