

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 (United States); Sebastian Hospital Inc, d/b/a Sebastian River Medical Center, (SRMC); and Thomas Gayeski (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. SRMC is a hospital located and doing business in Sebastian, Florida.
- B. Thomas Gayeski, M.D. (the “Relator”) is an individual resident of New York. On December 14, 2004, Relator filed a qui tam action in the United States District Court for the Southern District of Florida captioned *U.S. ex rel Gayeski v. Sebastian Hospital, Inc., d/b/a Sebastian River Medical Center, and Linda I. Bland, M.D.* 04-CV-14349 (S.D. Fla.) (hereinafter “the Civil Action”). Relator was an anesthesiologist at SRMC from October, 2000 to February 2002. Dr. Linda Bland (Dr. Bland) was a surgeon at SRMC from June 1999 to May 2003. The Civil Action was filed after both Dr. Bland and Relator resigned from SRMC’s medical staff. On December 4, 2006 the United States notified the court that it would intervene in this Civil Action against Defendant, Dr. Bland, and that it would not intervene against SRMC at that time because its investigation of SRMC had not been completed. The United States filed its Complaint against Dr. Bland on February 5, 2007.
- C. The United States contends that SRMC 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.

D. The United States contends that it has certain civil claims, as specified in Paragraph 2 below, including, but not limited to, a claim for unjust enrichment against SRMC for engaging in the following conduct during the period from 1999-2003: the submission of false claims to Medicare for unnecessary spinal surgeries and/or procedures performed by Dr. Bland at SRMC (hereinafter referred to as the "Covered Conduct").

E. The United States also contends that it has certain administrative claims, as specified in Paragraph 2, below, against SRMC for engaging in the Covered Conduct.

F. This Agreement is not an admission of liability by SRMC and the hospital denies any prior knowledge of alleged unnecessary surgeries performed by Dr. Bland, nor is it a concession by the United States that its claims are not well founded.

G. 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. SRMC agrees to pay to the United States \$925,000 (the "Settlement Amount"). The United States agrees to pay \$166,500 of the Settlement Amount to Relator. SRMC further agrees to pay Relator \$31,461.33 for expenses and attorney's fees and costs. The foregoing payments shall be made as follows:

a. SRMC 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 Attorneys Office for the Southern District of Florida. SRMC agrees to make this electronic funds transfer within five days of the Effective Date of this Agreement.

b. Contingent upon the United States receiving the Settlement Amount from SRMC and as soon as feasible after receipt, the United States agrees to pay \$166,500 to Relator by electronic funds transfer.

c. Within five days of the Effective Date of this Agreement SRMC will pay Relator's counsel \$31,461.33 for expenses and attorney's fees and costs related to the Civil Action.

2. Subject to the exceptions in Paragraph 4, below, in consideration of the obligations of SRMC in this Agreement, conditioned upon SRMC's full payment of the Settlement Amount, the United States (on behalf of itself, its officers, agents, agencies, and departments) agrees to release SRMC from any civil or administrative monetary claim the United States has 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; or the common law theories of payment by mistake, unjust enrichment, and fraud. No individuals are released by this Agreement.

3. Subject to the exceptions in Paragraph 4, below, in consideration of the obligations of SRMC in this Agreement, conditioned upon SRMC's full payment of the Settlement Amount, Relator, for himself and for his heirs, successors, attorneys, agents, and assigns, agrees to release SRMC 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. 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 SRMC and 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;
- g. Any liability for failure to deliver goods or services due; and
- h. Any liability of individuals, including officers and employees.

5. 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) and, conditioned upon receipt of Relator's share, Relator, for himself individually, and for his heirs, successors, agents, and assigns, fully and finally releases, waives, and forever discharges the United States, its officers, agents, and employees, from any claims arising from or relating to 31 U.S.C. § 3730; from any claims arising from the filing of the Civil Action; and from any other claims for a share of the Settlement Amount; and in full settlement of any claims Relator may have under this Agreement. This Agreement does not resolve or in any manner affect any claims the United States has or may have against the Relator arising under Title 26, U.S. Code (Internal Revenue

Code), or any claims arising under this Agreement. Relator consents to the United States' disclosure of this Agreement, and information about this Agreement, to the public.

