

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 Department of Health and Human Services (HHS) (collectively the "United States"); and the University of Medicine and Dentistry of New Jersey (UMDNJ), (hereafter referred to as "the Parties"), through their authorized representatives.

II. PREAMBLE

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

A. University of Medicine and Dentistry New Jersey ("UMDNJ") is the State University of New Jersey's university of health sciences and consists of eight separate schools, including the UMDNJ-New Jersey Medical School. UMDNJ also owns and operates UMDNJ's University Hospital ("UH").

B. The United States contends that UMDNJ 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. §§ 1395-1395hhh.

C. The United States contends that it has certain civil claims against UMDNJ, as specified in Paragraph 2, below, under the False Claims Act, 31 U.S.C. §§ 3729-3733, other federal statutes, and/or common law doctrines, for engaging in the following conduct: during the period from December 1, 2002, to November 30, 2006, UMDNJ submitted or caused to be submitted false claims to the Medicare Program for items and services that were ordered by physicians Atul Prakash, Joseph Campbell, Bakul Desai, Laxmipathi Garipalli, Joven Dungo, Feryadoon Kohan, Ravindra Patel, and Michael Benz with whom UMDNJ had employment

and/or financial relationships, and these claims were false because they were prohibited by Section 1877 of the Social Security Act (SSA), 42 U.S.C. § 1395nn (also known as the Stark Statute) and the Anti-Kickback Statute (AKS), 42 U.S.C. § 1320a-7b(b), and UMDNJ was required to and did certify on cost reports submitted to its fiscal intermediary for the applicable fiscal years that the items and services identified or summarized in each cost report were not provided or procured in violation of federal referral laws (e.g., the Stark Statute and the AKS). Hereinafter, the conduct described in this Paragraph is collectively referred to as the "Covered Conduct."

D. The United States also contends that it has certain administrative claims against UMDNJ for engaging in the Covered Conduct.

E. This Agreement is neither an admission of liability by UMDNJ nor a concession by the United States that its claims are not well founded.

F. 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. UMDNJ agrees to pay to the United States \$8,333,212.00 (the "Settlement Amount"). UMDNJ agrees to pay the Settlement Amount to the United States by electronic funds transfer pursuant to written instructions to be provided by the United States Attorney's Office for the District of New Jersey. UMDNJ agrees to make this electronic funds transfer no later than 30 days after the Effective Date of this Agreement.

2. Subject to the exceptions in Paragraph 4 (concerning excluded claims), below, in consideration of the obligations of UMDNJ in this Agreement, conditioned upon UMDNJ's full payment of the Settlement Amount, and subject to Paragraph 13, below (concerning bankruptcy proceedings commenced within 91 days of the Effective Date of this Agreement or any payment made under this Agreement, the United States (on behalf of itself, its officers, agents, agencies, and departments) agrees to release UMDNJ from any civil or administrative monetary claim the United States has or may have for the Covered Conduct under the False Claims Act, 31 U.S.C. §§ 3729-3733; the Civil Monetary Penalties Law, 42 U.S.C. § 1320a-7a; the civil monetary penalty provisions of the Stark Statute, 42 U.S.C. §§ 1395nn(g)(3) and (4); 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. No individuals are released by this Agreement.

3. In consideration of the obligations of UMDNJ in this Agreement and the Corporate Integrity Agreement (CIA), entered into between OIG-HHS and UMDNJ, conditioned upon UMDNJ's full payment of the Settlement Amount, and subject to Paragraph 13, below (concerning bankruptcy proceedings commenced within 91 days of the Effective Date of this Agreement or any payment made under this Agreement), the OIG-HHS agrees to release and refrain from instituting, directing, or maintaining any administrative action seeking exclusion from Medicare, Medicaid, and other Federal health care programs (as defined in 42 U.S.C. § 1320a-7b(f)) against UMDNJ under 42 U.S.C. § 1320a-7a (Civil Monetary Penalties Law), the civil monetary penalty provisions of the Stark Statute, 42 U.S.C. §§ 1395nn(g)(3) and (4), 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 (concerning excluded

claims), below, and as reserved in this Paragraph. The OIG-HHS expressly reserves all rights to comply with any statutory obligations to exclude UMDNJ from Medicare, Medicaid, and other Federal health care programs 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 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 UMDNJ) are the following claims of the United States:

- 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) for any conduct other than the Covered Conduct;
- e. Any liability based upon such obligations as are created by this Agreement;
- f. 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. Any liability of individuals, including directors, officers and employees; or

i. Any civil or administrative liability of individuals (including current or former directors, officers, employees, agents, or shareholders of UMDNJ) who receive written notification that they are the target of a criminal investigation (as defined in the United States Attorneys' Manual), are indicted, charged, or convicted, or who enter into a plea agreement related to the Covered Conduct.

