

SETTLEMENT AGREEMENT

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”), Somerset Medical Center, Carol Ash, and Kristin Petersen (hereafter collectively referred to as the “Parties”), through their authorized representatives.

RECITALS

A. Somerset Medical Center is a regional medical center located in Somerville, New Jersey. On or around October 1, 2006, Somerset Medical Center entered into a lease with Medicor Cardiology (the “Medicor Lease”), a medical practice located in Hillsborough, New Jersey. Under the terms of the Medicor Lease, Somerset Medical Center agreed to rent space in a building owned by Medicor Cardiology, located at 331 Route 206, Hillsborough, New Jersey, for a ten-year term beginning on October 1, 2006.

B. On September 30, 2009, Carol Ash and Kristin Petersen filed a qui tam action in the United States District Court for the District of New Jersey captioned *United States ex rel. Ash and Petersen v. Somerset Medical Center, et al.*, Civil No. 09-cv-4987, pursuant to the qui tam provisions of the False Claims Act, 31 U.S.C. § 3730(b) (the “Civil Action”). The qui tam complaint alleged, among other things, that Somerset Medical Center paid kickbacks to Medicor Cardiology in the form of inflated rents; paid kickbacks to an internist named Louis Arno and his practice group, RespaCare, in the form of inflated rents; paid kickbacks to internists named Kathleen Toomey and Hen-Vai

Wu by charging them below-market rents; billed Medicare for procedures performed at its sleep center even though the sleep center was not a licensed Medicare provider; and improperly billed Medicare under Relator Carol Ash's provider number.

C. The United States contends that Somerset Medical Center 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. §§ 1395-1395kkk-1.

D. The United States contends that it has certain civil claims against Somerset Medical Center arising from Somerset Medical Center's allegedly inflated rental payments to Medisor Cardiology during the period from October 1, 2006, through September 30, 2013. The United States alleges that at least one purpose of the above payments was to induce the referral of patients to Somerset Medical Center, that the payments induced such referrals to Somerset Medical Center, and that Somerset Medical Center's subsequent billings of the Medicare program for services resulting from those tainted referrals violated the federal anti-kickback law and thus were false claims. The foregoing alleged conduct is referred to below as the "Covered Conduct."

E. This Agreement is neither an admission of any wrongdoing or any liability by Somerset Medical Center, nor a concession by the United States that its claims are not well founded.

F. Relators claim entitlement under 31 U.S.C. § 3730(d) to a share of the proceeds of this Agreement and to Relators' reasonable expenses, attorneys' fees and costs.

To avoid the delay, uncertainty, inconvenience, and expense of protracted litigation of the above claims, and in consideration of the mutual promises and obligations of this Agreement, the Parties agree and covenant as follows:

TERMS AND CONDITIONS

1. Somerset Medical Center shall pay to the United States four-hundred-thirty-one thousand five-hundred-and-twenty-six dollars (\$431,526) ("Settlement Amount"), plus interest on the Settlement Amount at a rate of 2% per annum from September 26, 2013, no later than fifteen (15) business days after the Effective Date of this Agreement by electronic funds transfer pursuant to written instructions to be provided by the United States Attorney's Office for the District of New Jersey.
2. Conditioned upon the United States receiving the Settlement Amount from Somerset Medical Center and as soon as feasible after receipt, the United States shall pay to Relators Carol Ash and Kristin Petersen, through their legal counsel and by electronic funds transfer to an escrow account, twenty (20) percent of the Settlement Amount actually recovered under this Agreement.
3. Somerset Medical Center agrees to pay counsel for Relators Carol Ash and Kristin Petersen, and counsel for Relators Carol Ash and Kristin Petersen agree to accept as full payment, \$50,000 for expenses, attorneys' fees and costs in accordance with 31 U.S.C. § 3730(d)(1).
4. Subject to the exceptions in Paragraph 6 (concerning excluded claims) below, and conditioned upon Somerset Medical Center's full payment of the Settlement Amount, the United States releases Somerset Medical Center from any civil or administrative monetary claim the United States has 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 Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801-3812; the civil monetary penalty provisions of the Physician Self-Referral Law, 42 U.S.C. §§ 1395nn(g)(3); any statutory provision for which the Civil Division of the Department of Justice and/or the United States Attorney's Office for the District of New Jersey has actual and present authority to assert and compromise pursuant to 28 C.F.R., Part O, Subpart I, Section 0.45(d); and/or the common law theories of payment by mistake, unjust enrichment, and fraud.

