

SETTLEMENT AGREEMENTI. PARTIES

This Settlement Agreement (Agreement) is entered into between 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"), John N. Campbell, M.D., P.C. (hereafter "the Professional Corporation"), and John N. Campbell individually ("Campbell"), through their authorized representatives.

II. PREAMBLE

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

- A. Campbell is an employee of the Professional Corporation providing medical services to patients in and around the Grand Rapids area, both in the office and in nursing homes.
- B. The United States contends that Campbell and the Professional Corporation 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. §§ 1395-1395ggg.
- C. The United States contends that it has certain civil claims, as specified in Paragraph 2 below, against Campbell and the Professional Corporation, for engaging in the following conduct during the period from January 1, 1995 to December 31, 2000: routinely billing Medicare for nursing home visits by coding such claims as Level 2 or Level 3 visits (CPT codes 99312 or 99313) without appropriate documentation (hereinafter referred to as the

"Covered Conduct").

D. The United States also contends that it has certain administrative claims against Campbell and the Professional Corporation for engaging in the Covered Conduct, as specified in Paragraph 3 below.

E. This Agreement is neither an admission of liability by Campbell or the Professional Corporation, nor a concession by the United States that its claims are not well founded.

F. 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. Campbell and the Professional Corporation agree to collectively pay to the United States the sum of Two Hundred Thirty-Three Thousand Fifty Two dollars and 80/100 dollars, \$233,052.80 (the "Settlement Amount"). The Settlement Amount shall be paid by electronic funds transfer pursuant to written instructions to be provided by the United States Department of Justice, United States Attorney's Office, Western District of Michigan. Campbell and the Professional Corporation agree to make this electronic funds transfer no later than thirty days after the Effective Date of this Agreement.

2. Subject to the exceptions in Paragraph 4 below, in consideration of the obligations of Campbell and the Professional Corporation set forth in this Agreement, conditioned upon their full payment of the Settlement Amount, and subject to Paragraph 13 below (concerning bankruptcy proceedings commenced within 91 days of the Effective Date of

this Agreement), the United States (on behalf of itself, its officers, agents, agencies, and departments) agrees to release Campbell and the Professional Corporation from any civil or administrative monetary claim the United States has or may have 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, breach of contract, and fraud, for the Covered Conduct.

3. In consideration of the obligations of Campbell and the Professional Corporation set forth in this Agreement and the Integrity Agreement incorporated by reference, conditioned upon their full payment of the Settlement Amount, and subject to Paragraph 13, below (concerning bankruptcy proceedings commenced within 91 days of the Effective Date of this Agreement), OIG-HHS agrees to release and refrain from instituting, directing, or maintaining any administrative action seeking exclusion from the Medicare, Medicaid, or other Federal health care programs (as defined in 42 U.S.C. § 1320a-7b(f)) against Campbell or the Professional Corporation 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 4, below, and as reserved in this Paragraph. OIG-HHS expressly reserves all rights to comply with any statutory obligations to exclude Campbell or the Professional Corporation from the Medicare, Medicaid, or 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 OIG-HHS from taking action against entities or persons, or for conduct and practices, for which claims have been reserved in Paragraph 4, below.

4 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 Campbell or the Professional Corporation) are the following:

- 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;
- g. Any civil or administrative liability of individuals (including current or former directors, officers, employees, agents, or shareholders of the Professional Corporation) who receive written notification that they are the target of a criminal investigation (as defined in the United States Attorneys' Manual), are indicted, charged, or convicted, or who enter into a plea agreement related to the Covered Conduct.

5. Campbell and the Professional Corporation have entered into an Integrity Agreement (IA) with OIG-HHS, attached as Exhibit A, which is incorporated into this Agreement by reference. Campbell and the Professional Corporation will immediately upon

execution of the IA implement its obligations under the IA.

