

IN THE CIRCUIT COURT OF COOK COUNTY
COUNTY DEPARTMENT
LAW DIVISION

STATE OF ILLINOIS, *ex. rel*

and

Plaintiffs,

vs.

THE UNIVERSITY OF
CHICAGO HOSPITALS,

Defendant.

) COMPLAINT FOR VIOLATIONS OF
) ILLINOIS WHISTLEBLOWER
) REWARD AND PROTECTION ACT
) AND COMMON-LAW CLAIMS

) JURY TRIAL DEMANDED

FILED-2
2006 MAR 14 PM 4:14
CIRCUIT COURT OF COOK COUNTY
LAW DIVISION
JULIA M. SMITH, CLERK

PLAINTIFFS' JOINT COMPLAINT

INTRODUCTION

1. Plaintiff, the State of Illinois, by and through Lisa Madigan, Attorney General of the State of Illinois, and Plaintiffs and *qui tam* Relators _____ and _____ by and through their attorneys Cohen Law Group PC, in the name of the State of Illinois, bring this action to recover penalties and damages against The University of Chicago Hospitals (hereafter "UCH" or "the Defendant") under the Illinois Whistleblower Reward and Protection Act, 740 ILCS 175/1 *et seq.*, and under common law theories of fraud. UCH knowingly and deliberately presented and/or caused to be presented false and fraudulent claims to the Illinois Medical Assistance Program for reimbursement of services UCH provided in its neonatal intensive care ("NICUs") and intermediate care ("IMN") units in violation of statutory requirements and

regulations to which UCH specifically certified compliance as an express condition of receiving reimbursement.

2. UCH's fraud started at least as early as 1997 and continued until July 7, 2005. UCH actively concealed this ongoing fraud, which covers three primary areas where UCH knowingly and willfully violated regulations to which UCH specifically certified compliance as an express condition of receiving reimbursement. The first area involves UCH's policy and practice of double-bunking, or placing two or more radiant warmers, isolettes or open cribs containing premature and sick neonates in a bed space designed and licensed for the care of a single infant (hereinafter "double-bunking"). The second area involves UCH's policy and practice of operating above its licensed capacity in the NICU and IMN (hereinafter, "licensed capacity violations"). The third area involves UCH's practice of violating infection control regulations and mandates (hereinafter, "infection control violations").

LEGAL AND PROCEDURAL BACKGROUND

3. The Illinois Whistleblower Reward and Protection Act provides that any person who performs the following act or acts is liable for presenting false claims:

Knowingly presents, or causes to be presented, to an officer or employee of the State or a member of the Guard a false or fraudulent claim for payment or approval; [or]

Knowingly makes, uses, or causes to be made or used, a false record or statement to get a false or fraudulent claim paid or approved by the State. 740 ILCS 175/3(a)(1), (2).

4. The Act provides for a civil penalty of not less than \$5,000 and not more than \$10,000, plus three times the amount of damages the State sustains and for costs of a civil action brought to recover any such penalties or damages.

5. This case was initially filed by the Relators in federal court under seal in February 2003 under the caption *United States ex rel. _____ v. The University of Chicago Hospitals et al.*, Case No. 03 00806, under the Federal False Claims Act, 31 U.S.C. § 3729 *et seq.*, and the Illinois Whistleblower Reward and Protection Act. As required by both Acts, the case was filed *in camera* and under seal so that the federal and state governments could investigate the fraud allegations. 31 U.S.C. § 3730(a), (b); 740 ILCS 175/4(a), (b).

6. On November 2, 2005, the U.S. District Court, Northern District of Illinois, granted Illinois' motion to intervene on the double-bunking issue and to unseal the complaint, and announced that the U.S. declined intervention. The Court ordered Illinois to serve its complaint-in-intervention, asserting claims under the Illinois Whistleblower Reward and Protection Act and Illinois common law, and Relators to serve their first amended complaint. UCH moved to dismiss the complaints pursuant to Fed. Rules of Civ. Proc. 9(b) and 12(b). On February 28, 2006, the District Court granted, in part, UCH's motion to dismiss the Relators' federal claims pursuant to Rule 9(b) on the grounds that the complaint did not allege with sufficient particularity the facts underpinning the fraud. The Court also declined to exercise supplemental jurisdiction over Relators' and Illinois' state-law claims, and dismissed the remainder of UCH's motions as moot. In so doing, the Court expressly noted that it was not ruling on the merits of either the Relators' or Illinois' claims.

7. Without affording Relators an opportunity to amend, the federal court entered final judgment on March 2, 2006.

8. Illinois and Relators have chosen to refile their state-law claims here in the instant action.

THE PARTIES

9. The State of Illinois brings this action on behalf of the Illinois Department of Healthcare and Family Services (hereafter "IDHFS"), f/k/a the Illinois Department of Public Aid, which administers the Illinois Medical Assistance Program, commonly referred to as Illinois Medicaid, or the Medicaid program.

10. Relator _____ is a Registered Nurse. He worked at UCH from 1993 until mid-2004. From 1997, he worked as a charge nurse in the NICU and IMN. Through his employment at UCH, _____ acquired direct personal knowledge and non-public information of UCH's fraudulent practices under Illinois Medicaid.

11. Relator _____ is also a Registered Nurse. He worked at UCH's NICU and IMN part-time and full-time from July 1999 until June 2005. Through his employment at UCH, _____ acquired direct personal knowledge and non-public information of UCH's fraudulent practices under Illinois Medicaid.

12. Unless otherwise noted, the non-public information contained herein is based upon or is derived from the direct personal knowledge of the Relators.

13. UCH is an Illinois corporation with its principal place of business in Chicago, Cook County, Illinois, and which operates as a provider of medical care under the Illinois Medical Assistance Program. UCH is located at 5801 South Ellis in Chicago, Illinois, and owns and operates several related hospitals and health care clinics, including the University of Chicago Comer Children's Hospital, located at 5721 S. Maryland Avenue in Chicago, Illinois. The Comer Children's Hospital opened in early 2005, and is a 155-bed acute care hospital and major

tertiary referral center containing a NICU and IMN. Prior to that, during the pertinent time here, UCH operated Wyler's University of Chicago Children's Hospital, which also contained a NICU and IMN. The allegations herein regarding UCH's fraudulent conduct occurred at both the Wyler's and Comer facilities.

14. According to its own promotional materials, UCH annually admits more than 4,700 patients from the Chicago area, the Midwest, and the world. Over 60% of these patients are covered by the Illinois Medical Assistance Program.

ALLEGATIONS

Participation in the Illinois Medical Assistance Program

15. Each state decides who is eligible to receive Medicaid services, who is eligible to provide those services, what services are eligible for reimbursement, the reimbursement levels for services provided, and the administrative procedure for obtaining reimbursement. In Illinois, these are set by statute and regulations promulgated by IDHFS. Providers such as UCH that want to participate and receive reimbursement from the Illinois Medical Assistance Program must enter into an "Agreement for Participation." Under program rules, providers are required to re-enroll in the program on a regular basis. The UCH re-entered into this Agreement for Wyler's in, at least, 1992, 1999, and 2005. *See Exhibit A.* (All Exhibits attached hereto are incorporated herein.) The 1999 and 2005 agreements were signed by John Mordach, UCH's Vice President for Finance. The 1992 Agreement is signed illegibly, but the name and identity should be familiar to UCH.

16. UCH agreed to the following provisions as a prerequisite to enrolling and receiving payment from IDHFS:

1. *The Provider agrees, on a continuing basis, to comply with all current and future program policy provisions as set forth in the applicable Department of Public Aid Medical Assistance Program handbooks.*

2. *The Provider agrees on a continuing basis, to comply with applicable licensing standards as contained in State laws or regulations. Exhibit A.*

17. As an express condition of payment from IDHFS, a hospital must be licensed by the Illinois Department of Public Health, which inspects and oversees hospitals to ensure compliance with laws and regulations. To be licensed by the Illinois Department of Public Health, a hospital must certify its conformity to all applicable licensing laws and regulations.

18. In order to receive reimbursement from IDHFS, hospitals submit invoices for services provided to IDHFS. For NICU services, UCH bills IDHFS typically upon discharge by using IDHFS billing codes, including a recipient identification number, diagnosis code, procedure codes, etc.

19. From at least 1997 through the present UCH caused electronic and/or paper invoices to be submitted to IDHFS. The invoices are submitted electronically through an intermediary—Blue Cross/Blue Shield/THIN for UCH currently—which forwards them to IDHFS.

20. As a result of these invoices, IDHFS routinely authorizes the Illinois Comptroller to make payments to providers such as UCH for services provided. For reimbursement purposes, UCH is specially designated as a children's hospital and is reimbursed on a per diem basis for infants in its NICU. In addition, UCH receives "outlier" payments for certain high-cost patients.

