

Deferred Prosecution Agreement

1. The University of Medicine and Dentistry of New Jersey ("UMDNJ" or the "Institution"), including its components and affiliates, by its undersigned counsel, pursuant to authority granted by its Board of Trustees, and the United States Attorney's Office for the District of New Jersey (the "Office"), enter into this Deferred Prosecution Agreement (the "Agreement"). The phrases "UMDNJ," the "Institution" and "components and affiliates" as used in this Agreement shall include, without limitation, any and all legal entities (whether for profit or non-profit corporations, limited liability companies, partnerships, or otherwise) of UMDNJ and any and all schools, practices, facilities, centers, institutions or foundations affiliated with UMDNJ. The agreement between the Monitor and UMDNJ, described in paragraph 7 below, shall be deemed to include the foregoing. Except as specifically provided below, the Agreement shall be in effect for a period of two years from the date it is fully executed. The Agreement may be extended for an additional one-year period at the sole discretion of the Office.
2. The Office has informed UMDNJ that it will file, on or shortly after the date this Agreement is fully executed, a criminal complaint in the United States District Court for the District of New Jersey charging UMDNJ with health care fraud, in violation of Title 18, United States Code, Section 1347.
3. UMDNJ and the Office agree that, upon filing of the criminal complaint in accordance with the preceding paragraph, this Agreement shall be publicly filed in the United States District Court for the District of New Jersey, and UMDNJ agrees to post the Agreement prominently on its website.
4. In light of UMDNJ's remedial actions to date and its willingness to (a) undertake additional remediation; (b) acknowledge responsibility for its behavior; (c) continue its cooperation with the Office and other government agencies; (d) demonstrate its future good conduct and full compliance with applicable federal and state laws; and (e) consent to payment of additional restitution as set forth in paragraph 18 below, the Office shall recommend to the Court that prosecution of UMDNJ on the criminal complaint filed pursuant to paragraph 2 above be deferred for a period of twenty-four (24) to thirty-six (36) months from the filing date of the criminal complaint. If the Court declines to defer prosecution for any reason, this Agreement shall be null and void, and the parties will revert to their pre-Agreement positions.
5. UMDNJ commits itself to achieving exemplary corporate citizenship, to best practices of effective corporate governance and the highest principles of integrity and professionalism, to the steadfast protection of public funds, and to fostering a culture of openness, accountability and compliance throughout the Institution. To advance and underscore this commitment, UMDNJ agrees to take the remedial measures set forth herein.
6. UMDNJ will cooperate fully with all federal and state law enforcement and regulatory agencies, including but not limited to: the Office; the United States Department of Justice, Civil Division; the United States Department of Health and Human Services, Office of Inspector General; the Federal Bureau of Investigation; the United States Department of

Education, including its Office of Inspector General; the Office of the Attorney General of the State of New Jersey; the Office of the Insurance Fraud Prosecutor of New Jersey, including its Medicaid Fraud Section; and the Department of Human Services, Division of Medical Assistance and Health Services of the State of New Jersey.

7. UMDNJ agrees that until the expiration of this Agreement, it will retain an outside, independent individual (the "Monitor") selected by the Office. It shall be a condition of the Monitor's retention that the Monitor is independent of UMDNJ and that no attorney-client relationship shall be formed between the Monitor and UMDNJ. The Monitor shall have no role in academic affairs.

8. The Monitor shall have unfettered access to all documents and information the Monitor determines are necessary to assist him in the execution of his or her duties. The Monitor shall have the authority to meet with, and require reports on any subject from, any officer or employee of the Institution. The Monitor shall receive advance notice of, and have the option to attend, scheduled meetings of UMDNJ senior executives.

9. UMDNJ shall promptly notify the Monitor and the Office in writing of any allegations of unlawful conduct or other wrongdoing by UMDNJ, its trustees, officers, employees and agents. UMDNJ shall provide the Monitor and the Office with all relevant documents and information concerning such allegations, including but not limited to internal audit reports, letters threatening litigation, "whistleblower" complaints, civil complaints, and documents produced in civil litigation. In addition, UMDNJ shall report to the Monitor and the Office concerning its planned investigative measures and any resulting remedial measures, internal and external. The Monitor in his or her discretion may conduct an investigation into any such matters; and nothing in this paragraph shall be construed as limiting the ability of the Monitor to investigate and report to the Board of Trustees and the Office concerning such matters.

