

BULKY DOCUMENTS

(exceeds 300 pages)

Proceeding/Serial No: 911 58512

Filed: 4-30-07

Title: Notice of filing of Certified

Transcripts And Exhibits

Part 4 of 8

UNIVERSITY AT BUFFALO
SCHOOL OF MEDICINE

August 7, 1997

Robert P. Main
 President and CEO
 Siskin Hospital for Physical Rehabilitation
 One Siskin Plaza
 Chattanooga, TN 37403

CENTER FOR
 FUNCTIONAL
 ASSESSMENT
 RESEARCH

Dear Mr. Main,

DEPARTMENT OF
 REHABILITATION
 MEDICINE

Thank you for your note of July 25, 1997 expressing your concerns as Chair of the American Hospital Association Section for Long-Term Care and Rehabilitation Hospitals and Programs and the Medical Steering Committee of the American Rehabilitation Association. The issue is that of having an opportunity to evaluate the FIM-FRG system that is described in the RAND report that has not yet been released.

STATE

UNIVERSITY
 OF NEW YORK
 AT BUFFALO

A little background review is necessary. UDSmrSM was approached by HCFA in 1994 with the request to use data from the UDSmr database to evaluate the potential for using the FIM-FRGs (length of stay version) as a basis for a PPS. Dr. Margaret Stineman had developed the FIM-FRGs in collaboration with UDSmr. UDSmr is an academically based, non-profit organizational division of the University at Buffalo Foundation, Inc. Its charge is to maintain uniformity with respect to measurement of disability and rehabilitation outcomes. Fees charged to the subscribing organizations support UDSmr. It acts as a fiduciary agent with respect to data submitted to it and maintains a confidential relationship with the subscribers. In order to comply with HCFA's request, permission was obtained from each facility whose data are included in the transmission to HCFA.

PARKER HALL
 5 MAIN STREET
 BUFFALO, NY
 4214-9007

TELEPHONE:
 6-829-2076

FAX:
 6-829-2080

In the meantime, a license agreement to HCFA, which is equally binding upon the agency that HCFA selected to perform the analyses (in this case, RAND) was carefully developed to provide HCFA with the access it needed to be successful in its analysis. All parties signed the agreement. In the spirit of that agreement, UDSmr shared with RAND its technologies that are used to provide a reporting system that has integrity. We were able to do so because the terms of the agreement protect the intellectual property rights that reside with UDSmr. Incidentally, ARA was fully informed during development of the agreements.

UBF1056

UDSMr holds the copyrights for FIM-FRGs and any derivative works. The agreement states, that *only if HCFA elects to use the system*, then HCFA has a *license for implementation*. During 1996 and 1997, HCFA received complete reports from RAND. However, a draft report that was proposed for general circulation did not meet the conditions that had been specified in the contracts. Prior to release of an official version of the report, these issues were brought to HCFA's attention. HCFA asked that UDSMr propose remedies. These negotiations are underway.

Your main concern is that facilities have access to the information included in the RAND report and that they have the opportunity to test the effects of a FIM-FRG based PPS prior to implementation. We expect that a satisfactory resolution is near at hand. I am unable to give you more details at this time but I will be in touch as soon as it is possible to relate further progress.

Sincerely,



Carl V. Granger, MD
Professor, Rehabilitation Medicine
Director, CFAR & UDSMr

UBF1057

File

HODGSON RUSS
ANDREWS
WOODS &
GOODYEAR LLP
ATTORNEYS AT LAW

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Albany
Boca Raton
Buffalo
New York
Rochester
Mississauga
(Toronto)

August 15, 1997

Joe W. Fleming, II, Esq.
Professional Corporation
Third Floor
1606 20th street, N.W.
Washington, D.C. 20009

Dear Mr. Fleming:

Re: UDSMR

We are outside counsel to UDSMR of Buffalo, New York. We understand you are outside counsel to the ARA and are very knowledgeable about matters pertaining to rehabilitation research and facilities.

The reason for this letter is that we have just made a detailed examination of the "13x.com/rehabase" web site, including the \$6,900 introductory price tag for services and the instruction to send checks to Joe W. Fleming, II, P.C. On the plus side, your RehaBase program seems to be a valuable tool for the rehab industry. However, the web site fails to acknowledge UDSMR's copyrights and trademarks in the FIM™ measuring instruments, data and reports, and is publishing and using confidential and proprietary material from the draft Rand Report in serious violation of UDSMR's rights.

Rather than becoming distracted with legal arguments, we believe the best way to resolve these issues is for your P.C. to enter into an appropriate license on an expedited basis. Not only would the license resolve our client's infringement concerns, it would permit beneficial use of the FIM data and FIM/FRGs while ensuring continued protection of UDSMR's rights.

By way of further background, I have also recently reviewed your letter of July 23, 1997, to Carl V. Granger, M.D. and the outline of your remarks at the July 13-14 conference on Medical Rehabilitation. As I am sure you know, Dr. Granger has always been dedicated to performance of the highest levels of research and to pursuit of policies and programs that are most beneficial to the rehabilitation industry. Thus, your comments regarding the final Rand Report and UDSMR's opposition to its unconditional release seem unnecessarily harsh.

Furthermore, your web site suggests your RehaBase service requires issuance of that Report as a prerequisite to

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Joe W. Fleming, II
August 15, 1997
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commencement of its commercial operations. Thus, it appears you have not been entirely candid about the reasons for your public criticism of UDSMR's position.

