

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 of the Department of Health and Human Services ("OIG-HHS") (collectively the "United States"), and Lincare Holdings Inc. and its subsidiary Lincare Inc. (collectively "Lincare"), and Carla Martin (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. Lincare Inc. is a corporation that is a Medicare Part B supplier with corporate offices located in Clearwater, Florida, and doing business at locations in the Western District of Tennessee, including at Memphis, Tennessee, Medicare supplier number 0294030131 (hereafter "the Memphis Center").

B. Carla Martin ("the relator") is an individual resident of the State of Tennessee. From July 1995 through January 1998, relator was employed as a sales representative at the Memphis Center. On February 9, 1998, the relator filed a qui tam action in the United States District Court for the Western District of Tennessee captioned United States ex rel. Martin v. Lincare Holdings, Inc., et al, and originally filed as Case No. 98-2120-GV (hereinafter "the Civil Action.")

C. The United States contends that Lincare 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.

D. The United States contends that it has certain civil claims, as specified in Paragraphs 2 and 4 below, against Lincare for engaging in the following conduct during the period from January 1, 1995 through December 31, 1998: submitting home oxygen therapy claims to Medicare, under the Memphis Center's supplier number, that did not comply with Medicare requirements governing reimbursement for that product because the qualifying tests were performed by Lincare employees (hereinafter referred to as the "Covered Conduct").

E. The United States also contends that it has certain administrative claims, as specified in Paragraphs 2 and 4 below, against Lincare for engaging in the Covered Conduct.

F. This Agreement is neither an admission of liability by Lincare nor a concession by the United States or by relator that their claims are not well founded.

G. In order to avoid the delay, burden, 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. Lincare agrees to pay to the United States \$300,000 (the "Settlement Amount"). Contingent upon the United States receiving the Settlement Amount from Lincare, the United States agrees to pay \$54,000 of the Settlement Amount to the relator. Lincare agrees to pay relator's counsel(s) \$59,482.05 in full satisfaction of all of relator's expenses, attorney's fees and costs incurred in connection with her claims under Counts One and Two of the complaint in the Civil Action ("Complaint"). The foregoing payments shall be made as follows:

a. Lincare agrees to pay the full Settlement Amount to the United States by electronic funds transfer pursuant to written instructions provided by the Department of Justice, Civil Division, Fraud Section. Lincare agrees to make this electronic funds transfer no later than three (3) business days after the Effective Date of this Agreement, as defined in Paragraph 25.

b. As soon as feasible after receipt of the Settlement Amount from Lincare, the United States agrees to pay \$54,000 to relator by electronic funds transfer. Failure of the United States to pay relator shall not constitute a breach of this Agreement by Lincare and shall not affect relator's releases of Lincare contained herein.

c. Lincare agrees to pay \$59,482.05 in full satisfaction of all expenses, attorney's fees and costs incurred in connection with relator's claims under Counts One and Two of the Complaint by check or wire transfer to relator's counsel(s) within ten (10) business days after the effective date of this Agreement

2. Subject to the exceptions in Paragraph 5 below, in consideration of the obligations of Lincare set forth in this Agreement, conditioned upon Lincare's payment in full of the Settlement Amount, the United States (on behalf of itself, its officers, agents, agencies and departments):

a. Agrees to release Lincare and all present and former parents and subsidiaries, and all present and former employees, officers and directors, 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.

b. Agrees to dismiss with prejudice as to the United States the claims set forth in Paragraph 19.A. of the relator's complaint, and to dismiss without prejudice to the United States the claims set forth in Paragraphs 1 through 18 and 19.B. through 26 of relator's complaint.

3. Subject to the exceptions in Paragraph 5 below, in consideration of the obligations of Lincare in this Agreement, conditioned upon Lincare's full payment of the Settlement Amount, relator, for herself and for her heirs, successors, attorneys, agents, and assigns:

a. Agrees to release Lincare from any civil monetary claim the United States has or may have for the Covered Conduct under the False Claims Act, 31 U.S.C. §§ 3729-3733, and agrees to dismiss with prejudice the claims based on submission of false claims or false statements set forth in Paragraphs 1-26 of her complaint.

b. Agrees to release Lincare from any liability to relator for any and all expenses, attorney's fees and costs incurred in connection with relator's claims under Counts One and Two of the Complaint.

4. In consideration of the obligations of Lincare in this Agreement and the Corporate Integrity Agreement (CIA) entered into between OIG-HHS and Lincare, conditioned upon Lincare's full payment of the Settlement Amount, 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 Lincare 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 5, below, and as reserved in this Paragraph. The OIG-HHS expressly reserves all rights to comply with any statutory obligations to exclude Lincare 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, or for conduct and practices, for which claims have been reserved in Paragraph 5, below.

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 Lincare 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; and

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

6. Notwithstanding any term of this Agreement, specifically reserved and excluded from the scope and terms of this Agreement as to Lincare and relator are the following claims of the relator: Any statutory or common law claims she may have that her termination was contrary to law, and any civil liability of Lincare which may flow therefrom.

7. Conditioned upon receipt of the payment described in paragraph 1.b., relator, for herself individually, and for her heirs, successors, attorneys, 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 in connection with the Civil Action, or arising from the filing of the Civil Action, including 31 U.S.C. §§ 3730(b), (c), (c)(5), (d), and (d)(1), 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. The relator and her heirs, successors, attorneys, agents and assigns 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). 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. Lincare waives and will not assert any defenses Lincare 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.

