

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT (“Agreement”) is entered between the **STATE OF FLORIDA**, acting through its **MEDICAID FRAUD CONTROL UNIT** of the **OFFICE OF THE ATTORNEY GENERAL** (“MFCU”) and **MIRACLE BLESSED CARE ENTERPRISES, INC.** (“Miracle Blessed Care”), through their authorized representatives.

As a preamble to this Agreement, the MFCU and Miracle Blessed Care agree to the following:

A. **Miracle Blessed Care Defined:** As used in this Agreement, the term “Miracle Blessed Care” is defined as **Miracle Blessed Care Enterprises, Inc.**, a Florida “for profit” corporation, its current and former parent entities, predecessors, successors, and assigns, including the agents, employees, officers, and directors, and independent contractors of Miracle Blessed Care, their successors and assigns, to the extent such agents and independent contractors were acting for or on behalf of Miracle Blessed Care. Collectively, Miracle Blessed Care and MFCU are the “Parties,” as used herein.

B. **“Investigation” of the “Covered Conduct:”** The MFCU conducted an investigation of Miracle Blessed Care concerning Miracle Blessed Care's alleged improper claims for and receipt of Medicaid payments from Florida’s Agency for Health Care Administration (hereinafter “AHCA”). As used herein the term “Investigation” shall mean MFCU’s investigation into Miracle Blessed Care having billed Medicaid for certain Portable

Gaseous System Rentals, via procedure code E0431, in cases where it did not provide oxygen tanks to Medicaid recipients; Miracle Blessed Care submitted these claims through Medicaid Provider Number 9512811-00. The MFCU investigated Miracle Blessed Care's conduct for the period from January 1, 2005 through and including August 30, 2006. This MFCU- investigated conduct is the "Covered Conduct," as used hereafter.

C. **MFCU's Claims:** MFCU contends it has certain statutory and common-law civil claims against Miracle Blessed Care as a result of Covered Conduct.

D. **Motivation to Resolve Claims:** The Parties desire to conclude the aforementioned Investigation into the Covered Conduct and to settle and compromise on all claims against Miracle Blessed Care arising out of the said Investigation that the MFCU either asserted or maintained against Miracle Blessed Care or could have asserted or maintained against Miracle Blessed Care. The Parties enter into this full and final Settlement to avoid the delay, uncertainty, inconvenience, and expense of protracted litigation of these claims.

NOW, THEREFORE, in consideration of the premises and the mutual promises, agreements, obligations, and covenants set forth, and for good and valuable consideration as stated herein, the Parties agree as follows:

1. **Settlement Amount:** Miracle Blessed Care agrees to pay MFCU the sum of **Ten Thousand Six Hundred Seventy** and 00/100 DOLLARS (\$10,670). The foregoing payments

shall be made under all of the following terms:

- (a) Miracle Blessed Care agrees to pay the one-lump-sum amount of **\$10,670** to the MFCU.
- (b) Said lump-sum payment shall be paid by either certified or cashier's check or wire transfer drawn on a bank in the United States, and in United States currency.
- (c) The certified or cashier's check shall be payable to "Office of the Attorney General."
- (d) The certified or cashier's check or a copy of the receipt of transmittal for the wire transferred funds shall accompany this Settlement Agreement, which must be executed by the authorized representative of Miracle Blessed Care.
- (e) If Miracle Blessed Care elects to pay the Settlement Amount by wire transfer, Miracle Blessed Care agrees any such wire transfer shall be treated as a proposed payment whose acceptance can be affirmed only by the Deputy Attorney General's signature below on this Settlement Agreement. All other provisions regarding effective date will remain unchanged by the final acceptance of the payment by wire transfer.
- (f) Prior to any other distribution, the MFCU shall transfer to AHCA, that portion of the Settlement Amount constituting the Medicaid program loss.