21. IDHFS also reimburses UCH additional amounts based on UCH's treatment of a high volume of Medicaid patients in the form of disproportionate share adjustment payments and Medicaid High Volume Adjustments.

22. IDHFS's reimbursement to UCH Hospital for babies in the NICU or IMN exceeded \$1,500 per patient day.

23. Providers may only seek reimbursement for providing covered services that comply with Illinois Medicaid rules. Upon receipt of payment, providers are required to sign and maintain a billing certification certifying that the billed services were provided in compliance with applicable laws and regulations:

I acknowledge that I am familiar with pertinent Illinois Department of Public Aid Policies and Procedures as set forth in the Illinois Medical Assistance Handbook. With that knowledge, I certify that: The billing information listed on the remittance advices (voucher) identified below is true, accurate and complete; the services as described on the remittance advice were provided; and I understand payment is made from State and Federal funds and any falsification or concealment of a material fact may be grounds for prosecution or other appropriate legal action. Exhibit B.

UCH has, or should have, sole possession of these original, signed Billing Certifications.

Plaintiffs thus cannot determine who signed them on behalf of UCH.

24. The Illinois Medical Assistance Handbook referred to in the Billing Certification, which was and is made available to each provider enrolled in the program, makes reimbursement expressly conditioned on the provider's "*full compliance with applicable federal and state laws, Department Administrative Rules (89 Ill. Adm. Code Chapter 101), the general provisions contained in Chapter 100, General Policies and Procedures, and the policy and procedures contained in Chapter A-200 in the Handbook that applies specifically to medical providers.*" Exhibit C.

25. Also as an express condition of reimbursement, providers must submit yearly "cost reports" detailing the services provided and expenses incurred during that year. Here, too, providers must certify compliance with program rules as a condition of payment. As part of the

cost reports, UCH has certified that the information in those reports regarding the services provided was true, and also "*further certifies] that I am familiar with the laws and regulations regarding the provision of health care services and that the services identified in this cost report were provided in compliance with such laws and regulations.*" Exhibit D.

26. Exemplars of these cost reports indicate that Michael Volante, Reimbursement Manager for UCH and John Mordach, UCH's Vice President of Finance, signed the cost reports for the 1999-2000 and 2001-2002 years, certifying their accuracy. Mr. Mordach also signed the certification that the services detailed in the cost report were provided, and were provided in compliance with healthcare services laws and regulations in 2000 and 2002. See Exhibit D.

Applicable State Regulations

27. As noted above, to qualify for IDHFS reimbursement, a hospital must be licensed by the Illinois Department of Public Health. IDHFS will only pay for services provided in compliance with hospital licensing standards. 89 Ill. Admin. Code 148.50(a). As also noted above, a provider such as UCH must expressly certify that it has complied with all applicable State laws and regulations as a condition of Illinois Medicaid reimbursement from IDHFS. These regulations pertain to, among other things, the capacity for neonatal units, space and distance requirements for patients in the units and infection control.

28. A hospital's license applies "only to the number of beds and the clinical services operating at the time the license was issued. If a new clinical service is to be initiated, or an existing service expanded or discontinued, the approval of the Department [of Public Health] must first be obtained." 77 Ill. Admin. Code 250.120(g)(2).

29. A licensed hospital is required to “enforce its occupancy control measures in an effort to avoid over utilization of its facilities and services and control its admission and discharge of patients so that occupancy does not at any time exceed capacity, except in the event of an unusual emergency and then only as a temporary measure.” 77 Ill. Admin. Code 250.230(a) and (b).

30. “[E]ach licensed hospital providing maternity and perinatal services shall comply with the perinatal care standards promulgated by the Department (Regionalized Perinatal Care, 77 Ill. . Adm. Code 640).” 77 Ill. Admin. Code 250.1820 (b)(3). The Regionalized Perinatal Care standards incorporate, *inter alia*, the 1988 version of the Guidelines for Perinatal Care, promulgated by the American Academy of Pediatrics and the American College of Obstetricians and Gynecologists. 77 Ill. Admin. Code 640.25(c)(2).

31. “Each nursery serving pediatric patients shall contain no more than 12 bassinets. The minimum clear floor area per bassinet shall be 40 square feet.” 77 Ill. Admin. Code sec. 250.2630(f)(2).

32. Each infant in an intermediate or intensive care nursery must be separated by 4-6 feet; the Department of Public Health recommends each bed space be 80-100 square feet. 77 Ill. Admin. Code sec. 250.1830(e). The American Academy of Pediatrics’ Guidelines recommends at least 150 square feet of floor space for each baby in a NICU or IMN and requires that each bed be separated by at least 6 feet. In addition, the American Academy of Pediatrics’ Guidelines requires that each infant bed station be equipped with 16-20 electrical outlets, 3-4 oxygen outlets, 3-4 compressed air outlets and 3-4 suction outlets.

33. Hospitals must “have well-organized maternity and neonatal services adequately supervised by qualified personnel with the necessary space, facilities, equipment and personnel to

perform or make available maternity and neonatal services commensurate with the needs of the population in the hospital service area.” 77 Ill. Admin. Code 250.1820(a)(2)(d)(1). “Neonatal intensive care nursing on a 1:1 basis must be available as indicated. A ratio of at least one registered professional nurse to 1-1/2 patients shall be maintained at all times.” 77 Ill. Admin. Code 250.1830(f)(4)(B).

34. Hospitals “shall develop a protocol for management and reporting of infections consistent with the Control of Communicable Diseases Code and with Guidelines for Perinatal Care and Guidelines for Women's Health Care and as approved by the Infection Control Committee. These policies shall be known to maternity and nursery personnel.” 77 Ill. Admin. Code 250.1830(i)(4)(A).

35. “When an infectious condition is thought to exist, the infant shall be isolated in accordance with policies and procedures established” and “[f]acilities shall be available for the immediate isolation of all newborn infants who have or are suspected of having an infectious disease.” 77 Ill. Admin. Code 250.1830(e)(3),(4). According to required infection control, “[i]ndividual isolation technique is applied to the infected or potentially infected maternity or newborn infant. A closed isolette does not constitute isolation, nor is it a part of isolation technique.” 77 Ill. Admin. Code 250.1820(g)(2)(H).

36. An infected newborn must be moved to a separate isolation room unless “there is adequate nursing and medical staff for unhurried movement between patients and adequate time for thorough handwashing between patients and gowning, sufficient space (four to six feet) for easy movement between patients and to remove temptation to move from one patient to another

without handwashing, [and] a continuing program of instruction for all nursery personnel on the mode of spread of infections....” 77 Ill. Admin. Code 250.1820(g)(2)(I).

UCH's Neonatal Care Units

37. UCH has three levels of care for newborns: (a) the newborn nursery for the care of babies born without any complications; (b) the Intermediate Level II Nursery/Intensive Care Unit (“IMN”) for babies with relatively minor health problems, such as minor respiratory and nutritional problems and jaundice; and (c) the Level III Neonatal Intensive Care Unit/ICN (“NICU”) for the care of premature and critically ill newborns. Between 1997 and 2004, at the Wyler’s facility, there were between 36 and 40 Level III beds and 17 Level II beds in 5 rooms on 2 different floors, for a total capacity of between 53 and 58. The current facility, Comer, has 47 Level III beds and 18 Level II beds, for a total capacity of 65.

38. At both Wyler’s and Comer, the NICU and IMN were (and are) run as a single department, sharing staff, equipment and supplies. Herein, the NICU and IMN are referred to collectively as the NICU unless specified otherwise. All of the allegations herein apply to both units.

39. Babies admitted to the NICU are in critical medical condition. They are typically premature with very low birth weights and suffer complications including respiratory distress, cardiac anomalies, birth asphyxia, sepsis, congenital anomalies, hypoglycemia, and seizures. As a result of these conditions, many of the babies have underdeveloped immune systems, invasive tubes, catheters and surgical wounds. These babies are admitted to the NICU because they require constant supervision and care, additional medical equipment and protection from infection.

UCH's False Claims Regarding Double-Bunking Babies

40. The first category of UCH's fraud, and the basis for the State of Illinois' intervention, is UCH's practice of double-bunking. As also explained above, double-bunking involves placing two or more radiant warmers, isolettes or open cribs containing ill babies in a bed space designed and licensed for the care of a single infant. Double-bunked babies are forced to share set ups, including medical air, vacuum and oxygen sources, bedside supplies, and needle and biohazard receptacles. Often a double-bunked infant may not have its own monitor. At UCH, out-dated monitors were taken from hospital storage for use on the additional baby placed within the single space.

41. An example of double-bunking is documented in Exhibit E. (Patient names have been redacted.) This document, a UCH "NICU Staffing/Shift Report" for January 22, 2003, identifies double-bunking by listing two babies as sharing the same bed number. In some instances, the double-bunking is indicated by the presence of an "A" or "B" after the bed number. This example shows all-day double-bunking in Room 1, Bed 24; Room 2, Beds 4 and 5; and Room 5, Bed 5. In addition, a number of babies were double-bunked during a portion of that day.

