

SETTLEMENT AGREEMENT AND MUTUAL RELEASE

I

PARTIES

This Settlement Agreement and Mutual Release (the "Agreement") is entered into by and among Medi-Shield, Inc., a Florida corporation ("Medi-Shield"), Crown Ostomy, Inc., a Florida corporation ("Crown"), Nissim Institutional Providers, Inc., a California corporation ("Nissim"), Victory Health Care, Inc., an Illinois corporation ("Victory Illinois"), Victory Medical Supplies, Inc., a South Carolina corporation ("Victory South Carolina"), Howard M. Weiss, Martin J. Weiss and Mendel Duchman (all of the previously mentioned persons and entities are collectively referred to as the "Nissim Defendants"), Golden State Health Centers, Inc., a California corporation ("Golden State"), and David Weiss (Golden State and David Weiss are collectively referred to as the "Golden State Defendants" while the Nissim Defendants and the Golden State Defendants are collectively referred to as the "Defendants"), the United States of America ("United States"), and relator Geraldine Alderman (Geraldine Alderman is referred to herein as "Relator" or "Alderman"). The United States, Alderman, the Nissim Defendants and the Golden State Defendants are collectively referred to as the "Parties."

II

PREAMBLE

A. The United States contends that it has claims against the Defendants based on the submission of false Medicare

billings for adult urinary incontinent supplies, which included saline, syringes and lubricant that were billed to Medicare under Current Procedural Terminology ("CPT") Codes A4322, A4323 and A4402 between January 1, 1992 and December 31, 1994.

B. Alderman has filed a qui tam action, *United States of America, ex rel., Geraldine Alderman v. Howard M. Weiss; Martin J. Weiss; David Weiss; John C. Zarate; Mendel Duchman; Nissim Institutional Providers, Inc., A Corporation; Golden State Health Centers, Inc., A Corporation; Complete Medical Products, Inc., A Corporation; Complete Care, Inc., A Corporation; and Does 1 through 100, Inclusive*, case number 95-6734, in the United States District Court for the central District of California (the "Action"). In the Action, Alderman seeks damages for violation of the False Claims Act, 31 U.S.C. S 3729 et seq., from the Defendants and others.

C. Medi-Shield and Crown admit the allegations set forth in the criminal case styled United States v. Medi-Shield and Crown Ostomy in the Central District of California ("the criminal case"). Except as so admitted, the Defendants deny all other contentions of the United States and Alderman;

D. The Parties now desire to enter into this Agreement to avoid the uncertainty of litigation. This Agreement is executed by the Parties ~~for the~~ sole purpose of compromising and settling the matters specified herein, and it is expressly understood and agreed as a condition hereof that this Agreement shall not constitute or be construed as an admission by any party of the truth of any claims, causes of action, law or fact asserted by

any other party, non-party or third person.

### III

#### CIVIL DISPOSITION

1. The Court has subject matter jurisdiction pursuant to the False Claims Act, 31 U.S.C. § 3729 et seq., 28 U.S.C. § 1331 and 1345 and at common law.

2. The Court has personal jurisdiction over the Defendants pursuant to 31 U.S.C. § 3732(a). Each of the individual Defendants and certain of the corporate Defendants have resided and continue to reside within the Central District of California.

3. Venue is proper in the Central District of California pursuant to 31 U.S.C. § 3732(a) and 28 U.S.C. § 1391(b) and (c), since the cause of action arose in this district and each of the individual Defendants and certain of the corporate Defendants reside within the Central District of the State of California.

4. The Nissim Defendants shall pay the United States one million seven hundred and fifty thousand dollars (\$1,750,000) (the "Settlement Amount") as follows: five-hundred thousand dollars (\$500,000) no later than ten (10) days from the date of full execution of this Agreement; five-hundred thousand dollars (\$500,000) no later than forty (40) days from the date of full execution of this Agreement and the remaining seven-hundred and fifty thousand dollars (\$750,000) no later than seventy (70) days from the date of full execution of this Agreement. All sums unpaid after forty (40) days from the date of full execution of this agreement shall bear interest at the six-month

T-bill rate in effect on the fortieth day following execution. Payment of the Settlement Amount shall be made by wire transfers pursuant to written instructions to be provided by the United States.