6. Campbell and the Professional Corporation waive and shall not assert any defenses they may have to any criminal prosecution or administrative action relating to the Covered Conduct, which defenses 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. Campbell and the Professional Corporation agree that this Agreement is not punitive in purpose or effect. 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.

7. Campbell and the Professional Corporation fully and finally release the United States, its agencies, employees, servants, and agents from any claims (including attorney's fees, costs, and expenses of every kind and however denominated) which they have asserted, could have asserted, or may assert in the future against the United States, its agencies, employees, servants, and agents, related to the Covered Conduct and the United States' investigation and prosecution thereof.

8. 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 Medicaid or any State payer, related to the Covered Conduct; and neither Campbell nor the Professional Corporation shall resubmit to any Medicare carrier or intermediary or Medicaid or any State payer any previously denied claims related to the Covered

Conduct, and agree not to appeal any such denials of claims.

9. Campbell and the Professional Corporation agree 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 Campbell or the Professional Corporation, 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' audit(s) and civil investigation(s) of the matters covered by this Agreement,

(3) Campbell or the Professional Corporation'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 Campbell or the Professional Corporation makes to the United States pursuant to this Agreement, including any costs and attorneys fees, and

(6) the negotiation of, and obligations undertaken pursuant to the LA to:

(i) Retain an independent review organization to perform annual

reviews as described in Section III of the IA; and

(ii) prepare and submit reports to the OIG-HHS.

b. Future Treatment of Unallowable Costs: These unallowable costs shall be separately determined and accounted for by Campbell and the Professional Corporation and they 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 Campbell or the Professional Corporation, or any of its subsidiaries or affiliates, to the Medicare, Medicaid, TRICARE, or FEHBP Programs.

c. Treatment of Unallowable Costs Previously Submitted for Payment: Campbell and the Professional Corporation further agree that within 90 days after 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 Campbell or the Professional Corporation, 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. Campbell and the Professional Corporation agree that the United States, at a minimum, shall be entitled to recoup from them 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 Campbell or the Professional Corporation, or any of its subsidiaries or affiliates, on the effect of inclusion of unallowable costs (as defined in this Paragraph) on Campbell or the Professional Corporation, or any of its subsidiaries or affiliates', cost reports, cost statements, or information reports. Nothing in this Agreement shall constitute a waiver of the rights of the United States to examine or reexamine the unallowable costs described in this Paragraph.

10. This Agreement is intended to be for the benefit of the Parties only.

11. Campbell and the Professional Corporation 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

12. Campbell and the Professional Corporation warrant that they have reviewed their financial situation and that they are currently solvent within the meaning of 11 U.S.C. §§ 547(b)(3) and 548(a)(1)(B)(ii)(I), and shall remain solvent following its 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 Campbell and the Professional Corporation 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 Campbell or the Professional Corporation was or became indebted, on or after the date of this transfer, all within the meaning of 11 U.S.C. § 548(a)(1).

13. If, within 91 days after the Effective Date of this Agreement, Campbell or the Professional Corporation commences, or a third party commences, any case, proceeding, or other action under any law relating to bankruptcy, insolvency, reorganization, or relief of debtors, (a) seeking to have any order for relief of Campbell or the Professional Corporation's debts, or seeking to adjudicate Campbell or the Professional Corporation as bankrupt or insolvent; or (b) seeking appointment of a receiver, trustee, custodian, or other similar official for Campbell or the Professional Corporation or for all or any substantial part of Campbell or the Professional Corporation's assets, they agree as follows:

a. Such obligations under this Agreement may not be avoided pursuant to 11 U.S.C. §§ 547 or 548, and Campbell or the Professional Corporation shall not argue or otherwise take the position in any such case, proceeding, or action that: (i) their obligations under this Agreement may be avoided under 11 U.S.C. §§ 547 or 548; (ii) that they were insolvent at the time this Agreement was entered into, or became insolvent as a result of the payment made to the United States hereunder; or (iii) the mutual promises, covenants, and obligations set forth in this Agreement do not constitute a contemporaneous exchange for new value given to Campbell or the Professional Corporation