42. With two babies in a single bed space, it was virtually impossible to separate each baby's equipment, medications, soiled lines, etc. Soiled diapers were often placed on a shared desk or table. Care providers often used the wrong patient's ambu bag (self-inflating bags used for resuscitation), oxygen mask, pacifier, thermometer or other equipment. Because of their close proximity, nurses and doctors moved from one baby to the next without stopping to wash their hands or employ other required sanitary and hygienic practices.

43. At UCH, medically hazardous mistakes occurred due to double-bunking. For example, medical charts of double-bunked babies were intermingled and orders carried out on the wrong babies; breastmilk and unlabeled ambu bags were inadvertently used on the wrong babies and in emergency situations ambu bags were sometimes taken from one baby and used on another because the shared bed space lacked adequate space and equipment for two.

44. The double-bunking also impaired the ability of care givers to access the babies when, in emergencies, more than one care giver is needed. This resulted in situations in which double-bunked babies had to be physically removed from a bed space and moved elsewhere before care givers could work on the baby needing emergency medical attention.

45. UCH routinely double-bunked babies despite the existence of surgical wounds, suspected infections and other acute medical conditions presenting risk to both babies.

46. When Relator started working at the UCH NICU in 1993, he saw that double-bunking was prevalent. The nursing staff, including complained to UCH management repeatedly about the double-bunking practice. UCH management, identified herein, refused to end the practice of double-bunking babies.

47. UCH implemented double-bunking so that it could admit a higher volume of patients into the NICU, either from within the hospital or from other facilities, instead of referring these patients to other facilities.

48. While UCH was required to accept transfers or admit patients experiencing unusual emergencies on a temporary basis, UCH regularly double-bunked when multiple bed spaces were available so that it could claim open bed spaces were available to admit additional babies.

49. Double-bunking was implemented on a day-to-day basis by the nurse managers or “patient care” managers and the NICU directors. They would assign the babies to bed spaces, including multiple infants to one bed space. These persons include, but are not limited to, the following: Lynn Schultz Benjamin, NICU Director from about 1999 to 2004, and Executive Director of Pediatric Nursing from about 2004 to November 2005; Sandra Viall, patient care manager from about 2001 to 2003, and NICU Director from about 2003 until going out on leave in November 2005; Cathy Gray, perinatal center coordinator from about 1995 until present; former patient care managers Catherine L. Scanlan (from about 1995-2001), Karen Berringer, (from about 1995 to 2001), Jeanine Bardoczi (from about 1995 to 1999), Judy Doty (from about 1995 to 2004), Rebecca Corbin (from about 2000 to 2002), Carrie Hiller (from about 2004 to 2005) and Emir Huss (in about 2004); and current patient care managers Mary Messerle (from about 1997), Patricia Buckburn (from about 2004), and Evelyn Norton (from about 2004).

50. Double-bunking was tolerated, ratified and authorized by those who knew or should have known about the double-bunking and/or witnessed the double-bunking, but did nothing to stop the practice, even though they were in a position to do so. These persons include, in addition to those identified in the previous paragraph, but are not limited to, the following: Sylvia Garcia-Hutchens, NICU Infection Control Manger from about 1995 to present; John Marcinak, UCH Infection Control Manager from about 1995 to present; Deneene Bradford, Clinical Educator from about 2002 to 2003; Shirley McLain, Clinical Educator from about 2002 to 2003; Brenda Garrett, Case Manager from about 1997 to present; Elaine Mister, Case Manager from about 1997 to present; Mary Beth Williams, past Pediatric Director and Assistant Director, and UCH Vice President from about 1997 to present; Dr. Kwang-Sun Lee, NICU attending physician and

Section Chief of Neonatology from about 1995 to present; Maria Corpuz, Administrator from about 1997 to present; Bill Meadow, Associate Section Chief Professor of Pediatrics from about 1995 to present; Jaideep Singh, Medical Director NICU from about 1995 to present; Sudir Sriram, Attending Physician NICU from about 2003 to present; Steve Wall, Attending Physician NICU from about 1999 to 2001; Jeremy Marks, Attending Physician NICU from about 1995 to present; Mike Schreiber, Attending Physician NICU from about 1995 to present; Leslie Caldarelli; Jamie O'Malley, Chief Nursing Officer from about 1999 to present; Jean Borders, Executive Director of NICU Nursing from about 1995 to 1999; Kenneth P. Kates, Director and Vice President from about 1999 to present; John Brandecker, Director and Vice President from about 2005 to 2006; Steven A.N. Goldstein, Chairman of Pediatrics from about 2004 to the present; James L. Madara, Dean of the University of Chicago Medical School; and Michael Riordan, UCH Chief Executive Officer from about 1997 to present.

51. Based upon information obtained to date, which is incomplete, at least 123 babies for whom UCH received reimbursement from IDHFS were double-bunked in 1999. The dates of each double-bunking and the baby double-bunked are identified in Exhibit F, attached hereto. (To preserve the medical privacy of the patients, Exhibits F-J, O, R-U identify each baby by a number only; the name of the baby will be disclosed upon request in a manner that protects the baby's privacy.) As evident in Exhibit F, most of the babies were double-bunked for more than one patient day.

52. In 1999, IDHFS reimbursed UCH for at least 492 double-bunked patient-days, at the per diem reimbursement of about \$1560, for a total of approximately \$829,156.

53. Based upon incomplete information provided by UCH and IDHFS, at least 141 babies for whom UCH received reimbursement from IDHFS were double-bunked in 2000. The dates of each double-bunking and the baby double-bunked are identified in Exhibit G, attached hereto. As evident in Exhibit G, most of the babies were double-bunked for more than one patient day.

54. In 2000, IDHFS reimbursed UCH for at least 751 double-bunked patient-days, at the per diem reimbursement of about \$1570, for a total of approximately \$1,185,548.

55. Based upon incomplete information obtained to date, at least 141 babies for whom UCH received reimbursement from IDHFS were double-bunked in 2001. The dates of each double-bunking and the baby double-bunked are identified in Exhibit H, attached hereto. As evident in Exhibit H, most of the babies were double-bunked for more than one patient day.

56. In 2001, IDHFS reimbursed UCH for at least 537 double-bunked patient-days, at the per diem reimbursement of about \$1580, for a total of approximately \$857,861.

57. Based upon incomplete information obtained to date, at least 160 babies for whom UCH received reimbursement from IDHFS were double-bunked in 2002. The dates of each double-bunking and the baby double-bunked are identified in Exhibit I, attached hereto. As evident in Exhibit I, most of the babies were double-bunked for more than one patient day.

58. In 2002, IDHFS reimbursed UCH for at least 735 double-bunked patient-days, at the per diem reimbursement of about \$1585, for a total of approximately \$1,225,406.

59. Based upon incomplete information obtained to date, at least 199 babies for whom UCH received reimbursement from IDHFS were double-bunked in 2003. The dates of each double-bunking and the baby double-bunked are identified in Exhibit J. As evident in Exhibit J, most of the babies were double-bunked for more than one patient day.

60. In 2003, IDHFS reimbursed UCH for at least 1,117 double-bunked patient-days, at the per diem reimbursement of about \$1600, for a total of approximately \$1,787,200.

61. Based on the limited data obtained to date as well as Relators' observations and experiences, the same routine pattern and practice of double-bunking that occurred from 1999 to 2003, also occurred prior to 1999, and continued in 2004 until July 7, 2005.

62. The State and relators do not have complete documentation that would show all double-bunking by UCH, such as the NICU Staffing/Shift Reports. *See* Exhibit E. UCH remains in exclusive and particular control of all the exact dates and babies double-bunked and all the documentation that evidences it.

63. UCH did not seek to expand its NICU capacity during periods when it was double-bunking at the Wyler's facility, even though UCH could have without approval from the Illinois Health Facilities Planning Board. *See* 77 Ill. Admin. Code 640.50(j). UCH did not seek to increase NICU capacity until building the Comer facility, even though UCH recognized that the NICU at Wyler's was crowded. According to the document UCH filed requesting permission to build the new hospital, the NICU "affords little room for the parents with most of the space taken up by the bassinet [singular], monitors, IV poles, heating lamp and other bedside equipment." *See* Exhibit K.

64. UCH actively concealed the double-bunking from regulatory authorities responsible for monitoring UCH's compliance with applicable healthcare rules and regulations. UCH deviated from its practice and policy of double-bunking only when facing scheduled onsite inspections by the Joint Commission on Accreditation of Healthcare Organizations (JCAHO) or the Department of Public Health. Before an expected visit from JCAHO, attending physicians, nurse or patient

care managers, or the NICU director, required the NICU nursing staff to decompress the NICU. Decompression would occur by moving some babies to other units, by discharging babies, or by moving babies into already-available individual bed spaces. After the inspection, the practice of double-bunking resumed. For example, JCAHO did an onsite visit on or about the first few days in October 2001. The NICU ceased its double-bunking on September 28, 2001 and resumed it on October 6, 2001. *See Exhibit L.*

65. Similarly, when the Department of Public Health was onsite, attending physicians, nurse or patient care managers, or the NICU director, required the NICU nursing staff to decompress the NICU prior to the arrival of the Department to the unit. After the inspections, the double-bunking would resume.

