

SETTLEMENT AGREEMENT

I. PARTIES

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"); the State of California, acting through the California Department of Justice, Bureau of Medi-CAL Fraud and Elder Abuse, and on behalf of the California Department of Health Services (collectively the "State of California"); Loma Linda University Medical Center and Loma Linda University Behavioral Medicine Center (collectively "Loma Linda"); and Mark S. Razin (hereafter referred to as "the Parties"), through their authorized representatives.

II. PREAMBLE

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

A. Loma Linda University Behavioral Medicine Center (hereinafter "LLUBMC") is a Medicare-certified inpatient psychiatric hospital located in Redlands, CA. Loma Linda University Medical Center ("LLUMC") is a Medicare-certified tertiary acute care hospital located in Loma Linda, California.

Both hospitals are owned, controlled and operated by Loma Linda University Adventist Health Sciences Center.

B. Mark S. Razin ("the Relator") is an individual resident of the State of California. On May 1, 1998, the Relator filed a qui tam action in the United States District Court for the Central District of California captioned

On or about April 19, 1999, and October 5, 2001, the Relator filed a First Amended Complaint and Second Amended Complaint, respectively, in the action. The original Complaint and the First and Second Amended Complaints are hereinafter referred to collectively as "the Civil Action."

C. The Relator was an employee of Healthcare Financial Advisors, Inc. ("HFA"), a financial consulting firm that was acquired by Certus Corporation in September, 1998. HFA assisted its hospital clients in collecting reimbursement from the Medicare, Medicaid, and TRICARE programs (hereinafter collectively the "Federal health care programs," as defined in 42 U.S.C. § 1320a-7b(f)) by: (1) preparing hospitals' cost reports for filing with the Federal health care programs; (2) assisting hospitals in "reopening" previously filed cost reports to

identify potential errors that, if corrected, would allow the clients to recover additional reimbursement; and/or (3) performing square footage studies of clients' facilities in order to determine square footage statistics used to allocate certain overhead costs on cost reports.

D. The United States contends that LLUBMC, one of HFA's clients, submitted or caused to be submitted claims for payment to the Medicare Program (Title XVIII of the Social Security Act, 42 U.S.C. §§ 1395-1395ggg); and the Medicaid Program (42 U.S.C. §§ 1396-1396v).

E. The United States and the State of California contend that they have certain civil claims, as specified in Paragraph 2 below, against Loma Linda for engaging in the following conduct during the period from January 1, 1992 to December 31, 2000 in connection with cost reports that LLUBMC submitted to Federal health care programs: Knowingly submitting false claims in those cost reports; knowingly making false statements in those cost reports; failing to disclose material facts in those cost reports; knowingly retaining overpayments made by Federal health insurance programs during those cost reporting years; and conspiring to do any of the above ("hereinafter referred to as the "Covered Conduct").

F. The United States and the State of California also contend that they have certain administrative claims against Loma Linda for engaging in the Covered Conduct.

G. Loma Linda denies that it engaged in the Covered Conduct. This Agreement is neither an admission of liability by Loma Linda nor a concession by the United States or the State of California that their claims are not well founded.

H. The Relator claims entitlement under 31 U.S.C. § 3730(d) to a share of the proceeds of this Settlement Agreement, but the Relator and the United States have not agreed on the entitlement or amount of that award, if any.

I. To avoid the delay, uncertainty, inconvenience, and expense of protracted litigation of the above claims, the Parties reach a full and final settlement pursuant to the Terms and Conditions below.

III. TERMS AND CONDITIONS

1. Loma Linda agrees to pay to the United States \$2,000,000, plus simple interest on said \$2,000,000 at the annual rate of 4.75% from October 13, 2006 until the date of payment (the "Settlement Amount").

a. Loma Linda agrees to pay the full Settlement Amount to the United States by electronic funds transfer pursuant to written instructions to be provided by the United States.