2. **MFCU's Release:** Subject to the exceptions in Paragraph 3 ("Scope of Release") and Paragraph 4 ("Bankruptcy Provisions"), upon full execution of this Agreement by all

Parties and Miracle Blessed Care's simultaneous remittance to the MFCU of the settlement amount as provided in Paragraph 1, the MFCU agrees to release Miracle Blessed Care from any and all civil and administrative actions, causes of action, obligations, liabilities, claims, or demands for compensatory, special, punitive, exemplary, or treble damages, or demand whatsoever in law or in equity, which were asserted or maintained or could have been asserted or maintained, against Miracle Blessed Care based upon or arising out of the Investigation of the Covered Conduct specifically defined in Preamble Paragraph B. However, the Settlement Agreement will have no actual or intended effect until executed by MFCU's authorized representative. In the event Miracle Blessed Care makes payment of the Settlement Amount prior to full execution of this Agreement, MFCU may deposit the Settlement Amount in an escrow account pending execution and such deposit shall not be construed as acceptance of the terms of this Agreement.

3. **Scope of Release:** Notwithstanding any term of this Agreement, the following are specifically reserved and excluded from the scope and terms of this Agreement as to any entity or person, including Miracle Blessed Care:

(a) MFCU, AHCA or other appropriate law enforcement or regulatory agency or private party suit against Miracle Blessed Care or any predecessor, successor, director, officer, employee, assign or agent of Miracle Blessed Care for:

(1) Any administrative or civil cause of action for any violation of law arising out of the covered conduct and not encompassed with the Investigation as defined in Preamble Paragraph B; or

(2) Any criminal liability.

Accordingly, Miracle Blessed Care agrees not to assert the defenses of res judicata, collateral estoppel, excessive fines, or double jeopardy as to actions described in Subparagraphs (a)(1) and (a)(2).

(b) Any actions or matters involving the exclusion of Miracle Blessed Care or other entities or persons from Federal or State, including Florida, health care programs;

(c) Any administrative action(s) relating to professional licensure or adjudication of claims by persons or entities who are not parties to this Settlement Agreement;

(d) Any claims based upon such obligations as are created by this Agreement;

(e) Any liability to the State of Florida, including MFCU and OAG, for any conduct other than the Covered Conduct;

(f) Any express or implied warranty claims or other claims for defective or deficient products or services, including quality of goods and services, provided by Miracle Blessed Care;

(g) Any claims for personal injury or property damage or for other consequential damages arising from the Covered Conduct;

(h) Any claims based on a failure to deliver items or services due; and

(i) Any action against a healthcare professional, including Miracle Blessed Care and any of its employees or agents, for practicing without the necessary license or certification.

4. **Bankruptcy:** The Parties warrant and agree to the following bankruptcy

provisions:

(a) Miracle Blessed Care warrants that it has reviewed its own financial position and Miracle Blessed Care is solvent within the meaning of Title II of the United States Code (hereinafter "11 U.S.C."), §§ 547(b)(3) and 548 (a)(1)(B)(ii)(I), and will remain solvent following their payment to the MFCU of the Settlement Amount.

(b) Further, the Parties warrant that, in evaluating whether to execute this Agreement, they

(1) have intended that the mutual promises, covenants, and obligations set forth constitute a contemporaneous exchange for new value given to Miracle Blessed Care, within the meaning of 11 U.S.C. § 547(c)(1); and

(2) conclude that these mutual promises, covenants, and obligations do, in fact, constitute such a contemporaneous exchange.

(c) 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 Miracle Blessed Care was or became indebted, on or after the date of this transfer, all within the meaning of 11 U.S.C. § 548(a)(1).

(d) The Parties agree the Settlement Amount as defined in Paragraph 1 is a penalty as used in 11 U.S.C. §523(a)(7) and §1141(d)(2).

(e) Accordingly, the Parties agree within ninety-one (91) days of the later of the Effective Date, if Miracle Blessed Care commences any action under any law of bankruptcy, insolvency, reorganization, or relief of debtors, seeking to have any order for relief of Miracle

Blessed Care's debts; seeking to adjudicate Miracle Blessed Care as bankrupt or insolvent; or seeking appointment of a receiver, trustee, custodian, or other similar official for Miracle Blessed Care or for all or any substantial part of Miracle Blessed Care's assets, Miracle Blessed Care agrees as follows:

(1) Miracle Blessed Care's obligations under this Agreement may not be avoided pursuant to 11 U.S.C. §§ 547 or 548, and Miracle Blessed Care shall not argue or otherwise take the position in any such case, proceeding, or action that: Miracle Blessed Care's obligations under this Agreement may be avoided under 11 U.S.C. §§ 547 or 548; Miracle Blessed Care was insolvent at the time this Agreement was entered into, or became insolvent as a result of the payment made to the MFCU hereunder; or the mutual promises, covenants, and obligations set forth in this Agreement do not constitute a contemporaneous exchange for new value given to Miracle Blessed Care.

