

CONFIDENTIAL SETTLEMENT AGREEMENT

This Confidential Settlement Agreement ("Agreement") is made and entered into between CGH MEDICAL CENTER, an Illinois not-for-profit corporation ("CGH"), and DR. DAVID PETERSON ("Peterson") (each a "Party" and collectively, the "Parties").

RECITALS

WHEREAS, on or about October 1, 2001, Peterson filed a civil action (the "Action") under seal as a relator under the *qui tam* provisions of the False Claims Act, 31 U.S.C. §§ 3729-3733, in the United States District Court of the Northern District of Illinois (W. Div., No. 01 C 50356) against CGH and other defendants alleging that CGH submitted Medicare claims to the federal government in violation of the Stark Law, 42 U.S.C. §§ 1395nn *et seq.*;

WHEREAS, on or about April 25, 2002, the Court lifted the seal on the Action and ordered Peterson to serve the original complaint on CGH and the other defendants;

WHEREAS, on or about June 3, 2002, Peterson caused a copy of the original complaint to be served on CGH;

WHEREAS, Peterson withdrew the original Complaint and filed an Amended Complaint on October 2, 2002, containing similar allegations, and CGH thereafter filed a motion to dismiss the Amended Complaint;

WHEREAS, on February 7, 2003, the Court entered a Memorandum Opinion and Order granting CGH's motion to dismiss the Amended Complaint and allowing Peterson leave to file a second amended complaint consistent with that opinion;

WHEREAS, on February 28, 2003, Peterson filed a Second Amended Complaint in an attempt to cure the deficiencies with the Amended Complaint, and CGH filed a subsequent motion

to dismiss Peterson's Second Amended Complaint on May 6, 2003;

WHEREAS, CGH specifically denies all of Peterson's allegations in the Complaint, Amended Complaint and Second Amended Complaint and further denies that it has engaged in any wrongful conduct under the False Claims Act, the Stark Law, or any other laws or regulations governing, *inter alia*, the recruitment or employment of physicians, or the provision of designated health services to Medicare eligible patients; and

WHEREAS, to avoid protracted, expensive and unnecessary litigation, the Parties have agreed to fully compromise and settle all disputes and claims that were, or could have been, raised between or among the Parties, including, but not limited to, those that are based on, arise out of, relate to, or are in any manner connected with the Action, exclusively on the terms and conditions set forth in this Agreement, without any admission of liability or wrongdoing by the Parties.

WHEREFORE, in consideration of the mutual promises and covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by all parties, the Parties agree, and intend to be bound as follows:

1. The Parties shall keep all terms and conditions of this Agreement in strict confidence and shall not disclose the terms and conditions of this Agreement, including without limitation, the Settlement Payment or any range of the Settlement Payment (e.g., \$40,000 to \$100,000), to any person or entity, excluding the United States or as otherwise specifically permitted in paragraph 2 below. The Parties may, however, solely in response to a specific request, disclose that the Parties have compromised their differences and that the Action has been settled amicably. Violation of these conditions may subject the disclosing Party to sanctions by the Court. As the United States is not a party to this Agreement, the United States is not bound by any confidentiality

provisions.

2. The confidential nature of this Agreement shall not bar any Party from making any required disclosures to their respective attorneys, accountants, auditors, insurers or to any federal, state or local taxing authority, or otherwise as specifically mandated by law, and the Parties each agree to permit one another to make all such necessary disclosures. Furthermore, in the event that a Party receives a request (e.g., subpoena) for a copy of the Agreement or to disclose any of the information contained herein, the Party shall, within three (3) days after receiving said request, notify the other Party of the request, at the addresses for receipt of notice set forth below, in order to allow the other Party an opportunity to assert any objections to such disclosure and to seek a protective order or other form of limiting relief in order to preserve the confidential nature of this Agreement.

3. Peterson, on his behalf, and on behalf of his heirs, agents, assigns, attorneys, representatives, and anyone claiming any interest through him, hereby releases and forever discharges CGH, any and all physicians identified in the Second Amended Complaint, any and all physicians with whom CGH has had a relationship of any kind, and CGH's current and former officers, directors, executives, employees, agents, representatives, subsidiaries, divisions, affiliates, receivers, assigns, successors, predecessors, and anyone claiming any interest through them, from any and all claims, demands, rights, duties, obligations, debts, liabilities, damages, penalties, injuries, actions or causes of action of every kind or nature, from the beginning of the world to the Effective Date of this Agreement, whether contingent or actual, liquidated or unliquidated, personal or derivative, accrued or unaccrued, discovered or undiscovered, asserted or unasserted, including, but not limited to those that are based on, arise out of, relate to, or are in any manner connected with (a)

the Action, (b) CGH's recruitment or employment of physicians, or (c) the submission of any and all claims for payment by CGH to any federal or state government authority.

