

SETTLEMENT AGREEMENT AND RELEASE

1. PARTIES

This Settlement Agreement ("Agreement") is entered into between the UNITED STATES OF AMERICA (including its Departments and agencies), 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"); the *qui tam* relator Barry Steeley ("Relator"); and JULIA RACKLEY PERRY MEMORIAL HOSPITAL ("Perry") (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. Perry is an acute care hospital located at 530 Park Avenue East, Princeton, Illinois 61356. Perry is a health care provider, and submitted or caused to be submitted, claims for payment to the United States, including the Medicare Program (Title XVIII of the Social Security Act, 42 U.S.C. §§ 1395 – 1395ggg.

B. Medicare and other federal health care program payments to a hospital for inpatient treatment rendered to a beneficiary generally are based upon the beneficiary's "principal diagnosis," as set forth by the hospital.

C. Medicare and other federal health care programs rely upon participating hospitals to properly indicate the principal diagnosis through the use of standard diagnosis codes.¹

D. On or around August 25, 1997 the relator filed a *qui tam* complaint under seal alleging violations of the False Claims Act by Perry in the case styled United States ex. rel. Barry

¹ International Classification of Diseases, 9th Revision. Clinical Modification (ICD-9-CM).
*Settlement Agreement Between
United States and Perry March 24, 2003*

Steeley v. Quorum Health Group, et.al., Civil Action Number 3:97-0893 (M.D. Tenn.) (hereafter "the Qui Tam Action").

E. The United States conducted an investigation into the Qui Tam Action, including inpatient payment claims submitted to Medicare by Perry for DRG 14 with principal diagnosis codes (PDx Codes) of 436 (Acute, but ill-defined, cerebrovascular disease), and 434.91 (Unspecified cerebral artery occlusion with cerebral infarction), DRG 79 with PDx Codes, 482.89 (pneumonia due to "other specified bacteria"), 507.0 (Pneumonitis due to inhalation of food or vomitus), and 482.4 (Pneumonia due to *Staplylococcus*, unspecified); DRG 121 with PDx Codes, 410.11 (Acute myocardial infarction of other anterior wall, initial episode of care), 410.71 (Acute myocardial infarction, subendocardial infarction, initial episode of care), and 410.91 (Acute myocardial infarction, unspecified site, initial episode of care); DRG 127 with PDx Codes 402.91 (Unspecified hypertensive heart and renal disease with congestive heart failure), and 428.0 (Congestive heart failure), DRG 132 with PDx Code 414.0 (Coronary atherosclerosis of unspecified type of vessel, narrative or graft); DRG 138 with PDx Codes 427.31 (Atrial fibrillation), 427.32 (Atrial flutter), 427.89 (Other specified cardiac dysrhythmias), and 820.09 (Other closed transcervical fracture of femur); DRG 210 with PDx Code 820.21 (Closed fracture of intertrochanteric section of femur); DRG 296 with PDx Codes 263.9 (Unspecified protein-calorie malnutrition), 276.1 (Hyposmolality and/or hyponatremia), and 276.5 (Volume depletion); DRG 416 with PDx Codes 038.10 (Unspecified staphylococcal septicemia), 038.42 (Septicemia due to *Escherichia coli* (*E.coli*)) and 038.9 (Unspecified septicemia).

F. Based on its investigation, the United States contends that it has certain civil claims against Perry under the False Claims Act, 31 U.S.C. §§ 3729-3733, and other federal statutes and/or common law doctrines as more specifically identified in Paragraph 4 below, for

engaging in the following alleged conduct during the period from January 1, 1993 to December 31, 1998 (the "Covered Period"): the United States contends Perry submitted or caused to be submitted claims with the principal diagnosis codes set forth above in paragraph E some of which were not supported by the corresponding medical records (hereinafter referred to as the "Covered Conduct"). The United States alleges that, as a result of these claims, Perry received payments to which it was not entitled.

G. The United States also contends that it has certain administrative claims against Perry, as specified in Paragraph 4 below, for engaging in the Covered Conduct.

H. Perry has provided documents and information to the United States in response to the government's investigation of the Covered Conduct, including patient files for which claims were submitted to Medicare with the principal diagnosis codes set forth in paragraph E above. Perry represents that such response has been truthful and accurate.

