

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); the TRICARE Management Activity (TMA), through its General Counsel (collectively the "United States"); Omni Healthcare, P.A. (Omni) and Dr. Craig Deligdish (Shareholder); and Dr. Edward Supinski (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. Omni is a Florida professional association of physicians in Brevard County, Florida.
- B. Deligdish is a shareholder physician at Omni Healthcare, P.A.
- C. The Relator is a resident of the State of Florida. On September 4, 2003, the Relator filed a qui tam action in the United States District Court for the Middle District of Florida captioned U.S. ex rel Supinski v. Omni Healthcare, P.A., No. 6:03-CV-1282-Orl-18KRS (hereinafter "the Civil Action."). From on or about July of 2000 to July of 2002, the Relator was an employee-physician at Omni.
- D. The United States contends that Omni and Shareholder 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; and the TRICARE Program, 10 U.S.C. §§ 1071-1109.

E. The United States contends that it has certain civil claims, as specified in Paragraphs 2 and 4 below, against Omni and Shareholder for engaging in the following conduct during the period from January 1, 1995 to December 31, 2005: the improper billing of the Medicare and TRICARE programs for CPT code 99211 (Level 1) office visits billed in conjunction with, or in lieu of, laboratory tests, immunizations and/or other services (hereinafter referred to as the "Covered Conduct").

F. The United States also contends that it has certain administrative claims, as specified in Paragraphs 3, 4 and 5 below, against Omni and Shareholder for engaging in the Covered Conduct.

G. This Agreement is neither an admission of liability by Omni and Shareholder nor a concession by the United States that its claims are not well founded.

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. Omni and Shareholder agree to pay to the United States in the aggregate \$2,100,000 (the "Settlement Amount") of which \$1,600,000 is to be paid by Omni and \$500,000 is to be paid by Shareholder. The United States agrees to pay \$288,000 of the Settlement Amount to the Relator. Omni further agrees to pay the Relator an amount to be determined, either by negotiation or Court Order, for expenses and attorney's fees and costs. The foregoing payments shall be made as follows:

a. Omni and Shareholder agree to pay their respective portion of the Settlement Amount to the United States by electronic funds transfer pursuant to written

instructions to be provided by the United States Attorneys Office for the Middle District of Florida. Omni and Shareholder agree to make these electronic funds transfers within five (5) days from the Effective Date of this Agreement. If payment is not made within five (5) days, Omni and Shareholder will pay interest on the Settlement Amount in the amount of 5%, beginning six (6) days from the Effective Date of this Agreement through thirty (30) days from the Effective Date of this Agreement. If payment is not made within thirty (30) days from the Effective Date of this Agreement, Omni and Shareholder will pay interest in the amount of 10% beginning on the 31st day from the Effective Date of this Agreement until Omni and Shareholder pay the Settlement Amount, and the United States, at its sole option, may void the Agreement and bring any civil and/or administrative claim, action, or proceeding against Omni and Shareholder. If the United States exercises its right to void the Agreement, Omni and Shareholder will not plead, argue, or otherwise raise any defenses under the theories of statute of limitations, laches, estoppel, or similar theories, to any civil or administrative claims, actions, or proceeding which are brought by the United States within 90 calendar days of written notification to Omni and Shareholder that the releases have been rescinded pursuant to this Paragraph, except to the extent such defenses were available on September 4, 2003. If either Omni or Shareholder does not pay its respective settlement amount, the Agreement is voidable under this Paragraph as to both.

b. Contingent upon the United States receiving the Settlement Amount and as soon as feasible after receipt, the United States agrees to pay \$288,000 to Relator by electronic funds transfer.

c. The manner and extent to which Omni shall pay Relator attorneys' fees and costs shall be set forth in a separate agreement between Omni and Relator or established by Court Order.

2. Subject to the exceptions in Paragraph 6 below, in consideration of the obligations of Omni and Shareholder in this Agreement, conditioned upon Omni's and Shareholder's full payment of the Settlement Amount, and subject to Paragraph 16 below (concerning bankruptcy proceedings commenced within 91 days of the Effective Date of this Agreement or any payment under this Agreement), the United States (on behalf of itself, its officers, agents, agencies, and departments) agrees to release Omni and Shareholder 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. No individuals other than Shareholder are released by this Agreement.

3. In consideration of the obligations of Omni and Shareholder set forth in this Agreement, conditioned upon Omni's and Shareholder's full payment of the Settlement Amount, and subject to Paragraph 16 below (concerning bankruptcy proceedings commenced within 91 days of the Effective Date of this Agreement or any payment under this Agreement), TMA agrees to release and refrain from instituting, directing, or maintaining any administrative action seeking exclusion from the TRICARE Program against Omni and Shareholder under 32 C.F.R. § 199.9 for the Covered Conduct, except as reserved in Paragraph 6, below, and as reserved in this Paragraph. TMA expressly reserves authority to exclude Omni and Shareholder from the TRICARE Program under 32 C.F.R. §§ 199.9 (f)(1)(i)(A), (f)(1)(i)(B), and (f)(1)(iii),

based upon the Covered Conduct. Nothing in this Paragraph precludes the TRICARE Program from taking action against entities or persons, or for conduct and practices, for which civil claims have been reserved in Paragraph 6, below.