66. However, acting upon a request from the Illinois Attorney General during its investigation of Relators *qui tam* allegations the Department of Public Health conducted a surprise onsite inspection on September 26, 2003. Because the NICU management was unprepared for the inspection, the inspector/surveyor observed instances of double-bunking, overcrowding of the NICU above capacity, and the failure to practice appropriate infection control. *Exhibit M.*

67. On October 3, 2003, the Department of Public Health returned to UCH's NICU, and again, found a number of incidents of double-bunking. *Exhibit N.* The Department "recommend[ed] termination" of UCH's participation in Medicaid. *Exhibit M.*

68. UCH's continued participation in the Illinois Medicaid program was expressly conditioned on UCH's promise to follow "an approved plan of correction." *Exhibit M* at page 1 of 8. UCH avoided termination by implementing a plan of correction that provided that "if the

NICU census reaches 54 infants, the lowest acuity infants will be triaged by the Attending Neonatologist and NICU charge nurse for movement to ...and overflow room, fully staffed and equipped for intensive care. ... The Hospitals [sic] is also building a new children's hospital, anticipated to open December, 2004...which is anticipated to further decrease crowding."

Exhibit M at page 7 of 8.

69. However, despite getting caught and promising the State of Illinois that it would follow an approved plan of correction, double-bunking continued periodically for the remainder of 2003, 2004, and the beginning of 2005. The dates and babies that UCH double-bunked in November and December 2003 can be found on Exhibit J. The dates and babies that UCH double-bunked in 2004, including a number in April and May 2004, can be found on Exhibit O. UCH continued to double-bunk babies after the NICU moved to the Comer facility in 2005 including in March 2005.

70. UCH concealed the double-bunking from the State of Illinois, IDHFS, the Department of Public Health and other regulators because UCH and NICU management, listed hereinabove, knew that double-bunking violated a number of express, material, and regulatory requirements upon which eligibility for reimbursement from IDHFS was expressly conditioned.

71. It was only after UCH learned about the State of Illinois' investigation of Relators' qui tam action and this case that UCH adopted a new policy expressly prohibiting double-bunking and exceeding licensed capacity. The policy, announced on July 7, 2005 by James L. Madara, Dean of the University of Chicago Medical School, and Michael Riordan, UCH CEO, states:

- No more than one infant may be placed in one bed space (that is, at one headwall) **at any time** for any reason.

- The maximum census at any time in the NICU/TCU [Transitional Care Unit a/k/a IMN] is 65, including 47 Level III and 18 Level II patients. This maximum may not be exceeded.

To ensure we comply at all times with these requirements, the additional following procedure is effective immediately.

Once the NICU/TCU census is 59 or above, including patients we have already accepted for transfer into the NICU/TCU (external and internal), outside maternal and neonatal transfers will be cut off. Accordingly, if the census is 58, one transfer may be accepted. If the census is 59 or above, a transfer may not be accepted. Once a transfer is accepted, it is the same as the patient being here. Further, a bed is not considered empty until the patient physically leaves the unit. Exhibit P, emphasis in original.

72. UCH never informed either the Department of Public Health or IDHFS that it was double-bunking, or that UCH was billing IDHFS for the care of two babies when UCH did not provide the facilities or the services required by law for the care of those babies in its NICU. By concealing its double-bunking, but then submitting claims to IDHFS for payment for the care of double-bunked babies, UCH intentionally deceived and made false statements to the State of Illinois to obtain payments from IDHFS for which it was not entitled.

73. For hundreds of days each year, UCH double-bunked patients already admitted to the NICU in order to leave bed-spaces open to accept admissions from other hospitals. These days are revealed by comparing those days on which UCH double-bunked patients, as evident in Exhibits F-J and O, with those days that UCH was not over its licensed capacity, as detailed in paragraphs 51-60, *infra*. That is, each day that UCH double-bunked when it was not operating at or above its licensed capacity was a day that UCH double-bunked to leave empty spaces for additional admits.

74. UCH billed IDHFS for both double-bunked babies, even though neither of the double-bunked babies received compliant, covered services as required by Illinois law as described in the regulations referred to in paragraphs 27-36 above. UCH's double-bunking violated several material regulations, including, but not limited to: limits on a nursery containing any more than 12 bassinets; the minimum clear floor area per bassinet shall be 40 square feet; the space requirement that each baby in the NICU shall be separated by 4 to 6 feet; the facility requirement that each station for each baby be equipped with 16-20 electrical outlets, 3-4 oxygen outlets, 3-4 compressed air outlets and 3-4 suction outlets; the requirement that NICU nursing on a 1:1 basis must be available and at least a 1:1-1/2 ratio of registered professional nurse to babies must be maintained.

75. UCH billed IDHFS for double-bunked babies even though UCH expressly and repeatedly certified to the State of Illinois, IDPH, and IDHFS that it was in full compliance with all applicable statutes and regulations as a condition of receiving reimbursement from IDHFS.

- UCH made this certification when it entered into the Agreement for Participation for the Illinois Medical Assistance Program in 1992, 1999 and 2005. *See Exhibit A.*
- Again, when UCH certified on the Billing Certifications that it provided the services billed for, and that the bills were true, accurate and complete, and that UCH was familiar with applicable policies and procedures. *See Exhibit B.*
- And again, UCH had to certify that it provided its services it billed for in compliance with healthcare services laws and regulations as part of its annual cost reports. *See Exhibit C.*

- Finally, when, in order to continue to participate in Illinois Medicaid, UCH promised to stop double-bunking. *See Exhibit M.*

76. Accordingly, UCH's express certifications that it was in compliance with these applicable regulations, its claims for reimbursement based upon such compliance, and its promises of compliance, were all false statements or records made in order to obtain payments from IDHFS. IDHFS, unaware of the falsity of the claims, paid the claims submitted by UCH in connection with the care of double-bunked babies.

77. UCH billed IDHFS for each day a baby was in the NICU, whether or not the baby was double-bunked. On behalf of UCH, Reimbursement Manager Michael Volante and Vice President of Finance John Mordach signed and authorized the annual cost reports, which included the double-bunking in the NICU that had been billed during that year. Mr. Mordach falsely certified that services in the annual cost report were provided in compliance with healthcare services laws and regulations.

78. UCH knowingly and intentionally submitted false claims for payment in connection with its double-bunking described herein from at least 1997 until July 2005.

UCH's False Claims Regarding Licensed Capacity Violations

79. At various times throughout each year, UCH's policy and practice of double-bunking violated UCH's licensed capacity established by the State of Illinois, in addition to violating other regulations as alleged above.

80. UCH exceeded its licensed capacity even when there was no need to, so that UCH could admit transfers of infants in need of the NICU from within its hospital, instead of transferring the infant out, and to admit transfers from other area hospitals, in order to maximize its per diem

reimbursement from Illinois Medicaid. While UCH may have been required to accept transfers or admit patients experiencing unusual emergencies on a temporary basis and in limited circumstances, UCH regularly ignored its licensed capacity limit without justification.

81. When Relator _____ started working at the UCH NICU in 1993, he saw UCH's NICU regularly exceed its licensed capacity.. The nursing staff, including Relators _____
_____ complained to UCH management repeatedly about the practice of over-crowding the NICU and operating above licensed capacity, especially since management refused to bring in extra staff to care for the additional babies. UCH management, identified herein, refused to end this practice.

82. UCH nurse managers or "patient care" managers and the NICU directors routinely ignored UCH's capacity limits. These persons include, but are not limited to, the following: Lynn Schultz Benjamin, NICU Director from about 1999 to 2004, and Executive Director of Pediatric Nursing from about 2004 to November 2005; Sandra Viall, patient care manager from about 2001 to 2003, and NICU Director from about 2003 until going out on leave in November 2005; Cathy Gray, perinatal center coordinator from about 1995 until present; former patient care managers Catherine L. Scanlan (from about 1995-2001), Karen Berringer, (from about 1995 to 2001), Jeanine Bardoczi (from about 1995 to 1999), Judy Doty (from about 1995 to 2004), Rebecca Corbin (from about 2000 to 2002), Carrie Hiller (from about 2004 to 2005), and Emir Huss (in about 2004); and current patient care managers Mary Messerle (from about 1997), Patricia Buckburn (from about 2004), and Evelyn Norton (from about 2004).

