

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 (OIG-HHS) of the Department of Health and Human Services (HHS) (collectively the "United States"), AHS Hospital Corp., Atlantic Health System, Inc., Overlook Hospital, (collectively referred to as "AHS") and Paul Tahlor and Margaret Marino (collectively referred to as "Relators") (hereafter the United States, AHS and Relators are collectively referred to as "the Parties"), through their authorized representatives.

RECITALS

A. AHS Hospital Corporation and Atlantic Health Systems, Inc. are hospital healthcare systems doing business in New Jersey that own and operate hospitals, including Overlook Hospital. Overlook Hospital is located in Summit, New Jersey.

B. On April 25, 2008, Paul Tahlor and Margaret Marino filed a *qui tam* action in the United States District Court for the District of New Jersey captioned *United States ex rel. John Doe and Jane Doe v. AHS Hospital Corp., Atlantic Health Systems, Inc., Overlook Hospital, Summit Medical Group, Emergency Medical Associates of New Jersey, Hospitalist Associates, Inc., John Roe, M.D. 1 to John Doe, M.D. 100 (One Hundred Overlook Hospital Staff Physicians), Inglemoor Rehabilitation & Care Center, Runnells Specialized Hospital, South Mountain HC, Careone, Genesis Healthcare, David Schreck, M.D., and Samir Patel, M.D., 08-2042 (WJM)*, pursuant to the *qui tam* provisions of the False Claims Act, 31 U.S.C. § 3730(b) (the "Civil Action"). Relators alleged, among other things, that Defendants improperly billed, or caused others to bill, the Medicare Program (Medicare), Title XVIII of the Social Security Act, 42 U.S.C. §§ 1395-1395kkk-1, for inpatient hospital services at Overlook Hospital for patients who

did not qualify for such services and improperly transferred patients to skilled nursing facilities where those patients did not qualify for this care.

C. The United States contends that AHS submitted or caused to be submitted claims for payment to Medicare.

D. The United States contends it has certain civil claims against AHS arising from AHS's submission of, causing the submission of, or conspiracy to submit, inpatient claims for Medicare Part A reimbursements, and/or the use or making of false records or statements relating to such claims for Part A services, provided to Medicare patients at Overlook Hospital which under applicable laws, regulations, guidelines and policies, were ineligible for reimbursement as inpatient services and should have been submitted as outpatient services, during the period from January 1, 2002 through July 31, 2009. That conduct is referred to below as the Covered Conduct.

E. This Settlement Agreement and the payment described here in are neither an admission of liability by AHS nor a concession by the United States that its claims are not well founded or a concession by Relators that their claims are not well founded.

F. Relators claim, among other things, entitlement under 31 U.S.C. § 3730(d) to a share of the proceeds of this Settlement Agreement and to Relators' reasonable expenses, attorneys' fees and costs.

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. AHS shall pay to the United States eight million nine hundred ninety nine

thousand, nine hundred ninety nine dollars (\$8,999,999.00), plus any interest that may have accrued between November 15, 2011 and the Effective Date of this Agreement at a rate of 1.67%per annum (“Settlement Amount”) by electronic funds transfer pursuant to written instructions to be provided by the United States Attorney for the District of New Jersey no later than seven days after the Effective Date of this Agreement.

2. Subject to the exceptions in Paragraph 5 (concerning excluded claims) below, and conditioned upon AHS’s full payment of the Settlement Amount, the United States releases AHS, including officers, directors and employees of AHS, 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(a)(1)(A)&(B); 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. Subject to the exceptions in Paragraph 5 below, and conditioned upon AHS’s full payment of the Settlement Amount, Relators, for themselves and for their heirs, successors, attorneys, agents, and assigns, release AHS, including officers, directors, and employees of AHS, from any civil monetary claim the Relators have on behalf of the United States or Relators for the Covered Conduct under the False Claims Act, 31 U.S.C. §§ 3729-3733, except that Relators do not release AHS from claims for attorneys’ fees and expenses under 31 U.S.C. § 3730(d).