I. Perry denies the contentions of the United States as set forth in Paragraphs F and G above and as set forth in the Qui Tam Action, and denies that it knowingly submitted any erroneous claims. Perry further contends that claims submitted as referenced in Paragraph F above were based upon the medical coding advice of an outside consultant who was a licensed physician and who was not an employee of Perry. This Agreement is not a concession by the United States that its claims are not well founded.

J. In order to avoid the delay, uncertainty, inconvenience and expense of protracted litigation of these claims, the Parties reach a full and final settlement pursuant to the Terms and Conditions 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:

1. Perry agrees to pay to the United States \$709,659 (the "Settlement Amount"), as follows: Perry agrees to make payment of the Settlement Amount by electronic funds transfer pursuant to written instructions to be provided by the United States Attorney's Office for the Central District of Illinois in the amount of \$437,055 and pursuant to written instruction provided by the United States Attorney's office for the Middle District of Tennessee in the amount of \$272,604. Perry agrees to make these electronic funds transfers by no later than 5 business days after the effective date of this Agreement.

2. Perry shall cooperate reasonably, truthfully and in good faith with the United States in the administrative, civil or criminal investigation or prosecution of any person not specifically released in this Agreement concerning the Covered Conduct, and concerning similar matters involving other hospitals and others in connection with the Qui Tam Action. Upon reasonable notice, Perry shall make reasonable efforts to facilitate access to, and encourage the cooperation of, its directors, officers, and employees for interviews and testimony, consistent with the rights and privileges of such individuals, and will make available to the United States, upon reasonable request, all non-privileged documents and records in its possession, custody or control relating to the Covered Conduct.

3. Perry fully and finally releases the United States, its agencies, officers, servants, agents, employees, and contractors and their employees, and Relator from any and all claims (including attorneys fees, costs, and expenses of every kind and however denominated), causes of action,

adjustments, and set-offs of any kind arising out of or pertaining to the Covered Conduct, including the investigation of the Covered Conduct and this Agreement.

4. Subject to the exceptions in Paragraph 7 below, in consideration of the obligations of Perry set forth in this Agreement, conditioned upon Perry's payment in full of the Settlement Amount, and subject to Paragraph 19, 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 Perry, including its subsidiaries, predecessors, successors, assigns, transferees, and all of its current and former directors, officers and employees and the City of Princeton its current and former officers and employees (collectively referred to as the "Released Parties") from any civil or administrative monetary claim the United States has or may have including claims 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 *et seq*; or the common law and equitable theories of payment by mistake, unjust enrichment, breach of contract and fraud, for the Covered Conduct. The United States expressly reserves any claims against any entities and individuals other than the Released Parties.

5. Conditioned upon receipt of \$5,700 from Perry, in addition to Perry's payment of the Settlement Amount described in Paragraph 1, the Relator and Relator's Counsel release and will be deemed to release the Released Parties, from any claim that the Relator and/or Relator's Counsel may have arising from the filing of the Qui Tam Action, or under 31 U.S.C. § 3730(d) to pay Relator or Relator's Counsel any reasonable attorneys' fees, expenses and costs. Relator expressly reserves any claims against entities and individuals other than the Released Parties.

6. In consideration of the obligations of Perry set forth in this Agreement and the Provisions set forth in Paragraph 8, conditioned upon Perry's payment in full of the Settlement Amount, subject to Paragraph 19 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 claim or any action seeking exclusion from the Medicare, Medicaid or other federal health care programs (as defined in 42 U.S.C. § 1320b-7(f)) against the Released Parties under 42 U.S.C. § 1320a-7a (Civil Monetary Penalties Law), or 42 U.S.C. § 1320a-7(b)(7) (permissive exclusion for fraud, kickbacks, and other prohibited activities), for the Covered Conduct, except as reserved in Paragraph 7 below and as reserved in this Paragraph. The OIG-HHS expressly reserves all rights to comply with any statutory obligations to exclude the Released Parties from Medicare, Medicaid, or other Federal health care programs under 42 U.S.C. § 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 7.