83. Despite complaints from the nursing staff, UCH's operations above licensed capacity were ratified and authorized by those who knew or should have known about the excess patient

load in the NICU and/or witnessed the excess patient load when it was not necessary, but did nothing to stop the practice even though they were in a position to do so. These persons include, in addition to those identified in the previous paragraph, but are not limited to, the following: Sylvia Garcia-Hutchens, NICU Infection Control Manager from about 1995 to present; John Marcinak, UCH Infection Control Manager from about 1995 to present; Deneene Bradford, Clinical Educator from about 2002 to 2003; Shirley McLain, Clinical Educator from about 2002 to 2003; Brenda Garrett, Case Manager from about 1997 to present; Elaine Mister, Case Manager from about 1997 to present; Mary Beth Williams, past Pediatric Director and Assistant Director, and UCH Vice President from about 1997 to present; Dr. Kwang-Sun Lee, NICU attending physician and Section Chief of Neonatology from about 1995 to present; Maria Corpuz, Administrator from about 1997 to present; Bill Meadow, Associate Section Chief Professor of Pediatrics from about 1995 to present; Jaideep Singh, Medical Director NICU from about 1995 to present; Sudir Sriram, Attending Physician NICU from about 2003 to present; Steve Wall, Attending Physician NICU from about 1999 to 2001; Jeremy Marks, Attending Physician NICU from about 1995 to present; Mike Schreiber, Attending Physician NICU from about 1995 to present; Leslie Caldarelli; Jamie O'Malley, Chief Nursing Officer from about 1999 to present; Jean Borders Executive, Director of NICU Nursing from about 1995 to 1999; Kenneth P. Kates, Director and Vice President from about 1999 to present; John Brandecker, Director and Vice President from about 2005 to 2006; Steven A.N. Goldstein, Chairman of Pediatrics from about 2004 to the present; James L. Madara, Dean of the University of Chicago Medical School; and Michael Riordan, UCH Chief Executive Officer from about 1997 to present.

84. According to incomplete census data obtained to date, UCH exceeded its licensed capacity on at least the following dates in 1999: January 8, 18, 19, 25, February 16, 20, 23, March 5, April 10, June 4, 8, 9, 10, 11, 14, 15, 28, 29, 30, July 2, 6, 9, August 1, 2, 3, 4, 9, 10, 11, 13, 14, 15, 16, 19, 22, 23, 24, 25, 26, 27, 29, September 2, 3, 4, 5, 9, 12, 13, 14, 28, October 23, November 1, 17, and December 18. Those babies for which UCH received reimbursement from IDFHS on some of those dates in 1999 are identified in Exhibit F.

85. According to incomplete census data obtained to date, UCH exceeded its licensed capacity on at least the following dates in 2000: January 18, 24, 25, 27, 28, March 24, 25, May 15, 16, 21, June 6, 7, 8, 10, 11, 13, 17, 18, 19, July 5, 8, 9, 10, 12, 17, 23, 25, August 8, 10, 11, September 7, 9, 11, 13, 14, 16, 23, 24, 25, 26, 28, 29, 30, October 1, 3, November 26, 27, and December 9, 10, 11, 18, 19, 20. Those babies for which UCH received reimbursement from IDFHS on some of those dates in 2000 are identified in Exhibit G.

86. According to incomplete census data obtained date, UCH exceeded its licensed capacity on at least the following dates in 2001: January 7, February 20, 21, March 1, 12, 15, 16, 17, 18, 21, October 25, November 24, 25, 26, 28, 29. Those babies for which UCH received reimbursement from IDFHS on some of those dates in 2001 are identified in Exhibit H.

87. According to incomplete census data obtained to date, UCH exceeded its licensed capacity on at least the following dates in 2002: January 8, April 12, 17, 18, 20, 23, 26, 27, 28, May 28, 29, June 4, 5, 11, 12, 14, 15, 16, 17, 21, 22, 23, 24, 26, 27, July 15, 22, 24, 30, 31, August 1, 16, 26, September 27, 29, October 2, 3, 4, 5, 6, 7, 8, 10, 11, 12, 13, 14, 15, 16, 17, 18, 18, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, November 1, 9, 10, 11, 12, 13, 14, 15 and

December 10, 16, 20, 29, 31. Those babies for which UCH received reimbursement from IDFHS on some of those dates in 2002 are identified in Exhibit I.

88. According to incomplete census data obtained to date, UCH exceeded its licensed capacity on at least the following dates in 2003: January 3, 4, 6, 13, 14, 15, 16, 17, 19, 20, 21, 22, February 12, 15, 16, 17, 24, 25, 27, 28, March 1, 2, 4, 5, April 4, 5, 6, 7, 8, 9, 10, 11, 30, May 1, 3, 4, 5, 6, 7, 8, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, June 1, 7, 8, 9, 10, 11, 12, 13, 17, 18, 19, 20, 21, 22, 23, 24, 26, 27, 28, 29, 30, July 1, 2, 7, 9, 17, 27, 28, August 31, September 1, 2, 4, 5, 6, 7, 8, 9, 10, 12, 15, 16, 17, 27, 28, October 7, 8, November 6, 7, 9, 10, and December 4, 11, 13, 14, 15, 18, 19, 21, 22, 23, 24, 25, 26, 27, 28, 31. Those babies for which UCH received reimbursement from IDFHS on some of those dates in 2003 are identified in Exhibit J.

89. According to incomplete census data obtained to date, UCH exceeded its licensed capacity on at least the following dates in 2004: January 1, 2, 4, 5, 7, 8, 12, 14, 27, February 7, 8, 9, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, March 3, 5, 31, April 5, 26, May 8, 9, 10, 11, 12, 14, 15, 16, 17, 24, 25, 26, 27, 28, 29, 30, and June 9, 10, 11, 12, 13, 14, 18, 19, 20, 21, 22, 23, 24, 28, 30, July 1, 8, 9, 10, 11, 12. Those babies for which UCH received reimbursement from IDFHS on some of those dates in 2004 are identified in Exhibit O.

90. UCH actively concealed instances when it operated above its licensed capacity. When facing scheduled onsite inspections by the Joint Commission on Accreditation of Healthcare Organizations (JCAHO) or the Department of Public Health, UCH management—attending physicians, nurse or patient care managers, or the NICU director—would order the decompression of the NICU as described in paragraph 64. After the inspection, the NICU would resume the practice of exceeding its licensed capacity.

91. Similarly, before Department of Public Health would arrive for onsite scheduled inspections, attending physicians, nurse or patient care managers, or the NICU director, ordered the NICU nursing staff to decompress the department. After the inspections, the NICU would then return to overcrowding the NICU by exceeding licensed capacity.

92. When the Department of Public Health conducted the surprise onsite inspection on September 26, 2003 described in paragraph 66 above it first discovered, *inter alia*, that from September 1-26, 2003, the NICU had a census above its licensed capacity for 22 out of those 26 days that the Department reviewed the NICU's census records. Exhibit M at page 8 of 8. For this and other deficiencies, the Department "recommend[ed] termination" of UCH's participation in Medicaid. *Id.* at cover page.

93. UCH's continued participation in Illinois Medicaid was expressly conditioned on UCH following "an approved plan of correction." Exhibit M at page 1 of 8. UCH avoided termination by implementing a plan of correction that provided that "if the NICU census reaches 54 infants, the lowest acuity infants will be triaged by the Attending Neonatologist and NICU charge nurse for movement to ... an overflow room, fully staffed and equipped for intensive care." Exhibit M at page 7 of 8.

94. However, UCH continued to exceed its census of 58 throughout the month of December 2003, namely on December 4, 11, 13, 14, 15, 18, 19, 21, 22, 23, 24, 25, 26, 27, 28, 31.

95. Despite having been caught and promising the State of Illinois that it would cease exceeding its licensed capacity, UCH continued to operate above its licensed limits for the remainder of 2003, 2004, and the beginning of 2005, until July 7, 2005.

96. UCH concealed the over-crowding of the NICU from the State of Illinois, IDHFS, the Department of Public Health and other regulators because UCH and NICU management, listed hereinabove, knew that over-crowding the NICU violated a number of express, material, regulatory requirements, namely the NICU's licensed capacity, upon which eligibility for reimbursement from IDHFS was expressly conditioned.

97. UCH adopted its new policy prohibiting over-crowding the NICU and exceeding its licensed capacity only when UCH learned about the State's investigation. The policy was announced on July 7, 2005 by Dean of the Medical School James L. Madara, and CEO Michael Riordan: "The maximum census at any time in the NICU/TCU [Transitional Care Unit a/k/a IMN] is 65, including 47 Level III and 18 Level II patients. This maximum may not be exceeded." Exhibit P (emphasis in original). In fact, once the census reached 59, or 7 babies below the Comer's licensed capacity of 65, the NICU could not accept any additional transfers, according to the new policy.

98. There is no legitimate excuse for UCH to exceed its licensed capacity. It was a regular practice, and it was not done under exigent circumstances.