Loma Linda agrees to make this electronic funds transfer no later than three business days after the Effective Date of this Agreement.

b. The manner in and extent to which Loma Linda shall pay the Relator's claimed expenses and attorneys' fees and costs shall be set forth in one or more separate agreements between Loma Linda and the Relator or established by Court Order.

2. Subject to the exceptions in Paragraphs 5 and 6 below, in consideration of the obligations of Loma Linda in this Agreement, and conditioned upon Loma Linda's full payment of the Settlement Amount, the United States (on behalf of itself, its officers, agents, agencies, and departments) and the State of California (on behalf of itself, its officers, agents, agencies, and departments) agree to release Loma Linda, together with its current and former parent corporations, each of its direct and indirect subsidiaries, brother or sister corporations, divisions, current or former owners, officers, directors, affiliates, employees, agents, attorneys and the successors and assigns of any of them from any civil or administrative monetary claim the United States or the State of California have or may have 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

California False Claims Act, Cal. Gov't. Code §§ 12650 et seq.;
or the common law theories of payment by mistake, unjust
enrichment, and fraud.

3. Subject to the exceptions in Paragraphs 5 and 6 below,
in consideration of the obligations of Loma Linda in this
Agreement, and conditioned upon Loma Linda's full payment of the
Settlement Amount, the Relator, for himself and for his heirs,
successors, attorneys, agents, and assigns, agrees to release
Loma Linda, together with their current and former parent
corporations, each of their direct and indirect subsidiaries,
brother or sister corporations, divisions, current or former
owners, officers, directors, affiliates, employees, agents,
attorneys and the successors and assigns of any of them from any
civil monetary claim the United States has or may have for the
Covered Conduct under the False Claims Act, 31 U.S.C. §§ 3729-
3733.

4. HHS-OIG expressly reserves all rights to institute,
direct, or to maintain any administrative action seeking
exclusion against Loma Linda, and/or its officers, directors, and
employees, from Medicare, Medicaid, or 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)
(permissive exclusion).

5. California Department of Health Services expressly reserves all rights to institute, direct, or to maintain any administrative action seeking mandatory exclusion or suspension against Loma Linda, and/or its officers, directors, and employees, from Medi-Cal as defined in Welfare and Institutions Code sections 14123 and 14043.6. Notwithstanding any term of this Agreement, the State of California specifically does not herein release Loma Linda, its predecessors, subsidiaries, joint venture owners, and their corporate parents and affiliates, successors and assigns, and their current and former directors, officers and employees from any and all of the following: (a) any potential criminal, civil or administrative claims arising under State of California revenue codes; (b) any criminal liability; (c) any civil or administrative liability that Loma Linda has or may have under any state statute, regulation, or rule not covered by the release; (d) any liability to the State of California (or its agencies) for any conduct other than the Covered Conduct; (e) any claims based upon such obligations as are created by this Settlement 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; and (g) Any liability for failure to deliver goods or services due.

6. Notwithstanding any term of this Agreement, specifically reserved and excluded from the scope and terms of this Agreement as to any entity or person (including Loma Linda and the Relator) are the following claims of the United States:

a. Any civil, criminal, or administrative 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 such obligations as are 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; and

g. Any liability for failure to deliver goods or services due.

7. The Relator and his heirs, successors, attorneys, agents, and assigns agree not to object to this Agreement and 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 Settlement Agreement and this Civil Action, the Relator and his heirs, successors, attorneys, agents, and assigns agree that neither this Settlement Agreement, any intervention by the United States in the Civil Action in order to dismiss the Civil Action, nor any dismissal of the Civil Action, will 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 the Relator from sharing in the proceeds of this Settlement Agreement. Moreover, the United States, the State of California and Relator and his 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 percentage, if any, that the Relator should receive of any proceeds of the settlement of his claim(s), and that no agreements concerning relator share have been reached to date.