4. In consideration of the obligations of Omni and Shareholder in this Agreement, conditioned upon Omni's and Shareholder's full payment of the Settlement Amount, and subject to Paragraph 16 below (concerning bankruptcy proceedings commenced within 91 days of the Effective Date of this Agreement or any payment under this Agreement), the OIG-HHS agrees to release and refrain from instituting, directing, or maintaining any administrative action seeking exclusion from Medicare, Medicaid, and other Federal health care programs (as defined in 42 U.S.C. § 1320a-7b(f)) against Omni 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 6 below, and as reserved in this Paragraph. The OIG expressly reserves all rights to comply with any statutory obligations to exclude Omni from Medicare, Medicaid, and 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, for conduct and practices, for which the claims have been reserved in Paragraphs 5 and 6 below.

5. The OIG-HHS expressly reserves all rights to institute, direct, or to maintain any administrative action seeking exclusion against Shareholder from the Medicare, Medicaid, or other Federal health care program (as defined in 42 U.S.C. Section 1320a-7b(f) under 42 U.S.C. § 1320-7(a)(mandatory exclusion) or 42 U.S.C. § 1320a-7(b) (permissive exclusion).

6. 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 Omni, Shareholder, 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 exclusion from Federal health care programs;

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

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;

g. Any liability for failure to deliver goods or services due; and

h. Any liability of individuals, including officers and employees.

7. Conditioned upon receipt of his Relator's share, Relator, for himself individually, and for his 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.

8. Conditioned upon receipt of the payment described in Paragraph 1.c, the Relator, for himself, and for his heirs, successors, attorneys, agents, and assigns, agrees to release Omni, its officers, agents, employees, and Shareholder from any liability to Relator arising from the filing of the Civil Action, or under 31 U.S.C. § 3730(d) for expenses or attorney's fees and costs.

9. Omni and Shareholder waive and will not assert any defenses Omni or Shareholder 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. 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. Omni and Shareholder fully and finally release 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 Omni and Shareholder have 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.

11. The Settlement Amount 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, TRICARE, or any State payer, related to the Covered Conduct; and Omni and Shareholder shall not resubmit to any Medicare carrier or intermediary, TRICARE or any State payer any previously denied claims related to the Covered Conduct, and shall not appeal any such denials of claims.

12. Omni and Shareholder 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 Omni, its present or former officers, directors, employees, shareholders, and agents 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) Omni's and Shareholder's 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,

(5) the payment Omni and Shareholder make to the United States pursuant to this Agreement and any payments that Omni may make to relators, including costs and attorneys fees, and

(6) the negotiation of, and obligations undertaken pursuant to any Integrity Agreement (IA) with HHS-OIG to:

(i) Retain an independent review organization to perform annual reviews as described in Section III of the IA; and

(ii) prepare and submit reports to the OIG-HHS.

However, nothing in this Paragraph 12a(6) that may apply to the obligations undertaken pursuant to the IA affects the status of costs that are not allowable based on any other authority applicable to Omni. (All costs described or set forth in this Paragraph 12.a are hereafter, "unallowable costs").

b. Future Treatment of Unallowable Costs: These unallowable costs shall be separately determined and accounted for by Omni and Shareholder, and Omni and Shareholder 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 Omni or any of its subsidiaries or affiliates to the Medicare, Medicaid, TRICARE, or FEHBP Programs.

c. Treatment of Unallowable Costs Previously Submitted for Payment: Omni and Shareholder 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 Omni or any of its subsidiaries or affiliates, 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. Omni and Shareholder agree that the United States, at a minimum, shall be entitled to recoup from Omni and Shareholder 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 Omni or any of its subsidiaries or affiliates on the effect of inclusion of unallowable costs (as defined in this Paragraph) on Omni or any of its subsidiaries or affiliates' 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 Omni's 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 only. The Parties do not release any claims against any other person or entity, except to the extent provided for in Paragraph 14 below.

14. Omni and Shareholder waive and shall not seek payment for any of the health care billings covered by this Agreement from any health care beneficiaries or their

parents, sponsors, legally responsible individuals, or third party payors based upon the claims defined as Covered Conduct.

15. Omni and Shareholder warrant that they have reviewed their financial situation and that they currently are solvent within the meaning of 11 U.S.C. §§ 547(b)(3) and 548(a)(1)(B)(ii)(I), and will remain solvent following payment to the United States of the Settlement Amount. Further, the Parties warrant that, in evaluating whether to execute this Agreement, they (a) have intended that the mutual promises, covenants, and obligations set forth constitute a contemporaneous exchange for new value given to Omni and Shareholder, within the meaning of 11 U.S.C. § 547(c)(1); and (b) conclude that these mutual promises, covenants, and obligations do, in fact, constitute such a contemporaneous exchange. Further, the Parties warrant that the mutual promises, covenants, and obligations set forth herein are intended and do, in fact, represent a reasonably equivalent exchange of value which is not intended to hinder, delay, or defraud any entity to which Omni or Shareholder was or became indebted to on or after the date of this transfer, within the meaning of 11 U.S.C. § 548(a)(1).

