

## SETTLEMENT AGREEMENT

### I. PARTIES

This Settlement Agreement (Agreement) is entered into among 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"); the Cleveland Clinic Florida Hospital (Florida Hospital); and Sherri Issa, the relator; (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. The Florida Hospital is an active nonprofit corporation, which previously provided hospital services near Fort Lauderdale, Florida, but ceased operations on June 30, 2001. At all relevant times, the Cleveland Clinic Foundation was the parent company of the Florida Hospital.

B. Sherri Issa (the "relator") is an individual resident of the State of Florida. On March, 28, 1999, the relator filed a qui tam action in the United States District Court for the Southern District of Florida, captioned United States ex rel. Sherri Issa v. The Cleveland Clinic Foundation, Cleveland Clinic Florida Hospital, and Does 1 through 100, and on or about December 10, 2001, the relator filed an amended complaint in the same action (hereinafter "the Civil Action").

C. The Florida Hospital submitted or caused to be submitted claims for payment to the Medicare Program (Medicare), Title XVIII of the Social Security Act, 42 U.S.C. §§1395-1395ggg.

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D. The United States contends that it has certain civil claims, as specified below, against the Florida Hospital for engaging in the following conduct during the period from January 1, 1993 through June 30, 2001: billing Medicare for observation services for patients at the Florida Hospital that did not qualify for reimbursement under Medicare (hereinafter referred to as the "Covered Conduct").

E. The United States also contends that it has certain administrative claims, as specified in Paragraph 3 below, against the Florida Hospital for engaging in the Covered Conduct.

F. This Agreement is not an admission of liability by the Florida Hospital nor is it a concession by the United States that its claims are not well founded.

G. The Florida Hospital, its parent, the relator and relator's counsel have entered into a separate agreement addressing the issue of relator's expenses and attorney's fees and costs under 31 U.S.C. §3730(d) and mutual releases between the Florida Hospital, its parent corporation, the relator and relator's counsel, as more particularly described in that separate agreement.

H. To avoid the delay, uncertainty, inconvenience, and expense of protracted litigation of the above claims, the Parties reach a full and final settlement pursuant to the Terms and Conditions below.

### III. TERMS AND CONDITIONS

1. The Florida Hospital agrees to pay to the United States \$2,750,000.00 (the "Settlement Amount"). The Cleveland Clinic Foundation guarantees the payment of the Settlement Amount, as stated in the Guarantee Agreement incorporated herein by reference. The United States agrees to pay \$500,000

of the Settlement Amount to the relator. The foregoing payments shall be made as follows:

a. The Florida Hospital agrees to pay the full Settlement Amount to the United States by electronic funds transfer pursuant to written instructions to be provided by the United States Attorney's Office for the Southern District of Florida. The Florida Hospital agrees to make this electronic funds transfer no later than five (5) days following the Effective Date of this Agreement.

b. Contingent upon the United States receiving the Settlement Amount from the Florida Hospital and as soon as feasible after receipt, the United States agrees to pay \$500,000 to relator by electronic funds transfer.

2. Subject to the exceptions in Paragraph 5 below, in consideration of the obligations of the Florida Hospital in this Agreement, conditioned upon the Florida Hospital's full payment of the Settlement Amount, the United States (on behalf of itself, its officers, agents, agencies, and departments) agrees to release the Florida Hospital, together with its current and former parent corporations, brother and sister corporations, divisions, current and former officers, directors, members as defined in Chapter 1702 of the Ohio Revised Code – Nonprofit Corporation Law, and employees and the successors and assigns of any of them (hereinafter "Released Entities and Individuals"), from any civil or administrative monetary claim the United States has or may have for the Covered Conduct 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. §§3801-3812; or the common law theories of payment by mistake, unjust enrichment, and fraud.

3. OIG-HHS expressly reserves all rights to institute, direct, or to maintain any administrative action seeking exclusion against the Released Entities and Individuals from Medicare, Medicaid, or other Federal health care programs (as defined by 42 U.S.C. §§1320a-7b(f)) under 42 U.S.C. §1320a-7(a) (mandatory exclusion) or 42 U.S.C. §1320a-7(b) (permissive exclusion). Should OIG-HHS institute, direct, or maintain such an administrative action, the Florida Hospital does not waive and expressly reserves any and all defenses it may have, by statute, common law, except for the defenses waived in Paragraph 7.

