

STATE OF INDIANA)
) SS:
COUNTY OF MARION) COMMISSIONER OF INSURANCE

IN THE MATTER OF:)

National Union Fire Insurance)
Company of Pittsburgh, PA)
2704 Commerce Drive, Suite B)
Harrisburg, PA 17110)

Targeted Market Conduct Examination)

CAUSE NUMBER: IDOI-MC07-0627-044

FILED

MAR 11 2010

FINAL ORDER

STATE OF INDIANA
DEPT. OF INSURANCE

This Final Order is filed pursuant to Indiana Code §27-1-3.1-11(b) and results from the State of Indiana Insurance Commissioner's (hereinafter referred to as "Commissioner") consideration of the draft report regarding the targeted market conduct examination of National Union Fire Insurance Company of Pittsburgh, PA ("NUFIC"), a licensed insurance company domiciled in the state of Pennsylvania and doing business in the state of Indiana during all relevant times herein.

RECITALS

1. The Indiana Department of Insurance (the "Department") has the authority pursuant to Indiana Code §27-1-1-1 and 27-1-3.1-8 to conduct examinations of any insurance company licensed in Indiana as often as the Commissioner, in the Commissioner's sole discretion, considers appropriate and the Department is responsible for enforcing the statutory provisions applicable to companies engaging in the business of insurance in the State of Indiana.

2. On June 27, 2007, the Department issued an examination Warrant Number IDOI-MC07-0627-044, pursuant to Indiana Code §27-1-3.1, for the purpose of reviewing underwriting practices and to determine whether NUFIC had adequately contributed surcharges to the Patient's Compensation Fund ("PCF") or violated any other of the insurance laws of the state of Indiana regarding the PCF, for all policies written between January 1, 2005 and December 31, 2006 (attached as "Exhibit A").

3. On February 18, 2009, a draft report prepared by Merlinos & Associates on behalf of the Department and entitled "Market Conduct Examination of National Union Fire Insurance Company of PA" (hereinafter referred to as the "Report"), was provided to the Department.

4. Based on the findings contained in the Report, the Department alleges that during the period of January 1, 2005, through December 31, 2006, Gallagher Healthcare Insurance Services ("Gallagher") with the consent of NUFIC filed with the Department certain certificates of insurance representing that Kindred Healthcare, Inc., and the related Kindred entities ("Kindred"), were qualified health care providers for coverage and liability protection under the PCF and had complied with Indiana Code §34-18-1-1 *et. seq.*

5. The Department alleges NUFIC, Kindred and Gallagher each have violated provisions of Indiana Code §34-18-1-1 *et. seq.*, Indiana Code §27-1-3-22, Indiana Code §27-4-1-4(1)(D), and Indiana Code §27-4-1-4(5). NUFIC, Kindred and Gallagher disagree and dispute any violation of Indiana's laws or regulations.

6. The Commissioner, pursuant to Indiana Code §27-1-3.1-11(b) may order a company to take any action the Commissioner considers necessary and appropriate to

cure a violation if the Report reveals that the company is operating in violation of any law or regulation.

7. On March 4, 2010, the Department, NUFIC, Kindred, and Gallagher entered into a settlement agreement on the targeted market conduct examination, entitled "IN THE MATTER OF THE MARKET CONDUCT EXAMINATION OF NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH, PA - REGULATORY SETTLEMENT AGREEMENT", (hereinafter referred to as "Regulatory Settlement Agreement" and attached as "Exhibit B" and incorporated herein).

IT IS THEREFORE ORDERED by the Commissioner of Insurance:

1. The Regulatory Settlement Agreement shall be and is hereby adopted and incorporated herein.

2. NUFIC, Kindred, and Gallagher will pay into the PCF the total aggregate sum of Six Hundred Thousand Dollars (\$600,000.00), with each party responsible for paying the sum of Two Hundred Thousand Dollars (\$200,000.00) individually, within thirty (30) days following the date of the Commissioner's Order adopting the Regulatory Settlement Agreement.

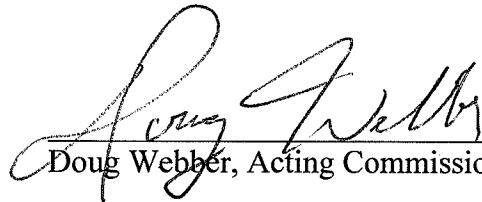
3. If any party fails to submit its surcharge payment to the Department ("Noncompliant Party") the terms of the Regulatory Settlement Agreement will be void solely as to that Noncompliant Party, and the Department retains the right to impose any regulatory penalty otherwise available by law with respect to the Noncompliant Party's willful violation of the terms of the Regulatory Settlement Agreement, this Order or other violation of law.