5. Upon obtaining the express approval of the Court responsible for the criminal case, the Parties agree that any restitution, excluding all criminal fines, ordered in the criminal case shall be credited with all sums paid pursuant to this Agreement.

6. In entering into this Agreement, the United States has relied on Howard M. Weiss' financial statements and tax returns, the Nissim Industrial Providers, Inc. financial statement, and the Temple Clinical Industries, Inc.'s financial statement, all submitted under cover of the Nissim Defendants' July 16, 1997 letter to the United States' counsel. In addition, the United States wishes to take a debtor's exam of Howard Weiss for the purpose of verifying his current assets and liabilities. Howard Weiss agrees to submit to a debtor's exam, under oath, on or before November 17, 1997, waiving all rights to service and notice as otherwise provided for by the Federal Rules of Civil Procedure and the Local Rules for the United States District Court for the Central District of California. Counsel for Alderman may attend the debtor's exam. Before the debtor's exam commences, Howard Weiss may seek and obtain a protective order from the United States District Court of the Central District of California to protect the financial information disclosed during such exam from disclosure by the relator or her counsel. If

Howard Weiss' debtor's exam reveals the existence of a particular asset which he did not previously disclose and which has a value in excess of \$15,000, then the United States shall have the option of rescinding this Agreement. Similarly, if Howard Weiss' debtor exam reveals the existence of assets which he did not disclose on financial statements previously provided and which cumulatively have a value in excess of \$25,000, the United States shall have the option of rescinding this Agreement. Such options, if applicable, shall be exercised within ten (10) business days of the government's receipt of the transcript from the debtor's exam by delivery of a written notice to the Nissim Defendants' counsel.

7. If, following the ten (10) day period discussed in the immediately preceding paragraph, the United States discovers the existence of a particular asset with a value in excess of \$15,000 or assets with a cumulative value in excess of \$25,000 which were not disclosed on Howard Weiss' financial statements or his examination under oath, such non-disclosure shall constitute a breach of this Agreement. Any asset which was expressly disclosed on a financial statement previously provided to the government or in the examination under oath, does not constitute a non-disclosed asset. In the event of a non-disclosure, where Howard Weiss knew or should have known of the asset(s), Howard Weiss shall pay as damages to the United States twice the value of the non-disclosed asset(s), but in no event less than \$25,000. In the event of any other non-disclosure, Howard Weiss shall pay as damages to the United States the

amount of the non-disclosed asset or assets. The Parties agree that such sums are reasonable concerning all of the circumstances existing as of the date of this Agreement, including the relationship of the sums to the range of harm to the United States that could reasonably be anticipated and the anticipation that proof of actual damages would be costly or inconvenient. Howard Weiss further agrees that he will not argue or otherwise assert that such payment is a penalty.

8. In entering into this agreement, the United States has relied on the Nissim defendants' representations that between January 1, 1992 and the present, they made charitable contributions in the millions of dollars as represented on their tax returns and financial statements previously provided to the United States. The Nissim defendants represents that with respect to the charitable contributions made by Howard Weiss, Crown, Medi-Shield and Nissim between January 1, 1992 and December 31, 1994, none of the charitable entities to which they made any such charitable contribution has any agreement, understanding, promise, duty or is otherwise obligated or expected (whether obligated to or not) to return, pay, or donate any of these monies to Howard Weiss or his family, directly or indirectly, or to provide Howard Weiss or any member of his family with access to or control over any portion of these monies for personal use, or with any personal service in exchange for the donation.

9. Within five (5) business days of receipt of the full Settlement Payment by the United States, the Parties shall

execute and file a Notice of Intervention and Joint Stipulation of Dismissal in the form attached hereto as Exhibit A. The Joint Stipulation will request that the Court inter alia enter an order unsealing the Action (if it has not already been unsealed) and dismissing the Action with prejudice as to the Relator's claims against the Nissim defendants, and without prejudice as to the United States except that the claims that are released by the United States pursuant to this Agreement (i.e. the adult urinary incontinence supplies claims against the Nissim defendants set forth in the immediately following paragraph), and only those claims, shall be dismissed with prejudice as to the United States. If the Action has not already been unsealed, the Joint Stipulation will state that the United States declines to intervene as to all defendants other than the Nissim defendants and, as to all claims asserted in the Action that are not released pursuant to this Agreement.

