

## 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"), North Broward Hospital District (NBHD), and Michael Reilly, M.D. (hereafter collectively referred to as "the Parties"), through their authorized representatives.

### RECITALS

- A. NBHD is a special taxing district of the State of Florida that operates a group of hospitals and other health care facilities in the Broward County, Florida area.
- B. In April 2010, Dr. Reilly (Relator) filed a *qui tam* action in the United States District Court for the Southern District of Florida captioned United States ex rel. Reilly v. North Broward Hospital District, et al., Case No. 10-60590 (S.D. Fla.), pursuant to the *qui tam* provisions of the False Claims Act, 31 U.S.C. § 3730(b) (the Civil Action). In his complaint, the Relator alleged that NBHD had entered into financial relationships with a number of physicians that violated the Physician Self-Referral Law, 42 U.S.C. §§ 1395nn; the Anti-Kickback Statute, 42 U.S.C. § 1320a-7b(b); and the False Claims Act, 31 U.S.C. §§ 3729-3733.
- C. Having investigated the Relator's allegations, the United States contends that NBHD 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. §§ 1395-1395lll, and to the Medicaid Program (Medicaid), Title XIX of the Social Security Act, 42 U.S.C. §§ 1396-1396w-5.

D. The United States contends that NBHD's contracts with certain employed physicians violated the Physician Self-Referral Law. The physicians whose contracts the United States contends were improper, and the time periods during which the United States contends that the improper contracts were in effect, are identified in Exhibit 1 to this Agreement. NBHD's submission of claims to Medicare and Medicaid for services rendered to patients that were referred to NBHD by the physicians identified in Exhibit 1 during the time periods identified in Exhibit 1 is referred to below as the Covered Conduct.

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

F. Relator claims entitlement under 31 U.S.C. § 3730(d) to a share of the proceeds of this Settlement Agreement and to Relator's reasonable expenses and 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. NBHD shall pay to the United States sixty-nine million, five hundred thousand dollars (\$69,500,000), plus accrued interest at the rate of 2.25% per annum from June 18, 2015, and continuing until and including the day of payment (Settlement Amount), no later than ten 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 Southern District of Florida.

2. Conditioned upon the United States receiving the Settlement Amount from NBHD and as soon as feasible after receipt, the United States shall pay 17.25 percent of the Settlement Amount (\$11,988,750 plus applicable interest) to Relator by electronic funds transfer.

3. No later than 7 days following the Effective Date of the Agreement and receipt of written instructions from Relator, NBHD agrees to pay Relator an aggregate total of \$860,263.33 under 31 U.S.C. § 3730(d) for expenses, attorneys' fees, and costs arising from the filing of the Civil Action.

4. Subject to the exceptions in Paragraph 7 (concerning excluded claims) below, and conditioned upon NBHD's full payment of the Settlement Amount, the United States releases NBHD; all of its d/b/a entities, together with its past and present direct and indirect affiliated entities, subsidiaries, components, and divisions (collectively the Affiliated Entities); and its past and present officers, directors, Commissioners, attorneys, agents, servants, and employees, as well as 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; the civil money penalty provisions of the Physician Self-Referral Law, 42 U.S.C. §§ 1395nn(g)(3) and (4); any other statute creating causes of action for civil damages or civil penalties for which the Civil Division of the United States Department of Justice has actual and present authority to assert and compromise pursuant to 28 C.F.R. Part 0, Subpart I, § 0.45(d); or the common law theories of payment by mistake, restitution, unjust enrichment, disgorgement, and fraud.

5. Subject to the exceptions in Paragraph 7 (concerning excluded claims) below, and conditioned upon NBHD's full payment of the Settlement Amount, Relator, for himself, and to the extent they are claiming derivatively through their relationship with Relator, for his heirs, successors, attorneys, agents, and assigns, releases NBHD; its Affiliated Entities; and its past and present officers, directors, Commissioners, attorneys, agents, servants, and employees, as well as successors and assigns of any of them; from any and all claims (including attorney's fees, costs, and expenses of every kind and however denominated) the Relator, his heirs, successors, attorneys, agents, and assigns have asserted, could have asserted, or may assert in the future, whether in law or equity or otherwise, on behalf of the United States related to the filing of the Civil Action or the Covered Conduct or the Relator's investigation and prosecution thereof under the False Claims Act, 31 U.S.C. §§ 3729-3733. Additionally, the Relator hereby declares that, other than the filing of the Civil Action, he is unaware of any claims he, and to the extent they are claiming derivatively through their relationship with Relator, his heirs, successors, attorneys, agents, and assigns, have asserted, could have asserted, or may assert in the future against NBHD; its Affiliated Entities; and its past and present officers, directors, Commissioners, attorneys, agents, servants, and employees, as well as successors and assigns of any of them, on behalf of the United States related to the filing of the Civil Action or the Covered Conduct or the Relator's investigation and prosecution thereof under the False Claims Act, 31 U.S.C. §§ 3729-3733.