4. NUFIC will provide to the Department within thirty (30) days following the date of the Commissioner's Order adopting the Regulatory Settlement Agreement a written plan of procedures adopted or to be adopted to ensure compliance with Indiana laws, rules, and regulations as respects the PCF.

5. Within ninety (90) days of the Commissioner's Order adopting the Regulatory Settlement Agreement, Gallagher will provide to the Department the names of all other insurance companies that Gallagher Healthcare serves or has served as a broker for and in which it calculated, collected or submitted premiums to the PCF for or on behalf of the insurer from January 1, 2005, through December 31, 2006.

6. The Department agrees to accept NUFIC's, Kindred's, and Gallagher's compliance with the terms of the Regulatory Settlement Agreement and the terms of this Order as full resolution of the Report and the market conduct examination of NUFIC.

ALL OF WHICH IS ORDERED THIS 11th DAY OF MARCH, 2010.



Doug Webber, Acting Commissioner of Insurance

Distribution List:

Richard Dunlevy, Regulatory Counsel
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Doug Webber, Acting Commissioner
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Debra M. Webb, Attorney
Indiana Department of Insurance
311 West Washington Street, Suite 300
Indianapolis, IN 46204

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

BEFORE THE INDIANA
COMMISSIONER OF INSURANCE

IN THE MATTER OF:)
)
National Union Fire Insurance)
Company of Pittsburg)
2704 Commerce Drive, Suite B)
Harrisburg, PA 17110)
)
Targeted Market Conduct Examination)

WARRANT NUMBER: MC IDOI-MC07-0627-044

FILED

JUN 27 2007

STATE OF INDIANA
DEPT. OF INSURANCE

EXAMINATION WARRANT

I, James Atterholt, Commissioner of the Indiana Department of Insurance, under authority of Indiana Code section 27-1-1-1 and pursuant to Ind. Code § 27-1-3.1-9, do hereby appoint Noble Consulting Services, Inc., 8910 Purdue Road, Suite 250, Indianapolis, Indiana 46268 as examiner to perform a targeted market conduct examination of the following company authorized to conduct the business of insurance in the State of Indiana as a Property & Casualty Insurer:

National Union Fire Insurance Company of Pittsburg, NAIC# 19445
2704 Commerce Drive, Suite B
Harrisburg, PA 17110

The examination shall review the underwriting practices of National Union Fire Insurance Company of Pittsburgh to determine whether it has adequately contributed surcharges to the Indiana Patient's Compensation Fund as defined in 760 IAC 1-21 or, engaged in unfair methods of competition or deceptive acts and practices, as defined in Indiana Code 27-4-1-4, or violated any other of the insurance laws of the State of Indiana regarding the Patient's Compensation Fund. This Examination shall begin no sooner

EXHIBIT

A

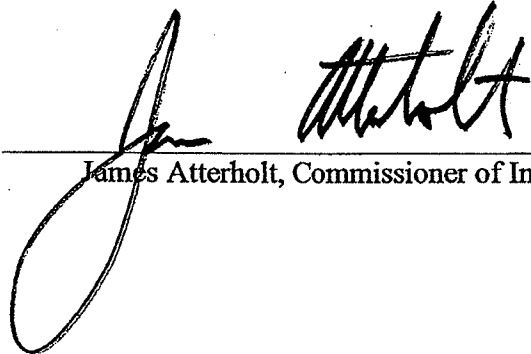
than thirty (30) days after the date of this warrant. Although the scope of this examination is limited, the Commissioner reserves the right to expand this examination.

As provided in Indiana Code section 27-1-3.1-9(d), the expenses of the examination shall be borne by National Union Fire Insurance Company of Pittsburg.

Examination Date: January 1, 2005 through December 31, 2006.

Commencement Date: August 1, 2007 through such time as necessary to complete the review.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal at the city of Indianapolis, Indiana, on this 27 day of June, 2007.