7. 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 Perry and the Relator) 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;

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

8. Perry agrees that for a period of three (3) years following the execution of this Agreement:

(a) Perry will continue to adhere to provisions set forth in its Corporate Compliance Program, as described in the Declaration attached hereto and incorporated herein by this reference as Appendix A, and continue to provide, at a minimum, the same level of resources currently provided, throughout this time period. Perry may amend its Compliance Program as it deems necessary so long as those amendments are consistent with the overall objective of ensuring compliance with the requirements of Medicare, Medicaid and all other Federal health care programs, as defined in 42 U.S.C. § 1320a-7b(f), and with the "Office of Inspector General's Compliance Program Guidance for Hospitals." 63 Fed. Reg. 8987 (February 23, 1998). Perry also agrees that for a period of three (3) years it will continue to maintain its policies and procedures for ensuring that services are billed pursuant to their principal diagnosis.

(b) Perry agrees that it will provide one hour of annual training to all employees and physicians with admitting privileges on Perry's commitment to full compliance with all Federal health care program requirements, including its commitment to prepare and submit accurate claims. In addition, Perry agrees to provide at least two hours annually of training to all

employees or agents (i) involved in coding or billing on the proper documentation for coding DRGs; and (ii) the consequences of false or improper coding and submissions to Federal health care programs.

(c) Perry also agrees to promptly refund to the appropriate Federal health care program payor any identified overpayment(s). If, at any time, Perry identifies or learns of any overpayments, Perry shall notify the payor (e.g., Medicare fiscal intermediary or carrier) within 30 days of identification of the overpayment and take remedial steps within 60 days of discovery (or such additional time as may be agreed to by the payor) to correct the problem, including preventing the underlying problem and the overpayments from recurring. Also, within 30 days of identification of the overpayment, Perry shall repay the overpayment to the appropriate payor to the extent such overpayment has been quantified. If not yet quantified, within 30 days of identification, Perry shall notify the payor of its efforts to quantify the overpayment amount along with a schedule of when such work is expected to be completed. Should a regulatory provision become effective providing for a larger time period for any of the foregoing events, it shall apply to Perry in lieu of the time period stated herein. Notification and repayment to the contractor should be done in accordance with the contractor policies, and for Medicare contractors, must include the information contained on the Overpayment Refund Form, provided as Appendix B to this Agreement. For purposes of this Agreement, an "overpayment" shall mean the amount of money that Perry has received in excess of the amount due and payable under the Federal health care programs' statutes, regulations or program directives, including carrier and intermediary instructions. Notwithstanding the above, notification and repayment of any overpayment amount that routinely is reconciled or adjusted pursuant to policies and procedures established by the payor should be handled in accordance with such policies and procedures.

(d) Perry shall report to the OIG within 30 days of making the determination that there is any Material Deficiency, which shall mean anything that involves a substantial overpayment (as defined in Paragraph 8(b)) or anything that involves a matter that a reasonable person would consider a potential violation of criminal, civil or administrative laws applicable to any Federal health care program for which penalties or exclusion may be authorized. In such report, Perry shall include the following information:

(i) If the Material Deficiency results in an overpayment, Perry shall notify the OIG at the same time it notifies the payor and shall include all the information on the Overpayment Refund Form, as well as:

(A) the payor's name, address, and contact person to whom the overpayment was sent; and

(B) the date of the check and identification number (or electronic transaction number) on which the overpayment was repaid/refunded;

(ii) a complete description of the Material Deficiency, including the relevant facts, persons involved, and legal and Federal health care program authorities implicated;

(iii) a description of Perry's actions taken to correct the Material Deficiency; and

(iv) any further steps Perry plans to take to address the Material Deficiency and prevent it from recurring.

(e) Perry shall provide OIG with an annual report that sets forth, under penalty of perjury, any changes that affect the structure or the resources dedicated to its Corporate Compliance Program, any reviews, audits, or analyses of its compliance program, and any response to those reviews, audits, or analyses. Perry shall also provide a certification that its compliance program meets the requirements of this Paragraph and a summary of the date,

amount, and payor for each overpayment refunded over the past year. The annual report shall also include the internal report of the Perry's pre-billing review of its ICD-9 482.89 and 038.9 claims. The annual reports are due each year on the anniversary of the effective date of this Agreement for three one year periods and shall be sent to:

Administrative and Civil Remedies Branch
Office of Counsel to the Inspector General
Office of Inspector General
U.S. Department of Health and Human Services
330 Independence Avenue, S.W.
Cohen Building, Room 5527
Washington, D.C. 20201
Phone No. 202-619-2078
Fax No. 202-205-0604

Unless otherwise specified, all notifications and reports required by this Paragraph may be made by certified mail, overnight mail, hand delivery or other means, provided that there is proof that such notification was received. For purposes of this requirement, internal facsimile confirmation sheets do not constitute proof of receipt.