More importantly, what needs to be understood is that UDSMR has, by contract, the exclusive worldwide right and license to use the proprietary ideas, concepts, information, software, and software components which comprise or relate to the FRGs ("FRG Rights") in connection with the development, sale, distribution or use of any commercial product which incorporates any part of said FRG Rights. It also bears important obligations to the licensor with respect to any such development, sale, distribution or use. These rights and obligations are derived not only from the Copyright Act but also from various contracts which UDSMR signed with, among others, the University of Pennsylvania, HCFA, and the Rand Corporation.

Under the circumstances, UDSMR is not in a position to permit broad public disclosure and use of this information. Third parties, including the RehaBase web site, also are not at liberty to make use of any FRGs derived from FIM data without having a license and paying appropriate royalties.

Finally, in order for UDSMR's subscribing facilities to take advantage of the services offered by your RehaBase program, their licenses require them to obtain UDSMR's consent before exporting the full range of data you have requested. Having just sponsored the creation of a valuable software program yourself, I am sure you can understand the importance of protecting the intellectual property rights associated with that program.

UDSMR is prepared to offer Joe W. Fleming, II, P.C. the necessary license. We look forward to discussing same at your earliest convenience.

Very truly yours,



Tricia T. Semmelhack

/jc

Joe W. Fleming, II
August 15, 1997
Page 3

bcc: Kathleen Dann
David V. Bradley
Dr. Carl V. Granger
James Phillips

UBF1060

JOE W. FLEMING, II

PROFESSIONAL CORPORATION

THIRD FLOOR

1606 20TH STREET, N.W.

WASHINGTON, D.C. 20009

JOE W. FLEMING, II
ATTORNEY AT LAW

SAMUEL P. FLEMING
FINANCIAL ANALYST

TEL: (202) 872-1033
FAX: (202) 833-9168

August 20, 1997

Tricia T. Semmelhack
Hodgson, Russ, Andrews,
Woods & Goodyear
1800 One M&T Plaza
Buffalo, NY 14203-2391

Dear Ms. Semmelhack:

This is to acknowledge your letter of August 15, 1997 regarding UDSMR.

First, I wish to assure you of my high regard for Dr. Granger and his long and substantial contributions to the field of rehabilitation. If anything in my letter to him of July 23, 1997 was taken to be a criticism of him or his work, I regret that. It was not so intended. I wrote to Carl to provide him with information on HCFA's work to develop an instrument to be used to collect data and design a post-acute payment system. You apparently have a copy of my letter to him so there is no need to repeat its content. I am of the opinion that adoption of FRGs as the basis for Medicare payment would be a good thing for the field and for UDS. Unless there is a concerted campaign by rehab providers, however, I do not think this will happen. To build such a campaign it is necessary for rehab hospitals and units to review and understand the RAND report. Keeping it under wraps is helpful to those within HCFA who want to wrap rehab hospitals and units with nursing homes in a single payment system.

The only public forum in which I have voiced these concerns was at the UDS conference in July. Some time ago Dr. Granger asked me to speak to that meeting and I agreed to do so. This was, in my view, a personal favor to him. I am retiring as soon as I can wind up cases I have in various pipelines and spending a day in Buffalo has no inherent appeal. As it became apparent that UDS is intent on keeping the RAND report from the public, I called Carl to tell him that it might be best for me to opt out of his conference, because if I did speak I would have to tell the assemblage that UDS is facilitating the political death of FRGs as the basis for a Medicare PPS. He asked that I come anyway. I did, and did describe this situation to the audience. My letter of July 23 followed to provide him with documentary evidence of HCFA going off in a different direction.

UBF1061

If HCFA adopts a different patient classification system it will certainly will be harmful to UDS. Hospitals won't maintain two such systems. So, my message was not intended to damage UDS, but rather to try to keep it and the FIM at the core of a Medicare PPS. Any impression to the contrary is in error.

Now, with regard to RehaBase, this is an analytic system my son developed to provide analyses of cost to rehab hospitals and units relative to a PPS. As recently as my trip to Buffalo in July Jim Phillips told me that UDS does not intend to provide any such service to its subscribers, so I have not seen our very limited effort to be in any way competitive with UDS. In fact, we have encouraged several hospitals to become UDS subscribers. All of the data used by RehaBase comes from individual hospitals. Nothing is drawn from the UDS database provided to RAND, to which we have no access. The RehaBase process is designed to use data from hospitals, providing an analysis that could be done by the hospital itself if it were disposed to invest the time and effort. This project was stimulated by requests from rehab hospitals and units for cost analysis, particularly pertaining to FRGs. It was begun on the supposition that the RAND report would be forthcoming on a timely basis and be available to all concerned. This, of course, has not happened. If FRGs are going down the tubes there won't be much interest in the service anyway. We may decide to refund the few deposits we have received for this service and forget the whole thing.

Since we have come this far, however, it would be helpful to understand the substance and cost of the license you suggest. I am unclear what would be licensed. If the RAND report is issued it will be in the public domain. If it is not or comes out without the information needed to classify patients I don't know what good a license will do, because no one, including UDS, will be able to represent its contents to interested parties. What sort of license will finesse this reality? I will be interested in your thoughts on this point.

I believe that all of the information on the RehaBase web page pertaining to the RAND report is drawn from either Margaret Stineman's original work or public presentations on the RAND study made by the principal investigator. As you may know Dr. Carter has made several such presentations at HCFA and at meetings of the American Rehabilitation Association. Please let us know of any items you feel do not reflect such public information.