James Atterholt, Commissioner of Insurance

Distribution to:

John Quinlan Doyle, President
National Union Fire Insurance Company of Pittsburg
2704 Commerce Drive, Suite B
Harrisburg, PA 17110

Debra M. Webb, Attorney
Indiana Department of Insurance
311 W. Washington Street, Suite 300
Indianapolis, IN 46204

IN THE MATTER OF
THE MARKET CONDUCT EXAMINATION OF
NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH, PA
REGULATORY SETTLEMENT AGREEMENT

This Regulatory Settlement Agreement ("Agreement") is entered into as of this 4th day of March, 2010, by and between National Union Fire Insurance Company of Pittsburgh PA., for itself and its shareholders, members, owners, parent corporations, subsidiaries, related entities and affiliates ("NUFIC"); Kindred Hospitals Limited Partnership, Transitional Hospitals Corporation of Indiana, Inc., Kindred Nursing Centers Limited Partnership, and Kindred Rehabilitation Services, Inc., for themselves and their shareholders, members, owners, parent corporations, related entities and affiliates ("Kindred"); Arthur J. Gallagher & Co., and Gallagher Healthcare a division of Arthur J. Gallagher Risk Management Services, Inc., for themselves and their shareholders, members, owners, parent corporations, subsidiaries, related entities and affiliates ("Gallagher"); and the Indiana Department of Insurance ("Department").

A. Scope of Agreement

This Agreement relates to the findings contained in the draft report dated February 18, 2009, prepared by Merlinos & Associates, Inc. on behalf of the Department and entitled "Market Conduct Examination of National Union Fire Insurance Company of PA" (hereinafter referred to as the "Report") and the market conduct examination of NUFIC as described in the Examination Warrant No. IDOI-MC07-0627-044, issued by the Department on June 27, 2007.

B. Effective Date

The effective date of the Agreement is thirty (30) days after the date this Agreement is adopted by the Commissioner of the Department ("Commissioner").

C. Recitals

EXHIBIT

B

1. NUFIC is a licensed insurance company domiciled in the state of Pennsylvania and doing business in the state of Indiana.
2. Kindred is a healthcare provider which, through certain Indiana-domiciled affiliates, operates long-term acute care hospitals and skilled nursing centers, with several facilities located and operated in Indiana.
3. Arthur J. Gallagher Risk Management Services, Inc.'s Houston Healthcare office ("Gallagher Healthcare") has a non-resident producer license in Indiana for Property & Casualty and Life and Accident & Health.
4. Gallagher Healthcare serves as an insurance broker, focusing on the placement and servicing of medical and professional liability insurance for clients engaged in the healthcare industry.
5. Gallagher Healthcare served as an insurance broker for and between NUFIC and Kindred during the period from January 1, 2003, through December 31, 2008 (collectively, the "Program Years").
6. During the Program Years, NUFIC issued to Kindred professional/general liability policy numbers including GL6051432 and GL5753665.
7. A health care provider may qualify to participate in the Indiana Patient's Compensation Fund ("PCF") if the provider or the health care provider's insurance carrier files with the Commissioner proof of financial responsibility under Indiana Code §34-18-4 and pays the surcharge assessed on the health care provider under Indiana Code §34-18-5.
8. The Department has alleged that during the period of January 1, 2005 through December 31, 2006, Gallagher Healthcare with the consent of NUFIC signed and filed seventy-seven (77) Certificate of Insurance forms using the aforementioned policy numbers.

9. The Certificates of Insurance represented to the Department that various Kindred facilities were qualified providers for coverage and liability protection under the PCF and had complied with Indiana Code §34-18-1-1 *et.seq.*

10. The individual certificates provided that the limits of liability for each of the health care providers was at least Two Hundred Fifty Thousand Dollars (\$250,000.00) for each occurrence with an aggregate of Seven Hundred Fifty Thousand Dollars (\$750,000.00) coverage (\$250,000/\$1,250,000 for nursing homes with more than 100 beds, and \$250,000/\$5,000,000 for hospitals) for claims against the health care provider.

11. The Department has alleged that there were over seventy-three (73) hospitals and two hundred forty-three (243) nursing home facilities insured nationally under the subject NUFIC policies. In Indiana there were three (3) hospitals, twenty-eight (28) nursing home facilities, and eight (8) ancillary providers covered by the subject 2005 NUFIC policy. In Indiana, there were two (2) hospitals, twenty eight (28) nursing home facilities, and eight (8) ancillary providers covered by the subject 2006 NUFIC policy.