5. UMDNJ waives and shall not assert any defenses UMDNJ may have to any criminal prosecution or administrative action relating to the Covered Conduct that 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.

6. UMDNJ fully and finally releases 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) that UMDNJ has 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.

7. 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 or any state payer, related to the Covered Conduct; and UMDNJ agrees not to resubmit to any Medicare carrier or intermediary or any state payer any previously denied claims related to the Covered Conduct, and agrees not to appeal any such denials of claims.

8. UMDNJ agrees to the following:

a. Unallowable Costs Defined: that all costs (as defined in the Federal Acquisition Regulation, 48 C.F.R. § 3 1.205-47; and in Titles XVIII and XIX of the Social Security Act, 42 U.S.C. §§ 1395-1395hhh and 1396-1396v; and the regulations and official program directives promulgated thereunder) incurred by or on behalf of UMDNJ, its present or former officers, directors, employees, shareholders, and agents 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 and any related plea agreement;
- (2) the United States' audit(s) and civil and any criminal investigation(s) of the matters covered by this Agreement;
- (3) UMDNJ'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 and any plea agreement;
- (5) the payment UMDNJ makes to the United States pursuant to this Agreement, including costs and attorneys fees; and
- (6) the negotiation of, and obligations undertaken pursuant to the CIA to:
 - (i) retain an independent review organization to perform annual reviews as described in Section III of the CIA; and

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

However, nothing in this paragraph 8.a.(6) that may apply to the obligations undertaken pursuant to the CIA affects the status of costs that are not allowable based on any other authority applicable to UMDNJ. (All costs described or set forth in this Paragraph 8.a. are hereafter "Unallowable Costs.")

b. Future Treatment of Unallowable Costs: These Unallowable Costs shall be separately determined and accounted for in nonreimbursable cost centers by UMDNJ, and UMDNJ 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 UMDNJ or any of its subsidiaries or affiliates to the Medicare, Medicaid, TRICARE, or FEHBP Programs.

c. Treatment of Unallowable Costs Previously Submitted for Payment: UMDNJ further agrees that within 90 days of the Effective Date of this Agreement it shall identify to applicable Medicare and TRICARE fiscal intermediaries, carriers, and/or contractors, and Medicaid 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 UMDNJ or any of its subsidiaries or affiliates, 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. UMDNJ agrees that the United States, at a minimum, shall be entitled to recoup from UMDNJ 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 UMDNJ or any of its subsidiaries or affiliates on the effect of inclusion of Unallowable Costs (as defined in this Paragraph) on UMDNJ or any of its subsidiaries or affiliates' 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 UMDNJ's books and records to determine that no Unallowable Costs have been claimed in accordance with the provisions of this Paragraph.

9. UMDNJ agrees to cooperate fully and truthfully with the United States' investigation of individuals and entities not released in this Agreement. Upon reasonable notice, UMDNJ shall encourage, and agrees not to impair, the cooperation of its directors, officers, and employees, and shall use its best efforts to make available, and encourage the cooperation of former directors, officers, and employees for interviews and testimony, consistent with the rights and privileges of such individuals. UMDNJ agrees to furnish to the United States, upon request, complete and unredacted copies of all non-privileged documents, reports, memoranda of interviews, and records in its possession, custody, or control concerning any investigation of the Covered Conduct that it has undertaken.

10. 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 11 (waiver for beneficiaries paragraph), below.

11. UMDNJ agrees that it waives and shall not seek payment for any of the health care billings covered by this Agreement from any health care beneficiaries or their parents, sponsors, legally responsible individuals, or third party payors based upon the claims defined as Covered Conduct.

12. UMDNJ warrants that it has reviewed its financial situation and that it currently is solvent within the meaning of 11 U.S.C. §§ 547(b)(3) and 548(a)(1)(B)(ii)(I), and shall remain solvent following payment to the United States of the Settlement Amount. 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 UMDNJ, 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 to and do, in fact, represent a reasonably equivalent exchange of value that is not intended to hinder, delay, or defraud any entity to which UMDNJ was or became indebted to on or after the date of this transfer, within the meaning of 11 U.S.C. § 548(a)(1).