10. The Monitor shall conduct a comprehensive review and evaluation of all policies, practices, and procedures, and report and make written recommendations to the Board of Trustees concerning the following subjects :

- a. The corporate structure and governance of UMDNJ;
- b. The effectiveness of the legal, finance, compliance, internal audit and security functions and operations at UMDNJ;
- c. Medicare, Medicaid and other health care benefit program cost reporting and billing;
- d. The development of effective training and education programs in the following areas, and any other area for which the Monitor determines a need for training and education: financial management and controls;

Medicare, Medicaid and other health care benefit program cost reporting and billing; ethics; compliance; security; document retention; and corporate governance;

- e. Contracts awarded or otherwise entered into without a bidding process. The Monitor shall have access to all previously entered no-bid contracts for a thorough review. Except as determined by the Monitor, the Monitor shall review all no-bid contracts before they are awarded by UMDNJ. In the event the Monitor opposes any no-bid contract, the Monitor will meet with the Board of Trustees to discuss his or her concerns;
- f. Document retention and destruction, including policies, practices and procedures for the retention and destruction of electronic data and electronic mail;
- g. Security programs and policies;
- h. Salaries, bonuses and other compensation and perquisites of UMDNJ senior management, including the Monitor's findings and determinations concerning the reasonableness of such compensation and perquisites;
- i. Conflicts of interest, actual or potential, of trustees, officers, employees and agents of UMDNJ. The Monitor shall insure compliance with Governor Richard J. Codey's Executive Order 65, signed November 15, 2005 which prohibits trustees and university presidents of New Jersey state colleges and universities from doing business with their respective schools. The Monitor shall also report to the Office and the Governor concerning conflicts of interest; and
- j. The relationship between UMDNJ and the University Physicians Associates ("UPA").

11. The Monitor shall:

- a. Monitor UMDNJ's compliance with this Agreement, and have authority to require UMDNJ to take any steps he or she believes are necessary for UMDNJ to comply with the terms of this Agreement;
- b. Ensure UMDNJ's compliance with applicable federal and state laws;
- c. Report to the Office, on at least a quarterly basis, as to UMDNJ's compliance with this Agreement and the implementation and effectiveness of its internal controls, financial management and accountability, and related compliance functions of the Institution. The first report to the Office shall be due three months after this Agreement is fully executed, and

subsequent reports shall be made quarterly thereafter;

- d. With notice to the Board of Trustees and with the prior approval of the Office, retain consultants, accountants or other professionals that the Monitor deems necessary to assist the Monitor in the execution of the Monitor's duties;
- e. Review and give prior approval for the engagement of all outside counsel for UMDNJ. In the event the Monitor objects to outside counsel selected by UMDNJ, the Monitor shall so notify the Board of Trustees, the President, and General Counsel of UMDNJ, and the Office;
- f. Monitor the information received by the confidential hotline and email address described in paragraph 17 below; and
- g. Review employment practices and make recommendations to the Board of Trustees in regard to the hiring or firing of senior management and finance, legal and compliance personnel, except as provided in paragraphs 12 and 13 below.

12. UMDNJ shall establish the position of Chief Compliance Officer ("CCO"). The CCO will report directly to the President of UMDNJ and to the Board of Trustees. The position of CCO shall be filled in the manner set forth in paragraph 13 below.

13. The Monitor shall conduct a comprehensive search for the following positions at UMDNJ: (a) General Counsel; and (b) the newly established Chief Compliance Officer position described in paragraph 12 above. Following the nationwide search, the Monitor shall recommend one or more candidates to the Board of Trustees. The Board of Trustees will select from the recommended candidates for each position.

14. UMDNJ agrees that the Monitor may also disclose his written reports, as directed by the Office, to any other federal, state or foreign law enforcement or regulatory agency in furtherance of an investigation of any other matters discovered by, or brought to the attention of, the Office in connection with the Office's investigation of UMDNJ or the implementation of this Agreement.

15. UMDNJ agrees that if the Monitor resigns or is unable to serve the balance of his term, a successor shall be selected by the Office within fortyfive (45) days. UMDNJ agrees that all provisions in this Agreement that apply to the Monitor shall apply to any successor Monitor.

16. UMDNJ agrees that it will establish, maintain and support training and education programs as recommended by the Monitor pursuant to paragraph 10(d) above. The programs, which shall be reviewed and approved by the Board of Trustees, shall be designed to advance and underscore the Institution's commitment to exemplary corporate citizenship, to best practices of effective corporate governance and the highest principles of integrity and professionalism, and to fostering a culture of openness, accountability and compliance throughout the Institution. The Monitor shall determine which UMDNJ officers and employees shall be required to attend such training and education programs (collectively the "Mandatory Participants"), and shall determine the timing and frequency of such programs. The Board of Trustees shall communicate to the Mandatory Participants, in writing or by video, its review and endorsement of the training and education programs.