In the interests of amicably addressing these issues I will let your comment about my candor pass. I can assure you that my assessment of the prospects for a PPS payment system and the significance of release of the RAND report relative thereto have nothing to do with analyzing costs for a few hospitals. FRGs got started because I and others organized a fund raising effort in 1990 to finance Margaret Stineman's initial work. My personal and professional interest in seeking a rational basis for Medicare payment reflects 25 years of working with and for rehab facilities. I am very sorry if Carl Granger sees my involvement in this matter as driven by self-interest. That, to use your term, seems "harsh."

I would be pleased to discuss these matters with you. I would also urge you to make an independent assessment of the prospects for FRGs as a basis for Medicare payment and the dynamics of the issue within HCFA. In protecting its perceived "rights" your client risks encouraging HCFA to adopt a different patient classification system. If that happens, FRGs are history.

As noted, I am phasing out this year to engage in less frustrating matters. Getting nasty letters after making a trip to Buffalo as a favor to Dr. Granger and providing him with information not otherwise available to him certainly confirms that determination. Incidentally, when I was in Buffalo I noticed that your client had reprinted several pieces I wrote for the American Rehab newsletter and distributed these to the attendees, without permission. Should I be flattered or retain counsel?

I look forward to hearing from you.

Sincerely,

A handwritten signature in black ink, appearing to read "Joe W. Fleming, II". The signature is stylized and includes a long horizontal flourish extending to the right.

Joe W. Fleming, II

cc: Carl Granger

SISKIN HOSPITAL
FOR PHYSICAL REHABILITATION™

September 4, 1997

Robert P. Main, FACHE

President and CEO

Dr. Gary Clark

Buffalo General Hospital

100 High Street

Buffalo, NY 14203-1154

Dear Dr. Clark:

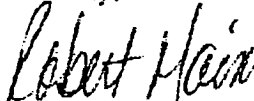
I am writing to you as Chair of the American Hospital Association Section for Long-Term Care and Rehabilitation Hospitals and Programs and the Medical Steering Committee of the American Rehabilitation Association.

The recently enacted Balanced Budget Act of 1997 provides for implementation of a rehabilitation prospective payment system (RPPS) on October 1, 2000. The RPPS will be phased in over a two-year period. Over the next few months, HCFA will make critical decisions regarding the type of prospective payment system it will adopt and it is important that the rehabilitation field play a major role in this process. The timetable for implementation of a RPPS set by the Congress is based on HCFA's representations as to the time required to implement a system based on functional related groups (FRGs). A payment system based on FRGs has been designed for HCFA by the RAND Corporation. The final RAND Report has been at HCFA for several months, but has not been made available to the public because of opposition from the Uniform Data System (UDS).

RAND utilized data from UDS (with permission of individual UDS subscriber hospitals) in designing the RPPS. The RAND Report does not contain any data identifying individual facilities. It does contain case weights and other payment variables, which should be available to the field in order to assess the system it proposed. UDS is apparently opposed to release of the full report in hopes of retaining some sort of commercial advantage in the RPPS. The more likely effect, unfortunately for the field, is that it will encourage HCFA to use some other system much less oriented to the needs of rehabilitation patients and providers, such as resource utilization groups (RUG's III).

Your facility granted permission for its UDS data to be supplied to HCFA for use by RAND. Enclosed is a letter I have written to Dr. Granger at UDS about this matter. I think it would be helpful if you and others involved in the matter would express your interest to Dr. Granger in having the RAND Report, in full, released to the public. Please feel free to use my letter in helping you compose your own letter. If you have any questions, please feel free to contact me.

Sincerely,



Robert P. Main


SISKIN HOSPITAL
FOR PHYSICAL REHABILITATION

Robert P. Main, FACHE
President and CEO

July 25, 1997

Carl V. Granger, M.D.
The Buffalo General Hospital
Neuroscience Center
100 High Street
Buffalo, New York 14203

COPY

Dear Dr. Granger:

I am writing to you as chair of the American Hospital Association Section for Long-Term Care and Rehabilitation Hospitals and Programs and the Medical Steering Committee of the American Rehabilitation Association.

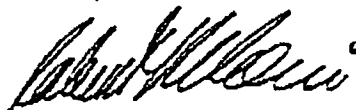
On behalf of these groups I urge you to make every effort to have the full text of the RAND report released by HCFA as soon as possible. The Congress has finally authorized a Medicare prospective payment system for rehabilitation. It is critical that the RPPS that is adopted by HCFA properly gauges the condition and needs for service of rehabilitation patients. HCFA seems intent on using a patient classification system developed for nursing homes. We need to work for a consensus among rehabilitation providers about an RPPS.

I have personally been skeptical about FRG's. I have concerns about coding and other aspects of the system. But, others and I have withheld judgement until we have an opportunity to study and evaluate the system devised by RAND. I understand that you are asking HCFA to withhold the report from the public, or to release only an abridged version of it.

I do not know the basis for this position and would not presume to advise you about the interests of UDS. I can only indicate that it is urgent to get the RAND report out so that the rehabilitation field can adopt a strategy for developing the best possible RPPS with HCFA. I hope you will do whatever you can to get the RAND report released in full.

If it would be helpful to discuss the matter, please call me.

Sincerely,



Robert P. Main

RPM/lge
cc: Ms. Susanne Sonik, AHA
Ms. Carolyn Zollar, ARA

UBF1065



**The
Functional
Assessment
Specialists**

December 4, 2003

Daniel A. Relles, Ph.D.
RAND
1700 Main Street
P.O. Box 2138
Santa Monica, CA 90406-2138

Dear Dan,

Thank you for sending along the two articles ("Evaluating the planned substitution of the minimum data set..." by Buchanan et al., and "Identifying and accommodating statistical outliers when setting..." by Paddock et al.) for UDSMR review. We have reviewed both articles and will provide feedback for each below. Prior to that discussion, however, I think that we should first revisit the original agreements to make sure we are all on the same page regarding use of UDSMR data provided to RAND via CMS.

