

NORTH CAROLINA SETTLEMENT AGREEMENT

I. PARTIES

This Settlement Agreement (“Agreement”) is entered into between the State of North Carolina (“the State”) and Adventist Health System Sunbelt Healthcare Corporation, Adventist Health System/Sunbelt, Inc., and the defendants named in the Civil Actions (as defined below) (collectively referred to as “Adventist,” and, individually, as “Adventist Entities”), and Michael Payne, Melissa Church, Gloria Pryor, and Sherry Dorsey (collectively referred to as the “Relators”). The State, the Relators and Adventist are hereby collectively referred to as the “Parties” and act through their authorized representatives.

II. PREAMBLE

As a preamble to this Agreement, the Parties agree to the following:

A. At all relevant times, Adventist Health System Sunbelt Healthcare Corporation, a Florida non-profit corporation with its principal place of business in Florida, owned numerous operators of hospitals and medical practices throughout the southeastern United States, including Fletcher Hospital, Inc., d/b/a Park Ridge Health and Park Ridge Medical Associates in North Carolina.

B. On December 12, 2012, Michael Payne, Melissa Church and Gloria Pryor filed a qui tam action in the United States District Court for the Western District of North Carolina captioned *United States of America et al., ex. rel. Payne, et al. v. Adventist Health System-Sunbelt, Inc., et al.*, Civil Action No. 3:12-cv-856-W (“Payne Qui Tam”). The Payne Qui Tam alleged that certain Adventist Entities knowingly submitted false

claims under the federal false claims act (31 U.S.C. § 3729) and the following state false claims acts: Florida (Fla. Stat. § 68.081 et seq.), Georgia (Ga. Code Ann. § 49-4-168 et seq.), Illinois (740 Ill. Comp. Stat. 175/1 et seq.), North Carolina (N.C. Gen. Stat. § 1-605 et seq.), Tennessee (Tenn. Code Ann. § 71-5-181 et seq.), and Texas (Tex. Hum. Res. Code Ann. § 36.001 et seq.). In February 2013, the Payne Relators amended their complaint. On April 5, 2013, Sherry Dorsey (“Dorsey Relator”) filed a qui tam action in the United States District Court for the Western District of North Carolina captioned *United States of America et al., ex. rel. Dorsey v. Adventist Health System-Sunbelt, Inc., et al.*, Civil Action No. 3:13-cv-217 (“Dorsey Qui Tam”). The Dorsey Qui Tam alleged that certain Adventist Entities knowingly submitted false claims under the federal false claims act (31 U.S.C. § 3729, et. seq.) and the North Carolina false claims act (N.C. Gen. Stat. § 1-605 et seq.). The Dorsey Qui Tam was later amended to add additional allegations, including but not limited to allegations against certain Adventist Entities under the Illinois, Florida and Texas false claims acts. The Payne Qui Tam and Dorsey Qui Tam, will be referred to collectively as the “Civil Actions.” The Civil Actions alleged, *inter alia*, that Adventist entered into financial relationships with physicians that violated the Physician Self-Referral Law, 42 U.S.C. § 1395nn, federal false claims act and the state-specific false claims acts.

C. Adventist has entered into a separate civil settlement agreement with the United States of America and Relators regarding the federal claims in the Civil Actions.

D. The State contends that Adventist caused false claims for payment to be submitted to the State’s Medicaid program (see N.C. Gen. Stat. § 1-605 et seq.).

E. The State contends that it has certain civil and administrative causes of action against Adventist for violations of the Physician Self-Referral Law (42 U.S.C. § 1395nn) with respect to certain physicians and time periods. The North Carolina physicians and time periods are identified in Exhibit 1 to this Agreement. Adventist's submission of claims to the North Carolina Medicaid Program for services and items that were referred to Adventist by physicians identified in Exhibit 1 during the time periods also identified in Exhibit 1 is referred to below as the "Covered Conduct."

F. This Agreement is neither an admission of facts or liability by Adventist, nor a concession by the State that its allegations are not well founded. Adventist expressly denies the allegations of the State as set forth herein and in the Civil Actions.