16. If within 91 days of the Effective Date of this Agreement or of any payment made hereunder, Omni or Shareholder commences, or a third party commences, any case, proceeding, or other action under any law relating to bankruptcy, insolvency, reorganization, or relief of debtors, (a) seeking to have any order for relief of Omni's or Shareholder's debts, or seeking to adjudicate Omni or Shareholder as bankrupt or insolvent; or (b) seeking appointment of a receiver, trustee, custodian, or other similar official for Omni or Shareholder or for all or any substantial part of Omni's or Shareholder's assets, Omni and Shareholder agree as follows:

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

b. If Omni's or Shareholder's obligations under this Agreement are avoided for any reason, including, but not limited to, through 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 Omni or Shareholder for the claims that would otherwise be covered by the releases provided in Paragraphs 2, 3, and 4 above. Omni and Shareholder agree that (i) any such claims, actions, or proceedings brought by the United States (including any proceedings to exclude Omni or Shareholder 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 Omni and Shareholder will not argue or otherwise contend that the United States' claims, actions, or proceedings are subject to an automatic stay; (ii) Omni and Shareholder 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 Omni and

Shareholder that the releases have been rescinded pursuant to this Paragraph, except to the extent such defenses were available on September 4, 2003; and (iii) the United States has a valid claim against Omni and/or Shareholder for \$2,100,000 plus penalties, and the United States may pursue its claim 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. Omni and Shareholder acknowledge that their agreements in this Paragraph are provided in exchange for valuable consideration provided in this Agreement.

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

18. Omni and Shareholder represent that this Agreement is freely and voluntarily entered into without any degree of duress or compulsion whatsoever.

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

20. 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 Middle District of Florida.

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

22. Upon receipt of the payments described in Paragraph 1.a above, the United States shall promptly file in the Civil Action a Notice of Dismissal of the claim for which

the United States will intervene as described in the Covered Conduct, pursuant to and consistent with the terms of the Agreement.

23. The individuals signing this Agreement on behalf of Omni represent and warrant that they are authorized by Omni to execute this Agreement. The individuals signing this Agreement on behalf of Shareholder represent and warrant that they are authorized by Shareholder 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.

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


25. This Agreement is binding on Omni's and Shareholder's successors, transferees, heirs, and assigns.

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

27. 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: 4/20/06

BY: 

AMY L. EASTON
Trial Attorney
Commercial Litigation Branch
Civil Division
United States Department of Justice

DATED: _____

BY: _____

GREGORY E. DEMSKE
Assistant Inspector General for Legal Affairs
Office of Counsel to the
Inspector General
Office of Inspector General
United States Department of
Health and Human Services

DATED: _____

BY: _____

LAUREL C. GILLESPIE
Deputy General Counsel
TRICARE Management Activity
United States Department of Defense

THE UNITED STATES OF AMERICA

DATED: _____

BY: _____

AMY L. EASTON
Trial Attorney
Commercial Litigation Branch
Civil Division
United States Department of Justice

DATED: 4/19/06

BY:  _____

GREGORY E. DEMSKE
Assistant Inspector General for Legal Affairs
Office of Counsel to the
Inspector General
Office of Inspector General
United States Department of
Health and Human Services

DATED: _____

BY: _____

LAUREL C. GILLESPIE
Deputy General Counsel
TRICARE Management Activity
United States Department of Defense

THE UNITED STATES OF AMERICA

DATED: _____

BY: _____

AMY L. EASTON
Trial Attorney
Commercial Litigation Branch
Civil Division
United States Department of Justice

DATED: _____

BY: _____

GREGORY E. DEMSKE
Assistant Inspector General for Legal Affairs
Office of Counsel to the
Inspector General
Office of Inspector General
United States Department of
Health and Human Services

DATED: 13 Apr 2006

BY: 

LAUREL C. GILLESPIE
Deputy General Counsel
TRICARE Management Activity
United States Department of Defense

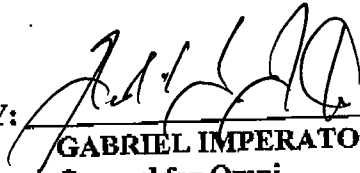
Omni Healthcare, P.A.

DATED: 4/13/06

BY: 

JASHBAI PATEL, MD
Omni Healthcare, PA

DATED: 4/13/06

BY: 


GABRIEL IMPERATO, ESQ.
Counsel for Omni

CRAIG DELIGDISH, M.D.

DATED: 4/14/06

BY: 
CRAIG DELIGDISH, M.D., Individually

DATED: 4/17/06


BY: 
BRIAN TENENBAUM, ESQ. TENENBAUM
Counsel for Craig Deligdish, M.D.

Edward Supinski- Relator

DATED: 4-17-06

BY: 
EDWARD SUPINSKI, M.D.

DATED: 4-17-06

BY: 
DONALD MCKENNA
Counsel for Relator

Settlement Agreement Between The United States,
Omni Healthcare, P.A., Dr. Craig Deligdish
and Dr. Edward Supinski