Contractual Agreements

The agreements signed in 1995 between UDSMR and CMS, CMS and RAND, and UDSMR and RAND provide the basis for how UDSMR data are to be handled. These arrangements were carefully constructed to ensure that all parties obtained what they needed so that they could perform work commissioned by CMS, while at the same time providing appropriate protection to the intellectual property and proprietary information of each party. In our email correspondence recently you stated that you did not have copies of all of these agreements, and you will recall that I faxed the missing documents to you, so you should now have the full set.

Based upon these agreements, it is our position that if CMS has not directed RAND to publish UDSMR information as part of its work on the PPS, or, regardless of the involvement of CMS, RAND is publishing materials incorporating data obtained from UDSMR, then RAND must obtain permission from UDSMR prior to publication. Such permission is independent from any timelines RAND is attempting to follow. To ensure that RAND does not needlessly work on a publication only to find that permission to publish is withheld, we recommend that early in the writing process RAND contact UDSMR and obtain permission. If such permission is withheld, then RAND may not publish. As I indicated to you in a previous communication, UDSMR is generally supportive of RAND's interest in publishing on the data, and will not unreasonably withhold such permission.

Uniform Data System

**for Medical
Rehabilitation**

Telephone
716.817.7800

Facsimile
716.568.0037

E-mail
info@udsmr.org

Website
www.udsmr.org

Suite 300
270 Northpointe Parkway
Amherst, New York
14228



University at Buffalo

UBF1066

We trust that the information provided above gives RAND a clear indication of our expectations. We would be delighted to discuss these issues with you or any representative of RAND at your convenience.

Sincerely,

A handwritten signature in cursive script that reads "Dick Linn". The signature is written in black ink and is positioned above the printed name.

Richard T. Linn, Ph.D.
Director

UDSMR™ POSITION STATEMENT CONCERNING HCFA/RAND REPORTS ON THE DEVELOPMENT OF A PROSPECTIVE PAYMENT SYSTEM FOR MEDICAL REHABILITATION

Summary Statement (See Full Explanation on pages 3-7)

September 1997

UDSMR is becoming increasingly aware of statements (both verbal and published) being made within the rehabilitation community which imply that UDSMR is standing in the way of HCFA's efforts to adopt a prospective payment system (PPS) for medical rehabilitation based on UDSMR's FIM™¹ instrument and the FIM/FRGs². In light of this and other recent statements which contain inaccuracies and incomplete information, and because of the national significance of the implementation of a PPS for medical rehabilitation, UDSMR desires to disclose the facts and circumstances surrounding its involvement with HCFA and the Rand Corporation ("RAND") in order to correct any misunderstandings and so that future statements may be based on accurate information.

Summary of UDSMR Position

Dr. Carl Granger and his colleagues at UDSMR have worked diligently for almost 15 years to develop and implement an outcomes measurement system for medical rehabilitation which would benefit the rehabilitation community and its patients. The centerpiece of this effort has always been adherence to the uniformity, validity and scientific integrity of the FIM instrument and the associated data, as well as maintenance of UDSMR's strict independence to assure unbiased results. Although Dr. Granger has always believed strongly in the free flow of ideas among researchers and others, UDSMR has had no choice but to take steps to protect the FIM instrument and data so valuable to the field and to UDSMR's subscribers.

The present issue with HCFA over publication of the RAND Corporation reports involves the protection of UDSMR's **intellectual property rights under its agreements with HCFA**. The premature dissemination of the **draft reports** without UDSMR's consent has already led to improper commercial exploitation by third parties of the information contained in those reports, and UDSMR seeks only to avoid further breaches of its proprietary rights. UDSMR has requested deletion of certain information for purposes of general publication, and has **agreed to make the full reports available subject to appropriate terms and conditions**. Failure by UDSMR to take these steps will, UDSMR believes, lead to a deterioration in the uniformity and integrity of the FIM instrument and a significant loss of its importance to the rehabilitation field.

¹ FIM is a trademark of UDSMR

² The FIM/FRGs were developed by Dr. Margaret Stineman at the University of Pennsylvania and are owned by the Trustees of the University of Pennsylvania. UDSMR has exclusive rights to use and incorporate the FIM/FRGs into products and services.

UDSMRSM: The FIM SystemTM

Current Status

1. HCFA wants to release the RAND reports for publication. The rehabilitation field (including various for-profit commercial ventures) is anxiously awaiting release of the reports in order to permit the rehabilitation industry to evaluate the usefulness of a PPS based on the FIM System and the modified version of the FIM/FRGs.
2. UDSMR is willing to permit HCFA to release the RAND reports, provided that HCFA removes certain information that is proprietary to UDSMR. UDSMR has made specific proposals to HCFA as to the information which must be deleted and final agreement between HCFA and UDSMR is anticipated shortly.
3. UDSMR stands ready to provide consulting services to assist in the evaluation of the effect of the proposed PPS on inpatient medical rehabilitation.

UDSMR Mission

To develop, refine, promote and maintain the FIM measuring instrument and its accompanying dataset and technology (the "FIM SystemTM") in response to the need to measure, record and track the severity of patient disability and the outcomes of medical rehabilitation in a uniform manner.