99. UCH never informed either the Department of Public Health or IDHFS that it was operating above its licensed capacity, and that UCH was billing IDHFS even though UCH was not providing compliant, covered facilities or the services required by the law. By concealing its operation above licensed capacity, but then submitting claims to IDHFS, UCH intentionally deceived the State of Illinois to obtain payments from IDHFS for which it was not entitled.

100. UCH's participation in the Illinois Medical Assistance Program was expressly conditioned upon complying with UCH's licensed capacity. *See* 77 Ill. Admin. Code 250.230(a)

and (b). The Department of Public Health authorized UCH to operate only at a finite capacity. The licensed capacity for UCH's NICUs at Wyler's during the 1994 to 2003 time period was between 53 and 58 babies. The licensed capacity at the current facility, Comer, is 65 babies.

101. UCH billed IDHFS for babies when it was operating the NICU in violation of licensed capacity, even though UCH expressly and repeatedly certified that it was in full compliance with all applicable statutes and regulations as a condition of receiving reimbursement from IDHFS:

- When UCH entered into the Agreement for Participation for the Illinois Medical Assistance Program in 1992, 1999 and 2005. *See Exhibit A.*
- Again, when UCH certified on the Billing Certifications that it provided the services billed for, and that the bills were true, accurate and complete, and that UCH was familiar with applicable policies and procedures. *See Exhibit B.*
- And again, UCH had to certify that it provided its services it billed for in compliance with healthcare services laws and regulations as part of its annual cost reports. *See Exhibit C.*
- Finally, when, in order to continue to participate in Illinois Medicaid, UCH promised to stop exceeding its licensed capacity. *See Exhibit M.*

102. Accordingly, UCH's express certifications that it was in compliance with these applicable regulations, its claims for reimbursement based upon such compliance, and its promises of compliance, were all false statements or records made in order to obtain payments from IDHFS. IDHFS, unaware of the falsity of the claims, paid the claims submitted by UCH when UCH was operating its NICU above the NICU's licensed capacity.

103. UCH billed IDHFS for each day a baby was in the NICU, whether or not its unit was operating above licensed capacity. On behalf of UCH, Reimbursement Manager Michael Volante and Vice President of Finance John Mordach signed and authorized the annual cost reports, which covered periods when the NICU was operating above its licensed capacity. Mr. Mordach falsely certified that services in the annual cost report were provided in compliance with healthcare services laws and regulations.

104. UCH knowingly and intentionally submitted false claims for payment when it was operating the NICU above licensed capacity as described herein from at least 1997 until July 2005.

105. The State and relators do not have complete documentation of all days showing the NICU above licensed capacity, such as the NICU Staffing/Shift Reports. *See Exhibit E.* UCH is thus in exclusive and particular control of all the exact dates when UCH exceeded its licensed capacity and all the documentation which would evidence this.

UCH's False Claims Regarding Infection Control Laws

106. State law requires that UCH develop and maintain effective infection control procedures, including, but not limited, to handwashing and hygienic grooming. In addition, once a baby is discovered to have an infection, *inter alia*, the baby should be immediately isolated. These regulations are described in paragraphs 34-36 above.

107. UCH routinely operated the NICU in violation of requisite infection control regulations. The close proximity of the double-bunked babies in NICU, combined with the lack of infection control, resulted in an environment where hospital-acquired infections ran rampant. That is, where the babies were double-bunked there was inadequate "nursing and medical staff for unhurried movement

between patients and [in]adequate time for thorough handwashing between patients and gowning,” and insufficient “space (four to six feet) for easy movement between patients and to remove temptation to move from one patient to another without handwashing.” 77 Ill. Admin. Code 250.1820(g)(2)(I).

108. Double-bunked babies did not have the required four-to-six feet between them, or adequate nursing and medical staff for unhurried movement, thorough handwashing and gowning between patients, or other simple infection control procedures. To the contrary, with two babies in a single bed space, it was virtually impossible to separate each baby’s equipment, medications, soiled lines, etc. Soiled diapers were often placed on a shared desk or table. Because of their close proximity, nurses and doctors moved from one baby to the next without stopping to wash their hands or re-gown. Care providers often used the wrong patient’s ambu bag, oxygen mask, pacifier, thermometer or other equipment, and breastmilk on the wrong babies because the shared bed space lacked adequate space and equipment for two.

109. Infection control regulations are intended to prevent and contain infection outbreaks. However, as a result of UCH’s violation of infection control procedures, there were a number of virulent outbreaks. One such outbreak occurred in and around September 2001, where, out of approximately 52 babies (more or less depending on the capacity of the NICU and prevalence of double-bunking on that day), 27 babies were colonized with *Serratia meningitis* (meaning that the bacterium is present on the body but has not yet caused infection) and two were infected, and at the same time, 12 babies were colonized with methicillin-resistant *Staphylococcus aureus* or MRSA, with six infected. Exhibit Q. At least 20 babies in all became infected with *serratia* or MRSA during the 2001 outbreak.

110. IDHFS reimbursed UCH for a number of babies in the NICU when UCH was operating in violation of infection control regulations and some, but not all, of these babies are identified (pseudonymously) in Exhibit R attached hereto.

111. Contrary to accepted and required medical standards, infected babies are left in the NICU without proper isolation techniques being used, and in some cases, remain double-bunked. The practice, as witnessed by Relators, is that infected babies were not moved into an isolation room until multiple babies become infected.

112. Also as a result of the UCH NICU's refusal to abide by infection control procedures, there were similar and additional infection outbreaks in and around: December 2000, July 2002, February 2003, July 2003, May 2003, August 2003 and September 2003. Again, IDHFS reimbursed UCH for a number of babies in the NICU during these times when UCH was operating in violation of infection control regulations, and some, but not all, of these babies are identified (pseudonymously) in Exhibit S attached hereto; *see also* Exhibit M.

113. The September 2003 outbreak is noteworthy because the Department of Public Health's inspection on September 26, 2003 saw evidence of this outbreak and concluded that UCH had violated the law regarding infection control. The Department's findings include, but are not limited to, that: (1) UCH "failed to ensure the prevention of the spread of infections," specifically, MRSA and S. Maltophilia; (2) UCH "failed to ensure adherence to Hospital policy governing isolation procedures;" (3) UCH "failed to ensure adherence to Hospital policy governing handwashing and care of the hands;" (4) UCH "failed to ensure the adherence to Hospital policy governing isolation procedures;" and (5) UCH "*failed to ensure adherence to State law governing isolation of newborns.*" Exhibit M at pages 1, 2, 6, 7 of 8 (emphasis added).

114. The inspector personally observed, *inter alia*, the following: (1) a respiratory therapist moved among 3 different babies without donning gloves and washing hands; (2) a tour of visitors were not gloved and touched potentially contaminated objects; and (3) staff were wearing rings and watches, even though prohibited by UCH's infection control policy. Exhibit M at pages 4, 5 of 8 (emphasis added).

115. As a result of UCH's lack of adequate infection control, IDHFS recommended termination of UCH's participation in Illinois Medicaid. As a condition to continued program participation, UCH promised to follow an approved plan of correction which included that the NICU Assistant Director or Patient Care Manager would be "responsible for enforcing compliance with Infection Control policies in the NICU." Exhibit M at page 5 of 8.

116. However, the NICU Assistant Director, and nurse or Patient Care Managers did not enforce infection control regulations and policies—*either before or after September 2003*. These persons include, but are not limited to, the following: Lynn Schultz Benjamin, NICU Director from about 1999 to 2004, and Executive Director of Pediatric Nursing from about 2004 to November 2005; Sandra Viall, patient care manager from about 2001 to 2003, and NICU Director from about 2003 until going out on leave in November 2005; Cathy Gray, perinatal center coordinator from about 1995 until present; former patient care managers Catherine L. Scanlan (from about 1995-2001), Karen Berringer, (from about 1995 to 2001), Jeanine Bardoczi (from about 1995 to 1999), Judy Doty (from about 1995 to 2004), Rebecca Corbin (from about 2000 to 2002), Carrie Hiller (from about 2004 to 2005), and Emir Huss (in about 2004); and current patient care managers Mary Messerle (from about 1997), Patricia Buckburn (from about 2004), and Evelyn Norton (from about 2004); Sylvia Garcia-Hutchens, NICU Infection Control

Manger from about 1995 to present; John Marcinak, UCH Infection Control Manager from about 1995 to present.