10. Effective one hundred twenty-one (121) days following receipt of the Settlement Amount and except as otherwise provided herein, the United States hereby releases the Nissim Defendants, in their personal and derivative capacities, and their respective officers, directors, shareholders, agents, employees, representatives, successors and heirs, and each of them, from all civil monetary claims the United States has or may have under the False Claims Act, 31 U.S.C. S 3729 et seq., and at common law, to the extent that such actions and claims are based on the submission of false Medicare billings for adult urinary incontinent supplies which included saline, syringes and

lubricant that were billed to Medicare under Current Procedural Terminology ("CPT") Codes A4322, A4323 and A4402 between January 1, 1992 and December 31, 1994 and the alleged payment of kickbacks related thereto. The release by the United States of the Nissim Defendants set forth in this paragraph shall not include the release of (1) any claims arising under Title 26 (the Internal Revenue Code); (2) any claims arising from a breach of this Agreement; (3) any claims for personal or property injury, or for other consequential damages, arising from rendering medical services to patients, if any; and (4) any claims not expressly released herein.

11. Upon the effectiveness of the release referred to in the immediately preceding paragraph, the Nissim Defendants fully and finally release 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) which the Nissim Defendants have asserted, could have asserted, or may assert in the future against the United States, its agencies, employees, servants and agents, related to the Nissim Defendants' submission of claims relating to adult urinary incontinent supplies between January 1, 1992 and December 31, 1994.

12. The Defendants agree 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 et seq., and the regulations promulgated thereunder, incurred by or on behalf of the Defendants, in connection with



(1) the United States' investigation and the Defendants' investigations and defense of the matters covered by this Agreement; (2) the negotiation of this Agreement; (3) any corrective action undertaken by the Defendants in response to the United States' investigation in connection with the matters covered by this Agreement, including but not limited to the costs of implementing and monitoring the provisions any Corporate Integrity Agreement which any of them may enter; and (4) the payments made to the United States pursuant to this Agreement are unallowable costs for government contract accounting and for Medicare, Medicaid, CHAMPUS, VA and FEHBP reimbursement purposes. These unallowable costs shall be separately estimated and accounted for by the Defendants, and the Nissim Defendants will not charge such costs directly or indirectly to any contracts with the United States or any state Medicaid program, or to any cost report, cost statement, or payment request submitted by the Defendants or any of their subsidiaries to the Medicare, Medicaid, CHAMPUS, VA or FEHBP programs. The Defendants agree further that within 60 days from the date that all parties have signed this Agreement they will identify to applicable Medicare and CHAMPUS fiscal intermediaries, carriers and/or contractors, and Medicaid fiscal agents any unallowable costs (as defined in this paragraph) included in payments sought in any cost reports, cost statements or information reports already submitted by the Defendants or any of their subsidiaries, and will request that such cost reports, cost statements or payment requests, even if already

settled, be adjusted to account for the effect of the inclusion of the unallowable costs. Any payments due after the adjustments have been made shall be paid to the United States at 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 the Defendants or any of their subsidiaries on the effect of inclusion of unallowable costs (as defined in this paragraph) on the Defendants', or any of their subsidiaries' cost reports, cost statements or payment requests. Nothing in the Agreement shall constitute a waiver of the rights of the United States, or any Medicare or CHAMPUS fiscal intermediary, contractor, or any Medicaid fiscal agent, to examine or reexamine the unallowable costs described in this paragraph.

13. Any rescission by the United States pursuant to paragraph 7 of this Agreement shall be applicable to the United States and the Relator.

14. The Parties agree that the Settlement Agreement constitutes a debt as defined in 11 U.S.C. § 523(a) and is, therefore, a non-dischargeable debt in bankruptcy proceedings.