6. Conditioned upon receipt of the payment described in Paragraph 1.b, Relator, for himself, and for his heirs, successors, attorneys, agents, and assigns, agrees to release SRMC, its officers, agents, and employees, from any liability to Relator arising from the filing of the Civil Action, or under 31 U.S.C. § 3730(d) for expenses or attorney's fees and costs. This Settlement Agreement does not and is not intended to release any claim filed by the Relator other than this Civil Action.

7. SRMC waives and shall not assert any defenses SRMC 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. SRMC fully and finally releases 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) that SRMC has 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.

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 SRMC shall not resubmit to any Medicare carrier or intermediary or any state payer any previously denied claims related to the Covered Conduct, and shall not appeal any such denials of claims.

10. SRMC 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 SRMC, 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 of the matters covered by this Agreement;
- (3) SRMC’s investigation, defense, and corrective actions undertaken in response to the United States’ audit(s) and civil investigation 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 SRMC makes to the United States pursuant to this Agreement and any payments that SRMC may make to Relator, including costs and attorneys fees.

All costs described or set forth in this Paragraph 11.a. are hereafter “unallowable costs.”

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

c. Treatment of Unallowable Costs Previously Submitted for Payment: SRMC 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 SRMC 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. SRMC agrees that the United States, at a minimum, shall be entitled to recoup from SRMC 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 SRMC or any of its subsidiaries or affiliates on the effect of inclusion of unallowable costs (as defined in this

Paragraph) on SRMC 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 SRMC's books and records to determine that no unallowable costs have been claimed in accordance with the provisions of this Paragraph.

11. SRMC agrees to cooperate fully and truthfully with the United States' investigation of individuals and entities not released in this Agreement. Upon reasonable notice, SRMC 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. If requested pursuant to applicable Department of Justice guidelines, SRMC agrees to furnish to the United States complete and unredacted copies of all documents, reports, memoranda of interviews, and records in its possession, custody, or control concerning any investigation of the Covered Conduct that it has undertaken, or that has been performed by its counsel or other agent, and waives any rights or privileges that otherwise may apply to such production.

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 Paragraph 13, below.

13. SRMC 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. SRMC 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)(B)(ii)(I), and shall 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 SRMC, 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 to and do, in fact, represent a reasonably equivalent exchange of value that is not intended to hinder, delay, or defraud any entity to that SRMC was or became indebted to on or after the date of this transfer, within the meaning of 11 U.S.C. § 548(a)(1).

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

16. SRMC represents that this Agreement is freely and voluntarily entered into without any degree of duress or compulsion whatsoever.

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

18. 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 is the United States District Court for the Southern District of Florida.

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

20. Upon receipt of the payments described in Paragraph 1.a.-c. above, the United States and Relator shall promptly sign and file in the Civil Action a Joint Stipulation of Dismissal with prejudice of the Civil Action against SRMC pursuant to the terms of the Agreement.

21. The individuals signing this Agreement on behalf of SRMC represent and warrant that they are authorized by SRMC to execute this Agreement. The individuals signing this Agreement on behalf of Relator represent and warrant that they are 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.

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

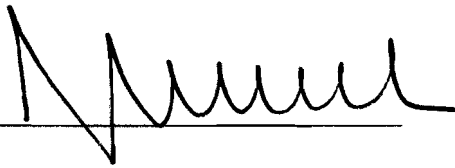
23. This Agreement is binding on SRMC's successors, transferees, heirs, and assigns.

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

25. 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: 7.18.07

BY: 

**Jeffrey W. Dickstein
Assistant United States Attorney
United States Attorneys Office
for the Southern District of Florida**

Sebastian River Medical Center - DEFENDANT

DATED: 7-3-07

BY: 
Timothy Parry

DATED: 7/18/07

BY: 
Gabriel Imperato
Counsel for SRMC

Thomas Gayeski, M.D. - RELATOR

DATED: 7/13/07

BY: Thomas Gayeski, M.D.
Thomas Gayeski, M.D.

DATED: 7/14/07

BY: Nancy LaVista
Nancy LaVista
Counsel for Thomas Gayeski