12. NUFIC issued an insurance policy to Kindred that provided Three Million Dollars (\$3,000,000.00) of total aggregate coverage with a Three Million Dollar (\$3,000,000.00) deductible that applied against the limit for all of the Kindred facilities. The Department has alleged that the net total aggregate coverage after consideration of the deductible was inadequate for the Certificates of Insurance filed.

13. The deductible was secured by a Three Million Dollar (\$3,000,000.00) deposit and all coverage under the policies was waived shortly after the policy term by Kindred's waiver of rights election under the terms of NUFIC policy GL6051432.

14. NUFIC did not maintain exposure detail or claim detail in its files and could not

provide this information to the Department after repeated requests.

15. The Department has alleged that the PCF surcharges calculated and submitted by Gallagher on behalf of Kindred were not based on the premiums paid or reasonable estimates of what would be paid for the required underlying layer of coverage.

16. Kindred performed its own claim administration, loss control and all other services under the policies and maintained all records related to those functions.

17. On June 27, 2007 the Department issued Examination Warrant Number IDOI MC07-0627-044 to NUFIC to determine whether NUFIC had adequately contributed surcharges to the PCF as defined in 760 IAC 1-21 or engaged in unfair methods of competition or deceptive acts and practices as defined in Indiana Code §27-4-1-4, or violated any other of the insurance laws of the State of Indiana regarding the PCF. The warrant covered the period of January 1, 2005 through December 31, 2006.

18. Pursuant to the authority provided in Indiana Code §27-1-3.1-9(d) the Commissioner appointed Noble Consulting Services, Inc., as Examiner who thereafter contracted with Merlinos & Associates, Inc. to provide additional examination assistance. Noble Consulting Services, Inc. and Merlinos & Associates, Inc. are collectively referred to hereinafter as the "Examiners".

19. The Examiners provided a Report of their preliminary findings to the Department on February 18, 2009. To the extent permitted or required by law, the work papers, recorded information, documents and copies thereof produced by, obtained by, or disclosed to the Examiners and the Department are confidential and are not be subject to subpoena, civil investigative demand or other process pursuant to Indiana Code §27-1-3.1-15.

20. The Examiners and the Department requested that Kindred provide loss experience or

other data to the Examiners in order that they might determine the appropriate premium for the underlying layer of coverage. Kindred did not provide all of the information requested by the Examiners and the Department.

21. Based on the information and belief of the Examiners the actual exposures for the required underlying PCF liability insurance coverage were insured through a Kindred captive, Cornerstone Insurance Company.

22. Indiana law does not recognize captives as authorized or licensed insurers and the PCF does not allow captives to provide the underlying coverage for purposes of providing proof of financial responsibility.

23. The Examiners' best estimate of the PCF surcharge submission shortfall for the period of January 1, 2005, through December 31, 2006, without review of actual Kindred professional liability experience for nursing homes and hospitals is One Million Four Hundred Fifty Thousand Five Hundred Eighteen Dollars (\$1,450,518.00).

24. The Department alleges NUFIC, Kindred and Gallagher each have violated provisions of Indiana Code §34-18-1-1 *et. seq.*, Indiana Code §27-1-3-22, Indiana Code §27-4-1-4 (1) (D), and Indiana Code §27-4-1-4(5). NUFIC, Kindred and Gallagher disagree and dispute any violation of Indiana's insurance laws or regulations.

25. The Department is aware that NUFIC and Kindred are parties to a certain contract external to this market conduct examination and outside the authority of the Department that may affect the willingness of each party to agree to and sign this Agreement.

26. NUFIC, Kindred and Gallagher have each individually agreed to submit the sum of Two Hundred Thousand Dollars (\$200,000.00) to the Department as additional PCF surcharge in

full settlement of all matters herein relating to the PCF, Program Years, market conduct examination and findings in the Report.

27. If any party fails to submit its above-described sum of Two Hundred Thousand Dollars (\$200,000.00) to the Department the terms of this Agreement will be void as to that party, and the Department retains the right to impose any regulatory penalty otherwise available by law with respect to the party's willful violation of the terms of this Agreement or other violation of law.

28. The Department, NUFIC, Kindred, and Gallagher desire to resolve their differences and settle the issues relating to the PCF, Program Years, market conduct examination and findings in the Report without further examination activities or further adjudicative efforts.