15. Alderman does not object to the settlement as set forth in this Agreement. The United States does not oppose the Relator's dismissal of unadopted claims with prejudice as to the Relator only and without prejudice as to the United States.

16. Nothing in the Agreement constitutes an agreement by the United States concerning the characterization of the amounts paid hereunder for purposes of any proceeding under Title 26 of

the Internal Revenue Code.

17. In the event of a voluntary or involuntary liquidation or reorganization brought by or against any of the Nissim Defendants under bankruptcy, receivership or other insolvency law, the Defendants agree not to contest or oppose any motion filed by the United States seeking relief from or modification of the automatic stay imposed by 11 U.S.C. § 105 to enjoin or restrain the United States from recovering monies owed by the Nissim Defendants arising out of this Agreement. The Nissim Defendants recognize that this express waiver is in consideration for the release of the claims set forth in this Agreement.

18. The executing parties to this Agreement are its sole intended beneficiaries and all rights not expressly released are reserved.

19. The United States and the Defendants will each bear all of their own attorneys' fees, costs and expenses.

20. This Agreement constitutes the complete agreement between the Parties with respect to the subject matter hereof. This Agreement may not be amended except by written consent of the Parties. The signature of each Party below represents that he or she has read and understands all provisions in this Agreement and authorized to execute this Agreement.

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

22. This Agreement is effective on the date of the

signature of the last signatory to the Agreement.

DATED: October 31, 1997

Howard M. Weiss  
HOWARD M. WEISS

DATED: October 31, 1997

MEDI-SHIELD, INC.  
By: Howard Weiss

Its: Owner

DATED: October 31, 1997

CROWN OSTOMY, INC.  
By: Howard Weiss

Its: Principal

DATED: October 31, 1997

NISSIM INSTITUTIONAL  
PROVIDERS, INC.  
By: Howard Weiss

Its: Principal

DATED: October 31, 1997

VICTORY HEALTH CARE, INC.  
By: Howard Weiss

Its: Principal

DATED: October 31, 1997

VICTORY MEDICAL SUPPLIES,  
INC.  
By: Howard Weiss

Its: Principal

DATED: October \_\_, 1997

MENDEL DUCHMAN  
MENDEL DUCHMAN

DATED: October 31, 1997

*Robert J. Weiss*  
*by [signature] - oldy in part*  
MARTIN J. WEISS

DATED: October 31, 1997

*David Weiss*  
*by [signature] - oldy in part*  
DAVID WEISS

DATED: October 31, 1997

GOLDEN STATE HEALTH CENTERS,  
INC.

By: *[Signature]*

Its: *[Signature]*

DATED: October 3, 1997

NORA M. MANELLA  
United States Attorney  
LEON W. WEIDMAN  
Assistant United States Attorney  
Chief, Civil Division  
HOWARD F. DANIELS  
Assistant United States Attorney  
Chief, Civil Fraud Section  
CONSUELO S. WOODHEAD  
Assistant United States Attorney

By: \_\_\_\_\_  
Consuelo S. Woodhead  
Assistant United States Attorney  
Deputy Chief, Civil Fraud Section  
Attorneys for Plaintiff

*November*  
DATED: October 05, 1997  
*[Signature]*

*[Signature]*  
GERALDINE ALDERMAN

APPROVED AS TO FORM AND CONTENT:

DATED: October 31, 1997

BIRD, MARELLA, BOXER, WOLPERT  
& MATZ, A Professional  
Corporation

By: *[Signature]*  
RONALD J. NESSIM *by [signature]*  
Attorneys for Howard M.  
Weiss, Medi-Shield, Inc.,  
Crown Ostomy, Inc., Nissim  
Institutional Providers,  
Inc., Victory Health Care,  
Inc., Victory Medical

Supplies, Inc. and Imperial  
Medical Supply, Inc.

