CORPORATE INTEGRITY AGREEMENT

FRANK A. KUNKEL, MD, AND OFFICE BASED ANESTHESIA SOLUTIONS, INC.

I. Preamble

A. This Corporate Integrity Agreement ("CIA") is entered into by and between Frank A. Kunkel, MD, Office Based Anesthesia Solutions, Inc., a company owned by Dr. Kunkel, (collectively referred to as "Dr. Kunkel"), and the Office of Inspector General of the United States Department of Health and Human Services ("OIG").

B. All of the persons and entities listed above shall be referred to collectively herein as the "Parties."

C. On June 11, 1998, OIG entered into a Settlement Agreement with Dr. Kunkel. The Settlement Agreement incorporated by reference all the provisions of a CIA between OIG and Altoona Anesthesia Associates, P.C. ("AAA"). As required by the AAA CIA, Dr. Kunkel has informed OIG that he is no longer a member of AAA and that his sole employment now is in private practice through his own company, Office Based Anesthesia Solutions, Inc., which has entered into a contract to provide anesthesiology and pain management services at Miners Hospital of Northern Cambria.

D. As a result of Dr. Kunkel's leaving the employment of AAA and his new business arrangement, Dr. Kunkel and OIG now enter into this new CIA.

E. Dr. Kunkel agrees to pursue the courses of action set forth in this CIA to ensure full and accurate compliance with Medicare regulations and program requirements by him, any corporation in which he is an owner or has a control interest as defined in 42 U.S.C. § 1320a-3(a)(3), his employees, and agents.

II. Terms and Conditions

A. Duration of CIA

This CIA and its obligations will take effect on the last date listed among the signature lines at the end of this CIA. It will remain in effect until June 11, 2003, though Dr. Kunkel will submit the final annual report due under the CIA on July 11, 2003.

B. Policies and Procedures

1. In operating his private practice, Dr. Kunkel will take the steps necessary to ensure that he and his agents and employees are knowledgeable about Medicare and Medicaid program requirements and that they will abide by Medicare and Medicaid coding and documentation requirements and that all claims submitted to Medicare and Medicaid are accurate and correctly identify the services rendered.

2. Pursuant to paragraph 4 of the Settlement Agreement, Dr. Kunkel will not accept direct or indirect supervisory or final responsibility over the daily scheduling of anesthesia services provided by himself or others or the billing of anesthesia services provided by other physicians and billable to Medicaid, Medicare or other Federally funded health care programs. During the term of Dr. Kunkel's contract with Miners Hospital, Dr. Kunkel will cooperate with the Director of Surgical Services in the hospital's scheduling of patients for surgery and operating room assignments. Nothing in this CIA shall preclude Dr. Kunkel from, consistent with the terms of this CIA, arranging or rearranging schedules on an *ad hoc* or emergency basis as necessary in the course of his practice so long as such arrangements are promptly communicated to the person or entity ultimately responsible for such scheduling. Dr. Kunkel is permitted to pursue and engage in other employment of his desire at any time, provided he continues to comply with the terms of this CIA and includes such information in his Annual Report submitted pursuant to paragraph II.F *infra*.

C. Training

1. Dr. Kunkel and his employees will participate in training programs annually. During the first year of AAA's CIA, Dr. Kunkel participated in training through his employment with AAA, which training provided for at least 4-6 hours on surgical anesthesia services and 4-6 hours on Evaluation and Management services. Beginning with this CIA, the annual training program shall provide 2-3 hours in each of the following substantive areas, as appropriate:

   a. the billing standards and procedures for the submission of accurate bills for services rendered to Medicare and Medicaid beneficiaries;

   b. all applicable statutes, regulations, and guidelines related to Medicare and Medicaid billing, reimbursement, and fraud and abuse;

   c. the personal obligation of each individual involved in the billing process to ensure that such billings are accurate; and

   d. the legal sanctions for improper billings.

2. All training required by this CIA shall be mandatory.

D. Audits

1. Dr. Kunkel agrees to contract with a third party reviewer (*e.g.*, audit, accounting or health care consulting firm) to undertake an annual review of a statistically valid sample of the claims submitted by him and his agents and employees to Federally funded programs to ensure that the programs are billed appropriately. This review will be conducted by an independent person or entity with expertise in Medicare and Medicaid billing requirements.

2. These reviews shall cover the preceding one (1) year period and shall seek to ensure that the claims are appropriately coded and billed.

3. If any of these audits indicate billings which violate or conflict with Medicare or Medicaid rules and regulations, Dr. Kunkel shall notify the entity in charge of processing the carrier claim for reimbursement (such as the Medicare carrier or other payor) within thirty (30) days after becoming aware of the existence of such billing. Dr. Kunkel shall remedy such violations within sixty (60) days or such additional time as may be agreed to by the payor or the Pennsylvania Department of Public Welfare.