117. Both before and after September 2003, despite the complaints from Relators and other nursing staff, UCH's operation of the NICU in violation of required infection control was tolerated, and thus ratified and authorized by those who knew or should have known about, and/or witnessed, the violations of infection control policies occurring in the NICU, but did nothing to stop the practice, even though they were in a position to do so. These persons include, in addition to those identified in the previous paragraph, but are not limited to, the following: Deneene Bradford, Clinical Educator from about 2002 to 2003; Shirley McLain, Clinical Educator from about 2002 to 2003; Brenda Garrett, Case Manager from about 1997 to present; Elaine Mister, Case Manager from about 1997 to present; Mary Beth Williams, past Pediatric Director and Assistant Director, and UCH Vice President from about 1997 to present; Dr. Kwang-Sun Lee, NICU attending physician and Section Chief of Neonatology from about 1995 to present; Maria Corpuz, Administrator from about 1997 to present; Bill Meadow, Associate Section Chief Professor of Pediatrics from about 1995 to present; Jaideep Singh, Medical Director NICU from about 1995 to present; Sudir Sriram, Attending Physician NICU from about 2003 to present; Steve Wall, Attending Physician NICU from about 1999 to 2001; Jeremy Marks, Attending Physician NICU from about 1995 to present; Mike Schreiber, Attending Physician NICU from about 1995 to present; Leslie Caldarelli; Jamie O'Malley, Chief Nursing Officer from about 1999 to present; Jean Borders Executive, Director of NICU Nursing from about 1995 to 1999; Kenneth P. Kates, Director and Vice President from about 1999 to present; John Brandecker, Director and Vice President from about 2005 to 2006; Steven A.N. Goldstein, Chairman of Pediatrics from about 2004 to the present; James L. Madara, Dean of the

University of Chicago Medical School; and Michael Riordan, UCH Chief Executive Officer from about 1997 to present.

118. In fact, within weeks of UCH submitting its plan of correction to IDPHS, in and around December 2003, there was another infection outbreak in the NICU involving at least 8 babies. IDHFS reimbursed UCH for a number of babies in the NICU at this time when UCH was operating in violation of infection control regulations, and some, but not all, of these babies are identified (pseudonymously) in Exhibit T attached hereto.

119. Even after UCH promised and expressly certified, as a condition of continued participation in and reimbursement from Illinois Medicaid, that the NICU would establish and enforce effective infection control, the NICU again violated infection control mandates. This conduct resulted in a number of additional infection outbreaks, including but not limited to the following: in or about February 2004, in or about May 2004, and in or about December 2004. IDHFS reimbursed UCH for a number of babies in the NICU during these times when UCH was violating infection control regulations, and some, but not all, of these babies are identified (pseudonymously) in Exhibit U attached hereto.

120. UCH's participation in the Illinois Medical Assistance Program was expressly conditioned upon complying with the NICU infection control laws and regulations described herein above.

121. UCH billed IDHFS even though UCH was operating the NICU in violation of infection controls required by the law. In so doing, but then submitting claims to IDHFS for payment for babies when UCH was operating the NICU in violation of infection control regulations, UCH

intentionally submitted false claims the State of Illinois to obtain payments from IDHFS for which it was not entitled.

122. UCH billed IDHFS for treating for babies in the NICU when UCH was knowingly and deliberately operated the NICU in violation of a number of infection control laws and requirements, even though UCH expressly and repeatedly certified at a number of junctures that it was in full compliance with the all applicable statutes and regulations as a condition of receiving reimbursement from IDHFS:

- When UCH entered into the Agreement for Participation for the Illinois Medical Assistance Program in 1992, 1999 and 2005. *See Exhibit A.*
- Again, when UCH certified on the Billing Certifications that it provided the services billed for, and that the bills were true, accurate and complete, and that UCH was familiar with applicable policies and procedures. *See Exhibit B.*
- And again, UCH had to certify that it provided its services it billed for in compliance with healthcare services laws and regulations as part of its annual cost reports. *See Exhibit C.*
- Finally, when, in order to continue to participate in Illinois Medicaid, UCH promised to enforce effective infection control. *See Exhibit M.*

123. Accordingly, UCH's express certifications that it was in compliance with these applicable regulations, its claims for reimbursement based upon such compliance, and its promises of compliance, were all false statements or records made in order to obtain payments from IDHFS. IDHFS, unaware of the falsity of the claims, paid the claims submitted by UCH even while UCH was operating the NICU in violation of infection control regulations.

124. UCH billed IDHFS for each day a baby was in the NICU, regardless of whether UCH was operating the NICU in violation of infection controls regulations. On behalf of UCH, Reimbursement Manager Michael Volante and Vice President of Finance John Mordach signed and authorized the annual cost reports, which included claims for reimbursement while UCH was operating the NICU in violation of infection control regulations. Mr. Mordach falsely certified that services in the annual cost report were provided in compliance with healthcare services laws and regulations.

125. The State and Relators do not have complete documentation showing all days when UCH was operating the NICU in violation of infection control regulations. UCH is in exclusive and particular control of all the exact dates when these violations occurred and all the documentation that evidences this.

126. UCH knowingly and intentionally submitted false claims for payment in connection with its operation of the NICU in violation of infection control regulations described herein from at least 1997 until July 2005.

COUNT I
Violation of Illinois Whistleblower Reward and Protection Act
for Double-Bunking
(State of Illinois and Relators)

127. Plaintiffs repeat and reallege paragraphs 1 through 126 above as if fully set forth herein.

128. Relators are private persons with direct, personal knowledge of the allegations of this Complaint, who have brought this action pursuant to 740 ILCS 175/3(b) on behalf of themselves and the State of Illinois.

129. By concealing the fact that the baby for whom UCH sought a per diem reimbursement for the NICU facility and service was double-bunked, UCH made and/or caused to be made a false statement or record.

130. By committing the acts alleged above, the Defendant violated 740 ILCS 175/3(a)(1) and (2) by repeatedly, willfully and intentionally presenting false claims for reimbursement and/or making false statements and/or records, including but not limited to false cost reports, to IDHFS for babies covered by the Medicaid program that were double-bunked in the Defendant's NICU and IMN from at least January 1997 to July 7, 2005.

131. Each claim for reimbursement that Defendant made for providing NICU services for babies who were double-bunked represents a false or fraudulent record or statement. Each claim for reimbursement for such NICU services submitted represents an unlawful claim and/or a false or fraudulent claim for payment.

132. Plaintiffs cannot at this time identify all of the false claims for payment that were caused by Defendant's conduct. This information is solely within the possession of Defendant.

133. The State of Illinois, by and through IDHFS, unaware of the falsity of said claims, paid the claims submitted in connection with the double-bunked babies at UCH.

134. Had the State of Illinois known that the Defendant submitted claims for the double-bunked babies in Defendant's NICU and IMN, it would not have paid those claims.

135. As a condition of payment Defendant expressly certified to IDHFS that they would, on a continuing basis, comply with the current rules and regulations for NICU facilities, requirements specified in implementing regulations, policies and procedures of IDHFS and the Department of Public Health.

136. As a condition of payment, UCH expressly certified billing information was true, accurate and complete and that the services as described in the billing were in compliance with State law. Claims submitted by the Defendant for double-bunked babies were not covered services reimbursable by IDHFS and, therefore, were false claims.

137. In submitting claims to IDHFS for double-bunked babies at UCH, Defendant knowingly concealed that the services provided to those babies did not comply with current rules and regulations for neonatal care facilities, IDHFS' regulations and/or the policies and procedures.

138. As a result of UCH's violations of 740 ILCS 175/3(a), the State of Illinois has been damaged in an amount in excess of eight million dollars, exclusive of interest.

WHEREFORE Plaintiffs respectfully request this Court to award the following damages to the following parties, and against Defendant:

To the STATE OF ILLINOIS:

- (1) Three times the amount of actual damages the State of Illinois sustained as a result of U of C Hospital's fraudulent practices;
- (2) A civil penalty of not less than \$5,000 and not more than \$10,000 for each false claim UCH submitted to the State of Illinois;
- (3) Prejudgment interest; and
- (4) All costs of this action.

To the RELATORS:

- (1) The maximum amount allowed pursuant to 740 ILCS 175/4(d);
- (2) Reimbursement of the expenses Relators incurred in connection with this action;
- (3) An award of reasonable attorneys' fees;
- (4) All costs of this action; and
- (5) Such further relief as this Court deems just and proper.

COUNT II
**Violation of Illinois Whistleblower Reward and Protection Act
for Exceeding Licensed Capacity
(Relators)**

139. Relators repeat and reallege paragraphs 1 through 126 above as if fully set forth herein.

140. Relators are private persons with direct, personal knowledge of the allegations of this Complaint, who have brought this action pursuant to 740 ILCS 175/3(b) on behalf of themselves and the State of Illinois.

141. By concealing the fact that the baby for whom UCH sought a per diem reimbursement for the NICU facility and service when the NICU was operating above UCH's licensed capacity, UCH made and/or caused to be made a false statement or record.

142. By committing the acts alleged above, the Defendant violated 740 ILCS 175/3(a)(1) and (2) by repeatedly, willfully and intentionally presenting false claims for reimbursement and false cost reports to the IDHFS for babies covered by the Medicaid program when UCH's NICU was operating above its licensed capacity from at least January 1997 to July 7, 2005.