5. Subject to the exceptions in Paragraph 6 below, and conditioned upon Somerset Medical Center's full payment of the Settlement Amount, Relators Carol Ash and Kristin Petersen, for themselves and for their heirs, successors, attorneys, agents, and assigns, release Somerset Medical Center from any civil monetary claim that Relators Carol Ash and Kristin Petersen have on behalf of the United States for the Covered Conduct under the False Claims Act, 31 U.S.C. §§ 3729-3733.

6. Notwithstanding the releases given in paragraphs 4 and 5 of this Agreement, or any other term of this Agreement, the following claims of the United States are specifically reserved and are not released:

- a. Any 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 or permissive 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 obligations 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. Any liability for personal injury or property damage or for other consequential damages arising from the Covered Conduct; or
- i. Any liability of individuals.

7. Relators Carol Ash and Kristin Petersen and their heirs, successors, attorneys, agents, and assigns shall not object to this Agreement and agree and confirm that this Agreement is fair, adequate, and reasonable under all the circumstances, pursuant to 31 U.S.C. § 3730(c)(2)(B). Conditioned upon Relators Carol Ash and Kristin Petersen's receipt of the payment described in Paragraph 2, Relator's Carol Ash and Kristin Petersen and their heirs, successors, attorneys, agents, and assigns fully and finally release, waive, and forever discharge the United States, its agencies, officers, agents, employees, and servants, from any claims arising from the filing of the Civil Action or under 31 U.S.C. § 3730, and from any claims to a share of the proceeds of this Agreement and/or the Civil Action.

8. Conditioned upon Relators Carol Ash and Kristin Petersen's receipt of the payment described in Paragraph 3, Relators Carol Ash and Kristin Petersen, for themselves, and for their heirs, successors, attorneys, agents and assigns, release

Somerset Medical Center and its officers, agents, and employees, from any and all actions, claims, causes of action, suits, charges, demands, debts, liabilities, past, present or future obligations, damages, judgments, executions, accounts, sums of money, reckonings, controversies, losses, actions and causes of action of every kind and nature whatsoever, including, but not limited to, any liability to Relators Carol Ash and Kristin Petersen arising from the filing of the Civil Action, or under 31 U.S.C. §3730(d) for expenses or attorneys' fees and costs, whether or not known or suspected at this time.

9. Somerset Medical Center, and its officers, employees, attorneys, agents, and assigns, release Relators Carol Ash and Kristin Petersen from any and all actions, claims, causes of action, suits, charges, demands, debts, liabilities, past, present or future obligations, damages, judgments, executions, accounts, sums of money, reckonings, controversies, losses, actions and causes of action of every kind and nature whatsoever, including, but not limited to, any liability to Somerset Medical Center arising from the filing of the Civil Action, or under 31 U.S.C. §3730(d) for expenses or attorneys' fees and costs, whether or not known or suspected at this time.

10. Somerset Medical Center waives and shall not assert any defenses Somerset Medical Center 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.

11. Somerset Medical Center fully and finally releases the United States, its agencies, officers, agents, employees, and servants, from any claims (including attorneys' fees, costs, and expenses of every kind and however denominated) that Somerset Medical Center has asserted, could have asserted, or may assert in the future against the United States, its agencies, officers, agents, employees, and servants, related to the Covered Conduct and the United States' investigation and prosecution thereof.

12. 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 contractor (e.g., Medicare Administrative Contractor, fiscal intermediary, carrier); TRICARE fiscal intermediary, carrier, and/or contractor; Federal Employees Health Benefits Program ("FEHBP") carrier or payer; or any state payer, related to the Covered Conduct; and Somerset Medical Center agrees not to resubmit to any Medicare carrier or intermediary; TRICARE fiscal intermediary, carrier, and/or contractor; FEHBP fiscal agent; or any state payer any previously denied claims related to the Covered Conduct, and agrees not to appeal any such denials of claims.

13. Somerset Medical Center agrees to the following:

a. Unallowable Costs Defined: 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. §§ 1395-1395kkk and 1396-1396w-5; and the regulations and official program directives promulgated thereunder) incurred by or on behalf of

Somerset Medical Center, its present or former officers, directors, employees, shareholders, and agents in connection with:

- 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) Somerset Medical Center'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 attorneys' fees);
- 4) the negotiation and performance of this Agreement and any plea agreement; and
- 5) the payment Somerset Medical Center makes to the United States pursuant to this Agreement and any payments that Somerset Medical Center may make to Relators Carol Ash and Kristin Petersen, including costs and attorneys' fees;

are unallowable costs for government contracting purposes and under the Medicare Program, Medicaid Program, TRICARE Program, and FEHBP (hereinafter referred to as "Unallowable Costs").