4. Peterson releases the United States from any claims arising from or relating to 31 U.S.C. § 3730 in connection with this Civil Action, or arising from the filing of the Civil Action, including 31 U.S.C. §§ 3730(b), (c)(5), (d), and (d)(1) in connection with this Civil Action. Peterson hereby confirms that this Agreement is fair, adequate, and reasonable under all the circumstances, pursuant to 31 U.S.C. §3730(c)(2)(B).

5. The releases set forth in Paragraphs 3 and 4 above shall only become effective upon the entry of the Stipulation of Dismissal referenced in Paragraph 7 below. The Stipulation of Dismissal and the Agreement provide that the claims are to be settled and dismissed without prejudice to any claims the United States may have against CGH, including but not limited to claims arising from the Internal Revenue Code or from suspension or debarment action by any United States government agency.

6. Within five (5) business days after the Parties have executed the Agreement, Peterson shall file a Stipulation of Dismissal (the "Stipulation") pursuant to Rule 41(a)(1)(ii) of the Federal Rules of Civil Procedure with the United States District Court for the Northern District of Illinois, Western Division. Before filing the Stipulation, Peterson shall send a draft of the Stipulation to CGH's counsel and the United States for approval.

7. The Stipulation shall dismiss all claims asserted in the Action against CGH and shall further provide that: (a) the dismissal of Peterson's claims against CGH is with prejudice to Peterson and without prejudice to the United States; (b) the United States intends to file a consent to the dismissal of all claims against CGH without prejudice to the United States and with prejudice to

Peterson, as relator; and (c) the Court shall retain jurisdiction to enforce the terms and conditions of this Agreement. Furthermore, the Stipulation shall also include the following language:

To the extent that any party to this Action has received any protected health information ("PHI"), as defined in the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. 1320d-1329-8) and its implementing regulations (45 C.F.R. Parts 160-164), the party confirms that it (a) has not used or disclosed the PHI for any purpose other than in the Action, and (b) will return any and all PHI to CGH, or certify in writing to CGH that any PHI has been destroyed within five (5) days after the entry of this Stipulation. Violation of this paragraph may subject the disclosing party to sanctions by the Court.

8. CGH shall pay the aggregate sum of Fifty-Five Thousand dollars (\$55,000.00) (the "Settlement Payment"), apportioned as follows: Peterson shall receive the total sum of Thirteen Thousand Seven Hundred Fifty dollars (\$13,750.00) and the United States shall receive the total sum of Forty-One Thousand Two Hundred Fifty dollars (\$41,250.00) (the "Apportionment"). Peterson's respective share of the Settlement Payment shall include any reasonable expenses necessarily incurred, plus reasonable attorneys' fees and costs pursuant to 31 U.S.C. § 3730(d)(2). CGH shall send the respective shares of the Settlement Payment to Peterson (c/o George P. Hampilos, Esq.) and the United States within five (5) business days after entry of the Stipulation referenced in paragraph 7 above.

9. The respective shares of the Settlement Payment shall be made by check payable to the order of David Peterson (c/o George P. Hampilos, Esq.) and the United States by First Class U.S. mail or overnight courier. If payment is requested via wire transfer, Peterson or the United States shall provide written instructions to CGH's counsel at least five (5) days before the Settlement Payment is due.

10. Peterson shall not voluntarily cooperate, assist, or aid in any way, directly or indirectly,

in the formulation or prosecution of any claim or possible claim by any person or entity (except the United States) against CGH, or in any such action that may adversely impact CGH, relating to the allegations made in the Action. Voluntary cooperation, assistance or aid shall include, without limitation, providing information, sources of information, documents, statements or testimony, whether oral or written, to any person or entity (except the United States), including their attorneys, or assisting or inducing any other such person or entity to provide such information, other than as provided by law. Violation of this paragraph may subject Peterson to sanctions by the Court.