NOW, THEREFORE, the Department, NUFIC, Kindred, and Gallagher agree to the following:

1. The Commissioner has jurisdiction over all matters relating to the PCF.
2. This Agreement is executed voluntarily by the parties or their appointed representatives, and all parties warrant that they have read and fully understand the provisions of this Agreement, have had the opportunity to seek the advice of counsel prior to execution of the Agreement and voluntarily agree to the terms of this Agreement.
3. This Agreement is not, and shall not be construed as, an admission of liability by NUFIC, Kindred, or Gallagher.
4. NUFIC, Kindred, and Gallagher will pay into the PCF the total aggregate sum of Six Hundred Thousand Dollars (\$600,000.00), with each party responsible for paying the sum of Two Hundred Thousand Dollars (\$200,000.00) individually, within thirty (30) days following the date of the Commissioner's Order adopting this Agreement.

5. NUFIC will provide to the Department within thirty (30) days following the date of the Commissioner's Order adopting this Agreement a written plan of procedures adopted or to be adopted to ensure compliance with Indiana laws, rules, and regulations as respects the PCF.

6. Kindred has provided to the Department independent documents, including its professional liability insurance policies, certifying that it may continue to be a qualified provider for participation in the PCF and does not use the services of a captive insurance company.

7. Within ninety (90) days of the Commissioner's Order adopting this Agreement, Gallagher will provide to the Department the names of all other insurance companies that Gallagher Healthcare serves or has served as a broker for and in which it calculates, collects, or submits premiums to the PCF for or on behalf of the insurer from January 1, 2005 through December 31, 2006. The Department agrees that these documents are considered examination workpapers and shall be given confidential workpapers treatment and shall not be subject to subpoena, civil investigative demand or other process pursuant to Indiana Code §27-1-3.1-15.

8. In return for and in consideration of this Agreement, the payments set forth above and the mutual releases described herein, NUFIC, Kindred, and Gallagher hereby mutually release, waive, discharge one another and settle all past, present and future causes of action, demands, losses, damages or claims of any kind, whether known or unknown among themselves, which may in any way relate to or arise from or out of the matters which were or could have been raised, asserted or alleged in conjunction with the Report, the market conduct examination of NUFIC, the placement and administration of the policies, the Program Years and the PCF, including the surcharges associated with the policies and calculations thereof. NUFIC, Kindred, and Gallagher recognize, acknowledge and agree that their participation in this Agreement and

their combined total payment of Six Hundred Thousand Dollars (\$600,000.00) as well as the mutual releases between themselves constitute good and sufficient consideration for the parties to fully release, waive, discharge and settle all claims they had or could have had, raised or could have raised in conjunction with any of the matters described herein.

9. In return for and in consideration of this Agreement, the payments set forth above and the releases described herein, the Department agrees to accept NUFIC's, Kindred's, and Gallagher's compliance with the terms of this Agreement as full resolution of the Report and the market conduct examination of NUFIC and fully release, waive and discharge NUFIC, Kindred, and Gallagher of all claims, demands, causes of action, charges, surcharges, fines, penalties, enforcement proceedings, market conduct examinations and actions of any kind whatsoever, whether known or unknown, which may in any way relate to or arise from or out of the matters which were or could have been raised, asserted or alleged in the Report, the market conduct examination of NUFIC, the placement and administration of the policies, the Program Years and the PCF, including the surcharges associated with the policies and the calculations thereof.

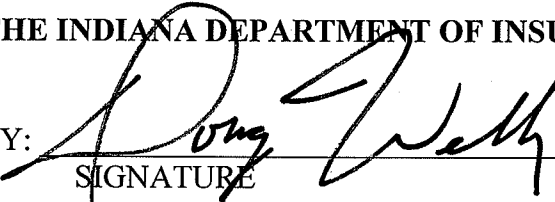
10. If any party fails to submit its Surcharge Payment to the Department ("Noncompliant Party") the terms of this Agreement will be void solely as to that Noncompliant Party, and the Department retains the right to impose any regulatory penalty otherwise available by law with respect to the Noncompliant Party's willful violation of the terms of this Agreement or other violation of law.

11. It is understood and agreed by NUFIC, Kindred, and Gallagher that nothing herein shall have any impact on the responsibilities and rights of NUFIC, Kindred, and Gallagher to each other, if any, outside the scope of the entire Agreement.

12. This Agreement shall be governed by the laws of the State of Indiana.

13. The undersigned acknowledge, agree and represent that they have all corporate and/or governmental authority necessary and sufficient to execute this Agreement and bind the Department, NUFIC, Kindred, and Gallagher.