8. Conditioned upon Loma Linda's payment in full to the United States of the Settlement Amount, the Relator, for himself and for his heirs, successors, attorneys, agents, and assigns, releases Loma Linda, together with its current and former parent corporations, each of its current and former direct and indirect subsidiaries, brother and sister corporations, divisions, current or former owners, officers, directors, affiliates, agents, and

employees, from any claim Relator has or may have that relates to the Civil Action and/or the Covered Conduct, except for any claims the Relator may have against Loma Linda for his attorneys' fees, expenses and costs, pursuant to 31 U.S.C. 3730(d), and (b) Relator, for himself and for his heirs, successors, agents and assigns (but not his attorneys), agrees not to file any other action against Loma Linda or its current and former officers, directors, affiliates, agents, and employees pursuant to the False Claims Act, 31 U.S.C. §§ 3729-3733 or the California False Claims Act, Cal. Gov't. Code §§ 12650 et seq for the Covered Conduct.

9. Loma Linda waives and will not assert any defenses Loma Linda 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 Settlement 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 or the State of California concerning the characterization of the Settlement

Amount for purposes of the Internal Revenue laws, Title 26 of the United States Code.

10. Loma Linda fully and finally releases the United States, the State of California, Relator, and their respective agencies, employees, servants, and agents from any claims (including attorney's fees, costs, and expenses of every kind and however denominated) which Loma Linda has asserted, could have asserted, or may assert in the future against the United States and/or the State of California, and/or Relator, and/or their respective agencies, employees, servants, and agents, related to the Covered Conduct and the United States' and the State of California's investigation and prosecution thereof.

11. The Settlement Amount will 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 Loma Linda 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.

12. Loma Linda agrees to the following:

a. Unallowable Costs Defined: that 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. §§ 1395-1395ggg and 1396-1396v, and the regulations and official program directives promulgated thereunder) incurred by or on behalf of Loma Linda, its present or former officers, directors, employees, shareholders, and agents in connection with the following shall be "unallowable costs" on government contracts and under the Medicare Program, Medicaid Program, TRICARE Program, and Federal Employees Health Benefits Program (FEHBP):

- (1) the matters covered by this Agreement,
- (2) the United States' and/or the State of California's audit(s) and civil investigation(s) of the matters covered by this Agreement,
- (3) Loma Linda's investigation, defense, and corrective actions undertaken in response to the United States' and/or the State of California's 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 Loma Linda makes to the United States pursuant to this Agreement and any payments that Loma Linda may make to the Relator, including costs and attorney's

fees. (All costs described or set forth in this Paragraph 12.a. are hereafter, "unallowable costs").

b. Future Treatment of Unallowable Costs: These unallowable costs shall be separately determined and accounted for in nonreimbursable cost centers by LLUBMC, and LLUBMC 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 LLUBMC or any of its subsidiaries or affiliates to the Medicare, Medicaid, TRICARE, or FEHBP Programs.

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

13. Loma Linda agrees to cooperate fully and truthfully with the investigation by the United States and the State of California of individuals and entities not released in this Agreement, for the Covered Conduct. Upon reasonable notice, Loma Linda will make reasonable efforts to facilitate access to, and encourage the cooperation of, its directors, officers, and employees for interviews and testimony, consistent with the rights and privileges of such individuals, and, to the extent not previously furnished, will furnish to the United States and/or the State of California, upon reasonable request, all non-privileged documents and records in its possession, custody, or control relating to the Covered Conduct.

14. 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 15 below or in Paragraphs 2, 3, 6, 8 and 10 above.

15. Loma Linda agrees that it waives and will 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.

16. Loma Linda warrants that it has reviewed its financial situation and that it currently is solvent within the meaning of

11 U.S.C. §§ 547(b)(3) and 548(a)(1)(A)(ii)(I), and will remain solvent following payment to the United States of the Settlement Amount. Further, the Parties warrant that, in evaluating whether to execute this Agreement, they (a) have intended that the mutual promises, covenants, and obligations set forth constitute a contemporaneous exchange for new value given to Loma Linda, within the meaning of 11 U.S.C. § 547(c)(1); and (b) conclude that these mutual promises, covenants, and obligations do, in fact, constitute such a contemporaneous exchange. Further, the Parties warrant that the mutual promises, covenants, and obligations set forth herein are intended and do, in fact, represent a reasonably equivalent exchange of value which is not intended to hinder, delay, or defraud any entity to which Loma Linda was or became indebted to on or after the date of this transfer, within the meaning of 11 U.S.C. § 548(a)(1).

