

# BEST AVAILABLE COPY

## 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"); Radiology Regional Center (RRC); and Relator Suzan Walker (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. Radiology Regional Center (RRC) is a Florida professional corporation, with its principal place of business in Fort Myers, Florida. RRC provides radiology services. RRC is a Medicare provider and bills Medicare for radiology services provided for Medicare beneficiaries.

B. Suzan Walker (the "relator") is an individual residing in the State of Florida. In December 2000, the relator filed a qui tam action in the United States District Court for the Middle District of Florida captioned United States ex rel. Suzan Walker v. Radiology Regional Center, et al., Case No. 2:00-CV-558-FTM-29DNF (hereinafter "the Civil Action."). The United States intervened in the Civil Action against RRC on January 29, 2004.

C. The United States contends that RRC submitted or caused to be submitted claims for payment to the Medicare Program (Medicare), Title XVIII of the Social Security Act, 42U.S.C. §§ 1395-1395ggg.

D. The United States contends that it has certain civil claims, as specified below, against RRC for engaging in the following conduct during the following time periods:

i. During the years 1997 through 2001, RRC billed Medicare for retroperitoneal ultrasound procedures (CPT Code 76770) which were not ordered by the patients' treating physicians or were otherwise not reimbursable.

ii. During the years 1996 through 2002, RRC billed Medicare for non-invasive physiologic studies of the extracranial arteries (CPT Code 93875) as well as duplex scans of the extracranial arteries (CPT Code 93880) for the same patient on the same date. However, the duplex scan, a more complex procedure, includes the physiological study, the less complex procedure. RRC should have billed for only the more complex procedure.

iii. During the years 1996 through 2002, RRC billed Medicare for non-invasive physiologic studies of the extremity veins (CPT Code 93965) as well as duplex scans of the extremity veins (CPT Codes 93970 and 93971) for the same patient on the same date. However, the duplex scan, a more complex procedure, includes the physiological study, the less complex procedure. RRC should have billed for only the more complex procedure.

iv. During the years 1998 through 2003, RRC billed Medicare for reconstruction procedures (CPT Code 76375) which were not

ordered by the patients' treating physicians or were otherwise not reimbursable.

v. During the years 1997 through 2003, RRC billed Medicare for magnetic resonance imagings (MRIs) of the orbit, face and neck (CPT Code 70540) which were not ordered by the patients' treating physicians or were otherwise not reimbursable.

vi. During the years 1994 through 2001, RRC billed Medicare for certain mammograms (CPT Codes 76090 and 76091) that did not qualify as diagnostic mammograms and, instead, should have been billed as screening mammograms (CPT Code 76092). (hereinafter referred to as the "Covered Conduct").

E. The United States also contends that it has certain administrative claims, as specified in Paragraph 3 below, against RRC for engaging in the Covered Conduct.

F. The Parties agree that nothing in this Agreement constitutes an admission by any Party, person or entity with respect to the allegations in this Agreement or in the Civil Action, nor does it constitute any admission or evidence of wrongdoing by any Party, person or entity. This Agreement also does not constitute 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. RRC agrees to pay to the United States \$2,533,586 (the "Settlement Amount"). The United States agrees to pay \$443,378 of the Settlement Amount to the relator. RRC further agrees to pay relator \$85,500 for expenses and attorney's fees and costs ("Fees and Expenses"). The foregoing payments shall be made as follows:

a. RRC agrees to pay the full Settlement Amount to the United States by electronic funds transfer directly to the Office of the United States Attorney for the Middle District of Florida pursuant to written instructions attached hereto as Attachment One. RRC agrees to make this electronic funds transfer no later than ten days after the Effective Date of this Agreement.

b. Contingent upon the United States receiving the Settlement Amount from RRC, the United States agrees to pay \$443,378 to relator by electronic funds transfer. The United States will attempt to make this payment to relator within 30 days of receipt of the Settlement Amount from RRC.

c. RRC agrees to pay relator the Fees and Expenses by electronic funds transfer, pursuant to written instructions, no later than ten days after the Effective Date of this Agreement.