143. Each claim for reimbursement that Defendant made for providing NICU services for babies when UCH was operating above its licensed capacity represents a false or fraudulent record or statement. And, each claim for reimbursement for such NICU services submitted represents an unlawful claim and/or a false or fraudulent claim for payment.

144. Relators cannot at this time identify all of the false claims for payment that were caused by Defendant's conduct. This information is solely within the possession of Defendant.

145. The State of Illinois, by and through IDHFS, unaware of the falsity of said claims, paid the claims submitted when UCH was operating above its licensed capacity.

146. Had the State of Illinois known that the UCH submitted claims when it was operating above its licensed capacity, the State would not have paid those claims.

147. As a condition of payment Defendant expressly certified to IDHFS that UCH would, on a continuing basis, comply with the rules and regulations for NICU facilities, requirements specified in implementing regulations, policies and procedures of IDHFS and the Department of Public Health.

148. As a condition of payment, UCH expressly certified billing information was true, accurate and complete and that the services as described in the billing were in compliance with State law. Claims submitted by the Defendant for babies when UCH was operating above its licensed capacity were not for covered services reimbursable by IDHFS and, therefore, were false claims.

149. In submitting claims to IDHFS when UCH was operating above its licensed capacity, Defendant knowingly concealed that the services provided to those babies did not comply with current rules and regulations for neonatal care facilities, IDHFS' regulations and/or the policies and procedures.

150. As a result of UCH's violations of 740 ILCS 175/3(a), the State of Illinois has been damaged in an amount in excess of eight million dollars, exclusive of interest.

WHEREFORE Relators respectfully request this Court to award the following damages to the following parties, and against Defendant:

To the STATE OF ILLINOIS:

- (1) Three times the amount of actual damages the State of Illinois sustained as a result of U of C Hospital's fraudulent practices;

- (2) A civil penalty of not less than \$5,000 and not more than \$10,000 for each false claim UCH submitted to the State of Illinois;
- (3) Prejudgment interest; and
- (4) All costs of this action.

To the RELATORS:

- (1) The maximum amount allowed pursuant to 740 ILCS 175/4(d);
- (2) Reimbursement of the expenses Relators incurred in connection with this action;
- (3) An award of reasonable attorneys' fees;
- (4) All costs of this action; and
- (5) Such further relief as this Court deems just and proper.

COUNT III

Violation of Illinois Whistleblower Reward and Protection Act for Infection Control Violations (Relators)

151. Relators repeat and reallege paragraphs 1 through 126 above as if fully set forth herein.

152. Relators are private persons with direct, personal knowledge of the allegations of this Complaint, who have brought this action pursuant to 740 ILCS 175/3(b) on behalf of themselves and the State of Illinois.

153. By committing the acts alleged above, the Defendant violated 740 ILCS 175/3(a)(1) and (2) by repeatedly, willfully and intentionally presenting false claims for reimbursement and false cost reports to the IDHFS when Defendant was operating the NICU in violation of infection control regulations from at least January 1997 to July 7, 2005.

154. Each claim for reimbursement that Defendant made for providing NICU services when UCH was operating was operating the NICU in violation of infection control regulations represents a false or fraudulent record or statement. And, each claim for reimbursement for such

NICU services submitted represents an unlawful claim and/or a false or fraudulent claim for payment.

155. Relators cannot at this time identify all of the false claims for payment that were caused by Defendant's conduct. This information is solely within the possession of Defendant.

156. The State of Illinois, by and through IDHFS, unaware of the falsity of said claims, paid the claims submitted while UCH was operating the NICU in violation of infection control regulations.

157. Had the State of Illinois known that the Defendant submitted claims while UCH was operating the NICU in violation of infection control regulations, it would not have paid those claims.

158. As a condition of payment Defendant expressly certified to IDHFS that they would, on a continuing basis, comply with the current rules and regulations for NICU facilities, requirements specified in implementing regulations, policies and procedures of IDHFS and the Department of Public Health.

159. As a condition of payment, UCH expressly certified billing information was true, accurate and complete and that the services as described in the billing were in compliance with State law. Claims submitted by the Defendant when Defendant was operating the NICU in violation of infection control regulations were not covered services reimbursable by IDHFS and, therefore, were false claims.

160. In submitting claims to IDHFS while Defendant was operating the NICU in violation of infection control regulations, Defendant knowingly concealed that the services provided to those babies did not comply with current rules and regulations for neonatal care facilities, IDHFS' regulations and/or the policies and procedures.

161. As a result of UCH's violations of 740 ILCS 175/3(a), the State of Illinois has been damaged in an amount in excess of ten million dollars, exclusive of interest.

WHEREFORE Relators respectfully request this Court to award the following damages to the following parties, and against Defendant:

To the STATE OF ILLINOIS:

- (1) Three times the amount of actual damages the State of Illinois sustained as a result of U of C Hospital's fraudulent practices;
- (2) A civil penalty of not less than \$5,000 and not more than \$10,000 for each false claim UCH submitted to the State of Illinois;
- (3) Prejudgment interest; and
- (4) All costs of this action.

To the RELATORS:

- (1) The maximum amount allowed pursuant to 740 ILCS 175/4(d);
- (2) Reimbursement of the expenses Relators incurred in connection with this action;
- (3) An award of reasonable attorneys' fees;
- (4) All costs of this action; and
- (5) Such further relief as this Court deems just and proper.

COUNT IV

Violation of the Illinois Public Assistance Fraud Act (State of Illinois)

162. The State of Illinois repeats and realleges paragraphs 1 through 126 above as if fully set forth herein.

163. Under 305 ILCS ' 8A-7(b) it is unlawful for any person or corporation to "willfully, by means of a false statement or representation, or by concealment of any material fact" to obtain, or attempt to obtain benefits or payments under the Public Aid Code to which he or it is not entitled, or in greater amounts than he or it is entitled. Civil penalties include: prejudgment interest; three times the amount of excess payments; and \$2,000 for each claim submitted.

164. Defendant falsely certified to IDHFS that it provided services to certain babies in its NICU and IMN that were in compliance with state law and state licensing requirements, when in fact those babies had been double-bunked in violation of state law and state licensing requirements.

165. The Defendant actively concealed from state regulators the fact that they were double-bunking babies in the NICU and IMN.

WHEREFORE, the State of Illinois respectfully requests this Court to enter judgment in favor of the State of Illinois and against the Defendant as follows:

- (1) Three times the amount of actual damages sustained by the State of Illinois as a result of the Defendant's fraudulent practices;
- (2) The sum of \$2,000 for each claim submitted to IDHFS for double-bunked babies;
- (3) Interest at the maximum legal rate from the date upon which payment was made by the State of Illinois on each claim submitted to DHF for double-bunked babies.

COUNT V
Common Law Fraud
(State of Illinois)

166. The State of Illinois repeats and realleges paragraphs 1 through 126 above as if fully set forth herein.

167. From at least January 1997 through July 7, 2005, the Defendant engaged in a pattern and practice whereby UCH prepared, certified, and submitted claims when it knew, or should have known, that these claims were false, and submitted these false claims intending to induce Illinois Medicaid to rely on them to pay for services.

168. In reliance on the veracity of the claims submitted, the State of Illinois paid these false or fraudulent Illinois Medicaid claims.

169. By reason of these payments, the State of Illinois has been damaged in an amount to be established at trial, exclusive of interest and costs.

WHEREFORE The State of Illinois respectfully requests this Court enter judgment in favor of the State of Illinois and against the Defendant as follows:

- (1) The amount of actual damages the State of Illinois sustained as a result of Defendant's fraudulent practices;
- (2) Punitive Damages
- (3) Prejudgment interest; and
- (4) Reasonable expenses.

COUNT VI
Payment by Mistake of Fact
(State of Illinois)

170. The State of Illinois repeats and realleges paragraphs 1 through 126 above as if fully set forth herein.

171. The State of Illinois made payments on the claims submitted by the Defendant under the erroneous belief that the claims for payment were based upon representations that were factually accurate and that represented allowable services.

172. This erroneous belief was material to the payments made by the State of Illinois to the Defendant.

173. Because of these mistakes of fact, the Defendant received monies to which it is not entitled.

WHEREFORE The State of Illinois respectfully requests this Court enter judgment in favor of the State of Illinois and against the Defendant as follows:

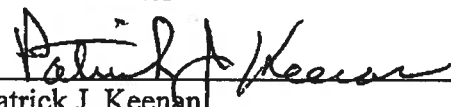
- (1) The amount of actual damages the State of Illinois sustained as a result of Defendant's fraudulent practices;
- (2) Prejudgment interest; and
- (3) Reasonable expenses.

Dated: March 14, 2006

Respectfully submitted,

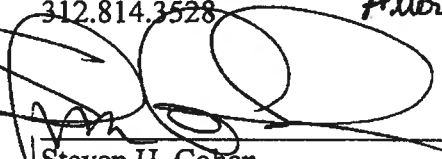
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