THE INDIANA DEPARTMENT OF INSURANCE

BY:  DATE 3/4/10
SIGNATURE

ITS: Acting Commissioner
PRINTED TITLE

NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH, PA.

BY: _____ DATE _____
SIGNATURE

ITS: _____
PRINTED TITLE

ARTHUR J. GALLAGHER & Co.

BY: _____ DATE: _____
SIGNATURE

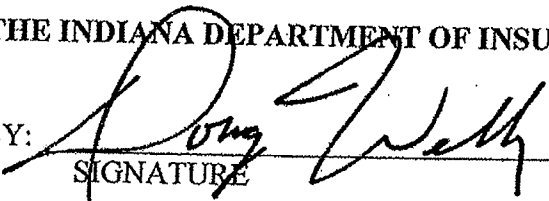
ITS: _____
PRINTED TITLE

ARTHUR J. GALLAGHER RISK MANAGEMENT SERVICES, INC.

BY: _____ DATE: _____
SIGNATURE


13. The undersigned acknowledge, agree and represent that they have all corporate and/or governmental authority necessary and sufficient to execute this Agreement and bind the Department, NUFIC, Kindred, and Gallagher.

THE INDIANA DEPARTMENT OF INSURANCE

BY:  DATE 3/4/10
SIGNATURE

ITS: Acting Commissioner
PRINTED TITLE

NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH, PA.

BY:  DATE 3/5/10
SIGNATURE

ITS: Assistant Vice President
PRINTED TITLE

ARTHUR J. GALLAGHER & Co.

BY: _____ DATE: _____
SIGNATURE

ITS: _____
PRINTED TITLE

ARTHUR J. GALLAGHER RISK MANAGEMENT SERVICES, INC.

BY: _____ DATE: _____
SIGNATURE

13. The undersigned acknowledge, agree and represent that they have all corporate and/or governmental authority necessary and sufficient to execute this Agreement and bind the Department, NUFIC, Kindred, and Gallagher.

THE INDIANA DEPARTMENT OF INSURANCE

BY: *Doug Welch* DATE 3/4/10
SIGNATURE

ITS: *Acting Commissioner*
PRINTED TITLE

NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH, PA.

BY: _____ DATE _____
SIGNATURE

ITS: _____
PRINTED TITLE

ARTHUR J. GALLAGHER & Co.

BY: *April Hanes-Bowd* DATE: 3/8/10
SIGNATURE

ITS: *Assistant Secretary*
PRINTED TITLE

ARTHUR J. GALLAGHER RISK MANAGEMENT SERVICES, INC.

BY: *April Hanes-Bowd* DATE: 3/8/10
SIGNATURE

ITS: SECRETARY
PRINTED TITLE

KINDRED HOSPITALS LIMITED PARTNERSHIP

BY: _____ DATE: _____
SIGNATURE

ITS: _____
PRINTED TITLE

TRANSITIONAL HOSPITALS CORPORATION OF INDIANA, INC.

BY: _____ DATE: _____
SIGNATURE

ITS: _____
PRINTED TITLE

KINDRED NURSING CENTERS LIMITED PARTNERSHIP

BY: _____ DATE: _____
SIGNATURE

ITS: _____
PRINTED TITLE

KINDRED REHABILITATION SERVICES, INC.

BY: _____ DATE: _____
SIGNATURE

ITS: _____
PRINTED TITLE

ITS: _____
PRINTED TITLE

KINDRED HOSPITALS LIMITED PARTNERSHIP

BY: M. Suzanne Redman DATE: 3/4/10
SIGNATURE

ITS: SENIOR VICE PRESIDENT and GENERAL COUNSEL
PRINTED TITLE

TRANSITIONAL HOSPITALS CORPORATION OF INDIANA, INC.

BY: M. Suzanne Redman DATE: 3/4/10
SIGNATURE

ITS: SENIOR VICE PRESIDENT and GENERAL COUNSEL
PRINTED TITLE

KINDRED NURSING CENTERS LIMITED PARTNERSHIP

BY: M. Suzanne Redman DATE: 3/4/10
SIGNATURE

ITS: SENIOR VICE PRESIDENT and GENERAL COUNSEL
PRINTED TITLE

KINDRED REHABILITATION SERVICES, INC.

BY: M. Suzanne Redman DATE: 3/4/10
SIGNATURE

ITS: SENIOR VICE PRESIDENT and GENERAL COUNSEL
PRINTED TITLE