4. If such audits indicate material deficiencies in Dr. Kunkel's Medicare and Medicaid billing processes, Dr. Kunkel shall include in his annual report to the OIG: (a) the audit's findings concerning the material violation; (b) Dr. Kunkel's actions to correct such material violation; and (c) any further steps Dr. Kunkel plans to take to address such material violation and prevent it from recurring. A material violation is one which has significant, adverse financial impact on the Medicare and/or Medicaid programs.

5. The time period for the first audit shall include claims submitted by Dr. Kunkel with dates of service from June 1, 1999 through May 31, 2000. Subsequent audits shall include the next consecutive twelve month time period, until the conclusion of this CIA.

E. Self-Disclosure of Probable Violations

During the term of this CIA, Dr. Kunkel will report to OIG any reliable evidence of actions that Dr. Kunkel, after promptly considering such evidence with outside consultants, believes constitute a probable violation of any State or Federal civil or criminal statute, regulation, or guideline governing a Federally funded health care program. This paragraph is not intended to require the reporting of violations that have no significant or material impact on the Medicare or Medicaid programs. When such disclosure is required by this CIA, Dr. Kunkel shall make the required disclosure as soon a practicable, but in no event later than thirty (30) calendar days after becoming aware of the existence of the probable violation.

F. Reporting

1. Dr. Kunkel shall make annual written reports (each one of which is referred to

throughout this CIA as the "Annual Report") to OIG describing the measures he has taken to comply with the terms of this CIA. In accordance with the provisions above, the Annual Report shall include the following:

a. A statement certifying that Dr. Kunkel and his agents and employees have taken the steps necessary to ensure that they (i) are knowledgeable about Medicare and Medicaid program requirements and (ii) have abided by Medicare and Medicaid coding and documentation requirements.

b. A statement certifying that Dr. Kunkel has complied with the training provisions of the CIA, and a copy of training materials used during such training sessions.

c. The independent reviewer's report of the claim review and any corrective actions taken by Dr. Kunkel as a result of the report.

d. A statement certifying that Dr. Kunkel has met the requirements of Section II.B.

e. Notification of any personnel actions taken pursuant to Section II.H.2.

2. The due dates for Dr. Kunkel's Annual Reports to the OIG will be as follows:

Annual Report #1	July 11, 2000
Annual Report #2:	July 11, 2001
Annual Report #3:	July 11, 2002
Annual Report #4:	July 11, 2003

3. All notifications, reports, certifications, disclosures, and other documents that the CIA requires Dr. Kunkel to submit to OIG shall be sent to:

Civil Recoveries Branch - Compliance Unit
Office of Counsel to the Inspector General
Office of Inspector General
U.S. Department of Health and Human Services
Cohen Building, Room 5527
330 Independence Avenue, S.W.
Washington, D.C. 20201
(202) 619-2078

5. All of OIG's contacts with Dr. Kunkel shall be made at the following address:

Frank A. Kunkel, M.D.
354 ~~Wren~~ Fibis Drive
Hollidaysburg, PA 16648
(814) 949-9717

6. The Parties agree that the reports required by the CIA are being provided for the purpose of assisting the OIG in its responsibility to monitor and enforce the applicable laws as well as the compliance obligations as described herein

G. OIG Inspection, Audit and Review Rights

1. In addition to any other rights OIG may have by statute, regulation, or pursuant to this CIA, upon reasonable advance notice, but subject to federal law pertaining to matters such as substance abuse, confidentiality of medical records, (*e.g.,* cases involving HIV infection), and attorney-client privilege, OIG (or its duly authorized representatives) will be entitled to examine and copy Dr. Kunkel's books, financial records, medical records, Federally funded health care programs claims submissions, and other documents related to the CIA, for purposes of verifying and evaluating: (a) Dr. Kunkel's compliance with the terms of the CIA, and (b) Dr. Kunkel's compliance with the requirements of the Medicare and Medicaid programs and other federally funded health care programs. Dr. Kunkel shall make the documentation described above available to OIG at all reasonable times for inspection, audit, or reproduction. For purposes of this provision, OIG (or its authorized representatives) may interview any of Dr. Kunkel's employees or agents who consent to be interviewed at the person's place of business during normal business hours or at some other place and time as may be mutually agreed upon between the employee/agent and OIG. Employees or agents may elect to be interviewed with or without Dr. Kunkel or his representative present.

2. If the OIG determines a genuine need, based on the OIG's review of the Annual Report submitted by Dr. Kunkel, to conduct another independent audit or review to determine whether or the extent to which Dr. Kunkel is complying with his obligations under this CIA, Dr. Kunkel agrees to pay for the reasonable cost of such audit or review, for which the total cost shall not exceed $25,000.