G. To avoid the delay, expense, inconvenience, and uncertainty of protracted litigation of these causes of action, the Parties mutually desire to reach a full and final settlement as set forth below.

III. TERMS AND CONDITIONS

NOW, THEREFORE, in reliance on the representations contained herein and in consideration of the mutual promises, covenants and obligations set forth in this Agreement, and for good and valuable consideration as stated herein, the Parties agree as follows:

1. Adventist agrees to pay to North Carolina the sum of one hundred ninety eight thousand four hundred fifty three dollars and seventy five cents (\$198,453.75) (the "Settlement Amount"). This Settlement Amount represents the state share of Medicaid payments made to Adventist for claims the State alleges were in violation of the

Physician Self-Referral Law and the North Carolina false claims act. The Settlement Amount is due in full no later than thirty days (30) after the Settlement Effective Date (as defined herein). The Settlement Amount shall constitute a debt immediately due and owing to North Carolina on the Settlement Effective Date and subject to the terms of this Agreement.

2. The State agrees to dismiss with prejudice any state law claims which the State has the authority to dismiss currently pending against Adventist in Federal Court for the Covered Conduct including any supplemental state law claims asserted in the Civil Actions. Contingent upon the receipt of its Settlement Amount, the State agrees to promptly pay the Relators a share thereof pursuant to state law in an amount to be determined within a reasonable time after receipt of the Settlement Amount..

3. Subject to the exceptions in Paragraph 4 below, in consideration of the obligations of Adventist set forth in this Agreement, and conditioned upon receipt by the State of the Settlement Amount, the State agrees to release Adventist, its predecessors and current and former direct and indirect affiliates, parents, divisions, subsidiaries, successors, transferees, heirs, and assigns, and their current and former directors, officers, and employees, individually and collectively (collectively, the "Adventist Released Entities"), from any civil or administrative monetary cause of action that the State has for any claims submitted or caused to be submitted to the State Medicaid program as a result of the Covered Conduct, or from any permissive authority to exclude Adventist from participation in the State Medicaid program.

4. Notwithstanding any term of this Agreement, the State specifically does not release any person or entity from any of the following liabilities:

- (a) any criminal, civil, or administrative liability arising under state revenue codes;
- (b) any criminal liability not specifically released by this Agreement;
- (c) any civil or administrative liability that any person or entity, including any Adventist Released Entities, has or may have to the State or to individual consumers or state program payors under any statute, regulation or rule, including but not limited to, any and all of the following claims: (i) State or federal antitrust violations; (ii) Claims involving unfair and/or deceptive acts and practices and/or violations of consumer protection laws, not expressly covered by the release for the Covered Conduct in Paragraph 3 above;
- (d) any liability to the State for any conduct other than the Covered Conduct;
- (e) any liability which may be asserted on behalf of any other payors or insurers, including those that are paid by the State's Medicaid program on a capitated basis;
- (f) any liability based upon obligations created by this Agreement;
- (g) except as explicitly stated in this Agreement, any administrative liability, including mandatory exclusions from the State's Medicaid program;
- (h) any liability for express or implied warranty claims or other claims for defective or deficient products and services provided by Adventist;
- (i) any liability for personal injury or property damage or for other consequential damages arising from the Covered Conduct; or
- (j) any liability based on a failure to deliver goods or services due.

5. Subject to the exceptions below, conditioned upon Adventist's full payment of the Settlement Amount, Relators, for themselves and for their heirs, successors, attorneys, agents, and assigns, release Adventist; its Adventist Released Entities; and its past and present officers, directors, attorneys, agents, servants, and employees, as well as successors and assigns of any of them; from any claim the Relators have, whether in law or equity or otherwise, on behalf of the State of North Carolina, related to (a) the Covered Conduct, and (b) all the North Carolina state law allegations in their respective Civil Actions, as amended, and agree to dismiss those state law claims with prejudice. Relators expressly reserve and do not dismiss or release their claims for attorney's fees and expenses against Adventist pursuant to state law comparable to 31 U.S.C. § 3730(d); or any claims Relators may have under state law comparable to 31 U.S.C. §3730(h); or their claims for a share of the proceeds of this Settlement. Adventist expressly reserves any defenses or objections in law or equity to Relators' claims for attorney's fees, expenses, and costs, on any grounds, including any provision of Federal, state, or common law, including, but not limited to, any state law comparable to 31 U.S.C. § 3730(d) and (h).