(2) If Miracle Blessed Care'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 MFCU, at its sole option, may rescind the releases in this Agreement, and bring any civil and/or administrative claim, action, or proceeding against Miracle Blessed Care for the claims that would otherwise be covered by the releases provided in Paragraphs 2 and 3.

(3) Miracle Blessed Care agrees that any such claims, actions, or proceedings brought by the State of Florida (including any proceedings to exclude Miracle Blessed Care 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 immediately preceding Subparagraph 4(e)(2). Miracle Blessed Care will not argue or otherwise contend that the State of Florida's claims, actions, or proceedings are subject to an automatic stay. Miracle Blessed Care will 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 State of Florida within 90 calendar days of written notification to Miracle Blessed Care that the releases herein have been rescinded pursuant to this Paragraph, except to the extent such defenses were available on the first day of the Investigated period.

(4) Miracle Blessed Care acknowledges that its agreements in this Paragraph are provided in exchange for valuable consideration provided in this Agreement.

5. **No Admission of Fault:** This Agreement, any exhibit or document referenced herein, any action taken to reach, effectuate, or further this Agreement, and the terms set forth herein, shall not be construed as, or used as, an admission by or against any of the Parties of any fault, wrongdoing, or liability whatsoever. Entering into or carrying out this Agreement, or any negotiations or proceedings related thereto, shall not in any event be construed as, or deemed to be evidence of, an admission or concession by any of the Parties, or to be a waiver of any applicable defense. However, with the exception of certain bankruptcy provisions in Paragraph 4, nothing in this Agreement, including this Paragraph, shall be construed to limit or to restrict Miracle Blessed Care's right to utilize this Agreement, or payments made hereunder, to assert and maintain the defenses of res judicata, collateral estoppel, payment, compromise and settlement, accord and satisfaction, or any legal or equitable defenses in any pending or future

legal or administrative action or proceeding arising out of the specific subject matter of the Investigation, as defined in Preamble Paragraph B. Miracle Blessed Care does not admit MFCU's contentions that arise from its Investigation of the Covered Conduct, set forth in Preamble Paragraph B, and specifically denies Miracle Blessed Care intentionally submitted any claims in violation of state or federal law. This Agreement, and the payment, promises, and release provided hereunder, are not and shall not be construed to be an admission of liability or any acknowledgment of the validity of any of the claims that were or that could have been asserted by the MFCU against Miracle Blessed Care, arising out of the Investigation, which liability or validity is hereby expressly denied by Miracle Blessed Care.

6. **Denied Medical Claims:** The Settlement Amount shall not be decreased as a result of the denial of claims for payment now being withheld from payment by AHCA or its intermediary agents related to the Covered Conduct. Miracle Blessed Care agrees not to resubmit to Medicare, Medicaid or any State or Federal payer any previously denied claims related to the Covered Conduct and agrees not to appeal any such denials of claims.

7. **Complete Resolution:** The Parties have agreed that the terms of this Agreement constitute a complete resolution and settlement of the claims asserted against Miracle Blessed Care by the MFCU, as well as the claims that could have been asserted against Miracle Blessed Care by the MFCU arising out of or as a result of the Investigation described in Preamble Paragraph B. Upon Miracle Blessed Care's continued fulfillment of its obligations under this Agreement, and payment of the lump-sum amount provided in Paragraph 1, the Investigation, as

defined in Preamble Paragraph B, shall be concluded.

8. **Survival:** This Agreement shall be binding upon and inure to the benefit of the Parties and their successors, transferees, heirs, and assigns.

9. **Merger:** This Agreement constitutes the entire agreement between the Parties with regard to the subject matter contained herein and all prior negotiations and understandings between the Parties shall be deemed merged into this Agreement.