H. Dealing with Excluded or Convicted Persons or Entities

1. During the term of this CIA, Dr. Kunkel will not knowingly employ, with or without pay, or enter into a contract or business relationship with any individual or entity that has been convicted of a criminal offense related to the delivery of health care or has been listed by a Federal agency as debarred, suspended or otherwise ineligible for Federal program participation. In order to carry out this provision, Dr. Kunkel will make reasonable inquiry into the status of any

potential employee, agent, or contractor, including a review of the OIG List of Excluded Individuals/Entities, currently found at http://www.dhhs.gov/progorg/oig, and the General Services Administration's List of Parties Excluded from Federal Programs and Non-Procurement Programs, currently found at http://www.arnet.gov/epls.

2. During the term of this CIA, any current employee or contractor of Dr. Kunkel who is charged with a criminal offense related to the delivery of health care or who is made subject of a proposed debarment, suspension or exclusion during their employment or contractual relationship with Dr. Kunkel, will be removed from responsibility for or involvement with Dr. Kunkel's provision of services to beneficiaries of Medicare, Medicaid, or any other Federally funded health care program until the resolution of such criminal charges, suspension, or proposed debarment, once Dr. Kunkel becomes aware of such information. If an employee, contractor or agent is convicted, debarred, or excluded from participation in Federally funded health care programs during the term of this CIA, Dr. Kunkel will immediately remove such person from responsibility for, or involvement with Dr. Kunkel's Federally funded health care programs.

I. Breach and Default

1. If OIG believes that Dr. Kunkel has materially breached one or more of his obligations under this CIA, OIG (or its duly authorized representatives) will notify Dr. Kunkel of the alleged breach in writing, specifying the circumstances of the alleged breach. A material breach is a failure by Dr. Kunkel to meet an obligation under this CIA that has a significant, adverse impact on the Medicare and/or Medicaid programs.

2. Dr. Kunkel will have 30 calendar days from receipt of the notice to demonstrate to OIG that: (a) he is not in material breach; (b) the material breach has been cured; or (c) the material breach cannot be reasonably cured within 30 calendar days, but that Dr. Kunkel has taken significant action to cure the material breach and is pursuing such action with reasonable diligence.

3. If, in response, OIG contends that: (a) Dr. Kunkel is in material breach and that it is reasonable for such breach to have been cured within 30 calendar days, but Dr. Kunkel has failed to do so; or (b) that Dr. Kunkel is in material breach and, although it is not reasonable for such breach to have been cured within 30 calendar days, Dr. Kunkel has not taken significant action to cure the breach or has not done so with reasonable diligence, it may declare Dr. Kunkel in default and impose stipulated monetary penalties in lieu of exclusion, or take action to exclude him from participation in the Medicare, Medicaid, and all other Federally funded health care programs until such time as the breach is cured.

4. Upon notification of its intent to exclude or assess stipulated monetary penalties, OIG shall make available to Dr. Kunkel the due process afforded a respondent under 42

U.S.C. § 1320a-7b(f) and its implementing regulations. Notwithstanding any provisions of Title 42 of the United States Code or Chapter 42 of the Code of Federal Regulations, the only issues in a proceeding for exclusion or assessment of stipulated monetary penalties based on breach of this CIA will be: (a) whether Dr. Kunkel materially breached one or more of his obligations under the CIA at the time of and as specified in the notice of breach given to Dr. Kunkel; (b) whether it was reasonable for such breach to have been cured within 30 calendar days; (c) whether Dr. Kunkel had taken significant action to cure the breach or had done so with reasonable diligence; and (d) whether such breach was continuing on the date OIG notified Dr. Kunkel of its intent to exclude or impose stipulated monetary penalties in lieu of exclusion.

J. Documentation and Record Retention

Dr. Kunkel shall maintain for inspection all documents and records relating to his Medicare and Medicaid billing and reimbursements for a period of five (5) years following the execution of the CIA.

K. Cooperation

An obligation under the terms of this CIA shall be Dr. Kunkel's good faith cooperation with any civil, criminal or administrative investigations or proceedings related to his status as a provider of Federally funded health care programs. This provision shall not require Dr. Kunkel to waive or forego any administrative, statutory or constitutionally guaranteed rights. A material failure to cooperate shall be treated as a breach of the terms of this CIA.

L. Modification

Any modification to this CIA must be made in writing and signed by all the Parties to the CIA.

M. Integration Clause

This CIA and the Settlement Agreement embody the entire agreement and understanding of the Parties with respect to the subject matter contained herein. There are no restrictions, promises, representations, warranties, covenants, or undertakings other than those expressly set forth or referred to in this CIA and the Settlement Agreement.

IN WITNESS WHEREOF, the parties hereto affix their signatures.

7/23/99
Date

Frank A. Kunkel, MD

7/23/99
Date

Office Based Anesthesia Solutions, Inc.

FOR THE U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES:

7/14/99
Date

Lewis Morris
Assistant Inspector General for Legal Affairs
Department of Health and Human Services