

SETTLEMENT AGREEMENT

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 Memorial Health Care System, Inc. (Memorial) (hereafter collectively referred to as “the Parties”), through their authorized representatives.

RECITALS

A. Memorial is a non-profit corporation organized and existing under the laws of the State of Kentucky that owns and/or operates two hospitals in the State of Tennessee: Memorial Hospital in Chattanooga, Tennessee (“Memorial Hospital”); and Memorial Hixson Hospital, formerly known as Memorial North Park Hospital (“North Park Hospital”) in Hixson, Tennessee.

B. The United States contends that Memorial 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.

C. The United States contends that it has certain civil claims against Memorial arising from the following conduct during the period from January 22, 2003, through July 31, 2009:

1. Beginning on January 22, 2003, Memorial entered into a series of transactions with various physicians and physician groups through which it paid remuneration and provided other financial benefits which the United States contends were inconsistent with fair market value and intended in part to induce the physicians and physician members of the groups to refer patients to Memorial facilities. Specifically:

a. Beginning on January 22, 2003, Memorial entered into a series of timeshare lease arrangements with various physicians and physician groups,

identified in Attachment A, for use of exam room space and for administrative, clerical and technical support and supplies in Memorial's sleep centers at Memorial Hospital and North Park Hospital (the "Sleep Center Agreements"). Under the Sleep Center Agreements, which provided for initial terms of one year and automatic one-year renewals, Memorial agreed to provide timeshare space and support services at rates that were lower than fair market value. On March 27, 2009, Memorial gave notice of its intent to terminate the Sleep Center Agreements still in effect and sought to negotiate new agreements.

b. From at least April 1, 2008 through June 30, 2009, Dr. Anuj Chandra, who had entered into a Sleep Center Agreement effective January 18, 2007, used the space available to him for a 1/2 day per week more than permitted under his agreement without payment of additional rent to Memorial.

c. From at least the late 1980s (prior to the enactment of 42 U.S.C. § 1395nn (also known as the Stark law)) until June 22, 2009, Dr. Channappa Chandra was permitted to use a storage closet at Memorial Hospital free of rent and absent any written agreement on the basis of a verbal agreement between Dr. Channappa Chandra and a former Memorial Hospital administrator.

The United States contends that these arrangements failed to meet the requirements of 42 U.S.C. § 1395nn (also known as the Stark law), and violated the Anti-Kickback Statute, 42 U.S.C. § 1320a-7b(b).

2. The United States contends that from January 22, 2003, through July 31, 2009, in violation of the False Claims Act, 31 U.S.C. §§ 3729-3733, Memorial, through Memorial Hospital and North Park Hospital, submitted or caused to be submitted claims to

Medicare for inpatient and outpatient hospital services referred, ordered or arranged for by the physicians who benefitted from the prohibited financial arrangements between Memorial and the physicians specified in Paragraph 1 above.

The conduct described in this Paragraph C is referred to below as the Covered Conduct.

D. This Settlement Agreement is neither an admission of liability by Memorial nor a concession by the United States that its claims are not well founded.

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. Memorial shall pay to the United States the sum of One Million, Two Hundred Seventy-Eight Thousand, Five Hundred Ninety-Seven Dollars (\$1,278,597.00) ("Settlement Amount") by electronic funds transfer pursuant to written instructions to be provided by United States Attorney's Office for the Eastern District of Tennessee no later than 10 days after the Effective Date of this Agreement.

2. Subject to the exceptions in Paragraph 4 (concerning excluded claims) below, and conditioned upon Memorial's full payment of the Settlement Amount, the United States releases Memorial, its parent, subsidiaries, affiliates, and successors in interest, and the officers, directors, and employees thereof, 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. The OIG-HHS expressly reserves all rights to institute, direct, or maintain any administrative action seeking exclusion against Memorial and/or its officers, directors, and

employees from Medicare, Medicaid, and all other Federal health care programs (as defined in 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) or 42 U.S.C. § 1320a-7a (permissive exclusion).

4. Notwithstanding the release given in paragraph 2 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;
- h. Any liability for personal injury or property damage or for other consequential damages arising from the Covered Conduct; or
- i. Except as explicitly stated in this Agreement, any administrative liability of individuals.

5. Memorial waives and shall not assert any defenses Memorial 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. Memorial fully and finally releases 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 Memorial has 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 carrier or intermediary or any state payer, related to the Covered Conduct; and Memorial 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.

8. Memorial agrees 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

Memorial, its 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) Memorial'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 Memorial makes 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 in nonreimbursable cost centers by Memorial, and Memorial 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 Memorial or any of its subsidiaries or affiliates to the Medicare, Medicaid, TRICARE, or FEHBP Programs.

c. Treatment of Unallowable Costs Previously Submitted for Payment:

Memorial 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 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 Memorial 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. Memorial agrees that the United States, at a minimum, shall be entitled to recoup from Memorial 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 Memorial or any of its subsidiaries or affiliates on the effect of inclusion of Unallowable Costs (as defined in this Paragraph) on Memorial 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 Memorial's books and records 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. Memorial agrees that it 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.

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 Tennessee. 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 Memorial's successors, transferees, heirs, and assigns.

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.