17. Upon the United States' receipt of the payment described in Paragraph 1(a) above, the United States, the State of California and the Relator shall promptly sign and file in the Civil Action a Notice of Intervention and Joint Stipulation of Dismissal with prejudice of the Civil Action pursuant to the terms of the Agreement, in the form attached hereto as Exhibit 1.

18. Except as expressly provided to the contrary in this Agreement, each Party will bear its own legal and other costs

incurred in connection with this matter, including the preparation and performance of this Agreement.

19. Loma Linda represents that this Agreement is freely and voluntarily entered into without any degree of duress or compulsion whatsoever.

20. The Relator represents that this Agreement is freely and voluntarily entered into without any degree of duress or compulsion whatsoever.

21. This Agreement is governed by the laws of the United States. The Parties agree that the exclusive jurisdiction and venue for any dispute arising between and among the Parties under this Agreement will be the United States District Court for the Central District of California.

22. This Agreement constitutes the complete agreement between the Parties with respect to the matters it addresses. This Agreement may not be amended except by written consent of the Parties.

23. The individuals signing this Agreement on behalf of Loma Linda represent and warrant that they are authorized by Loma Linda to execute this Agreement. The individual signing this Agreement on behalf of the Relator represents and warrants that he is authorized by Relator to execute this Agreement. The United States' signatories represent that they are signing this

Agreement in their official capacities and that they are authorized to execute this Agreement. The State of California signatories represent that they are signing this Agreement in their official capacity and that they are authorized to execute this Agreement.

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

25. This Agreement is binding on Loma Linda'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 United States, California or Loma Linda.

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: 4/19/07

BY: W. Weiss
WENDY L. WEISS
Assistant United States Attorney
Central District of California

THE UNITED STATES OF AMERICA

DATED: 3/19/07

BY: _____


GREGORY DEMSKE
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 STATE OF CALIFORNIA

STATE OF CALIFORNIA
OFFICE OF THE ATTORNEY GENERAL
MEDICAID FRAUD CONTROL UNIT

DATED: 3/26/07

BY: Brian V. Frankel
BRIAN FRANKEL
Supervising Deputy Attorney General

STATE OF CALIFORNIA
MEDICAID PROGRAM

DATED: _____

BY: _____
THOMAS MCCAFFERY
Chief Deputy Director
Calif. Dept. of Health Services

THE STATE OF CALIFORNIA

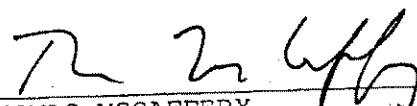
STATE OF CALIFORNIA
OFFICE OF THE ATTORNEY GENERAL
MEDICAID FRAUD CONTROL UNIT

DATED: _____

BY: _____
BRIAN FRANKEL
Deputy Attorney General

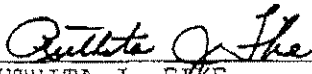
STATE OF CALIFORNIA
MEDICAID PROGRAM

DATED: 4/17/07


BY: 
THOMAS MCCAFFERY
Chief Deputy Director
Calif. Dept. of Health Services

LOMA LINDA - DEFENDANT

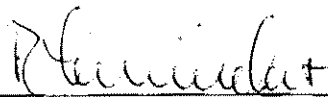
DATED: 3/22/07

BY: 
RUTHITA J. FIKE
Chief Executive Officer

DATED: 3/22/07

BY: 
STEVEN MOHR
Chief Financial Officer

DATED: 3/23/07


BY: 
ROBERT FABRIKANT
Sidley Austin LLP
Counsel for Loma Linda

MARK S. RAZIN - RELATOR

DATED: 3/15/07

BY: 
MARK S. RAZIN

DATED: 3/20/07

BY: 
PETER CHATFIELD
Phillips & Cohen, LLP
Counsel for Relator