9. Lincare fully and finally releases the United States, its agencies, employees, servants, and agents from any claims (including attorneys fees, costs, and expenses of every kind and however denominated) which Lincare 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' civil and administrative investigation and civil and administrative prosecution thereof.

10. The Settlement Amount shall not be decreased as a result of the denial of claims for payment now being withheld from payment by any Medicare carrier, intermediary, DMERC, or other Medicare payer, or any State payer, related to the Covered Conduct; and Lincare shall not resubmit to any Medicare carrier, intermediary, DMERC, or other Medicare payer, or any State payer any previously denied claims related to the Covered Conduct, and shall not appeal any such denials of claims.

11. Lincare 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 Lincare, 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) Lincare'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 Lincare makes to the United States pursuant to this Agreement and any payments that Lincare may make to relator, including costs and attorneys fees. (All costs described or set forth in this Paragraph 11.a. are hereafter, "unallowable costs"), and

(6) the negotiation of, and obligations undertaken pursuant to the CIA to:

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

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

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

c. Treatment of Unallowable Costs Previously Submitted for Payment: If applicable, Lincare further agrees that within 90 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 Lincare 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. Lincare agrees that the United States, at a minimum, shall be entitled to recoup from Lincare 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 Lincare or any of its subsidiaries or affiliates on the effect of inclusion of unallowable costs (as defined in this Paragraph) on Lincare 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 Lincare'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 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 13 below.

13. Lincare waives 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.

14. Lincare 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 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 Lincare, 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 Lincare was or became indebted to on or after the date of this transfer, within the meaning of 11 U.S.C. § 548(a)(1).

15. 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.

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

17. The relator represents that this Agreement is freely and voluntarily entered into without any degree of duress or compulsion whatsoever and that she has been advised with respect hereto by counsel prior to entering into this Settlement Agreement.

18. 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 Western District of Tennessee, except that disputes arising under the CIA shall be resolved pursuant to the dispute resolution provisions in the CIA. Any breach of the CIA is controlled by the terms of the CIA and does not constitute a breach of this Agreement

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

20. Upon receipt of the payment described in Paragraph 1.a above, the United States shall promptly sign and file in the Civil Action a Notice of Intervention as to the claims set forth in Paragraph 19.A. of the relator's complaint and Declination as to all other claims set forth in the relator's complaint, and the United States and the relator shall promptly sign and file a Joint Stipulation of Dismissal pursuant to the terms of this Agreement.

21. The individual signing this Agreement on behalf of Lincare represents and warrants that he or she is authorized by Lincare to execute this Agreement. The individual(s) 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.

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

23. This Agreement is binding on Lincare's and the relator's successors, transferees, heirs, and assigns.

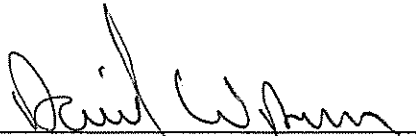
24. All Parties consent to the United States' disclosure of this Agreement, and information about this Agreement, to the public.

25. 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.


IN WITNESS WHEREOF, the parties hereto affix their signatures:

FOR THE UNITED STATES OF AMERICA

DATED: 5/15/06


BY: 
DAVID B. WISEMAN
Trial Attorney
Commercial Litigation Branch
Civil Division
U.S. Department of Justice

DATED: 5/15/06

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

FOR LINCARE HOLDINGS INC. AND LINCARE INC.

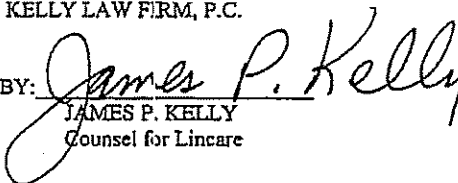
DATED: May 15, 2006

BY: 
LISA WEGRZYN
General Counsel

APPROVED AS TO FORM AND CONTENT:

KELLY LAW FIRM, P.C.

DATED: May 15, 2006

BY: 
JAMES P. KELLY
Counsel for Lincare

FOR THE RELATOR

DATED: _____

BY: _____
CARLA MARTIN

DATED: _____

BY: _____
MARK KLEIMAN
Counsel for Carla Martin

FOR LINCARE HOLDINGS INC. AND LINCARE INC.

DATED: _____

BY: _____
LISA WEGRZYN
General Counsel

APPROVED AS TO FORM AND CONTENT:

KELLY LAW FIRM, P.C.

DATED: _____

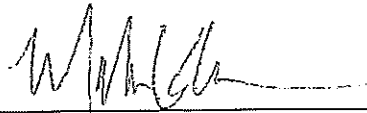
BY: _____
JAMES P. KELLY
Counsel for Lincare

FOR THE RELATOR

DATED: _____

BY: _____
CARLA MARTIN

DATED: 5/15/06

BY: 
MARK KLEIMAN
Counsel for Carla Martin

FOR LINCARE HOLDINGS INC. AND LINCARE INC.

DATED: _____

BY: _____
LISA WEGRZYN
General Counsel

APPROVED AS TO FORM AND CONTENT:

KELLY LAW FIRM, P.C.

DATED: _____

BY: _____
JAMES P. KELLY
Counsel for Lincare

FOR THE RELATOR

DATED: 5/12/06

BY: Carla Martin
CARLA MARTIN

DATED: _____

BY: _____
MARK KLEIMAN
Counsel for Carla Martin