DATED: October \_\_, 1997

TALCOTT, LIGHTFOOT, VANDEVELDE,  
WOEHRLE & SADOWSKY

By: \_\_\_\_\_  
JOHN D. VANDEVELDE  
Attorneys for Mendel Duchman

DATED: October 31, 1997

IRELL & MANELLA

By: B. J. Hennigan  
BRIAN J. HENNIGAN  
Attorneys for Golden State  
Health Centers, Inc.,  
Martin J. Weiss and David  
Weiss

DATED: November 5  
~~OCTOBER~~ \_\_, 1997

WILLIAM R. RAMSEY  
A Professional Law Corporation

By: William R. Ramsey  
WILLIAM R. RAMSEY  
Attorneys for Relator  
Geraldine Alderman

Supplies, Inc. and Imperial  
Medical Supply, Inc.

*JW*  
DATED: ~~October~~ *November 3*, 1997

TALCOTT, LIGHTFOOT, VANDELDELDE,  
WOEHRLE & SADOWSKY

By:   
JOHN D. VANDELDELDE  
Attorneys for Mendel Duchman

DATED: October \_\_, 1997

IRELL & MANELLA

By: \_\_\_\_\_  
BRIAN J. HENNIGAN  
Attorneys for Golden State  
Health Centers, Inc.,  
Martin J. Weiss and David  
Weiss

DATED: October \_\_, 1997

WILLIAM R. RAMSEY  
A Professional Law Corporation

By: \_\_\_\_\_  
WILLIAM R. RAMSEY  
Attorneys for Relator  
Geraldine Alderman

DATED: October 31, 1997

*Martin J. Weiss*  
*by P. [unclear] - ally injured*

MARTIN J. WEISS

DATED: October 31, 1997

*David Weiss*  
*by [unclear] - attorney injured*

DAVID WEISS

DATED: October 31, 1997

GOLDEN STATE HEALTH CENTERS,  
INC.

By:

*[Signature]*

Its:

*V. S. Pres.*

*November 20*  
DATED: October 3, 1997

NORA M. MANELLA  
United States Attorney  
LEON W. WEIDMAN  
Assistant United States Attorney  
Chief, Civil Division  
HOWARD F. DANIELS  
Assistant United States Attorney  
Chief, Civil Fraud Section  
CONSUELO S. WOODHEAD  
Assistant United States Attorney

By:

*[Signature]*

Consuelo S. Woodhead  
Assistant United States Attorney  
Deputy Chief, Civil Fraud Section  
Attorneys for Plaintiff

DATED: October \_\_, 1997

GERALDINE ALDERMAN

APPROVED AS TO FORM AND CONTENT:

DATED: October 31, 1997

BIRD, MARELLA, BOXER, WOLPERT  
& MATZ, A Professional  
Corporation

By:

*Ronald J. Nessim*

RONALD J. NESSIM *BY*  
Attorneys for Howard M.  
Weiss, Medi-Shield, Inc.,  
Crown Ostomy, Inc., Nissim  
Institutional Providers,  
Inc., Victory Health Care,  
Inc., Victory Medical



signature of the last signatory to the Agreement.

DATED: October \_\_, 1997

\_\_\_\_\_  
HOWARD M. WEISS

DATED: October \_\_, 1997

MEDI-SHIELD, INC.

By: \_\_\_\_\_

Its: \_\_\_\_\_

DATED: October \_\_, 1997

CROWN OSTOMY, INC.

By: \_\_\_\_\_

Its: \_\_\_\_\_

DATED: October \_\_, 1997

NISSIM INSTITUTIONAL PROVIDERS, INC.

By: \_\_\_\_\_

Its: \_\_\_\_\_

DATED: October \_\_, 1997

VICTORY HEALTH CARE, INC.

By: \_\_\_\_\_

Its: \_\_\_\_\_

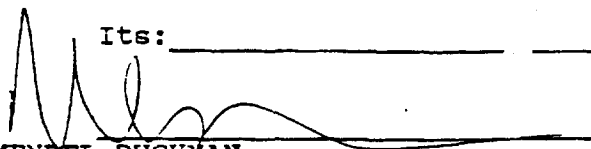
DATED: October \_\_, 1997

VICTORY MEDICAL SUPPLIES, INC.

By: \_\_\_\_\_

Its: \_\_\_\_\_

*NOVEMBER*  
DATED: ~~October~~ *AD* \_\_, 1997

  
\_\_\_\_\_  
MENDEL DUCHMAN