4. In consideration of the obligations of the Florida Hospital in this Agreement, conditioned upon the Florida Hospital's full payment of the Settlement Amount, relator, for herself and for her heirs, successors, attorneys, agents, and assigns, agrees to release the Florida Hospital, together with its current and former parent corporations, and any and all affiliates, and the successors and assigns of any of them, current or former officers, directors, agents, members as defined in Chapter 1702 of the Ohio Revised Code – Nonprofit Corporation Law, and employees, and the successors and assigns of any of them from any civil monetary claim the United States has or may have under the False Claims Act, 31 U.S.C. §§3729-3733, and as to any other claim she may have against them relating to or arising under the facts plead in the amended complaint. The relator also agrees to dismiss the entire amended complaint with prejudice as to herself. This paragraph 4, and the obligations set forth in this Agreement, shall not limit any releases or obligations of the relator, or her counsel, agreed to in the separate agreement with the relator and relator's counsel referred to in Preamble Part G.

5. 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 the Florida Hospital and relator) are the following claims of the United States:

- a. Any civil, criminal or administrative liability arising under Title 26, U.S. Code (Internal Revenue Code);
- b. Any criminal liability;
- c. Except as explicitly stated in this Agreement, any administrative liability, including mandatory and permissive exclusion from Federal health care programs;
- d. Any liability to the United States (or its agencies) for any conduct other than the Covered Conduct and for any conduct at hospitals other than the Florida Hospital;
- e. Any liability based upon such obligations as are created by this Agreement;
- f. Any liability for express or implied warranty claims or other claims for defective or deficient products or services, including quality of goods and services; and
- g. Any liability for failure to deliver goods or services due, except for the Covered Conduct described in Paragraph D above.

6. The relator and her heirs, successors, attorneys, agents, and assigns agree not to object to this Agreement and agree and confirm that this Agreement is fair, adequate, and reasonable under all the circumstances, pursuant to 31 U.S.C. §3730(c)(2)(B). Conditioned upon receipt of her relator's share, relator, for herself individually, and for her heirs, successors, agents and assigns, fully and finally releases, waives, and forever discharges the United States, its officers, agents, and employees,

from any claims arising from or relating to 31 U.S.C. §3730, including 31 U.S.C. §§3730(b), (c), (c)(5), (d), and (d)(1), from any claims arising from the filing of the Civil Action, and from any other claims for a share of the Settlement Amount, and in full settlement of any claims relator may have under this Agreement. This Agreement does not resolve or in any manner affect any claims the United States has or may have against the relator arising under Title 26, U.S. Code (Internal Revenue Code), or any claims arising under this Agreement.

7. The Florida Hospital waives and will not assert any defenses the Florida Hospital may have to any criminal prosecution or administrative action relating to the Covered Conduct that may be based in whole or in part on a contention that, under the Double Jeopardy Clause in the Fifth Amendment of the Constitution, or under the Excessive Fines Clause in the Eighth Amendment of the Constitution, this Agreement bars a remedy sought in such criminal prosecution or administrative action. The Florida Hospital agrees that this Agreement is not punitive in purpose 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.

8. The Florida Hospital fully and finally releases 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 Florida Hospital 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.

9. The Settlement Amount shall not be decreased as a result of the denial of any claims for payment now being withheld from payment by any Medicare carrier or intermediary or any State payer, related to the Covered Conduct; and the Florida Hospital 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.

10. The Florida Hospital and the Released Entities and Individuals agree 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 Florida Hospital or any of the Released Entities and Individuals 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' audit(s) and civil and any criminal investigation(s) of the matters covered by this Agreement,
- (3) the Florida Hospital's and the Released Entities and Individuals' investigation, defense, and corrective actions undertaken in response to the United States' audit(s) and civil and any criminal investigation(s) in connection with the matters covered by this Agreement (including attorney's fees),
- (4) the negotiation and performance of this Agreement, and

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(5) the payment made to the United States pursuant to this Agreement and any payments made to relator, 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 shall be separately determined and accounted for in nonreimbursable cost centers by the Florida Hospital and Released Entities and Individuals, and the Florida Hospital and the Released Entities and Individuals 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 Florida Hospital or the Released Entities and Individuals to the Medicare Program, Medicaid Program, TRICARE, or Federal Employees Health Benefits Program (FEHBP).

