

SETTLEMENT AGREEMENT

This Settlement Agreement (Agreement) is entered into among the United States of America, acting through the United States Department of Justice (the “DOJ”) and on behalf of the Office of Inspector General (“OIG-HHS”) of the Department of Health and Human Services (“HHS”) (collectively the “United States”), and Thomas Jefferson University (“TJU”) and Jefferson University Physicians, Department of Emergency Medicine (“JUP”) (the United States and Jefferson collectively referred to as the “Parties”), through their authorized representatives.

RECITALS

A. This settlement agreement arises as a result of a voluntary self-disclosure by Thomas Jefferson University and Jefferson University Physicians to the United States Attorney’s Office for the Eastern District of Pennsylvania.

B. Following a routine internal compliance review, TJU’s Counsel for Compliance identified certain Medicare Part B professional fee billing anomalies associated with services rendered to patients by non-physician practitioners, including Physician Assistants and Certified Registered Nurse Practitioners, in the Emergency Departments at hospital locations in which the physician and non-physician provider staff of Jefferson University Physicians’ Department of Emergency Medicine provide patient care.

C. Based upon this review, it appeared that certain professional fee services were billed under a physician’s National Provider Identification number when those services should have been billed under either the National Provider Identification number of the Physicians Assistants or Certified Registered Nurse Practitioners. The United States contends that TJU and JUP 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. §§ 1395-1395kkk-1. D. The United States

contends that it has certain claims against TJU and JUP during the period of January 1, 2008, through December 31, 2011, arising from TJU's submission of claims for services performed by certain JUP Emergency Department non-physician providers but which were improperly billed under a JUP Emergency Medicine physician's National Provider Identification number. This conduct is referred to below as the "Covered Conduct."

To avoid the delay, uncertainty, inconvenience, and expense of protracted litigation of the above claims, and in consideration of the mutual promises and obligations of this Settlement Agreement, the Parties agree and covenant as follows:

TERMS AND CONDITIONS

1. TJU and JUP collectively shall pay to the United States seventy-seven thousand four hundred and eighty-six dollars exactly (\$77,486.00) (the "Settlement Amount") no later than thirty days after the Effective Date of this Agreement by electronic funds transfer pursuant to written instructions to be provided by the United States Attorney's Office for the Eastern District of Pennsylvania.

2. Subject to the exceptions in Paragraph 4 (concerning excluded claims) below, and conditioned upon TJU and JUP's full payment of the Settlement Amount, the United States releases TJU, JUP, and their current and former parent corporations; direct and indirect subsidiaries; inside and outside legal counsel; brother or sister corporations; divisions; current or former owners; and officers, directors, and affiliates; and the successors and assigns of any of them from any civil or administrative monetary claim the United States has 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. In consideration of the obligations of TJU and JUP in this Agreement and conditioned upon their 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 TJU and JUP 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 4 (concerning excluded claims), below, and as reserved in this Paragraph. The OIG-HHS expressly reserves all rights to comply with any statutory obligations to exclude TJU and JUP 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 4, below.

4. Notwithstanding the releases given in paragraphs 2 and 3 of this Agreement, or any other term of this Agreement, the following claims of the United States are specifically reserved and are not released:

- a. Any 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 obligations 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; or
- h. Any liability for personal injury or property damage or for other consequential damages arising from the Covered Conduct.

5. TJU and JUP waive and shall not assert any defenses they 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.

6. TJU and JUP fully and finally release the United States, its agencies, officers, agents, employees, and servants, from any claims (including attorney's fees, costs, and expenses of every kind and however denominated) that TJU and JUP have asserted, could have asserted, or may assert in the future against the United States, and its agencies, employees, servants, and agents, related to the Covered Conduct and the United States' investigation and prosecution thereof.

7. 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 contractor (e.g., Medicare

Administrative Contractor, fiscal intermediary, carrier) or any state payer, related to the Covered Conduct; and TJU and JUP agree not to resubmit to any Medicare contractor or any state payer any previously denied claims related to the Covered Conduct, and agrees not to appeal any such denials of claims.

8. TJU and JUP agree to the following:

(a) Unallowable Costs Defined: 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. §§ 1395-1395kkk-1 and 1396-1396w-5; and the regulations and official program directives promulgated thereunder) incurred by or on behalf of TJU and JUP, their present or former officers, directors, employees, shareholders, and agents in connection with:

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

are unallowable costs for government contracting purposes and under the Medicare Program, Medicaid Program, TRICARE Program, and Federal Employees Health Benefits Program (FEHBP) (hereinafter referred to as Unallowable Costs).

b. Future Treatment of Unallowable Costs: Unallowable Costs shall be separately determined and accounted for by TJU and JUP, and TJU and JUP 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 TJU and JUP or any of their subsidiaries or affiliates to the Medicare, Medicaid, TRICARE, or FEHBP Programs.

c. Treatment of Unallowable Costs Previously Submitted for Payment: TJU and JUP 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 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 TJU and JUP or any of their 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. TJU and JUP agree that the United States, at a minimum, shall be entitled to recoup from TJU and JUP 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 TJU and JUP or any of their subsidiaries or affiliates on the effect of inclusion of Unallowable Costs (as defined

in this Paragraph) on TJU and JUP or any of their 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 the books and records of TJU and JUP to determine that no Unallowable Costs have been claimed in accordance with the provisions of this Paragraph.

9. 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 10 (waiver for beneficiaries paragraph), below.

10. TJU and JUP agree that they 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.

11. Each Party shall bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

12. Each party and signatory to this Agreement represents that it freely and voluntarily enters in to this Agreement without any degree of duress or compulsion.

13. This Agreement is governed by the laws of the United States. The exclusive jurisdiction and venue for any dispute relating to this Agreement is the United States District Court for the Eastern District of Pennsylvania. For purposes of construing this Agreement, this Agreement shall be deemed to have been drafted by all Parties to this Agreement and shall not, therefore, be construed against any Party for that reason in any subsequent dispute.

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

15. The undersigned counsel represent and warrant that they are fully authorized to execute this Agreement on behalf of the persons and entities indicated below.

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

17. This Agreement is binding on the successors, transferees, heirs, and assigns of TJU and JUP.

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


19. 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




ZANE DAVID MEMEGER, ESQ.
United States Attorney

DATED: _____



MARGARET L. HUTCHINSON, ESQ.
Assistant United States Attorney
Chief, Civil Division

DATED: _____



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United States Attorney's Office for the
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DATED: _____

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Assistant Inspector General for Legal Affairs
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United States Department of Health and Human
Services

THE UNITED STATES OF AMERICA

ZANE DAVID MEMEGER, ESQ.
United States Attorney

DATED: _____

MARGARET L. HUTCHINSON, ESQ.
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DATED: 4/3/14

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United States Department of Health and Human
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THOMAS JEFFERSON UNIVERSITY AND
JEFFERSON UNIVERSITY PHYSICIANS,
DEPARTMENT OF EMERGENCY MEDICINE

DATED: _____

Cristina Cavaleri
CRISTINA G. CAVALIERI, ESQUIRE
Sr. Vice President, Chief Legal and Governance
Officer and Secretary, TJU General Counsel and
Secretary, JUP

DATED: _____

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