(f) In addition to any other rights OIG may have by statute, regulation, or contract, OIG or its duly authorized representative(s) may examine or request copies of Perry books, records, and other documents and supporting materials and/or conduct on-site reviews of any of Perry's locations for the purpose of verifying and evaluating: (i) Perry's compliance with the terms of this Agreement; and (ii) Perry's compliance with the requirements of the Federal health care programs in which it participates. The documentation described above shall be made available by Perry to OIG-HHS or its duly authorized representative(s) at all reasonable times for inspection, audit or reproduction. Furthermore, for purposes of this provision, OIG-HHS or its duly authorized representative(s) may interview any of Perry's employees, contractors, or agents who consent to be interviewed at the individual's place of business during

normal business hours or at such other place and time as may be mutually agreed upon between the individual and OIG-HHS. Perry agrees to assist OIG-HHS or its duly authorized representative(s) in contacting and arranging interviews with such individuals upon OIG-HHS's request. Perry's employees may elect to be interviewed with or without a representative of Perry present.

(g) Exclusion for Material Breach of these Provisions of Paragraph 8

1. *Definition of Material Breach.* A material breach of these Provisions of Paragraph 8 means:

- a. a failure by Perry to report a Material Deficiency, take corrective action and make the appropriate refunds, as required in section 8(d)
- b. a repeated or flagrant violation of the obligations under these Provisions of Paragraph 8, including, but not limited to, the obligations addressed in section 8(a – g)

2. *Notice of Material Breach and Intent to Exclude.* The parties agree that a material breach of these Provisions of Paragraph 8 by Perry constitutes an independent basis for Perry's exclusion from participation in the Federal health care programs. Upon a determination by OIG that Perry has materially breached these Provisions of Paragraph 8 and that exclusions should be imposed, OIG shall notify Perry of: (a) Perry's material breach; and (b) OIG's intent to exercise its contractual right to impose exclusions (this notification is hereinafter referred to as the "Notice of Material Breach and Intent to Exclude").

3. *Opportunity to Cure.* Perry shall have 30 days from the date of receipt of the Notice of Material Breach and Intent to Exclude to demonstrate to OIG's satisfaction that:

- a. Perry is in compliance with the obligations of the Provisions of Paragraph 8 cited by the OIG as being the basis for the material breach;
- b. the alleged material breach has been cured; or
- c. the alleged material breach cannot be cured within the 30-day period, but that: (i) Perry has begun to take action to cure the material breach; (ii) Perry is pursuing such action with due diligence; and (iii) Perry has provided to OIG a reasonable timetable for curing the material breach.

4. *Exclusion Letter.* If at the conclusion of the 30-day period, Perry fails to satisfy the requirements of section 8(a-f), OIG may exclude Perry from participation in the Federal health care programs. OIG will notify Perry in writing of its determination to exclude Perry (this letter shall be referred to hereinafter as the "Exclusion Letter"). Subject to the Dispute Resolution provisions in section 8(h), below, the exclusion shall go into effect 30 days after the date of the Exclusion Letter. The exclusions shall have national effect and shall also apply to all other Federal procurement and non-procurement programs. Reinstatement to program participation is not automatic. If at the end of the period of exclusion, Perry wishes to apply for reinstatement, Perry must submit a written request for reinstatement in accordance with the provisions at 42 C.F.R.—§§ 1001.3001 —.3004.

(h) *Dispute Resolution*

1. *Review Rights.* Upon OIG's delivery to Perry of its Demand Letter or of its Exclusion Letter, and as an agreed-upon contractual remedy for the resolution of disputes arising under Paragraph 8, Perry shall be afforded certain review rights comparable to the ones that are provided in 42 U.S.C. § 1320a-7(f) and 42 C.F.R. Part 1005 as if they applied to the exclusion sought pursuant to Paragraph 8. Specifically, OIG's determination to seek exclusion shall be

subject to review by an HHS ALJ and, in the event of an appeal, the HHS Departmental Appeals Board ("DAB"), in a manner consistent with the provisions in 42 C.F.R. §§ 1005.2-1005.21. Notwithstanding the language in 42 C.F.R. § 1005.2 (c), the request for an hearing shall be involving exclusion shall be made within 25 days of receipt of the Exclusion Letter.