b. If Campbell or the Professional Corporation's obligations under this Agreement are avoided for any reason, including, but not limited to, through the exercise of a trustee's avoidance powers under the Bankruptcy Code, the United States, at its sole option, may rescind the releases in this Agreement, and bring any civil and/or administrative claim, action, or proceeding against Campbell or the Professional Corporation for the claims that would otherwise be covered by the releases provided in Paragraphs 2 and 3, above. Campbell and the Professional Corporation agree that (i) any such claims, actions, or proceedings brought by the United States (including any proceedings to exclude Campbell or the Professional Corporation from participation in Medicare, Medicaid, or other Federal health care programs) are not subject to an "automatic stay" pursuant to 11 U.S.C. § 362(a) as a result of the action, case, or proceeding described in the first clause of this Paragraph, and that they shall not argue or otherwise contend that the United States' claims, actions, or proceedings are subject to an automatic stay; (ii) that Campbell or the Professional Corporation shall not plead, argue, or otherwise raise any defenses under the theories of statute of limitations, laches, estoppel, or similar theories, to any such civil or administrative claims, actions, or proceeding which are brought by the United States within 90 calendar days of written notification to either of them that the releases herein have been rescinded pursuant to this Paragraph, except to the extent such defenses were available on the Effective Date of this Agreement; and (iii) the United States shall have a valid claim against Campbell and the Professional Corporation in the amount of \$108,621.54, plus the right to seek treble damages and all penalties under the False Claims Act, and the United States may pursue its claim in the case, action, or proceeding referenced in the first clause of this Paragraph, as well as in any other case, action, or proceeding.

c. Campbell and the Professional Corporation acknowledges that their agreements in this Paragraph are provided in exchange for valuable consideration provided in this Agreement.

14. 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 Campbell and the Professional Corporation represents that this Agreement is freely and voluntarily entered into without any degree of duress or compulsion whatsoever.

16. 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 shall be the United States District Court for the Western District of Michigan, except that disputes arising under the IA shall be resolved exclusively under the dispute resolution provisions in the IA.

17. This Agreement and the IA incorporated by reference constitute the complete agreement between the Parties. This Agreement may not be amended except by written consent of the Parties, except that only Campbell, the Professional Corporation and OIG-HHS must agree in writing to modification of the IA.

18. Campbell and the individuals signing this Agreement on behalf of the Professional Corporation represent and warrant that they are authorized 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.

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

20. This Agreement is binding on Campbell, the Professional Corporation, and their successors, transferees, heirs, and assigns.

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

22. This Agreement is effective on the date of signature of the last signatory to the Agreement (Effective Date). Facsimiles of signatures shall constitute acceptable, binding signatures for purposes of this Agreement.

THE UNITED STATES OF AMERICA

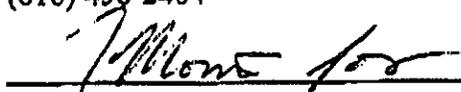
MARGARET M. CHIARA  
United States Attorney

Dated: NOVEMBER 26, 2003



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Dated: 12/4/, 2003



LARRY J. GOLDBERG  
Assistant Inspector General for Legal Affairs  
Office of Counsel to Inspector General  
Office of Inspector General  
United States Department of  
Health and Human Services

JOHN N. CAMPBELL, M.D., P.C. - DEFENDANT

Dated: November 26, 2003

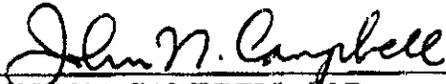
John N. Campbell  
JOHN N. CAMPBELL, M.D., P.C.  
Its Officer

Dated: 11/26/, 2003

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JOHN N. CAMPBELL, M.D., INDIVIDUALLY

Dated: November 26, 2003

  
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JOHN N. CAMPBELL, M.D.

Dated: 11/26, 2003

  
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