6. In consideration of the obligations of Adventist set forth in this Agreement and conditioned on receipt by the State of the Settlement Amount, the State agrees to release and refrain from instituting, recommending, directing, or maintaining any administrative action seeking exclusion from the State's Medicaid program against Adventist for the Covered Conduct, except as reserved in Paragraph 4 above. Nothing in this Agreement precludes the State from taking action against Adventist if Adventist is

excluded from the federal health care programs or for conduct and practices other than the Covered Conduct.

7. Adventist and the Affiliated Entities 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.

8. In consideration of the obligations of the State set forth in this Agreement, Adventist waives and discharges the State, its agencies, political subdivisions, employees, servants, and agents from any causes of action (including attorney's fees, costs, and expenses of every kind and however denominated) which Adventist has asserted, could have asserted, or may assert in the future against the State, its agencies, political subdivisions, employees, servants, and agents, arising from the State's investigation and prosecution of the Covered Conduct.

9. Adventist and the Affiliated Entities and their past and present officers, directors, attorneys, agents, servants, and employees, as well as successors and assigns of any of them, fully and finally release the Relators, their heirs, successors, attorneys, agents and assigns from any and all claims (including attorney's fees, costs, and expenses of every kind and however denominated) that Adventist or the Affiliated Entities or their past and present officers, directors, attorneys, agents or employees have asserted, could have asserted, or may assert in the future against Relators related to the Civil Actions or the Covered Conduct and the Relators' investigation and prosecution thereof.

10. The amount that Adventist must pay to the State pursuant to Paragraph III.1. above will not be decreased as a result of the denial of claims for payment now being withheld from payment by the State's Medicaid program, or any other state payor, for the Covered Conduct; and Adventist agrees not to resubmit to the State's Medicaid program or any other state payor, any previously denied claims, which denials were based on the Covered Conduct, and agrees not to appeal or cause the appeal of any such denials of claims.

11. Adventist shall not seek payment for any claims for reimbursement to the State's Medicaid program covered by this Agreement from any health care beneficiaries or their parents, sponsors, legally responsible individuals, or third party payors.

12. Adventist expressly warrants that it has reviewed its financial condition and that it is currently solvent within the meaning of 11 U.S.C. §§ 547(b)(3) and 548(a)(B)(ii)(I), and shall remain solvent following payment of the Settlement Amount and compliance with this Agreement.

13. The Parties each represent that this Agreement is freely and voluntarily entered into without any degree of duress or compulsion whatsoever.

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

15. Except as otherwise stated in this Agreement, this Agreement is intended to be for the benefit of the Parties only, and by this instrument the Parties do not release any liability against any other person or entity.

16. Nothing in this Agreement constitutes an agreement by the State concerning the characterization of the amounts paid hereunder for purposes of the State's revenue code.

17. This Agreement is governed by the laws of the State and venue for addressing and resolving any and all disputes relating to this Agreement shall be the state courts of appropriate jurisdiction of the State.

18. The undersigned Adventist signatories represent and warrant that they are authorized as a result of appropriate corporate action to execute this Agreement. The undersigned State signatories represent that they are signing this Agreement in their official capacities and that they are authorized to execute this Agreement on behalf of the State through their respective agencies and departments.

19. The Settlement Effective Date of this Agreement shall be the date of signature of the last signatory to this Agreement. Facsimiles of signatures shall constitute acceptable binding signatures for purposes of this Agreement.

20. This Agreement shall be binding on all successors, transferees, heirs, and assigns of the Parties.

21. This Agreement constitutes the complete agreement between the Parties with respect to this matter and shall not be amended except by written consent of the Parties.