2. Exclusion Review. Notwithstanding any provision of Title 42 of the United States Code or Chapter 42 of the Code of Federal Regulations, the only issues in a proceeding for exclusion based on a material breach of the Provisions of Paragraph 8 shall be:

- a. whether Perry was in material breach of Paragraph 8.
- b. whether such breach was continuing on the date of the Exclusion Letter; and
- c. whether the alleged material breach could not have been cured within the 30 day period, but that:
 - (i) Perry had begun to take action to cure the material breach within that period;
 - (ii) Perry has pursued and is pursuing action with due diligence; and
 - (iii) Perry provided to OIG within that period a reasonable timetable for curing the material breach and Perry has followed the timetable.

For purposes of the exclusion herein, exclusion shall take effect only after an ALJ decision favorable to OIG, or, if the ALJ rules for Perry, only after a DAB decision in favor of OIG. Perry's election of its contractual right to appeal to the DAB shall not abrogate the OIG's authority to exclude Perry upon issuance of an ALJ's decision in favor of the OIG. If the ALJ

sustains the determination of the OIG and determines that exclusion is authorized, such exclusion shall take effect 20 days after the ALJ issues such a decision, notwithstanding that Perry may request review of the ALJ decision by the DAB. If the DAB finds favor of OIG after an ALJ decision. Perry agrees to waive its right to any notice of such an exclusion if a decision upholding the exclusion is rendered by the ALJ or DAB. If the DAB finds favor of Perry, Perry will be reinstated effective on the date of the original exclusion.

4. *Finality of Decision.* The review by an ALJ or DAB provided for above shall not be considered to be an appeal right arising under any statutes or regulations. Consequently, the parties of these Provisions of Paragraph 8 agree that the DAB's decision (or the ALJ's decision if not appealed) shall be considered final for all purposes under the Provisions of Paragraph 8.

9. Perry waives and will not assert any defenses it may have to any criminal prosecution or administrative action directly 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 for purposes of 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.

10. After this Agreement is executed and payment described in Paragraph 1 has been received by the United States and payment described in Paragraph 5 has been received by the Relator, the United States and Relator will notify the United States District Court for the Middle

District of Tennessee that (a) the United States has partially intervened in the Qui Tam Action with respect to claims against Perry related to the Covered Conduct; (b) notwithstanding such intervention, the Parties have reached a settlement; and (c) pursuant to this settlement the Parties have stipulated that: (i) the Relator dismisses all claims against Perry in the Qui Tam Action with prejudice as to him, and (ii) the United States dismisses with prejudice only those claims in the Qui Tam Action related to the Covered Conduct against Perry, and the claims in the Qui Tam Action unrelated to the Covered Conduct are dismissed without prejudice as to the United States.

11. The Settlement Amount that Perry shall 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 other payer, related to the Covered Conduct; and Perry agrees not to resubmit to any said payer any previously denied claims related to the Covered Conduct, and agrees not to appeal any such denials of claims.

12. Perry agrees to the following:

(a) Unallowable Costs Defined: that 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. §§ 1395-1395ggg and 1396-1396v, and the regulations and official program directives promulgated thereunder) incurred by or on behalf of the Released Parties in connection with the following shall be "unallowable costs" on Government contracts and under the Medicare Program, Medicaid Program, TRICARE Program, and Federal Employees Health Benefits Program (FEHBP):

- (1) the matters covered by this Agreement,
- (2) the United States' civil investigation(s) of the matters covered by this Agreement,

(3) The Released Parties' investigation, defense, and corrective actions undertaken in response to the United States' investigation(s) in connection with the matters covered by this Agreement (including attorney's fees),

(4) the negotiation and performance of this Agreement,

(5) the payment Perry makes to the United States pursuant to this Agreement and any payments that Perry may make to Relator, including costs and attorneys fees, and

(6) the negotiation of, and obligations undertaken pursuant to the Provisions set forth in Paragraph 8 to prepare and submit reports to the OIG-HHS.

(All costs described or set forth in this Paragraph 12(a) are hereafter, "unallowable costs").

However, nothing in this Paragraph affects the status of costs that are not allowable based on any other authority applicable to Perry.

(b) Future Treatment of Unallowable Costs: These unallowable costs shall be separately determined and accounted for by the Released Parties, and the Released Parties 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 the Released Parties to the Medicare, Medicaid, TRICARE, or FEHBP Programs.