c. Treatment of Unallowable Costs Previously Submitted for Payment: the Florida Hospital further agrees that, within 180 days of the Effective Date of this Agreement, it 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 Florida Hospital or the Released Entities and Individuals, 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 Florida Hospital agrees that the United States, at a minimum, shall be entitled to recoup from the Florida Hospital



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 Florida Hospital or any of the Released Entities and Individuals on the effect of inclusion of unallowable costs (as defined in this Paragraph) on the Florida Hospital or any of the Released Entities and Individuals' 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 the Florida Hospital's or the Released Entities and Individuals' books and records to determine that no unallowable costs have been claimed in accordance with the provisions of this Paragraph.

11. This Agreement is intended to be for the benefit of the Parties, only. The Parties do not release any claims against any other person or entity, except to the extent provided for in this Agreement.

12. The Florida Hospital waives and shall not seek payment for any of the health care billings covered by this Agreement from any health care beneficiaries, sponsors, legally responsible individuals, or third party payors based upon the claims defined as Covered Conduct.

13. Upon receipt of the payments described in Paragraph 1 above, the United States and relator shall promptly sign and file in the Civil Action a Notice of

Election to Intervene In Part and to Decline to Intervene In Part, and Joint Stipulation of Dismissal pursuant to the terms of this Agreement. The relator will dismiss the entire qui tam amended complaint with prejudice as to herself and her attorney. The dismissal of the amended complaint will be with prejudice to the United States as to Covered Conduct occurring at the Florida Hospital, but without prejudice to the United States with respect to any other conduct. In addition, the Florida Hospital and the relator stipulate that they will request that the Court will retain jurisdiction over the issue of relator's expenses and attorney's fees and costs under 31 U.S.C. §3730(d) in the event of any dispute or if enforcement is necessary.

14. Except as expressly provided to the contrary in this Agreement, each Party will bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

15. The Florida Hospital represents that this Agreement is freely and voluntarily entered into without any degree of duress or compulsion whatsoever.

16. The relator represents that this Agreement is freely and voluntarily entered into without any degree of duress or compulsion whatsoever.

17. 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 shall be the United States District Court for the Southern District of Florida.

18. This Agreement constitutes the complete agreement between the Parties. This Agreement may not be amended except by written consent of the Parties.

19. The individuals signing this Agreement on behalf of the Florida Hospital represent and warrant that they are authorized by the Florida Hospital to

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

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

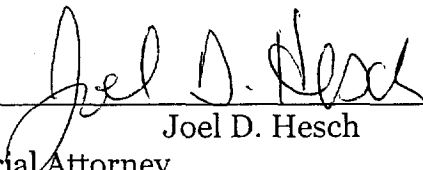
21. This Agreement is binding on the Florida Hospital's successors, transferees, heirs, and assigns.

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

23. This Agreement is effective on the date of signature of the last signatory to the Agreement (Effective Date of this Agreement). Facsimiles of signatures shall constitute acceptable, binding signatures for purposes of this Agreement.

THE UNITED STATES OF AMERICA

DATED: 4/19/05

BY:   
Joel D. Hesch  
Trial Attorney  
Commercial Litigation Branch  
Civil Division  
United States Department of Justice

DATED: \_\_\_\_\_

BY: \_\_\_\_\_  
Mark Lavine  
Assistant United States Attorney  
United States Attorney's Office

DATED: \_\_\_\_\_

BY: \_\_\_\_\_  
LEWIS MORRIS  
Chief Counsel to the Inspector General  
Office of Counsel to the  
Inspector General  
Office of Inspector General  
United States Department of  
Health and Human Services

THE UNITED STATES OF AMERICA

DATED: \_\_\_\_\_

BY: \_\_\_\_\_

Joel D. Hesch  
Trial Attorney  
Commercial Litigation Branch  
Civil Division  
United States Department of Justice

DATED: 1/18/05

BY: *M. Layne*

Mark Layne  
Assistant United States Attorney  
United States Attorney's Office

DATED: \_\_\_\_\_

BY: \_\_\_\_\_

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

THE UNITED STATES OF AMERICA

DATED: \_\_\_\_\_

BY: \_\_\_\_\_

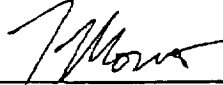
Joel D. Hesch  
Trial Attorney  
Commercial Litigation Branch  
Civil Division  
United States Department of Justice