6. In consideration of the obligations of NBHD in this Agreement and the Corporate Integrity Agreement (CIA), entered into between OIG-HHS and NBHD, conditioned upon NBHD'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 NBHD under 42 U.S.C. § 1320a-7a (Civil Monetary Penalties Law), the civil monetary provisions of the Physician Self-Referral Law at 42 U.S.C. § 1395nn(g)(3) and (4), 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 7 (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 NBHD 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 7, below.

7. Notwithstanding the releases given in paragraphs 4 and 6 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. Any liability of individuals, except as expressly provided in paragraphs 4 and 5, above.

8. Relator and his 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). Conditioned upon Relator's receipt of the payment described in Paragraph 2, Relator and his heirs, successors, attorneys, agents, and assigns fully and finally release, waive, and forever discharge the United States, its agencies, officers, agents, employees, and servants, from any claims arising from the filing of the Civil Action or under 31 U.S.C. § 3730, and from any claims to a share of the proceeds of this Agreement and/or the Civil Action.

9. Relator, for himself, and to the extent they are claiming derivatively through their relationship with Relator, for his heirs, successors, attorneys, agents, and assigns, releases NBHD; its Affiliated Entities; and its past and present officers, directors,

Commissioners, attorneys, agents, servants, and employees, as well as successors and assigns of any of them, from any liability for any and all claims the Relator, his heirs, successors, attorneys, agents, and assigns have asserted, could have asserted, or may assert in the future related to the filing of the Civil Action or the Covered Conduct or the Relator's investigation and prosecution thereof, or under 31 U.S.C. § 3730(d) for expenses or attorney's fees and costs. Additionally, the Relator hereby declares that, other than the filing of the Civil Action, he is unaware of any claims he, and to the extent they are claiming derivatively through their relationship with Relator, his heirs, successors, attorneys, agents, and assigns, have asserted, could have asserted, or may assert in the future against NBHD; its Affiliated Entities; and its past and present officers, directors, Commissioners, attorneys, agents, servants, and employees, as well as successors and assigns of any of them, related to the filing of the Civil Action or the Covered Conduct or the Relator's investigation and prosecution thereof, or under 31 U.S.C. § 3730(d) for expenses or attorney's fees and costs.

10. NBHD 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. 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.

11. NBHD and the Affiliated Entities 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 NBHD and/or the Affiliated Entities have 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.

12. NBHD, for itself, and to the extent they are claiming derivatively through their relationship with NBHD, its Affiliated Entities, and its successors, attorneys, agents, and assigns, fully and finally release the Relator, his 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 NBHD or its Affiliated Entities, or its successors, attorneys, agents, or assigns, have asserted, could have asserted, or may assert in the future related to the filing of the Civil Action or the Covered Conduct or the Relator's investigation and prosecution thereof. Additionally, NBHD hereby declares that it is unaware of any claims it, and to the extent they are claiming derivatively through their relationship with NBHD, its Affiliated Entities, and its successors, attorneys, agents, and assigns, have asserted, could have asserted, or may assert in the future against the Relator, his heirs, successors, attorneys, agents and assigns related to the filing of the Civil Action or the Covered Conduct or the Relator's investigation and prosecution thereof.

13. 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 NBHD agrees 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.

14. NBHD 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 NBHD, the Affiliated Entities, and/or 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) NBHD'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 NBHD makes to the United States pursuant to this Agreement and any payments that

NBHD may make to Relator, including costs and attorney's 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 paragraph 14.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 NBHD and/or the Affiliated Entities.

b. **Future Treatment of Unallowable Costs:** Unallowable Costs shall be separately determined and accounted for in nonreimbursable cost centers by NBHD and the Affiliated Entities, and NBHD and the Affiliated Entities 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 NBHD or any of the Affiliated Entities to the Medicare, Medicaid, TRICARE, or FEHBP Programs.

**c. Treatment of Unallowable Costs Previously Submitted for**

**Payment: NBHD and the Affiliated Entities 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 NBHD or any of the Affiliated Entities, 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. NBHD and the Affiliated Entities agree that the United States, at a minimum, shall be entitled to recoup from NBHD and the Affiliated Entities 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 NBHD or any of the Affiliated Entities on the effect of inclusion of Unallowable Costs (as defined in this Paragraph) on NBHD or any of the Affiliated Entities' 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 NBHD and**

the Affiliated Entities to determine that no Unallowable Costs have been claimed in accordance with the provisions of this Paragraph.

15. 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 16 (waiver for beneficiaries paragraph), below.