UDSMR has carried out this mission through a not-for-profit entity with the primary purpose of serving the field of medical rehabilitation in an evenhanded, uniform way and has rejected all offers and proposals from third parties (including offers to purchase the FIM System) which might compromise or give the appearance of compromising UDSMR's mission or principles.

For more information, contact: James A. Phillips, MS, CEO
Uniform Data System for Medical Rehabilitation
232 Parker Hall, 3435 Main Street
Buffalo, New York 14214
(716) 829-2076, ext. 31
(716) 829-2080 (FAX)

*****NOTE TO OUR SUBSCRIBERS*****

**FOR INFORMATION REGARDING A CUSTOM REPORT FOR YOUR FACILITY,
PLEASE CONTACT**

DAVID LUNTZ AT (716) 829-2076 x36

¹FIM System is a trademark of UDSMR. All copyrights in the FIM System and the components thereof are owned by UDSMR.

UDSMR™ POSITION STATEMENT CONCERNING HCFA/RAND REPORTS ON THE DEVELOPMENT OF A PROSPECTIVE PAYMENT SYSTEM FOR MEDICAL REHABILITATION

September 1997

UDSMR is becoming increasingly aware of statements (both verbal and published) being made within the rehabilitation community which imply that UDSMR is standing in the way of HCFA's efforts to adopt a prospective payment system (PPS) for medical rehabilitation based on UDSMR's FIM™¹ instrument and the FIM/FRGs². A recent article in *American Health Consultants' Rehab Continuum Report* (Vol. 6, No. 10, October 1997, p.133-135) states "A recent dispute between Uniform Data System for Medical Rehabilitation (UDSMR) and the Health Care Financing Administration (HCFA) over proprietary information in the Santa Monica, CA-based RAND Corporation's report on FRGs has delayed the release of the report and HCFA's final decision on a PPS". UDSMR believes there is a substantial amount of misinformation circulating in the field regarding UDSMR's relationship with HCFA which may be leading to inaccurate conclusions. In light of this and other recent statements which contain inaccuracies and incomplete information, and because of the national significance of the implementation of a PPS for medical rehabilitation, UDSMR desires to disclose the facts and circumstances surrounding its involvement with HCFA and the Rand Corporation ("RAND") in order to correct any misunderstandings and so that future statements may be based on accurate information.

I. Summary of UDSMR Position

Dr. Carl Granger and his colleagues at UDSMR have worked diligently for almost 15 years to develop and implement an outcomes measurement instrument for medical rehabilitation which would benefit the rehabilitation community and its patients. The centerpiece of this effort has always been an unbending adherence to the uniformity, validity and scientific integrity of the FIM instrument and associated data, as well as maintenance of UDSMR's strict independence to assure unbiased results. Although Dr. Granger has always believed strongly in the free flow of ideas among researchers and others, UDSMR has had no choice but to take steps to protect the FIM instrument and data so valuable to the field and to UDSMR's subscribers.

The present issue with HCFA over publication of the RAND reports involves the protection of UDSMR's **intellectual property rights under its agreements with HCFA**. The premature dissemination of the **draft reports** without UDSMR's consent has already led to improper commercial exploitation by third parties of the information contained in those reports, and UDSMR seeks only to avoid further breaches of its proprietary rights. UDSMR has requested deletion of certain information for purposes of general publication, and **has agreed to make the full reports available subject to appropriate terms and conditions.**

Failure by UDSMR to take these steps will, UDSMR believes, lead to a deterioration in the uniformity and integrity of the FIM instrument and a significant loss of its importance to the rehabilitation field.

¹FIM is a trademark of UDSMR

²The FIM/FRGs were developed by Dr. Margaret Stineman at the University of Pennsylvania and are owned by the Trustees of the University of Pennsylvania. UDSMR has the exclusive rights to use and incorporate the FIM/FRGs into products and services.

II. UDSMR Mission

To develop, refine, promote and maintain the FIM measuring instrument and its accompanying dataset and technology (the "FIM SystemTM") in response to the need to measure, record and track the severity of patient disability and the outcomes of medical rehabilitation in a uniform manner. (see also Item VI below)

UDSMR has carried out this mission through a not-for-profit entity with the primary purpose of serving the field of medical rehabilitation in an evenhanded, uniform way and has rejected all offers and proposals from third parties (including offers to purchase the FIM System) which might compromise or give the appearance of compromising UDSMR's mission or principles.

III. License Agreement with HCFA (1995)

- A. Purpose: To grant to HCFA a limited license to evaluate and implement UDSMR's FIM System as the basis for a PPS for medical rehabilitation.
- B. Summary of License Provisions:
1. The license granted to HCFA was in two distinct phases. The first phase license was solely for the purpose of evaluating the FIM System. The second phase license (not yet implemented) is contingent upon HCFA adopting the FIM System as the basis for a PPS.
 2. In the first phase, UDSMR granted HCFA a license to evaluate the suitability of the proprietary FIM System and gave HCFA access to proprietary data from its Adult FIM database, as well as other related information including proprietary algorithms, processes, etc. ("Information"), all subject to the terms of a confidentiality agreement.
 - a. UDSMR subscribers were contacted individually and asked for permission to make their data available to HCFA.
 - b. UDSMR acknowledged that HCFA intended to hire a subcontractor to evaluate the FIM System and agreed HCFA could sublicense the FIM System to its subcontractor and give its subcontractor access to UDSMR's Information on the condition that the subcontractor sign a confidentiality agreement and consent to certain minimum sublicense terms and conditions aimed at protecting the proprietary nature of the material disclosed. HCFA subsequently designated RAND as its subcontractor and RAND signed the confidentiality agreement and agreed to the sublicense terms in October 1995.

