

SETTLEMENT AGREEMENT

I. PARTIES

This Settlement Agreement ("Agreement") is entered into between 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 VillaView Community Hospital, Inc. ("VillaView") (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. VillaView is a California non-profit public benefit corporation that owns and operates a community hospital which provides health care services. At all times relevant to this Agreement, VillaView submitted claims to the Medicare Program ("Medicare"), Title XVIII of the Social Security Act, 42 U.S.C. §§ 1395-1395ggg, for reimbursement of services provided to Medicare beneficiaries.

B. The United States contends that, during the period September 1, 1994, through April 30, 1997, VillaView submitted or caused to be submitted claims for payment to the Medicare program which were false in that the Medicare beneficiaries to whom VillaView provided the health care services were referred to

VillaView as the result of illegal remuneration paid to a third party in violation of the Medicare Anti-Kickback statute, 42 U.S.C. § 1320a-7b(b) ("the Covered Conduct").

C. The United States contends that it has certain civil claims against VillaView under the False Claims Act, 31 U.S.C. §§ 3729-3733 ("the Act"), other federal statutes and/or common law doctrines, for the false claims referenced in paragraph B above.

D. The United States also contends that it has certain administrative claims against VillaView under the provisions for permissive exclusion from the Medicare, Medicaid and other federal health care programs, 42 U.S.C. § 1320a-7(b), and the provisions for civil monetary penalties, 42 U.S.C. § 1320a-7a, for the Covered Conduct.

E. On or about June 21, 1996, James Moore ("Relator") filed an action pursuant to the *qui tam* provisions of the Act in the United States District Court for the Southern District of California, United States ex rel. Moore v. VillaView Community Hospital, Inc., et al., Civ. No. 96-1126-BTM (AJB) (S.D. Cal.) ("the *qui tam* action"), alleging violation of the Act by VillaView and others for, *inter alia*, the violation of the Medicare Anti-Kickback statute, as alleged in paragraph B above.

F. VillaView disputes and denies the contentions of the United States as set forth in Paragraphs B through E, above.

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:

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1. VillaView agrees to pay to the United States the sum of \$51,000 (the "Settlement Amount"). Payment shall be made within ten business days by electronic funds transfer pursuant to written instructions provided by the United States Attorney's Office for the Southern District of California, receipt of which instructions is hereby acknowledged.

2. In consideration of the obligations of VillaView set forth in this Agreement, conditioned upon the ~~XXXXXX~~ ^{VillaView's} payment in full of the Settlement Amount, and subject to Paragraph ~~11~~ ¹¹ below (concerning bankruptcy proceedings commenced within 91 days of the effective date of this Agreement), the United States (on behalf of itself, its officers, agents, agencies and departments) agrees to release VillaView from any civil or administrative monetary claims the United States has or may have against VillaView under the False Claims Act, 31 U.S.C. §§ 3729-3733; the Civil Monetary Penalties

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Law, 42 U.S.C. § 1320a-7a; any other statute creating causes of action for civil damages or civil penalties which the Civil Division of the United States Department of Justice has actual and present authority to assert and compromise pursuant to 28 C.F.R. Part 0, Subpart I, § 0.45(d), and the common law theories of payment by mistake, unjust enrichment, breach of contract and fraud, for the Covered Conduct. The United States further agrees that it will cause to be filed with the Court a dismissal with prejudice of the *qui tam* action as to VillaView.