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

STATE OF NORTH CAROLINA

By: *Charles H. Hobgood* Dated: 9/4/2015

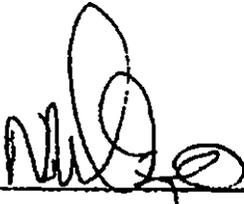
CHARLES H. HOBGOOD
Director, Medicaid Investigations Division
Office of the Attorney General

By: *D/R* Dated: 9/3/15

DAVE RICHARD
Deputy Secretary for Medical Assistance
Division of Medical Assistance

THE PAYNE RELATORS

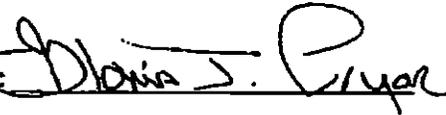
DATED: 9/4/15

BY: 
Michael Payne

DATED: 9/4/15

BY: Melissa Church
Melissa Church

DATED: 9-4-15

BY: 
Gloria Pryor

DATED: 9/8/15

BY: 
Peter Chatfield, Esq.
Counsel for the Payne Relators

SHERRY DORSEY (RELATOR)

DATED: _____

BY: _____
Sherry Dorsey

DATED: _____

BY: _____
Marian Wilbanks, Esq.
Counsel for Ms. Dorsey

THE PAYNE RELATORS

DATED: _____

BY: _____

Michael Payne

DATED: _____

BY: _____

Melissa Church

DATED: _____

BY: _____

Gloria Pryor

DATED: _____

BY: _____

Peter Chatfield, Esq.
Counsel for the Payne Relators

SHERRY DORSEY (RELATOR)

DATED: 9-3-2015

BY: Sherry Dorsey

Sherry Dorsey

DATED: _____

BY: _____

Marian Wilbanks, Esq.
Counsel for Ms. Dorsey

THE PAYNE RELATORS

DATED: _____ BY: _____

Michael Payne

DATED: _____ BY: _____

Melissa Church

DATED: _____ BY: _____

Gloria Pryor

DATED: _____ BY: _____

Peter Chatfield, Esq.
Counsel for the Payne Relators

SHERRY DORSEY (RELATOR)

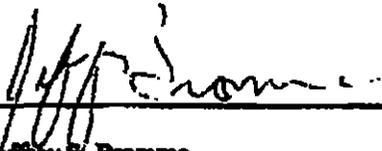
DATED: _____ BY: _____

Sherry Dorsey

DATED: 9/8/15 BY: 

Marlan Wilbanks, Esq.
Counsel for Ms. Dorsey

ADVENTIST HEALTH SYSTEM

By:  Dated: 9/11/15
Jeffrey S. Bromme
Senior Vice President
Chief Legal Officer

By:  Dated: 9/16/15
Daniel H. Melvin II
Counsel to Adventist Health System

EXHIBIT 1 to Adventist Health System/North Carolina Settlement Agreement

PHYSICIAN NAME	CALENDAR YEARS
Bailey, Robert	2007-2012
Barone, Russell	2010-2011
Bryant, James	2007-2012
Danninger, Sarah	2011-2012
Eisenhauer, Thomas L	2007-2012
Estes, Ralph Christian	2007-2012
Francis, Robert D.	2007-2012
Garfield, Robert	2007-2012
Grainger, Wade K	2007-2012
Herbert, Teresa	2007-2012
Highley, Timothy A	2007-2012
Huffman, Allan	2007-2012
Husted, David S	2008-2012
Ingram, Denise	2007-2012
Johnson, Clifford P	2010-2012
Johnson, Ronald W	2007-2012
Keppler, Eileen	2007-2012
Krueger, Andrew H	2010-2012
Krueger, Hilary	2010-2012
Lang, John M	2007-2012
Lartey, Philip L	2008-2010, 2012
Lugus, Thomas R	2007-2012
Manly, David T	2007-2010, 2012
Mashkovich, Yury	2012
McGee, Donna Brock	2007-2012
Neilson, Lorraine	2007-2012
Neuenschwander, Michael C	2009-2012
Possinger, Clive	2012
Price, David C	2007-2012
Rice, John	2012
Riddle, Charlotte	2007-2012
Robinson, Rebekah	2007-2012
Simons, William J	2007-2012
Stalford, Michael	2007-2012
Stover, Brian S	2010-2012
Stover, Pamela	2010-2011
Swann, Leah	2011-2012
Thompson, James	2007-2012
Uritis, Mary Anne	2007-2012
Young, William A	2007-2012