(continued)

¹FIM System is a trademark of UDSMR. All copyrights in the FIM System and the components thereof are owned by UDSMR.

UDSMRSM: The FIM SystemTM

- c. The confidentiality agreement signed by RAND provides that RAND must keep confidential all Information supplied by UDSMR (including any such Information as modified by RAND). In particular, RAND is not authorized to market, modify, license or publish, or authorize anyone else to release the Information.
 - d. HCFA was granted a period of up to 10 years to accept or reject the FIM System as the basis for a PPS.
3. In the second phase, contingent upon HCFA adopting the FIM System at the conclusion of the evaluation phase, HCFA will receive a non-exclusive, royalty-free, perpetual license to use the FIM System in a PPS.
 - a. HCFA's license is limited to a PPS for Medicare inpatient rehabilitation services.
 4. In the event that HCFA rejects the FIM System as the basis for a PPS, all rights and licenses granted to HCFA will automatically terminate and HCFA will be required to return, and cause its subcontractors to return, to UDSMR all materials and data relating to the licensed system, the Information and all modifications and derivatives thereof.
 5. As the license granted to HCFA was non-exclusive and expressly limited, UDSMR retains full rights to the FIM System, the Information and all modifications and derivatives thereof for all U.S. and international applications.

C. UDSMR Costs: Other Relevant Information:

1. All costs and expenses incurred by UDSMR in connection with the negotiation, execution and implementation of the License Agreement, including communications with and consents from subscribers, preparation and transfer of data, interpretation and explanation of FIM System and data, and drafting of legal contracts were absorbed 100% by UDSMR with no reimbursement from HCFA.
 2. UDSMR will not receive any fees, royalties or other compensation whatsoever from HCFA or RAND in connection with the License Agreement.
 3. The American Rehabilitation Association (ARA) was kept apprised of this process (including receiving copies of draft contracts) at each stage in the negotiations.
-

IV. Events Since Execution of License Agreement

- A. RAND was hired as subcontractor to HCFA to evaluate the FIM System.
- B. RAND completed its evaluation of the suitability of the FIM System as a basis for a PPS for medical rehabilitation.

Comment: UDSMR agrees with the RAND report findings that the FIM instrument and derivatives are an appropriate basis for an inpatient rehabilitation PPS.

- 1. In 1996, RAND released "drafts" of two reports of its evaluation and conclusions, which were designated as "Not Cleared for Open Publication". UDSMR contends that the RAND reports contain information to which UDSMR has proprietary rights under its agreements with HCFA (and HCFA's agreements with RAND), including without limitation the modified version of the FIM/FRGs which RAND developed using UDSMR's data and information.
- 2. UDSMR believes one or both of these draft reports were distributed to RAND's two "advisory panels", neither of which included any representative of UDSMR. Copies of the draft reports were also provided to UDSMR.
- 3. The two RAND reports (listed below) have now been finalized by RAND and are awaiting release by HCFA for publication:
 - a. "A Classification System for Inpatient Rehabilitation Patients: A Review and Proposed Revisions to the Functional Independence Measure-Function Related Groups"
 - b. "A Prospective Payment System for Inpatient Rehabilitation"
- C. One or more commercial enterprises have developed proprietary products incorporating data and information obtained from or derived using proprietary UDSMR information contained in the restricted draft RAND reports.

V. Current Status

- A. HCFA wants to release the RAND reports for publication. The rehabilitation field (including various for-profit commercial ventures) is anxiously awaiting release of the reports in order to permit the rehabilitation industry to evaluate the usefulness of a PPS based on the FIM System and the modified version of the FIM/FRGs.

(continued)

- B. UDSMR is willing to permit HCFA to release the RAND reports, provided that HCFA removes certain information that is proprietary to UDSMR. UDSMR has made specific proposals to HCFA as to the information which must be deleted and final agreement between HCFA and UDSMR is anticipated shortly.
- C. UDSMR stands ready to provide consulting services to assist in the evaluation of the effect of the proposed PPS on inpatient medical rehabilitation.

VI. UDSMR Principles of Operation

UDSMR was founded upon and continues to operate in accordance with the following basic principles:

- A. To enable clinicians and facilities to document severity of patient disability and to measure outcomes of medical rehabilitation in a uniform way.
- B. To establish a common language which may be used to discuss disability across the disciplines.
- C. To evaluate the efficiency and effectiveness of rehabilitation care for purposes of continuous quality improvement.
- D. To establish and maintain STANDARDS for collection, reporting and uses of UDSMR data.
- E. To achieve and maintain UNIFORMITY through various elements, tools, processes, and methodologies that include uniform data sets and databases (national and international), education, training, credentialing, research and development, and feedback reporting.
- F. Other principles governing database management include: reliability; validity; integrity; independence; feasible for use in clinical settings; economical; supported by education, training and credentialing; accessibility to inquiries; continuous refinements; data conform to expected response patterns; facilitate data transmission; error identification and correction; external cross-validation (Medpar tapes); account for secondary gain (gaming/guessing scores); case mix adjustment.

