

SETTLEMENT AGREEMENT

I. PARTIES

This Settlement Agreement ("Agreement") is made between 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 Dirk Richmond ("Relator"), and St. Anthony's Memorial Hospital ("St. Anthony's") (collectively the "Parties").

II. PREAMBLE

A. WHEREAS, St. Anthony's is a licensed Medicare provider. Beginning in 1992, St. Anthony's submitted HCFA Form 838, Medicare Credit Balance Report, on a quarterly basis to its designated Medicare intermediary.

B. WHEREAS, relator Dirk Richmond filed a *qui tam* suit against St. Anthony's in the United States District Court for the Southern District of Illinois in July 1995, styled *United States ex rel. Richmond v. St. Anthony's Memorial Hospital*, No. 95-4160 (S.D. Ill.). The United States intervened in part as to Count One in the Amended Complaint and declined as to Counts II through IV. This Agreement addresses the United States' civil claims against St. Anthony's based on the conduct alleged in Count One of the Amended Complaint filed by the Relator, as well as the Relator's claims in the Amended Complaint.

C. WHEREAS, the United States alleges that the conduct described in Count One, the submission of thirteen allegedly false Medicare Credit Balance Reports, resulted in the submission of false claims actionable under the False Claims Act, 31 U.S.C. §§ 3729-3733, to the Medicare program.

D. WHEREAS, St. Anthony's denies the contentions of the United States in

Paragraph C above and the Relator's allegations in the Amended Complaint; and

E. WHEREAS, the Parties mutually desire to settle these disputes.

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. Settlement Amount. St. Anthony's agrees to pay the United States the sum of two-hundred twenty eight thousand, five hundred dollars (\$228,500) (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. Dismissal by the United States. In consideration for this Agreement and payment set forth herein, the United States agrees to abide by the July 16, 1997 Order of the Court dismissing Count One with prejudice as to the Relator and the United States, and dismissing Counts II-IV with prejudice as to the Relator and without prejudice as to the United States, and hereby releases St. Anthony's and any of its current and former shareholders, officers, directors, employees, parents, subsidiaries, predecessors, and successors, from any civil or administrative monetary claims (including recoupment claims) that the United States has or may have under the False Claims Act, 31 U.S.C. §§ 3729-3733, the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801-3812; the Civil Monetary Penalties Law, 42 U.S.C. § 1320a-7a, for St. Anthony's' alleged conduct and submission of claims as described in Count

- (a) Counts II, III and/or IV of the Amended Complaint lack merit; or
- (b) the allegations contained in Counts II, III and/or IV of the Amended Complaint did not benefit the Government.

7. Relator's Share. Pursuant to 31 U.S.C. § 3730, the United States will pay Relator's share, in the amount of \$45,700, within a reasonable time after the United States' receipt of payment from St. Anthony's. The United States shall not be obligated to pay Relator unless and until the United States receives payment from St. Anthony's.

8. Waiver by Relator. In exchange for the United States' payment to Relator of the above-noted share, Relator agrees to relinquish any and all claims he might bring against the United States, relating to this action against St. Anthony's, or this Agreement, including claims under 31 U.S.C. § 3730(d).

9. Exceptions to the Release Notwithstanding any term of this Agreement, specifically reserved and excluded from the scope and terms of the release and Agreement are any and all:

- a. Claims that may arise under Title 26, United States Code, Internal Revenue Code, or Internal Revenue Service regulations or under securities laws;
- b. Claims for defective or deficient services;
- c. Claims relating to obligations created by this Agreement;
- d. Claims of the United States contained in Counts II-IV of the Amended Complaint; and
- e. Claims of the Relator for reasonable expenses, including attorneys' fees

and costs, pursuant to 31 U.S.C. § 3730(d);

- f. Claims for any action seeking exclusion from the Medicare program or Federal health programs (as defined in Title 42 U.S.C. 1320a-7b(6)(f)) pursuant to 42 U.S.C. § 1320a-7(a) (mandatory exclusion).

10. Order of Dismissal. Concurrent with the execution of the Agreement, the Parties agree to abide by the order of the Court dismissing Count One with prejudice as to the Relator and the United States, and dismissing Counts II-IV with prejudice as to the Relator and without prejudice as to the United States. The Parties agree that the Court retains jurisdiction to enforce the terms of the Agreement.

11. Release by Relator. In consideration of the mutual promises and obligations of this Agreement, and in consideration of the matters set forth in the Mutual Release, Warranties and Representations dated October 16, 1997 ("Release"), Relator and St. Anthony's have executed the Release releasing one another from any and all claims that may arise under or relate to any of the allegations in the Amended Complaint and Paragraph C of this Agreement, except for Relator's claims for reasonable expenses, including attorneys' fees and costs, pursuant to 31 U.S.C. § 3730(d).

12. 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 St. Anthony's 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 St. Anthony's' investigation, defense and corrective

actions with respect to matters specifically covered by this Agreement, including the implementation of the Corporate Integrity 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. St. Anthony's 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 St. Anthony's to the United States for payments made to St. Anthony's by Medicare and/or Medicaid (federal share) for costs that are unallowable (as defined in this paragraph) shall be paid by St. Anthony's to HHS at HHS' direction.

13. Waiver of Double Jeopardy Defense. With respect to the conduct alleged in Count One of the Amended Complaint and in Paragraph C of this Agreement, St. Anthony's hereby waives any defenses it 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 agrees not to argue that the amounts paid under this Agreement are punitive in nature or effect in any such criminal prosecution. Nothing in this Paragraph or any other provision of this 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.

14. 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 Southern District of Illinois.

15. Effect of Agreement. The Parties agree that no provision of this Agreement, nor any consideration exchanged pursuant to this Agreement, constitutes an admission by any person or entity with respect to any issue of law or fact.

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

17. Entire Agreement. This Agreement 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 hereto. No other additional promises, conditions or agreements have been entered into other than those stated in this Agreement.

18. Effective Date. This Agreement shall be effective on the date of signing by all the parties.

19. Execution. This Agreement is executed in four counterparts, each of which shall constitute an original and all of which shall constitute one and the same Agreement.

UNITED STATES OF AMERICA

Dated: _____

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

L Morris

Dated: 10/14/97

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: _____

Ronald E. Osman
Timothy Keller
Ronald E. Osman & Associates, Ltd.
Attorneys for Relator

St. Anthony's Memorial Hospital

Dated: _____

UNITED STATES OF AMERICA

Laurie A. Oberembt Dated: _____
LAURIE A. OBEREMBT
Trial Attorney
Civil Division
United States Department of Justice

Signed original on 10/10/97
Signed this copy on 11/6/97

_____ 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

Timothy Keller Dated: _____
Ronald E. Osman
Timothy Keller
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St. Anthony's Memorial Hospital

R. Wildern Dated: 10-14-97
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