4. In consideration of the obligations of AHS in this Agreement and the Corporate Integrity Agreement (CIA), entered into between OIG-HHS and AHS, and conditioned upon AHS’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 Overlook Hospital 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 (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 Overlook Hospital 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 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 or Relators 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) or to Relators 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; and
- i. Any liability of entities or individuals not included in paragraphs 2 and 3, including, but not limited to, Summit Medical Group, Emergency Medical Associates of New Jersey, Hospitalist Associates, Inc., Inglemoor Rehabilitation & Care Center, Runnells Specialized Hospital, South Mountain HC, Careone, Genesis Healthcare, David Schreck, M.D., and Samir Patel, M.D.

6. Relators and their heirs, successors, attorneys, agents, and assigns shall not object to this Agreement but 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). In connection with this Agreement and this Civil Action, Relators and their heirs, successors, attorneys, agents, and assigns agree that neither this Agreement, any intervention by the United States in the Civil Action in order to dismiss certain claims in the Civil Action arising from the Covered Conduct, nor any dismissal of such claims from the Civil Action, shall waive or otherwise affect the ability of the United States to contend that provisions in the False Claims Act, including 31 U.S.C. §§ 3730(d)(3) and 3730(e), bar Relators from sharing in the proceeds of this Agreement. Moreover, the United States and Relators and their heirs, successors, attorneys, agents, and assigns agree that they each retain all of their rights pursuant to the False Claims Act on the issue of the share percentage, if any, that Relators should receive of any proceeds of the settlement of their claim(s).

7. AHS waives and shall not assert any defenses AHS 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.

8. AHS 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 AHS has asserted, could have asserted, or may assert in the future against the United States, its agencies, officers, agents, employees, and servants, 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 claims for payment now being withheld from payment by any Medicare carrier or intermediary or any state payer, related to the Covered Conduct; and AHS 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. AHS 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 and 1396-1396w-5; and the regulations and official program directives promulgated thereunder) incurred by or on behalf of AHS, 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) AHS'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;
- (5) the payment AHS makes to the United States pursuant to this Agreement and any payments that AHS may make to Relator, including costs and attorneys fees; 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,

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). However, nothing in this paragraph 10.a.(6) that may apply to the obligations undertaken pursuant to the CIA affects the status of costs that are not allowable based on any other authority applicable to AHS.

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

c. Treatment of Unallowable Costs Previously Submitted for Payment: AHS 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 AHS 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. AHS agrees that the United States, at a minimum, shall be entitled to recoup from AHS 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 AHS or any of its subsidiaries or affiliates on the effect of inclusion of Unallowable Costs (as defined in this Paragraph) on AHS 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 AHS's books and records to determine that no Unallowable Costs have been claimed in accordance with the provisions of this Paragraph.

11. AHS agrees to cooperate fully and truthfully with the United States in any

continuing investigation into the matters alleged in the Civil Action, including matters not referred to in this Agreement as Covered Conduct. Upon reasonable notice, AHS shall encourage, and agrees not to impair, the cooperation of its directors, officers, and employees, and shall use its best efforts to make available, and encourage, the cooperation of former directors, officers, and employees for interviews and testimony, consistent with the rights and privileges of such individuals.

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 Paragraphs 2 and 3 and Paragraph 13 (waiver for beneficiaries paragraph), below.

13. AHS 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.

14. Upon receipt of the payment described in Paragraph 1, above, the Parties shall promptly sign and file in the Civil Action a Joint Stipulation of Dismissal with prejudice of all claims against AHS in the Civil Action for the Covered Conduct, with the proviso, pursuant to 31 U.S.C. § 3730(d), that the court shall retain jurisdiction over any dispute between the United States and Relators as to the Relators' share of any proceeds recovered by the United States pursuant to the Settlement Agreement and over any dispute between AHS and Relators as to the appropriate attorneys' fees and costs, if any, to be paid to Relators. The court shall also retain jurisdiction over any claims in the Civil Action other than those against AHS for the Covered Conduct.

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

reserve all rights under 31 U.S.C. § 3730(d) to seek reasonable expenses, attorney's fees and costs from AHS.

16. 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.

17. 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 District of New Jersey. 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.

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

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 AHS's successors, transferees, heirs, and assigns.