For more information, contact:

James A. Phillips, MS, CEO
Uniform Data System for Medical Rehabilitation
232 Parker Hall
3435 Main Street
Buffalo, New York 14214
(716) 829-2076, ext. 31
(716) 829-2080 (FAX)

April 9, 1997

**Via Telecopy
410-786-6593**

The Healthcare Financing Administration
7500 Security Boulevard
Baltimore, Maryland 21244-1850

Attention: William Buczko, PhD

Dear Dr. Buczko:

Re: Proposed Publication of Rand Reports

We represent Uniform Data System for Medical Rehabilitation ("UDSMR"). You requested that UDSMR provide in writing the reasoning behind UDSMR's objection to the publication of the two proposed Rand reports listed below relating to its evaluation of UDSMR's FIMSM system and the development of a prospective payment system for rehabilitation:

1. *A Patient Classification System for Inpatient Rehabilitation Patients: A Review and Proposed Revisions to the FIM-FRG's (MR-857-HCFA) (the "Evaluation Report").*
2. *A Prospective Payment System for Inpatient Rehabilitation (DRR-1593-HCFA).*

While several portions of the proposed reports concern us, we are particularly concerned about the disclosure of the CART Trees contained in Appendix D to the Evaluation Report. Moreover, we object to any publication relating to the evaluation by Rand of the UDSMR FIM system at this point as a violation of the various agreements entered into by UDSMR, HCFA and Rand.

As you know, UDSMR entered into a License Agreement with HCFA pursuant to which UDSMR granted HCFA a license to use the FIM system in two specific phases.

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First, to use the FIM system and to grant sublicenses to third parties solely for the purpose of evaluating the use of the FIM system as the basis of a case-mix adjusted prospective payment system for Medicare inpatient rehabilitation services. Second, subject to HCFA's adoption of the FIM system as the basis for a PPS, a license to use the FIM system in connection with the implementation of such a system. As HCFA has not yet adopted the FIM system as the basis of a PPS, the sole license rights granted to HCFA (or to third parties via sublicense) at this time are pursuant to Section 1 of the License Agreement relating to evaluation of the FIM system. It was always UDSMR's understanding that during the evaluation phase HCFA's subcontractor would conduct research under HCFA's direction and supervision and that the results would be communicated only to HCFA and only for the purpose described in our agreement.

Rand entered into three agreements with HCFA related to evaluation of the FIM system: (1) a Third-Party Confidentiality Agreement, (2) an Agreement for Release of Proprietary Data and (3) Terms and Conditions for Sublicense of UDSMR Data and Licensed System. The Confidentiality Agreement was necessary as a result of the disclosure by UDSMR of data and other information to HCFA and Rand to be used in connection with the evaluation of the FIM system, including without limitation disclosure of data from UDSMR's FIM database. Note that Section 2 of the Confidentiality Agreement specifically prohibits publication of any Information without the prior written consent of UDSMR and HCFA.

Furthermore, HCFA's Agreement for Release of Proprietary Data further restricts use of data disclosed by UDSMR to Rand. This agreement specifically limits Rand's use of the data to research under HCFA's contract No. 500-92-0023. In addition, Section 2 of this agreement prohibits Rand from releasing to "any other organization or individual" any of the information provided by UDSMR or any information "extracted or derived from" UDSMR's information. This would include Rand's version of the FRG's as contained in the CART Trees and much of the other data contained in the various tables in the reports, all of which were developed using UDSMR's data.

Finally, the Terms and Conditions for Sublicense provide that (1) Rand shall only act at the direction of HCFA and within the scope of the license, (2) Rand has no right to use the licensed system or any UDSMR information beyond the scope of the sublicense agreement (i.e., for evaluation), and (3) Rand shall disclose all modifications, enhancements, improvements and derivative works to HCFA only and shall not acquire any rights to any of the foregoing.

All of the foregoing leaves us wondering why there is any discussion about the publication of reports relating to Rand's research and concerned as to whether the agreements

The Healthcare Financing Administration

April 9, 1997

Page 3

which were signed are taken seriously by Rand. Rand has told UDSMR that they "always" publish the results of their research for HCFA. However, it was never UDSMR's understanding that Rand would have the right to publish the results, much less any derivative works which were derived from the licensed system or UDSMR's data, especially prior to HCFA's making a determination as to adoption of the FIM system. In fact, you may recall that one of UDSMR's chief concerns in negotiating the License Agreement with HCFA was the issue of selecting a subcontractor and ensuring that the agreements with the subcontractor incorporated adequate protections of UDSMR's intellectual property rights.

Unfortunately, the consequences of even a preliminary distribution of the Evaluation Report are already evident. We are aware that a draft of the Evaluation Report was distributed during the Summer of 1996 to one or more "advisory technical panels" consisting of many prominent individuals in the rehabilitation industry. To our knowledge, none of these individuals was required to sign a confidentiality agreement to protect the information in the reports. There is now evidence that Rand's version of the FRG's derived from the FIM system and UDSMR's data are being used for commercial purposes including consulting tools and other products and services and, in fact, portions are published and available via the Internet. The distribution of the draft report to the advisory panels was done without UDSMR's prior notice and, we believe, constituted a serious violation of our agreement with HCFA. We seek to avoid any further violation of UDSMR's rights under the foregoing agreements by restricting the distribution of the final Rand reports to those individuals whose review is necessary in connection with the evaluation of the FIM system. To the extent any such individuals are not covered by existing agreements, disclosure should be accompanied by appropriate confidentiality agreements.

We welcome the opportunity to discuss these matters with you as well as an appropriate remedy for the prior unauthorized disclosures. At a minimum, all efforts must be made to notify those who have received the draft reports that any further misuse of the proprietary information contained in the reports may have legal consequences. Please call us at your convenience.

Very truly yours,

David V. L. Bradley

tak

Copies to: Ms. Kathy Dann
Barbara O. Wynn, Deputy Director (fax: 410-786-0765)
Tricia T. Semmelhack, Esq.