[Signatures begin on the following page]

THE UNITED STATES OF AMERICA

DATED: _____

BY: _____

WILLIAM C. KILLIAN
UNITED STATES ATTORNEY
Eastern District of Tennessee

DATED: _____

BY: _____

MICHAEL D. GRANSTON
LAURIE A. OBEREMBT
Civil Division
United States Department of Justice

DATED: _____

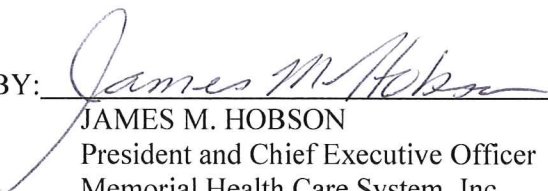
BY: _____

GREGORY E. DEMSKE
Chief Counsel to the Inspector General
Office of Inspector General
United States Department of Health and
Human Services

MEMORIAL HEALTH CARE SYSTEM, INC.

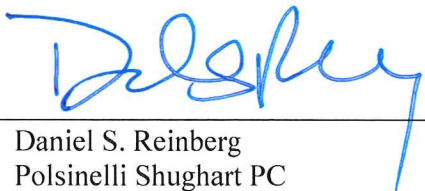
DATED: 8-15-12

BY: _____


JAMES M. HOBSON
President and Chief Executive Officer
Memorial Health Care System, Inc.

DATED: 8-15-12

BY: _____


Daniel S. Reinberg
Polsinelli Shughart PC
Counsel for Memorial Health Care System,
Inc.

THE UNITED STATES OF AMERICA

DATED: _____

BY: _____

WILLIAM C. KILLIAN
UNITED STATES ATTORNEY
Eastern District of Tennessee

DATED: _____

BY: _____

MICHAEL D. GRANSTON
LAURIE A. OBEREMBT
Civil Division
United States Department of Justice

DATED: _____

BY: _____

GREGORY E. DEMSKE
Chief Counsel to the Inspector General
Office of Inspector General
United States Department of Health and
Human Services

MEMORIAL HEALTH CARE SYSTEM, INC.

DATED: _____

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JAMES M. HOBSON
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DATED: _____

BY: _____

Daniel S. Reinberg
Polsinelli Shughart PC
Counsel for Memorial Health Care System,
Inc.

THE UNITED STATES OF AMERICA

DATED: _____

BY: _____

WILLIAM C. KILLIAN
UNITED STATES ATTORNEY
Eastern District of Tennessee

DATED: 8/15/12

BY: Laurie A. Oberembt

MICHAEL D. GRANSTON
LAURIE A. OBEREMBT
Civil Division
United States Department of Justice

DATED: _____

BY: _____

GREGORY E. DEMSKE
Chief Counsel to the Inspector General
Office of Inspector General
United States Department of Health and
Human Services

MEMORIAL HEALTH CARE SYSTEM, INC.

DATED: 8-15-12

BY: James M. Hobson

JAMES M. HOBSON
President and Chief Executive Officer
Memorial Health Care System, Inc.

DATED: 8-15-12

BY: Daniel S. Reinberg

Daniel S. Reinberg
Polsinelli Shughart PC
Counsel for Memorial Health Care System,
Inc.

THE UNITED STATES OF AMERICA

DATED: _____

BY: _____

WILLIAM C. KILLIAN
UNITED STATES ATTORNEY
Eastern District of Tennessee

DATED: _____

BY: _____

MICHAEL D. GRANSTON
LAURIE A. OBEREMBT
Civil Division
United States Department of Justice

DATED: 8/23/12

BY: _____

GREGORY E. DEMSKE
Chief Counsel to the Inspector General
Office of Inspector General
United States Department of Health and
Human Services

MEMORIAL HEALTH CARE SYSTEM, INC.

DATED: 8-15-12

BY: _____

JAMES M. HOBSON
President and Chief Executive Officer
Memorial Health Care System, Inc.

DATED: 8-15-12

BY: _____

Daniel S. Reinberg
Polsinelli Shughart PC
Counsel for Memorial Health Care System,
Inc.

Attachment A
Physician Sleep Center Agreements

Physician/Group	Premises Covered	Effective Date	Termination Date
Anuj Chandra, M.D.	Two exam rooms at Memorial Hospital Doctor's West Building	1/18/2007	7/31/2009
Lawrence Ch'ien, M.D.	Two exam rooms at Memorial Hospital Doctor's West Building	1/22/2003	10/28/2004
	Two exam rooms at Memorial Hospital Doctor's West Building	10/29/2004	3/31/2009
Thomas G. Devlin, M.D.	Two exam rooms at Memorial Hospital Doctor's West Building	1/22/2003	10/28/2004
	Two exam rooms at Memorial Hospital Doctor's West Building	10/29/2004	7/31/2008
The Diagnostic Center	Two exam rooms at Memorial Hospital Doctor's West Building	10/29/2004	10/13/2008
	Two exam rooms at North Park Hospital Annex Building	10/29/2004	8/30/2007
Tarek A. Kadrie, M.D.	Two exam rooms at Memorial Hospital Doctor's West Building	10/29/2004	7/31/2009
Daniel R. Smith, M.D.	Two exam rooms at Memorial Hospital Doctor's West Building	2/25/2003	2/24/2005
Specialists in Pulmonary Care, Critical Care, & Sleep Medicine	Two exam rooms at Memorial Hospital Doctor's West Building; and two exam rooms at North Park Hospital Annex Building	8/1/2007	8/31/2008
Andrew N. Vernon, M.D.	Two exam rooms at North Park Hospital Annex Building	2/25/2003	2/24/2005
Vincent A. Viscomi, M.D.	Two exam rooms at Memorial Hospital Doctor's West Building; and two exam rooms at North Park Hospital Annex Building	1/22/2003	10/28/2004
	Two exam rooms at Memorial Hospital Doctor's West Building; and two exam rooms at North Park Hospital Annex Building	10/29/2004	7/31/2009