17. UMDNJ agrees to establish and maintain a confidential hotline and email address, of which UMDNJ employees are informed and can use to notify UMDNJ of any concerns about unlawful conduct or other wrongdoing involving UMDNJ.

18. UMDNJ shall make full restitution to the state and federal governments in an amount to be determined by the Monitor after the Monitor has had the opportunity to conduct a thorough investigation. To date, the Office's investigation has revealed that UMDNJ improperly received \$4.9 million from Medicaid for physician services in outpatient clinics. The state and federal governments have recouped \$2,056,874 from UMDNJ. UMDNJ agrees to pay \$2,843,126, the difference between the preliminary loss amount of \$4.9 million and the recoupment of \$2,056,874, to Medicaid within thirty (30) days of the execution of this Agreement.

19. Nothing in this Agreement affects in any way any civil, administrative, regulatory claims, causes of action, or rights of any federal or state agency.

20. Within five (5) days of the execution of this Agreement, UMDNJ agrees to call a meeting, on a date mutually agreed upon by UMDNJ and the Office, of its senior executives, and any other UMDNJ employees who the Institution desires to attend, such meeting to be attended by the United States Attorney and other representatives of the Office for the purpose of communicating the goals and expected effect of this Agreement.

21. UMDNJ agrees that its continuing cooperation during the term of this Agreement shall include, but shall not be not limited to, the following:

- a. Not engaging in or attempting to engage in any unlawful conduct;
- b. Completely, truthfully and promptly disclosing all information concerning all matters about which the Office and other government agencies designated by the Office may inquire, and continuing to provide the Office,

upon request, all documents and other materials relating to matters about which the Office inquires, and analysis or other work product as may be requested by the Office, as promptly as is practicable. Cooperation under this paragraph shall include identification of documents that may be relevant to the matters under investigation;

- c. Consenting to any order sought by the Office permitting disclosure of any materials that constitute “matters occurring before the grand jury” within the meaning of Rule 6(e) of the Federal Rules of Criminal Procedure;
- d. Not asserting, in relation to any request of the Office, any claims of attorney-client privilege or attorney work-product doctrine as to any documents, records, information or testimony requested by the Office related to: (i) factual internal investigations undertaken by the Institution or its counsel relating to the matters under investigation by the Office; (ii) legal advice given contemporaneously with, and related to, such matters. Such materials are referred to hereinafter as the “Confidential Materials.” By producing the Confidential Materials pursuant to this Agreement, UMDNJ does not intend to waive the protection of the attorney-client privilege or the attorney work-product doctrine, or any other applicable privilege, as to third parties. The Office will maintain the confidentiality of the Confidential Materials pursuant to this Agreement and will not disclose them to any third party, except to the extent that the Office determines, in its sole discretion, that disclosure is otherwise required by law or would be in furtherance of the discharge of the duties and responsibilities of the Office. Should the Office determine that such disclosure is necessary, it will advise UMDNJ and permit the Institution a reasonable opportunity to oppose such disclosure; UMDNJ, however, recognizes that the Office in its sole discretion will determine whether to disclose;
- e. Making available UMDNJ officers and employees and using its best efforts to make available former UMDNJ officers and employees to provide information and/or testimony at all reasonable times as requested by the Office, including sworn testimony before a federal grand jury or in federal trials, as well as interviews with federal law enforcement authorities. Cooperation under this paragraph shall include identification of witnesses who, to UMDNJ’s knowledge, may have material information regarding the matters under investigation;
- f. Providing testimony, certifications, and other information deemed necessary by the Office or a court to identify or establish the original location, authenticity, or other evidentiary foundation necessary to admit into evidence documents in any criminal or other proceeding as requested by the Office; and

- g. UMDNJ acknowledges and understands that its future cooperation is an important factor in the decision of the Office to enter into this Agreement, and UMDNJ agrees to continue to cooperate fully with the Office, and with any other government agency designated by the Office, regarding any issue about which UMDNJ has knowledge or information.

22. The Office may continue to investigate current and former UMDNJ trustees, officers, employees, agents and attorneys. Nothing in this Agreement restricts in any way the ability of the Office to investigate and prosecute any current or former UMDNJ trustee, officer, employee, agent or attorney.