10. **No External Representations:** No representations, warranties, or inducements have been made by the MFCU concerning this Agreement other than those representations, warranties, and covenants contained in this Agreement.

11. **No Oral Modifications or Waivers:** No waiver, modification, or amendment of the terms of this Agreement shall be valid or binding unless in writing, signed by the Party to be charged, and then only to the extent set forth in such written waiver, modification, or amendment.

12. **Failure of Strict Performance:** Any failure by any Party to the Agreement to insist upon the strict performance by any other Party of any of the provisions of this Agreement shall not be deemed a waiver of any of the provisions of this Agreement, and such Party, notwithstanding such failure, shall have the right thereafter to insist upon the specific

performance of any and all of the provisions of this Agreement.

13. **Choice of Law:** This Agreement shall be governed by, and construed and enforced in accordance with the laws of the State of Florida, without regard to its conflict of law principles.

14. **Release of Florida:** Miracle Blessed Care fully and finally releases the MFCU, the OAG, and the State of Florida, its agencies, employees, servants, and agents from any claims (including attorney's fees and costs of any kind) that Miracle Blessed Care has asserted, could have asserted, or may assert in the future against the MFCU, the OAG, or the State of Florida, its agencies, employees, and agents arising out of or resulting from the Investigation as defined in Preamble Paragraph B.

15. **Contract Beneficiaries:** This Agreement is intended to be for the benefit of the Parties only, and by this instrument the Parties do not release any claims against any other person or entity, except to the extent provided for in the immediately preceding Paragraph.

16. **Contribution from Medical Beneficiaries:** Miracle Blessed Care 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 payers based upon the claims defined as Covered Conduct.

17. **Litigation Costs:** With exception of investigative costs and litigation costs which may be specifically provided for in Paragraph 1, 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.

18. **Unenforceable Clause:** Neither Party shall challenge the legality or enforceability of this Agreement. If any clause, provision, or section of this Agreement shall, for any reason, be held illegal, invalid, or unenforceable, such illegality, invalidity, or unenforceability shall not affect any other clause, provision, or section of this Agreement, and this Agreement shall be construed and enforced as if such illegal, invalid, or unenforceable clause, section, or other provision had not been contained herein.

19. **Arms Length Negotiations:** The Parties executed this Agreement after arms length negotiations and it reflects the conclusion of the Parties that this Agreement is in the best interest of all the Parties. Each Party is satisfied with the Agreement's language and construction, and therefore the interpretation of the terms of this Agreement shall not be construed against any of the Parties. Each Party represents that this Agreement is freely and voluntarily entered into without any degree of duress or compulsion whatsoever.

20. **Authority to Execute Agreement:** The undersigned individuals signing this Agreement on behalf of Miracle Blessed Care represent and warrant that they are authorized to execute this Agreement. The undersigned MFCU signatories represent that they are signing this

Agreement in their official capacities and that they are authorized to execute this Agreement.

21. **Effective Date:** This Agreement is effective on the date of signature of the last signatory to the Agreement (“Effective Date”).

22. **Non-Punitive Effect:** The Parties agree that this Settlement is not punitive in purpose or effect.

23. **IRS Characterization:** Nothing in this Agreement constitutes an agreement or representation characterizing the Settlement Amount for the purposes of the Internal Revenue Code, Title 26 of the United States Code.

24. **Public Disclosure:** All Parties consent to the MFCU’s disclosure of this Agreement, and information about this Agreement, to the public.

25. **Introductory Signals:** The introductory paragraph signals are for subject identification only and do not affect the meaning or become part of the Agreement.

**MIRACLE BLESSED CARE ENTERPRISES,
INC.**

FOR FLORIDA'S OFFICE OF THE
ATTORNEY GENERAL,
DEPARTMENT OF LEGAL AFFAIRS

BILL McCOLLUM

Name: **Javier M. Seuc**

Position: President

Date:

Robert A. Hannah
Deputy Attorney General

Date:

C:\Documents and Settings\CopesS\Local Settings\Temp\notes6030C8\settlement agreement.wpd