13. If within 91 days of the Effective Date of this Agreement or of any payment made under this Agreement, UMDNJ commences, or a third party commences, any case, proceeding, or other action under any law relating to bankruptcy, insolvency, reorganization, or relief of debtors (a) seeking to have any order for relief of UMDNJ's debts, or

seeking to adjudicate UMDNJ as bankrupt or insolvent; or (b) seeking appointment of a receiver, trustee, custodian, or other similar official for UMDNJ or for all or any substantial part of UMDNJ's assets. UMDNJ agrees as follows:

a. UMDNJ's obligations under this Agreement may not be avoided pursuant to 11 U.S.C. § 547, and UMDNJ shall not argue or otherwise take the position in any such case, proceeding, or action that: (i) UMDNJ's obligations under this Agreement may be avoided under 11 U.S.C. § 547; (ii) UMDNJ was insolvent at the time this Agreement was entered into, or became insolvent as a result of the payment made to the United States; or (iii) the mutual promises, covenants, and obligations set forth in this Agreement do not constitute a contemporaneous exchange for new value given to UMDNJ.

b. If UMDNJ's obligations under this Agreement are avoided for any reason, including, but not limited to, through the exercise of a trustee's avoidance powers under the Bankruptcy Code, the United States, at its sole option, may rescind the releases in this Agreement and bring any civil and/or administrative claim, action, or proceeding against UMDNJ for the claims that would otherwise be covered by the releases provided in Paragraphs 2 and 3, above. UMDNJ agrees that (i) any such claims, actions, or proceedings brought by the United States (including any proceedings to exclude UMDNJ from participation in Medicare, Medicaid, or other Federal health care programs) are not subject to an "automatic stay" pursuant to 11 U.S.C. § 362(a) as a result of the action, case, or proceedings described in the first clause of this Paragraph, and UMDNJ shall not argue or otherwise contend that the United States' claims, actions, or proceedings are subject to an automatic stay; (ii) UMDNJ shall not plead, argue, or otherwise raise any defenses under the theories of statute of limitations, laches, estoppel, or similar theories, to any such civil or administrative claims, actions, or proceeding that are

brought by the United States within 90 calendar days of written notification to UMDNJ that the releases have been rescinded pursuant to this Paragraph, except to the extent such defenses were available on the effective date of this agreement; and (iii) the United States has a valid claim against UMDNJ in the amount of \$12,499,818.00 plus penalties, and the United States may pursue its claim in the case, action, or proceeding referenced in the first clause of this Paragraph, as well as in any other case, action, or proceeding.

c. UMDNJ acknowledges that its agreements in this Paragraph are provided in exchange for valuable consideration provided in this Agreement.

14. Except as expressly provided to the contrary in this Agreement, each Party shall bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

15. UMDNJ represents that this Agreement is freely and voluntarily entered into without any degree of duress or compulsion whatsoever.

16. 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 is the United States District Court for the District of New Jersey, except that disputes arising under the CIA shall be resolved exclusively under the dispute resolution provisions in the CIA.

17. For purposes of construction, this Agreement shall be deemed to have been drafted by all Parties to this Agreement and shall not, therefore, be construed against any Party for that reason in any subsequent dispute.

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

19. The individuals signing this Agreement on behalf of UMDNJ represent and warrant that they are authorized by UMDNJ to execute this Agreement. The United States 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 UMDNJ's successors, transferees, heirs, and assigns.

22. All Parties consent to the United States' disclosure of this Agreement, and information about this Agreement, to the public.

23. This Agreement is effective on the date of signature of the last signatory to the Agreement (Effective Date of this Agreement). Facsimiles of signatures shall constitute acceptable, binding signatures for purposes of this Agreement.

THE UNITED STATES OF AMERICA

DATED: 9/30/09



Alex Kriegsman
Assistant United States Attorney
District of New Jersey

DATED: 9/28/09



Gregory E. Demske
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

UMDNJ - DEFENDANT

DATED: 07/21/09

BY: William F. Owen, Jr., M.D.
William F. Owen, Jr., M.D.
UMDNJ President

DATED: 7/21/09

BY: Walter F. Timpone, Esq.
Walter F. Timpone, Esq.
Counsel for UMDNJ