# 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"); and Christopher Dooley, Ph.D (Dooley) (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. Dooley is a psychologist licensed to practice in the State of New Jersey. Dooley is a sole practitioner.

B. The United States contends that Dooley 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. §§ 1395-1395hhh.

C. The United States contends that it has certain civil claims, as specified in Paragraph 2, below, against Dooley for engaging in the following conduct during the period from January 1, 2001 through April 3, 2003: The submission of claims for psychological services rendered to patients in skilled nursing facilities, when such services were not appropriately documented by Dooley, or were based on a code that Dooley knew or should have known would result in a greater payment to him than the code applicable to the services actually provided (hereinafter referred to as the "Covered Conduct").

D. The United States contends also that it has certain administrative claims against Dooley for engaging in the Covered Conduct, as specified in Paragraph 4, below.

E. This Agreement is neither an admission of liability by Dooley 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. Dooley agrees to pay to the United States $90,000 (the "Settlement Amount"). Dooley agrees to pay the Settlement Amount in monthly installments of $1,500 beginning on the Effective Date of this Agreement and continuing every month thereafter for a period of 60 months. Additionally, Dooley agrees to pay $60,000 from the proceeds of the sale of his residence, which is currently listed for sale, and to secure this payment, Dooley has executed the mortgage (Mortgage), which is attached hereto as Exhibit A. The United States agrees that it shall only assert its $60,000 mortgage backed interest in Dooley's home against any future disposition of the home and will not hold Dooley personally liable for this payment.

2. If Dooley fails to make any of the monthly payments described in Paragraph 1, above, then upon written notice to Dooley of this default, Dooley shall have ten (10) calendar days to cure the default. If the default is not cured within the ten-day period, the United States may elect any of the following non-exclusive options: (a) the remaining unpaid principal portion of the Settlement Amount shall become accelerated and immediately due and payable, with interest at a simple rate of 12% per annum from the date of default until the date of payment; (b) file an action for specific performance of the Agreement; (c) offset the remaining unpaid balance of the Settlement Amount (inclusive of interest) from any amounts due and

owing to Dooley by any department, agency, or agent of the United States; or (d) rescind this Agreement and file suit based on the Covered Conduct. Dooley agrees not to contest any collection action undertaken by the United States pursuant to this Paragraph, and to pay the United States all reasonable costs of collection and enforcement of this Agreement, including reasonable attorney's fees and expenses. In the event that the United States opts to rescind this Agreement, Dooley agrees not to plead, argue, or otherwise raise any defenses under the theories of statute of limitations, laches, estoppel, or similar theories, to any civil or administrative claims that (I) are filed by the United States within 120 calendar days of written notification to Dooley that this Agreement has been rescinded, and (ii) relate to the Covered Conduct.

3. Subject to the exceptions in Paragraph 4, below, in consideration of the obligations of Dooley set forth in this Agreement, conditioned upon Dooley's full payment of the Settlement Amount, and subject to Paragraph 14, below, the United States (on behalf of itself, its officers, agents, agencies, and departments) agrees to release Dooley 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; the common law theories of payment by mistake, unjust enrichment, and fraud, for the Covered Conduct.

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 Dooley) 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. Any administrative liability, including mandatory and permissive exclusion from Federal health care programs;

d. Any liability to the United States (or its agencies) for any conduct other than the Covered Conduct; and

e. Any liability based upon such obligations as are created by this Agreement.

5. Voluntary Exclusion.

a. In compromise and settlement of the rights of OIG-HHS to exclude Dooley pursuant to 42 U.S.C. § 1320a-7(b)(7) based upon the Covered Conduct, Dooley agrees to be excluded under this statutory provision from Medicare, Medicaid, and all other Federal health care programs, as defined in 42 U.S.C. § 1320a-7b(f), for a period of three (3) years. The exclusion shall be effective upon the Effective Date of this Agreement.

b. Such exclusion shall have national effect and shall also apply to all other federal procurement and nonprocurement programs. Federal health care programs shall not pay anyone for items or services, including administrative and management services, furnished, ordered, or prescribed by Dooley in any capacity while Dooley is excluded. This payment prohibition applies to Dooley and all other individuals and entities (including, for example, anyone who employs or contracts with Dooley, and any hospital or other provider where Dooley provides services). The exclusion applies regardless of who submits the claim or other request for payment. Dooley shall not submit or cause to be submitted to any Federal health care program any claim or request for payment for items or services, including administrative and

management services, furnished, ordered, or prescribed by Dooley during the exclusion. Violation of the conditions of the exclusion may result in criminal prosecution, the imposition of civil monetary penalties and assessments, and an additional period of exclusion. Dooley further agrees to hold the Federal health care programs, and all federal beneficiaries and/or sponsors, harmless from any financial responsibility for items or services furnished, ordered, or prescribed to such beneficiaries or sponsors after the effective date of the exclusion. Dooley waives any further notice of the exclusion and agrees not to contest such exclusion either administratively or in any state or federal court.

c. Reinstatement to program participation is not automatic. If Dooley wishes to be reinstated, Dooley must submit a written request for reinstatement to the OIG in accordance with the provisions of 42 C.F.R. §§ 1001.3001-.3005. Such request may be made to the OIG no earlier than 120 days prior to the expiration of the minimum period of exclusion. Reinstatement becomes effective upon application by Dooley, approval of the application by the OIG, and notice of reinstatement by the OIG. Obtaining another license, moving to another state, or obtaining a provider number from a Medicare contractor, a state agency, or a Federal health care program does not reinstate Dooley's eligibility to participate in these programs.