2. Subject to the exceptions in Paragraph 4 below, in consideration of the obligations of RRC in this Agreement, and conditioned upon RRC's full payment of the Settlement Amount, the United States (on behalf of itself, its officers, agents, agencies, and departments) agrees to release RRC and its current and former shareholders, physicians, officers, directors, employees, and agents, and the successors, predecessors, or assigns of any of them ("the Released Entities and Individuals") 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 or administrative theories of recoupment, payment by mistake, unjust enrichment, disgorgement, conversion, breach of contract, and fraud.

3. In consideration of the obligations of RRC in this Agreement and the Corporate Integrity Agreement ("CIA") incorporated herein by reference, and conditioned upon RRC'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 the Medicare, Medicaid, or other Federal health care programs (as defined in 42 U.S.C. § 1320a-7b(f)) against RRC and its thirteen current and former shareholders 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. The OIG-HHS expressly reserves all rights to comply with any statutory obligations to exclude RRC from the Medicare, Medicaid, or other Federal health care program 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 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 RRC 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 to the Medicaid, TRICARE or Federal Employees Health Benefits Programs;

f. Any liability based upon such obligations as are created by this Agreement; and

g. Any liability for express or implied warranty claims or other claims for defective or deficient products or services, including quality of goods and services.

5. Conditioned upon receipt of the payment described in Paragraph 1.b, the relator, for herself and for her heirs, successors, attorneys, agents, and assigns, agrees to release the United States, its officers, agents, and employees, from any claims arising from or relating to 31 U.S.C. § 3730 in connection with this Civil Action, or arising from the filing of the Civil Action, including 31 U.S.C. §§ 3730(b), (c), (c)(5), (d), and (d)(1) in connection with this Civil Action. The relator agrees and confirms that this Agreement is fair, adequate, and reasonable under all the circumstances, pursuant to 31 U.S.C. § 3730(c)(2)(B).

6. a. Relator affirmatively represents and warrants that neither she, or her attorney, have filed other lawsuits, and have made no other complaints against any of the Released Entities or Individuals, which are either active or pending. Further, Relator affirmatively represents that she is not aware of other lawsuits or complaints made or brought by anyone else at any time.

b. Relator and her attorneys, for themselves, their agents, executors, administrators, successors, beneficiaries, heirs and/or assigns, release the Released Entities and Individuals from any and all claims or causes of action that Relator or her attorneys may have or may bring, whether in law or equity and whether known or unknown. This release includes, but is not limited to, claims for relator's expenses, attorneys' fees and costs pursuant to 31 U.S.C. section 3730.

c. Relator and her attorneys further agree that they will not assist any other person or entity in bringing any claims, actions, complaints, or suits against the Released Entities or Individuals, except in accordance with service of legal process or as otherwise required by law or when acting in cooperation with an investigation or action by government law enforcement agencies.

d. This Release shall be fully and unconditionally effective

upon RRC's satisfaction of its payment obligation under Paragraph 1 of this Agreement, irrespective of whether the United States pays the Relator any sums to which the Relator claims she is entitled, and irrespective of any other event.

e. Relator and her counsel agree that, contemporaneously with RRC's payment of Fees and Expenses, and within three days of the effective date of this Agreement, they shall return to RRC any and all documents and papers that relate to RRC which Relator received or otherwise obtained as a result of her employment with RRC. This obligation does not extend to documents provided by the Relator or her counsel to the United States and which documents are currently in the possession of the United States.

7. RRC and its current and former shareholders, physicians, officers, directors, employees, and agents, and the successors, predecessors, or assigns of any of them hereby release the Relator from any and all claims that they may have against her, whether known or unknown, suspected or unsuspected.

8. RRC has entered into a CIA with OIG-HHS, attached as Exhibit 1, which is incorporated into this Agreement by reference. RRC will immediately upon execution of this Agreement implement its obligations under the CIA.

9. RRC waives and will not assert any defenses RRC 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. RRC agrees 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.

10. RRC and its current and former shareholders, physicians, officers, directors, employees, and agents, and the successors, predecessors, or assigns of any of them 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.

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 RRC 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.

12. RRC agrees to the following:

(a) Unallowable Costs Defined: that all costs (as defined in the Federal Acquisition Regulations (FAR) 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 RRC, its present or former officers, directors, employees, shareholders, and agents in connection with the following shall be "unallowable costs":

(1) the matters covered by this Agreement;

(2) the United States' audit(s) and investigation(s) of the matters covered by this Agreement;

(3) RRC's investigation, defense, and corrective actions undertaken in response to the United States' audit(s) and 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 RRC makes to the

United States pursuant to this Agreement and any payments that RRC may make to  
relator, including costs and attorneys 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;

on Government contracts and under the Medicare Program, Medicaid Program,  
TRICARE Program, and Federal Employees Health Benefits Program (FEHBP).  
However, nothing in this Paragraph affects the status of costs that are not  
allowed based on any other statutory authority applicable to RRC. (All costs  
described or set forth in this Paragraph 16(a) are hereafter, "unallowable  
costs").