23. Should the Office determine, in its sole discretion, during the term of this Agreement that UMDNJ has committed any unlawful conduct commenced subsequent to the date of this Agreement, or otherwise in any other respect knowingly and materially breached this Agreement, UMDNJ shall, in the discretion of the Office, thereafter be subject to prosecution for any federal crimes of which the Office has knowledge.

24. Should the Office determine, in its sole discretion, that UMDNJ has knowingly and materially breached any provision of this Agreement, the Office shall provide written notice to UMDNJ of the alleged breach and provide UMDNJ with a two-week period in which to make a presentation to the Office to demonstrate that no breach occurred, or, to the extent applicable, that the breach was not material or knowingly committed or has been cured. The parties understand and agree that should UMDNJ fail to make a presentation to the Office within a two-week period after receiving written notice of an alleged breach, it shall be conclusively presumed that UMDNJ is in breach of this Agreement. The parties further understand and agree that the determination whether UMDNJ has breached this Agreement rests solely in the discretion of the Office, and the exercise of discretion by the Office under this paragraph is not subject to review in any court or tribunal outside the Department of Justice. In the event of a breach of this Agreement that results in a prosecution of UMDNJ, such prosecution may be premised upon any information provided by or on behalf of UMDNJ to the Office at any time, unless otherwise agreed when the information was provided.

25. UMDNJ shall expressly waive all rights to a speedy trial pursuant to the Sixth Amendment of the United States Constitution, Title 18, United States Code, Section 3161, Federal Rule of Criminal Procedure 48(b), and any applicable Local Rules of the United States District Court for the District of New Jersey, for the period that this Agreement is in effect.

26. In case of a knowing material breach of this Agreement, any prosecution of UMDNJ relating to the facts set forth in the criminal complaint described in paragraph 2 of this Agreement that are not time-barred by the applicable statute of limitations as of the execution of this Agreement may be commenced against UMDNJ notwithstanding the expiration of any applicable statute of limitations during the deferred prosecution period. UMDNJ agrees to waive the statute of limitations with respect to any crime that would otherwise expire during the term of this Agreement, and this waiver is knowing and voluntary and in express reliance on the advice of counsel. Any such waiver shall terminate upon final expiration of this agreement.

27. The Office agrees that if UMDNJ is in full compliance with all of its obligations under this Agreement, the Office, within ten (10) days of the expiration of twenty-four (24) months (or thirty-six months, if extended) from the execution of this Agreement, will seek dismissal with prejudice of the criminal complaint filed pursuant to paragraph 2. Except as otherwise provided herein, during and upon the conclusion of the term of this Agreement, the Office agrees that it will not prosecute UMDNJ further for the matters that have been the subject of the Office's investigation relating to this Agreement.

28. UMDNJ shall adopt all recommendations made by the Monitor, unless UMDNJ objects to the recommendation and the Office agrees that adoption of the recommendation should not be required. In the event the Board disagrees with any recommendation of the Monitor, the Board and the Monitor may present the issue to the United States Attorney for his consideration and final decision.

29. It is understood that this Agreement is limited to UMDNJ and the Office and cannot bind other federal, state or local authorities. However, the Office will bring this Agreement and the cooperation of UMDNJ and its compliance with its other obligations under this Agreement to the attention of other prosecuting offices, if requested to do so.

30. This Agreement constitutes the full and complete agreement between UMDNJ and the Office and supersedes any previous agreement between them. No additional promises, agreements, or conditions have been entered into other than those set forth in this Agreement, and none will be entered into unless in writing and signed by the Office, UMDNJ's counsel, and a duly authorized representative of UMDNJ. It is understood that the Office may permit exceptions to or excuse particular requirements set forth in this Agreement at the written request of UMDNJ or the Monitor, but any such permission shall be in writing.

AGREED TO:



University of Medicine and Dentistry of
New Jersey

Christopher J. Christie
United States Attorney
District of New Jersey


Date: _____

Date: _____

TRUSTEE'S CERTIFICATE

I have read this agreement and carefully reviewed every part of it with counsel for the University of Medicine and Dentistry of New Jersey ("UMDNJ") from McElroy, Deutsch, Mulvaney & Carpenter, LLP, Walter F. Timpone, Esq. I understand the terms of this Agreement and voluntarily agree, on behalf of UMDNJ, to each of the terms. Before signing this Agreement, I consulted with the attorney for UMDNJ. The attorney fully advised me of UMDNJ's rights, of possible defenses, of the advisory United States Sentencing Guidelines' provisions, and of the consequences of entering into this Agreement. No promises or inducements have been made other than those contained in this Agreement. Furthermore, no one has threatened or forced me, or to my knowledge any person authorizing this Agreement on behalf of UMDNJ, in any way to enter into this Agreement. I am also satisfied with the attorney's representation in this matter. I certify that I am a trustee of UMDNJ, and that I have been duly authorized by the Board of Trustees of UMDNJ to execute this certificate on behalf of UMDNJ.