DATED: \_\_\_\_\_

BY: \_\_\_\_\_


Mark Lavine  
Assistant United States Attorney  
United States Attorney's Office

DATED: 1/19/05

BY:  \_\_\_\_\_

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

**THE FLORIDA HOSPITAL - DEFENDANT**

DATED: 1/24/05 BY:   
Carrie Valiant, Esq.  
Epstein Becker & Green  
1227 25th St., N.W.  
Washington, D.C. 20037  
Counsel for Cleveland Clinic Florida Hospital

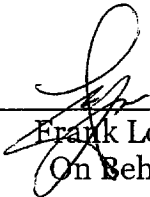
DATED: \_\_\_\_\_ BY: \_\_\_\_\_  
Scott T. Kragie, Esq.  
Squire, Sanders & Dempsey, L.L.P.  
1202 Pennsylvania Ave., N.W.  
Washington, D.C. 20044  
Counsel for Cleveland Clinic Florida Hospital


DATED: \_\_\_\_\_ BY: \_\_\_\_\_  
Frank Lordeman, Chief Operating Officer  
On Behalf of Cleveland Clinic Florida Hospital

**THE FLORIDA HOSPITAL - DEFENDANT**

DATED: \_\_\_\_\_ BY: \_\_\_\_\_  
Carrie Valiant, Esq.  
Epstein Becker & Green  
1227 25th St., N.W.  
Washington, D.C. 20037  
Counsel for Cleveland Clinic Florida Hospital

DATED: \_\_\_\_\_ BY: \_\_\_\_\_  
Scott T. Kragie, Esq.  
Squire, Sanders & Dempsey, L.L.P.  
1202 Pennsylvania Ave., N.W.  
Washington, D.C. 20044  
Counsel for Cleveland Clinic Florida Hospital

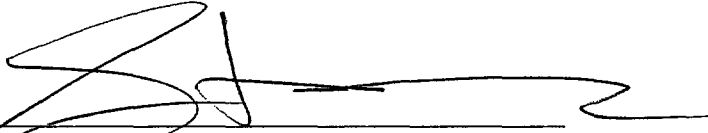
DATED: \_\_\_\_\_ BY:  \_\_\_\_\_  
Frank Lordeman, Chief Operating Officer  
On Behalf of Cleveland Clinic Florida Hospital

APPROVED AS TO FORM  
CCF-OFFICE OF  
GENERAL COUNSEL  
BY  \_\_\_\_\_  
DATE 1/21/05



**THE FLORIDA HOSPITAL - DEFENDANT**

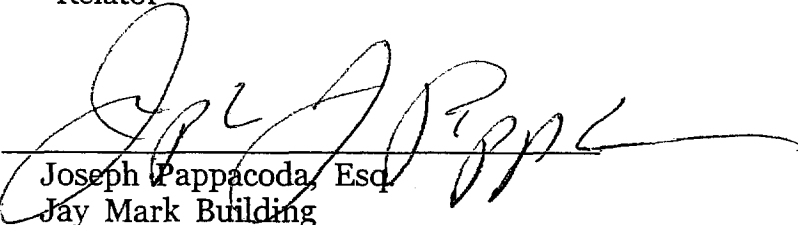
DATED: \_\_\_\_\_ BY: \_\_\_\_\_  
Carrie Valiant, Esq.  
Epstein Becker & Green  
1227 25th St., N.W.  
Washington, D.C. 20037  
Counsel for Cleveland Clinic Florida Hospital

DATED: 1/21/05 BY:   
Scott T. Kragie, Esq.  
Squire, Sanders & Dempsey, L.L.P.  
1202 Pennsylvania Ave., N.W.  
Washington, D.C. 20044  
Counsel for Cleveland Clinic Florida Hospital

DATED: \_\_\_\_\_ BY: \_\_\_\_\_  
Frank Lordeman, Chief Operating Officer  
On Behalf of Cleveland Clinic Florida Hospital

**SHERRI ISSA - RELATOR**

DATED: 1-18-03 BY:   
SHERRI ISSA  
Relator

DATED: 1/18/05 BY:   
Joseph Pappacoda, Esq.  
Jay Mark Building  
500 SE 6<sup>th</sup> Street, Suite 100  
Fort Lauderdale, FL 33301  
Counsel for Relator