16. NBHD and the Affiliated Entities 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.

17. 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 of the Civil Action (a copy of which is attached hereto as Exhibit 2) pursuant to Rule 41(a)(1), dismissing the Civil Action with prejudice to the Relator as to all claims, with prejudice to the United States for the Covered Conduct, and without prejudice to the United States for all other claims.

18. Except as provided in Paragraph 3 above, each Party shall bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

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

20. 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 Southern District of Florida. 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.

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

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

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

24. This Agreement is binding on NBHD's successors, transferees, heirs, and assigns.

25. This Agreement is binding on Relator's successors, transferees, heirs, and assigns.

26. All parties consent to the disclosure of this Agreement, and information about this Agreement, to the public by the Parties.

27. 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:

BY:

\_\_\_\_\_  
David T. Cohen  
Senior Trial Counsel  
Commercial Litigation Branch  
Civil Division  
United States Department of Justice

DATED:

9/1/15

BY:

\_\_\_\_\_  
Mark Kavine  
Assistant United States Attorney  
Southern District of Florida

DATED:

8/31/15

BY:

\_\_\_\_\_  
Robert K. DeConti  
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

THE UNITED STATES OF AMERICA

DATED: 9/1/15

BY: David T. Cohen  
David T. Cohen  
Senior Trial Counsel  
Commercial Litigation Branch  
Civil Division  
United States Department of Justice

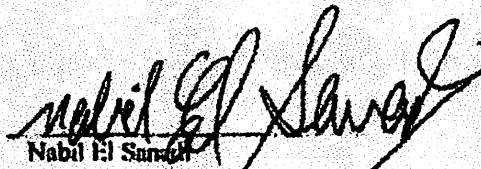
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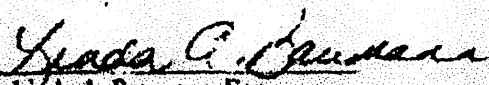
BY: \_\_\_\_\_  
Mark Lavine  
Assistant United States Attorney  
Southern District of Florida

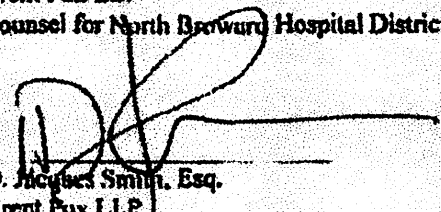
DATED: 8/31/15

BY: Robert K. DeConti  
Robert K. DeConti  
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

NORTH BROWARD HOSPITAL DISTRICT

DATED: 8/20/2015 BY:   
Nabil El Samir  
President/CEO  
North Broward Hospital District

DATED: 8/20/15 BY:   
Linda A. Bateman, Esq.  
Arent Fox LLP  
Counsel for North Broward Hospital District

DATED: 8/20/15 BY:   
D. Jacques Smith, Esq.  
Arent Fox LLP  
Counsel for North Broward Hospital District

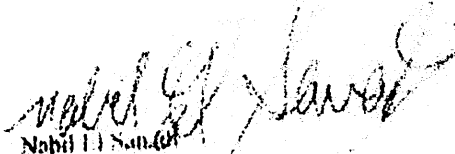
MICHAEL REILLY, M.D. (RELATOR)

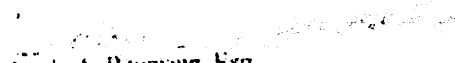
DATED: \_\_\_\_\_ BY: \_\_\_\_\_  
Michael T. Reilly, M.D.


DATED: \_\_\_\_\_ BY: \_\_\_\_\_  
Bryan Vroon, Esq.  
Counsel for Dr. Reilly



NORTH BROWARD HOSPITAL DISTRICT


DATED 8/20/2015 BY   
Nabil I. Sautou  
President/CEO  
North Broward Hospital District

DATED: BY   
Jacob A. Baumann, Esq.  
Arent Fox LLP  
Counsel for North Broward Hospital District

DATED: 8/20/15 BY   
D. Jacques Smith, Esq.  
Arent Fox LLP  
Counsel for North Broward Hospital District

MICHAEL REILLY, M.D. (RELATOR)

DATED 8/24/15 BY   
Michael T. Reilly, M.D.

DATED 8/27/15 BY   
Bryan Vroom, Esq.  
Counsel for Dr. Reilly

**Exhibit 1 to Settlement Agreement**

<b><u>Physician</u></b>	<b><u>Dates</u></b>
George Caldwell	1/1/09 - 5/31/14
Michael Chizner	4/1/00 - 5/31/14
Violeta McCormack	1/1/05 - 5/31/14
Hector Rodriguez-Cortes	6/1/08 - 5/31/14
Rudolph Roskos	3/1/10 - 5/31/14
John Rozanski	1/1/07 - 5/31/14
Ashok Sharma	1/1/06 - 5/31/14
Erol Yoldas	1/1/09 - 5/31/14
Shazia Zafar	8/1/08-5/31/14