3. In consideration of the obligations of VillaView set forth in this Agreement, conditioned upon VillaView's payment in full of the Settlement Amount, and subject to Paragraph 11 below (concerning bankruptcy proceedings commenced within 91 days of the effective date of this Agreement), the OIG-HHS agrees to release and refrain from instituting, directing or maintaining any administrative claim or any action seeking exclusion from the Medicare, Medicaid or other Federal health care programs (as defined in 42 U.S.C. § 1320a-7b(f)) against VillaView under 42 U.S.C. § 1320a-7a (Civil Monetary Penalties Law), or 42 U.S.C. § 1320a-7(b) (permissive exclusion), for the Covered Conduct, except as reserved in Paragraph 4 below, and as reserved in this Paragraph. The OIG-HHS expressly reserves all rights to comply with any statutory obligations to exclude VillaView from the

Medicare, Medicaid or other Federal health care programs under 42 U.S.C. Section 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 civil 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 VillaView) are any and all of the following:

(1) Any civil, criminal or administrative claims arising under Title 26, U.S. Code (Internal Revenue Code);

(2) Any criminal liability;

(3) Except as explicitly stated in this Agreement, any administrative liability, including mandatory exclusion from Federal health care programs;

(4) Any liability to the United States (or its agencies) for any conduct other than the Covered Conduct;

(5) Any claims based upon such obligations as are created by this Agreement;

(6) Any express or implied warranty claims or other claims for defective or deficient products or services, including quality of goods and services, provided by VillaView;

(7) Any claims for personal injury or property damage or for other consequential damages arising from the Covered Conduct;

(8) Any claims based on a failure to deliver items or services due; and

(9) Any claims against any individuals, including officers and employees.

5. VillaView has entered into a Corporate Integrity Agreement with HHS, attached hereto as Exhibit A, which is incorporated into this Agreement by reference. VillaView will immediately upon execution of this Agreement implement its obligations under the Corporate Integrity Agreement.

6. VillaView waives and will not assert any defenses VillaView may have to any criminal prosecution or administrative action relating to the Covered Conduct, which defenses may be based in whole or in part on the Double Jeopardy or Excessive Fines Clause of the Constitution or the holding or principles set forth in *United States v. Halper*, 490 U.S. 435 (1989), and *Austin v. United States*, 113 S. Ct. 2801 (1993), and agrees that the Settlement Amount is not punitive in nature or effect. 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.

7. VillaView fully and finally releases the United States, its agencies, employees, servants, and agents from any claims (including attorneys fees, costs, and expenses of every kind and however denominated) which VillaView 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.

8. The Settlement Amount that VillaView must pay pursuant to this Agreement by electronic wire transfer pursuant to Paragraph 1 above, will 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 VillaView 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.

9. VillaView agrees 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. §§ 1395-1395ggg (1997) and 1396-1396v(1997), and the regulations promulgated

thereunder) incurred by or on behalf of VillaView in connection with: (1) the matters covered by this Agreement, (2) the Government's audit and civil and any criminal investigation of the matters covered by this Agreement, (3) VillaView's investigation, defense, and corrective actions undertaken in response to the Government's audit and civil and any criminal investigation in connection with the matters covered by this Agreement (including attorney's fees and the corporate integrity agreement attached hereto as Exhibit A), (4) the negotiation of this Agreement, and (5) the payment made pursuant to this Agreement, are unallowable costs on Government contracts and under the Medicare Program and Medicaid Program (hereafter, "unallowable costs"). These unallowable costs will be separately estimated and accounted for by VillaView, and the Hospital will 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 VillaView or any of its subsidiaries to the Medicare or Medicaid programs.

VillaView further agrees that within 60 days of the effective date of this Agreement it will identify to applicable Medicare carrier and Medicaid 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 VillaView or any of its subsidiaries, and will 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. VillaView agrees that the United States will be entitled to recoup from VillaView any overpayment 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 VillaView or any of its subsidiaries on the effect of inclusion of unallowable costs (as defined in this paragraph) on VillaView's or any of its subsidiaries' cost reports, cost statements or information reports. Nothing in this Agreement shall constitute a waiver of the rights of the United States to examine or reexamine the unallowable costs described in this Paragraph.

~~This paragraph does not include within its scope any payments made to KIA, Inc.~~

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10. This Agreement is intended to be for the benefit of the Parties only, and by this instrument the Parties do not release any claims against any other person or entity.