b. Future Treatment of Unallowable Costs: Unallowable Costs shall be separately determined and accounted for by Somerset Medical Center, and Somerset Medical Center 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 Somerset Medical Center or any of its subsidiaries or affiliates to the Medicare, Medicaid, TRICARE, or FEHBP Programs.

c. Treatment of Unallowable Costs Previously Submitted for

Payment: Somerset Medical Center 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 Somerset Medical Center 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. Somerset Medical Center agrees that the United States, at a minimum, shall be entitled to recoup from Somerset Medical Center 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 Somerset Medical Center or any of its subsidiaries or affiliates on the effect

of inclusion of Unallowable Costs (as defined in this Paragraph) on Somerset Medical Center 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 Somerset Medical Center's books and records to determine that no Unallowable Costs have been claimed in accordance with the provisions of this Paragraph.

14. Somerset Medical Center agrees to cooperate fully and truthfully with the United States' investigation of individuals and entities not released in this Agreement. Upon reasonable notice, Somerset Medical Center 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. Somerset Medical Center further 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, or that has been performed by another on its behalf.

15. 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 15 (waiver for beneficiaries paragraph), below.

16. Somerset Medical Center 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.

17. Upon receipt of the payment described in Paragraph 1, above, the United States and Relators Carol Ash and Kristin Petersen shall promptly sign and file in the Civil Action a Joint Stipulation of Dismissal of the Civil Action pursuant to Rule 41(a)(1). Such dismissal shall be with prejudice to Relators Carol Ash and Kristin Petersen and the United States as to the Covered Conduct; and with prejudice to Relators Carol Ash and Kristin Petersen, and without prejudice to the United States, as to all other claims and/or allegations in the Complaint and as to all Defendants other than Somerset Medical Center.

18. Relators Carol Ash and Kristin Petersen have entered into a separate Mutual Release with Kenneth Bateman, Medicor Cardiology, PA, RespaCare, Louis J. Arno, M.D., Kathleen Toomey, M.D., and Hen-Vai Wu, M.D. in consideration for Relators Carol Ash and Kristin Petersen filing a Joint Stipulation of Dismissal of the Civil Action with prejudice to Relators Carol Ash and Kristin Petersen, and without prejudice to the United States, as to Kenneth Bateman, Medicor Cardiology, PA, RespaCare, Louis J. Arno, M.D., Kathleen Toomey, M.D., and Hen-Vai Wu, M.D. pursuant to Rule 41(a)(1) of the Federal Rules of Civil Procedure.

19. Except as otherwise provided 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.

20. Each party and signatory to this Agreement represents that it freely and voluntarily enters in to this Agreement without any degree of duress or compulsion.

21. This Agreement is governed by the laws of the United States. The exclusive jurisdiction and venue for any dispute relating to this Agreement is the United States District Court for the District of New Jersey. For purposes of construing this Agreement, 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.

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

23. The undersigned counsel represent and warrant that they are fully authorized to execute this Agreement on behalf of the persons and entities indicated below.

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

25. This Agreement is binding on Somerset Medical Center's successors, transferees, heirs, and assigns.

26. This Agreement is binding on Relators Carol Ash and Kristin Petersen's successors, transferees, heirs, and assigns.

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

28. 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: 3/11/14

BY: Charles Graybow
CHARLES GRAYBOW
Assistant U.S. Attorney
Office of the United States Attorney
for the District of New Jersey

DATED: 3/11/14

BY: Robert K. DeConti
ROBERT K. DECONTI
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

SOMERSET MEDICAL CENTER

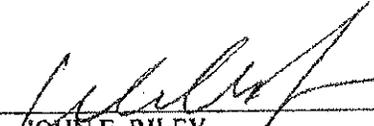
DATED: _____ BY: *J. Ann Mendles*
JO-ANN MENDLES
Vice-Chairperson of the Board of Trustees
Somerset Medical Center

DATED: _____ BY: *Paul G. Wenik*
JACK WENIK
Sills Cummis & Gross P.C.
The Legal Center
One Riverfront Plaza
Newark, New Jersey 07102
Counsel for Somerset Medical Center

RELATORS CAROL ASH AND KRISTIN PETERSEN

DATED: 1/30/14 BY: 
CAROL ASH

DATED: 7/25/14 BY: 
KRISTIN PETERSEN

DATED: 2/26/14 BY: 
JOHN E. RILEY
WILLIAM J. MURRAY, Jr.
Vaira & Riley, P.C.
1600 Market Street
Suite 2650
Philadelphia, PA 19103
Counsel for Carol Ash and Kristin Petersen