(c) Treatment of Unallowable Costs Previously Submitted for Payment: The Released Parties further agree that within 90 days of the Effective Date of this Agreement they shall 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 the Released Parties, 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. The Released Parties agree that the United States, at a minimum, shall be entitled to recoup from the Released Parties 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 the Released Parties on the effect of inclusion of unallowable costs (as defined in this Paragraph) on the Released Parties' 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 reexamine the Released Parties' books and records to determine that no unallowable costs have been claimed in accordance with the provisions of this Paragraph.

13. This Agreement is intended to be for the benefit of the Parties and Released Parties only, and by this instrument the Parties do not release any claims against any other person or entity. This agreement is not intended to be for the benefit of Birman Managed Care, Inc., Birman and Associates, and David N. Birman, MD and by this instrument the parties do not release any claims against Birman Managed Care, Inc., Birman and Associates, and David N. Birman, MD.

14. Perry agrees that it will not seek payment for any of the health care billings covered by this Agreement from any health care beneficiaries or their parents or sponsors. Perry waives

any causes of action against these beneficiaries or their parents or sponsors based upon the claims for payment covered by this Agreement.

15. Conditioned on Perry's payment in full of the Settlement Payment, Relator shall receive from the United States a payment of \$46,343.00, amounting to 17% of the Settlement Amount in the Qui Tam Action. The United States shall pay relator this amount within a reasonable time after Perry makes payment. It is expressly agreed that the United States in no way promises or guarantees nor is liable to Relator for the collection or payment of any funds pursuant to this agreement or the payment of any Relator's share except as provided herein for funds actually collected and received by the United States.

16. On receipt of the payment described in paragraph 15 above, Relator shall release and shall be deemed to have released and forever discharged the United States, its officers, agents, and employees from any liability arising from the filing of the complaint in this Qui Tam Action as against Perry, including any claim pursuant to 31 U.S.C § 3730(d) to a share of any settlement proceeds received from Perry, and in full satisfaction and settlement of claims under this agreement.

17. Perry expressly warrants that it has reviewed its financial situation and that it currently is solvent within the meaning of 11 U.S.C. § 547(b)(3), and shall remain solvent following its payment to the United States hereunder. Further, the Parties expressly warrant that, in evaluating whether to execute this Agreement, the Parties (i) have intended that the mutual promises, covenants and obligations set forth herein constitute a contemporaneous exchange for new value given to Perry, within the meaning of 11 U.S.C. § 547(c)(1), and (ii) have concluded that these mutual promises, covenants and obligations do, in fact, constitute such a contemporaneous exchange.

18. In the event that Perry commences, or a third party commences, within 91 days of the effective date of this Agreement, any cause, 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 Perry's debts, or seeking to adjudicate Perry as bankrupt or insolvent, or (b) seeking appointment of a receiver, trustee, custodian or other similar official for Perry or for all or any substantial part of Perry's assets, Perry agrees as follows:

a. Perry's obligations under this Agreement may not be avoided pursuant to 11 U.S.C. § 547, and Perry will not argue or otherwise take the position in any such case, proceeding or action that: (i) Perry's obligations under this Agreement may be avoided under 11 U.S.C. § 547; (ii) Perry 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 Perry.

b. In the event that Perry's obligations hereunder are avoided for any reason, including the exercise of a trustee's avoidance powers under the Bankruptcy Code, 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 Perry for the claims that would otherwise be covered by the releases provided in Paragraphs 4, 5 and 6, above. If the United States chooses to do so, Perry agrees that (i) any such claims, actions or proceedings brought by the United States (including any proceedings to exclude Perry from participation in Medicare, Medicaid, or other federal health care programs) are not subject to an "automatic stay" pursuant to 11 U.S.C. § 362(a) as a result of the action, case or proceeding described in the first clause of this Paragraph, and that Perry will not argue or otherwise contend that the United State's claims, actions or

proceedings are subject to an automatic stay; and (ii) that Perry 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 thirty (30) calendar days of written notification to Perry that the releases herein have been rescinded pursuant to this Paragraph, except to the extent such defenses were available on the date this Settlement Agreement is execute.

c. Each Party acknowledges that its agreements in this Paragraph are provided in exchange for valuable consideration provided in this Agreement.