11. CGH agrees to the following:

(a) Unallowable Costs Defined: that all costs (as defined in the Federal Acquisition Regulations (FAR) 48 C.F.R. § 31.205-47 and in Titles XVIII and XIX of the Social Security Act, 42 U.S.C. §§ 1395-1395ggg and 1396-1396v, and the regulations and official program directives promulgated thereunder) incurred by or on behalf of CGH, its present or former officers, directors, employees, shareholders, and agents in connection with the following shall be "unallowable costs":

- (1) the matters covered by this Agreement;
- (2) the United States' audit(s) and civil investigation(s) of the matters covered by this Agreement,
- (3) CGH's investigation, defense, and corrective actions undertaken in response to the United States' audit(s) and civil investigation(s) in connection with the matters covered by this Agreement (including attorney's fees),
- (4) the negotiation and performance of this Agreement, and
- (5) the payment CGH makes to the United States pursuant to this

Agreement and any payments that CGH may make to Peterson, including costs and attorneys' fees.

All costs described or set forth in this Paragraph are hereafter, "unallowable costs."

(b) Future Treatment of Unallowable Costs: These unallowable costs will be separately determined and accounted for in non-reimbursable cost centers by CGH, and CGH 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 CGH or any of its subsidiaries to the Medicare, Medicaid, TRICARE, or FEHBP Programs.

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

12. This Agreement is a compromise of a disputed claim and neither this Agreement nor any representation made in it, or exchange of any consideration made by virtue of it, shall be construed as admitting the merit or lack of merit of any claim or defense, whether asserted or unasserted, that is based on, arises out of, relates to, or is in any manner connected with the Action.

13. Whenever possible, each provision of this Agreement shall be interpreted in such a manner as to be valid under applicable laws, but if any provision of this Agreement shall be held to be prohibited by or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity without invalidating the remainder of such provision or the remaining provisions of this Agreement.

14. This Agreement shall be construed as a whole and shall not be construed strictly for or against any of the Parties.

15. This Agreement constitutes the entire understanding between the Parties with respect to the subject matter hereof, supersedes any and all prior or contemporaneous written or oral agreements between or among the Parties, and may not be modified in any manner, except by an instrument in writing signed by the Parties.

16. This Agreement is binding upon and inures to the benefit of each Party to this Agreement. This Agreement may not be assigned or transferred by any Party under any circumstances, except upon the written consent of all Parties.

17. Any notice required or desired to be given hereunder shall, unless otherwise specified, be sufficient if in writing and directed to the following persons:

If to CGH, to:

Jonathan Feld, Esq.
Jenny Johnson, Esq.
Katten, Muchin, Zavis, Rosenman
525 West Monroe Street, Suite 1600
Chicago, IL 60661-3693
Tel. (312) 902-5200
Fax. (312) 902-1061

If to Peterson, to:

George Hampilos, Esq.
Schirger, Monteleone & Hampilos, P.C.
308 West State Street, #M4
Rockford, IL 61101
Tel. (815) 962-0044
Fax. (815) 962-6250

If to the United States:

Laurie Oberembt, Esq.
Department of Justice
Civil Division / Fraud Section
601 D. Street, N.W., Room 6532
Washington, D.C. 20530

or to such other address as the addressee may have specified in a notice fully given to the sender as provided herein.

18. Each of the undersigned warrants and represents that he or she has read this Agreement

and has been fully informed and have full knowledge of its terms, conditions and effects, and each has, either personally or through their attorneys, fully investigated to their full satisfaction the facts surrounding the various claims, controversies and disputes relating to the Action, and understand and are fully satisfied with the terms and effects of this Agreement which is contractually binding. The Parties agree that no promise or inducement has been offered or made except as set forth herein, and that this Agreement is executed of their free act and deed without reliance on any statement or representation except as set forth herein.

19. Each of the undersigned warrants that he or she has full right, title, power and authority to execute this Agreement and to release the claims herein released.

20. This Agreement may be simultaneously executed in two or more counterparts, each of which so executed shall be deemed to be an original; and such counterparts together shall constitute a single agreement.

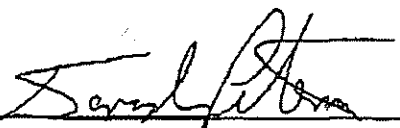
21. The Effective Date of this Agreement shall be the date on which the Stipulation is entered.

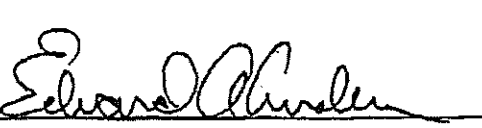
22. All parties consent to the United States' disclosure of this Agreement, and information about this Agreement, to the public.

AGREED AND ACCEPTED:

DAVID PETERSON

CGH MEDICAL CENTER

By: 

By: 

Its: _____

Its: President & CEO

Date: 11/26/03

Date: 11/19/03