(b) Future Treatment of Unallowable Costs:

If RRC receives any cost-based reimbursement, these unallowable costs will be  
separately determined and accounted for by RRC, and RRC will 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 RRC or any of its subsidiaries to the Medicare,  
Medicaid, TRICARE, or FEHBP Programs to the extent that RRC or its  
subsidiaries submit cost reports, cost statements, information statements or  
payment requests for costs to these Programs.

(c) Treatment of Unallowable Costs Previously

Submitted for Payment: RRC further agrees that, if it has received any  
cost-based reimbursement, within 90 days of the Effective Date of this  
Agreement it will 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  
RRC or any of its subsidiaries or affiliates, and will 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 any unallowable costs. RRC agrees that the United States, at  
a minimum, shall be entitled to recoup from  
RRC 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 any 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 RRC or any of its subsidiaries  
on the effect of inclusion of unallowable costs (as defined in this Paragraph)  
on RRC or any of its subsidiaries' 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 RRC's books and records to determine that no unallowable costs have  
been claimed in accordance with the provisions of this Paragraph.

13. This Agreement is intended to be for the benefit of  
the Parties and the Released Entities and Individuals only. The Parties do  
not release any claims against any other person or entity, except to the  
extent provided for in Paragraph 14 below.

14. RRC and its current and former shareholders,

physicians, officers, directors, employees, and agents, and the successors, predecessors, or assigns of any of them 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.

15. RRC 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 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 RRC, 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 RRC was or became indebted to on or after the date of this transfer,!

within the meaning of 11 U.S.C. § 548(a)(1).

16. 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.

17. 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 Middle District of Florida, except that disputes arising under the CIA shall be resolved exclusively under the dispute resolution provisions in the CIA.

18. This Agreement and the CIA attached hereto constitute the complete agreement between the Parties. This Agreement may not be amended except by written consent of the Parties, except that only RRC and OIG-HHS must agree in writing to modification of the CIA.

19. On the Effective Date, the Relator shall file an amended complaint against RRC only. In addition, after payment in full of the Settlement Amount by RRC to the United States, the Parties shall promptly sign and file in the Civil Action the attached Joint Stipulation of Dismissal With Prejudice of the Civil Action (Exhibit 2) pursuant to the terms of the Agreement.

20. The individuals signing this Agreement on behalf of RRC represent and warrant that they are authorized by RRC to execute this Agreement. The individual signing this Agreement on behalf of the relator represent and warrant 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.

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

22. This Agreement is binding on RRC's successors, transferees, heirs, and assigns.

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

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

25. Except in connection with the CIA which has its own breach and default provisions, any party may bring an action to enforce any of the requirements of this Agreement in the United States District Court

for the Middle District of Florida, and nothing herein shall constitute a waiver of any party's right to seek enforcement of the terms of this Agreement.

26. RRC represents that its Board of Directors has ratified and approved this Agreement.

UNITED STATES OF AMERICA

THE

DATED: \_\_\_\_\_

BY:

CAROL L. WALLACK  
Trial Attorney  
Commercial Litigation Branch  
Civil Division  
United States Department of Justice

DATED: \_\_\_\_\_

BY:

MARK STEINBECK  
Assistant United States Attorney  
Middle District of Florida

DATED: \_\_\_\_\_

BY:

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

Assistant Inspector

RADIOLOGY REGIONAL CENTER

DATED: \_\_\_\_\_

BY:

MICHAEL J. CARRON  
Vice-President  
Radiology Regional Center

DATED: \_\_\_\_\_

BY:

ANKUR J. GOEL  
McDermott, Will & Emery  
Washington, D.C.

RELATOR, SUZAN WALKER

DATED:

BY:

---

JOSEPH J. PAPPACODA  
500 Southeast 6th Street  
Fort Lauderdale, Florida

ATTACHMENT ONE

EXHIBIT ONE