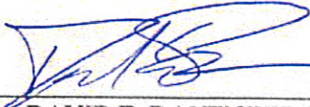
22. This Agreement is binding on Relators' successors, transferees, heirs, and assigns.

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

24. 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.

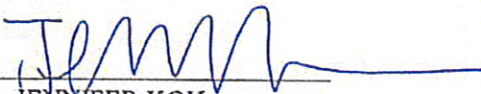
THE UNITED STATES OF AMERICA

DATED: 6/10/12

BY: 

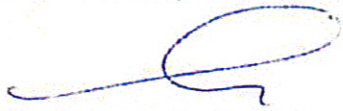
DAVID E. DAUENHEIMER
Assistant United States Attorney
District of New Jersey

DATED: 6/15/12

BY: 

JENNIFER KOH
Commercial Litigation Branch
Civil Division
United States Department of Justice

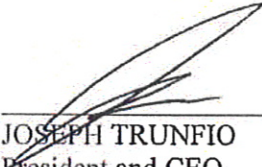
DATED: 6/14/12

BY: 

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

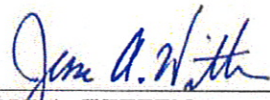
**AHS HOSPITAL CORP., ATLANTIC HEALTH SYSTEM, INC. AND
OVERLOOK HOSPITAL**

DATED: 6/8/12



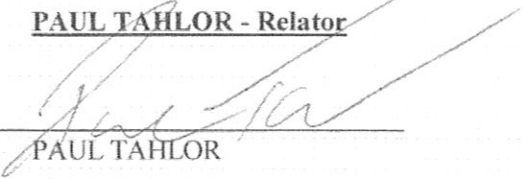
JOSEPH TRUNFIO
President and CEO
Atlantic Health System, Inc. and AHS Hospital Corp.

DATED: 6/8/12



JESSE A. WITTEN
Drinker Biddle & Reath LLP
Counsel for AHS

PAUL TAHLOR - Relator

DATED: 6/8/12 BY: 
PAUL TAHLOR

MARGARET MARINO- Relator

DATED: _____ BY: _____
MARGARET MARINO

DATED: _____ BY: _____
TIMOTHY J. MCINNIS
McInnis Law
Co-Counsel for Relators (admitted
pro hac vice)

DATED: _____ BY: _____
PAUL B. BRICKFIELD
Brickfield & Donahue
Co-Counsel for Relators (local
counsel)

PAUL TAHLOR - Relator

DATED: _____ BY: _____
PAUL TAHLOR

MARGARET MARINO- Relator

DATED: *June 7, 2012* BY: *Margaret Marino*
MARGARET MARINO

DATED: _____ BY: _____
TIMOTHY J. MCINNIS
McInnis Law
Co-Counsel for Relators (admitted
pro hac vice)

DATED: _____ BY: _____
PAUL B. BRICKFIELD
Brickfield & Donahue
Co-Counsel for Relators (local
counsel)


PAUL TAHLOR - Relator

DATED: _____ BY: _____
PAUL TAHLOR

MARGARET MARINO- Relator

DATED: _____ BY: _____
MARGARET MARINO

DATED: _____ BY: _____
TIMOTHY J. MCINNIS
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Co-Counsel for Relators (admitted
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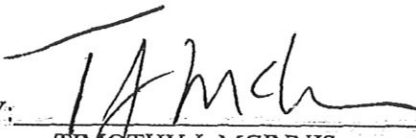
DATED: 6/8/12 BY: 
PAUL B. BRICKFIELD
Brickfield & Donahue
Co-Counsel for Relators (local
counsel)

PAUL TAHLOR - Relator

DATED: _____ BY: _____
PAUL TAHLOR

MARGARET MARINO- Relator

DATED: _____ BY: _____
MARGARET MARINO

DATED: 6/11/12 BY: 
TIMOTHY J. MCINNIS
McInnis Law
Co-Counsel for Relators (admitted
pro hac vice)

DATED: _____ BY: _____
PAUL B. BRICKFIELD
Brickfield & Donahue
Co-Counsel for Relators (local
counsel)