11. In the event VillaView commences, or a thirty party commences, within 91 calendar days of the effective date of this Agreement, any case, proceeding, or other action (a) under any law relating to bankruptcy, insolvency, reorganization or relief of debtors, seeking to have any order for relief of the Hospital's debts, or seeking to adjudicate the Hospital as bankrupt or insolvent, or (b) seeking appointment of a receiver, trustee, custodian or other similar official for the Hospital or for all or any substantial part of the Hospital's assets, the Hospital agrees as follows:

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

b. In the event that VillaView's obligations hereunder are avoided pursuant to 11 U.S.C. Section 547, 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 VillaView for the claims that would otherwise be covered by the releases provided in Paragraphs 2 and 3, above. If the United States chooses to do so, VillaView agrees that (i) any such claims, actions or proceedings brought by the United States (including any proceedings to exclude VillaView from participation in Medicare, Medicaid, or other federal health care programs) are not subject to an "automatic stay" pursuant to 11 U.S.C. Section 362(a) as a result of the action, case or proceeding described in the first clause of this Paragraph, and that VillaView will not argue or otherwise contend that the United States' claims, actions or proceedings are subject to an automatic stay; (ii) that VillaView will 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 which are brought by the United States within 90 calendar days of written notification to VillaView that the releases herein have been rescinded pursuant to this Paragraph, except to the extent such defenses were available on June 21, 1996; and (iii) the United States has a valid claim against VillaView in

the amount of \$165,500, and the United States may pursue its claim, inter alia, 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. VillaView acknowledges that its agreements in this Paragraph are provided in exchange for valuable consideration provided in this Agreement.

12. Each party to this Agreement will bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

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

14. 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 will be the United States District Court for the Southern District of California.

15. This Agreement and the Corporate Integrity Agreement attached hereto as Exhibit A constitute the complete agreement between the Parties. This Agreement may not be amended except by written consent of the Parties, except that only VillaView and OIG-

HHS must agree in writing to modification of the Corporate Integrity Agreement.

16. The undersigned individuals signing this Agreement on behalf of VillaView represent and warrant that they are authorized by VillaView to execute this Agreement. The undersigned United States signatories represent that they are signing this Agreement in their official capacities and that they are authorized to execute this Agreement.

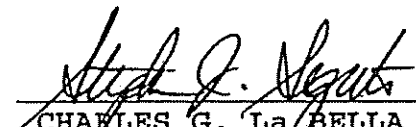
17. This Agreement may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same agreement.

18. This Agreement is effective on the date of signature of the last signatory to the Agreement.

THE UNITED STATES OF AMERICA

DATED: 2.25.99

BY:



CHARLES G. La BELLA
United States Attorney
STEPHEN J. SEGRETO
Assistant U.S. Attorney
Office of the U.S. Attorney
Southern District of California

SIGNATURES CONTINUE NEXT PAGE

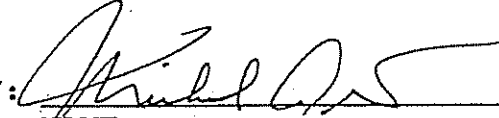
DATED: 3/12/99

BY: 

LEWIS MORRIS
Assistant Inspector General
Office of Counsel to the
Inspector General
Office of Inspector General
United States Department of
Health and Human Services

VillaView COMMUNITY HOSPITAL, INC.

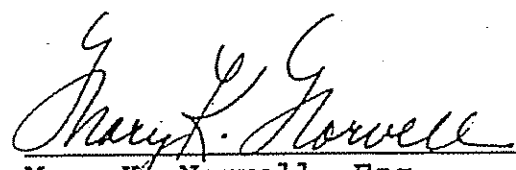
DATED: 2/24/99

BY: 

NAME Michael Santos
Title Chairman, Board of Directors

APPROVED AS TO FORM AND CONTENT:

DATED: 7/23/99

BY: 

Mary K. Norvell, Esq.
Foley & Lardner
Counsel for VillaView