6. Dooley has provided sworn financial disclosure statements (Financial Statements) to the United States and the United States has relied on the accuracy and completeness of those Financial Statements in reaching this Agreement. Dooley warrants that the Financial Statements are complete, accurate, and current as of the date the Financial Statements were provided to the United States. In the event the United States learns of asset(s) in which Dooley had interests that were not disclosed in the Financial Statements, or in the event

the United States learns of any misrepresentation by Dooley on, or in connection with, the Financial Statements, and in the event such nondisclosure or misrepresentation changes the estimated net worth set forth on the Financial Statements by $9,000 or more, the United States may at its option: (a) rescind this Agreement and file suit based on the Covered Conduct; or (b) let the Agreement stand and collect the full Settlement Amount plus one hundred percent (100%) of the value of the net worth of Dooley previously undisclosed. Dooley agrees not to contest any collection action undertaken by the United States pursuant to this provision.

7. In the event that the United States, pursuant to Paragraph 6, above, opts to rescind this Agreement, Dooley agrees not to plead, argue, or otherwise raise any defenses under the theories of statute of limitations, laches, estoppel, or similar theories, to any civil or administrative claims that (a) are filed by the United States within 60 calendar days of written notification to Dooley that this Agreement has been rescinded, and (b) relate to the Covered Conduct, except to the extent these defenses were available on the Effective Date of this Agreement.

8. Dooley waives and shall not assert any defenses Dooley 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. 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.

9. Dooley 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 Dooley 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.

10. 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 Dooley 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.

11. Dooley 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. §§ 1395-1395hhh and 1396-1396v; and the regulations and official program directives promulgated thereunder) incurred by or on behalf of Dooley, or his present or former employees 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) Dooley'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; and

(5) the payments Dooley makes to the United States pursuant to this Agreement, including any costs and attorneys fees.

b. Future Treatment of Unallowable Costs: If applicable, these unallowable costs shall be separately determined and accounted for by Dooley, and Dooley 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 Dooley to the Medicare, Medicaid, TRICARE, or FEHBP Programs.

c. Treatment of Unallowable Costs Previously Submitted for Payment: If applicable, Dooley further agrees that within 90 days of the Effective Date of this Agreement he 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 Dooley, 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. Dooley agrees that the United States, at a minimum, shall be entitled to recoup from Dooley 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 Dooley on the effect of inclusion of unallowable costs (as defined in this Paragraph) on Dooley's 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.

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. Dooley 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. The Parties acknowledge that subsequent to agreeing in principle to this settlement and providing the United States with a $60,000 mortgage interest in his residence, Dooley filed for bankruptcy under Chapter 7 in the United States Bankruptcy Court for the

District of New Jersey (Case No. 08-14829). Dooley further agrees as follows:

a. Dooley's obligations under this Agreement are non-dischargeable pursuant to 11 U.S.C. §§ 523(a)(2), (4), and/or (6), and may not be avoided pursuant to 11 U.S.C. §§ 547 or 548, and Dooley shall not argue or otherwise take the position in any such case, proceeding, or action that: (i) Dooley's obligations under this Agreement may be avoided under 11 U.S.C. §§ 547 or 548; or (ii) the mutual promises, covenants, and obligations set forth in this Agreement do not constitute a contemporaneous exchange for new value given to Dooley.

b. If Dooley'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 Dooley for the claims that would otherwise be covered by the release provided in Paragraph 3, above. Dooley agrees that (i) any such claims, actions, or proceedings brought by the United States (including any proceedings to exclude Dooley 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 Dooley shall not argue or otherwise contend that the United States' claims, actions, or proceedings are subject to an automatic stay; (ii) Dooley 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 proceedings that are brought by the United States within 30 calendar days of written notification to Dooley 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 has a viable outstanding claim against Dooley in the amount of $1,258,515, 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. Dooley acknowledges that his agreements in this Paragraph are provided in exchange for valuable consideration provided in this Agreement.

15. 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.

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

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 is the United States District Court for the District of New Jersey.

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

19. The individuals signing this Agreement on behalf of Dooley represent and warrant that they are authorized by Dooley 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.

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

21. This Agreement is binding on Dooley's successors, transferees, heirs, and assigns.

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

23. 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

CHRISTOPHER J. CHRISTIE
UNITED STATES ATTORNEY

DATED: 8/20/08 BY: _____
DAVID E. DAUENHEIMER
Assistant United States Attorney
District of New Jersey

U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES

DATED:_____ BY: _____
GREGORY E. DEMSKE
Assistant Inspector General for Legal Affairs
Office of Counsel to the Inspector General
Office of Inspector General

CHRISTOPHER DOOLEY, Ph.D - DEFENDANT

DATED: 6/29/08 BY: Dr. Christopher Dooley
CHRISTOPHER DOOLEY

DATED: 7-1-08 BY: _____
PETER J. BROEGE
Counsel for Dooley

THE UNITED STATES OF AMERICA

CHRISTOPHER J. CHRISTIE
UNITED STATES ATTORNEY

DATED:_____ BY: _____
DAVID E. DAUENHEIMER
Assistant United States Attorney
District of New Jersey

U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES

DATED: 8/19/08 BY: _____
GREGORY E. DEMSKE
Assistant Inspector General for Legal Affairs
Office of Counsel to the Inspector General
Office of Inspector General

CHRISTOPHER DOOLEY, Ph.D - DEFENDANT

DATED:_____ BY: _____
CHRISTOPHER DOOLEY

DATED:_____ BY: _____
PETER J. BROEGE
Counsel for Dooley