12/30/05
Date


University of Medicine and Dentistry
of New Jersey

CERTIFICATE OF COUNSEL

I am counsel for the University of Medicine and Dentistry of New Jersey ("UMDNJ"). In connection with such representation, I have examined relevant UMDNJ documents, and have discussed this Agreement with the authorized representative of UMDNJ. Based on my review of the foregoing materials and discussions, I am of the opinion that:

1. The undersigned counsel is duly authorized to enter into this Agreement on behalf of UMDNJ.
2. This Agreement has been duly and validly authorized, executed and delivered on behalf of UMDNJ, and is a valid and binding obligation of UMDNJ.

Further, I have carefully reviewed every part of this Agreement with the Board of Trustees of UMDNJ. I have fully advised these Trustees of UMDNJ's rights, of possible defenses, of the advisory United States Sentencing Guidelines' provisions, and of the consequences of entering into this Agreement. To my knowledge, UMDNJ's decision to enter into this Agreement is an informed and voluntary one.

Walter F. Timpone, Esq. _____
Attorney for UMDNJ

Date _____

CERTIFIED COPY OF RESOLUTION

Upon motion duly made, seconded, and unanimously carried by the affirmative vote of all the Directors present, the following resolutions were adopted:

WHEREAS, the University of Medicine and Dentistry of New Jersey ("UMDNJ") has been engaged in discussions with the United States Attorney's Office for the District of New Jersey (the "Office") in connection with an investigation being conducted by the Office into activities of UMDNJ relating to Medicaid billing and reimbursement;

WHEREAS, the Board of Trustees of UMDNJ consents to resolution of these discussions by entering into a deferred prosecution agreement that the Board of Trustees has reviewed with outside counsel representing UMDNJ, relating to a criminal complaint to be filed in the U.S. District Court for the District of New Jersey charging UMDNJ with health care fraud;

NOW THEREFORE, BE IT RESOLVED that outside counsel representing UMDNJ from McElroy, Deutsch, Mulvaney & Carpenter, LLP, Walter F. Timpone, Esq., is hereby authorized to execute the Deferred Prosecution Agreement on behalf of UMDNJ substantially in the same form as reviewed by the Board of Trustees at this meeting and as attached hereto as Exhibit A, and that a Trustee of the Company is authorized to execute the Trustee's Certificate attached thereto.

SECRETARY'S CERTIFICATION

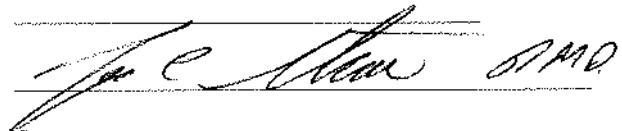
I, Frederic C. Sterritt, the duly elected Secretary of the University of Medicine and Dentistry of New Jersey ("UMDNJ" or "the Institution") a corporation duly organized under the laws of the State of New Jersey, hereby certify that the following is a true and exact copy of a resolution approved by the Board of Trustees of the Institution at a meeting held at UMDNJ on December 29, 2005;

WHEREAS, UMDNJ has been engaged in discussions with the United States Attorney's Office for the District of New Jersey (the "Office") in connection with an investigation being conducted by the Office into activities of UMDNJ relating to Medicaid billing and reimbursement;

WHEREAS, UMDNJ consents to resolution of these discussions by entering into a deferred prosecution agreement that the Board of Trustees has reviewed with outside counsel representing UMDNJ, relating to a criminal complaint to be filed in the U.S. District Court for the District of New Jersey charging UMDNJ with health care fraud;

NOW THEREFORE, BE IT RESOLVED that outside counsel representing UMDNJ from McElroy, Deutsch, Mulvaney & Carpenter, LLP, Walter F. Timpone, Esq., is hereby authorized to execute the Deferred Prosecution Agreement on behalf of UMDNJ substantially in the same form as reviewed by the Board of Trustees at this meeting and as attached hereto as Exhibit A, and that a Trustee of the Institution is authorized to execute the Trustee's Certificate attached thereto.

IN WITNESS WHEREOF, I have hereunto signed my name as Secretary and affixed the Seal of said Corporation this thirtieth day of December, 2005.


Secretary

CORPORATE SEAL