19. Except as provided in Paragraph 5 above, 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.

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

21. 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 Central District of Illinois, except that disputes arising out of the Qui Tam Action will be resolved exclusively in the United States District Court for the Middle District of Tennessee, and disputes arising under the Provisions in Paragraph 8 of this Agreement shall be resolved exclusively under the OIG-HHS dispute resolution procedures.

22. This Agreement constitutes the complete agreement between the Parties. This Agreement may not be amended except by written consent of the Parties, except that only Perry and OIG-HHS must agree in writing to modification of the Provisions set forth in Paragraph 8.

23. - All parties consent to the United States disclosure of this agreement, and information about this agreement, to the public.

24. . The undersigned individuals signing this Agreement on behalf of Perry represent and warrant that they are authorized by Perry 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.

25. This Agreement is binding on the successors, transferees, and assigns of the Parties.

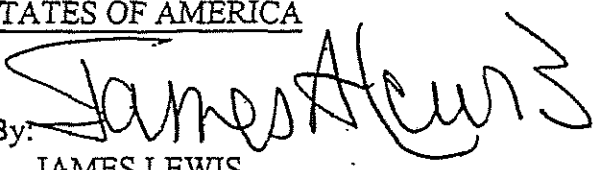
26. This Agreement may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same agreement.

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

THE UNITED STATES OF AMERICA

Dated:

By:


JAMES LEWIS
Assistant United States Attorney
Central District of Illinois

Dated:

By:

VAN S. VINCENT
Assistant United States Attorney
Middle District of Tennessee

Dated:

By:

ROBERT J. McAULIFFE
Trial Attorney
Commercial Litigation Branch, Civil Division
U.S. Department of Justice

Dated:

By:

LARRY GOLDBERG
Assistant Inspector General for Legal Affairs
Office of Counsel to the Inspector General
U. S. Department of Health and Human Services


THE UNITED STATES OF AMERICA

Dated: _____

By: _____

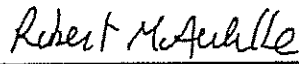
JAMES LEWIS
Assistant United States Attorney
Central District of Illinois

Dated: 3-24-03

By:  _____

VAN S. VINCENT
Assistant United States Attorney
Middle District of Tennessee

Dated: 4-1-03

By:  _____

ROBERT J. McAULIFFE
Trial Attorney
Commercial Litigation Branch, Civil Division
U.S. Department of Justice

Dated: _____

By: _____

LARRY GOLDBERG
Assistant Inspector General for Legal Affairs
Office of Counsel to the Inspector General
U. S. Department of Health and Human Services

THE UNITED STATES OF AMERICA

Dated: _____

By: _____

JAMES LEWIS
Assistant United States Attorney
Central District of Illinois

Dated: _____

By: _____

VAN S. VINCENT
Assistant United States Attorney
Middle District of Tennessee

Dated: _____

By: _____

ROBERT J. McAULIFFE
Trial Attorney
Commercial Litigation Branch, Civil Division
U.S. Department of Justice


Dated: 3/27/03

By: Larry Goldberg

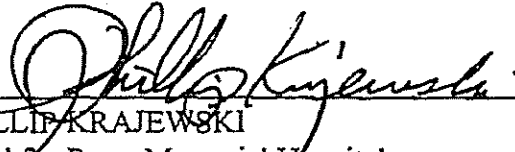
LARRY GOLDBERG
Assistant Inspector General for Legal Affairs
Office of Counsel to the Inspector General
U. S. Department of Health and Human Services

PERRY MEMORIAL HOSPITAL

Dated: 3/26/2003

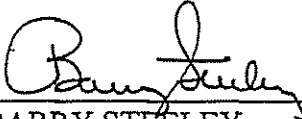
By: 
ROBERT G. SENNEFF
President and Chief Executive Officer

Dated: 3/27/2003

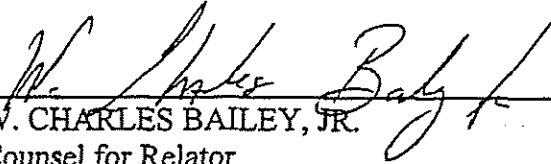
By: 
J. PHILLIP KRAJEWSKI
Counsel for Perry Memorial Hospital

RELATOR BARRY STEELEY

Dated: 03/25/03

By: 
BARRY STEELEY

Dated: 3/25/03

By: 
W. CHARLES BAILEY, JR.
Counsel for Relator