CORPORATE:114145_1 (2G2P_1)

UBF1078



DEPARTMENT OF HEALTH & HUMAN SERVICES

Health Care Financing Administration

Office of Research and Demonstrations
7500 Security Boulevard
Baltimore, MD 21244-1850

June 3, 1997

David V. L. Bradley, Esq.
Hodgson, Russ, Andrews, Woods & Goodyear, LLP
1800 One M&T Plaza
Buffalo, New York 14203-2391

Dear Mr. Bradley:

This is in response to your letter of April 9, 1997, in which you expressed Uniform Data System for Medical Rehabilitation's (UDSmr) concerns with the publication of two RAND reports relating to its evaluation of UDSmr's FIM system and the development of a prospective payment system for rehabilitation. The two reports in question are:

1. A Patient Classification System for Inpatient Rehabilitation Patients: A Review and Proposed Revisions to the FIM-ERG's (MR-857-HCFA).
2. A Prospective Payment System for Inpatient Rehabilitation (DRR-1593-HCFA).

In your letter, you cite to various provisions of the License Agreement between UDSmr and the Health Care Financing Administration (HCFA) which, in your view, restrict the publication of the evaluation reports. Based upon our review of the License Agreement, it does not appear to us that publication of these reports would violate the terms of the agreement.

Since HCFA has not adopted UDSmr's system as the basis for a prospective payment system, HCFA's rights with respect to UDSmr's system are governed exclusively by Section 1 of the License Agreement, entitled "License for Payment System Research." This provision essentially gives HCFA a license to use UDSmr's system for the purpose of evaluating their system as the basis for a prospective payment system. Section 1 of the License Agreement also permits HCFA to grant to a third-party a limited sublicense to use UDSmr's system for purposes of such an evaluation. HCFA retained RAND to assist it in that evaluation.

UBF1079

Page 2 - David V. L. Bradley, Esq.

Section 1 of the License Agreement between HCFA and UDSmr provides that any sublicense granted to a third party to use the system is to be subject to the Third Party Confidentiality Agreement. In general, that confidentiality agreement provides in Section 2, entitled "Use of Information: Limitations," that a third party may not publish any of the information contained in UDSmr's licensed system without the prior written consent of HCFA and UDSmr.

The two reports identified above which RAND proposes to publish relate exclusively to the evaluation of UDSmr's system and contain the results of that evaluation. The reports do not reveal any information from UDSmr's system. Hence, we do not believe that publication of these reports violates any of the terms and conditions of either the License Agreement or the Third Party Confidentiality Agreement.

Of course, it is not our intention to disclose information contrary to the terms and conditions of the License Agreement. If you can show us that disclosure of certain information contained in the two reports at issue is precluded by a specific provision of the agreement, we will withhold those portions of the report from publication. However, based upon our review of the License Agreement and confidentiality agreements, we do not see that there is any limitation placed upon publication of the results of the evaluation of UDSmr system, which does not disclose information contained in the system.

As indicated above, we would welcome any additional information you can provide to establish that the publication of information in the RAND reports is prohibited by a term of the license or confidentiality agreements. Please contact me if you have any questions or desire to discuss this matter.


Sincerely yours,



William Buczko, Ph.D.
Research Analyst
Office of Research and Demonstrations
Division of Payment Systems

cc: Barbara Wynn
Rodney Benson
Tom Gustafson

UBF1080


**HODGSON RUSS
ANDREWS
WOODS &
GOODYEAR_{LLP}**
ATTORNEYS AT LAW

David V. L. Bradley
Partner
DIRECT: 716-848-1208

1800 One M&T Plaza
Buffalo, NY 14203-2391
716-856-4000
FAX: 716-849-0349 M&T
FAX: 716-852-5185 GUARANTY

*Albany
Boca Raton
Buffalo
New York
Rochester
Mississauga
(Toronto)*

June 17, 1997

VIA TELECOPY
410-786-6593

William Buczko, Ph.D.
Research Analyst
Division of Payment Systems
Health Care Financing Administration
Office of Research and Demonstrations
7500 Security Boulevard
Baltimore, Maryland 21244-1850


Dear Dr. Buczko:

Re: UDSMR - Publication of Rand Reports

Thank you for your letter of June 3, 1997. We appreciate your statement that HCFA does not intend to disclose information contrary to the terms of our license agreement. We are in the process of reviewing the license agreement and related documents in order to provide you with a more detailed explanation of our position. We expect to be able to respond to you shortly.

We look forward to resolving this matter in a prompt and cooperative manner. In the meantime, we trust you will continue to withhold publication of the final Rand reports.

Very truly yours,


David V. L. Bradley

tak

Copies to: Ms. Kathleen Dann
Barbara O. Wynn, Deputy Director (via telecopy/410-786-0765)

CORPORATE:127008_1 (2Q00_1)

UBF1081

July 11, 1997

**VIA FACSIMILE TO:
410-786-6511**

William Buzcko, Ph.D.
Research Analyst
Division of Payment Systems
Health Care Financing Administration
Office of Research and Demonstrations
7500 Security Boulevard
Baltimore, Maryland 21244-1850

Dear Dr. Buzcko:

Re: Uniform Data System for Medical Rehabilitation

In response to your letter of June 3, I believe my previous letter dated April 9 addressed UDSMR's specific concerns regarding publication of the Rand reports. However, I will attempt to provide further clarification of UDSMR's position.

There is no dispute that HCFA's rights at this stage are governed by Paragraph 1 of the License Agreement and that HCFA has an obligation to protect UDSMR's rights pursuant to other sections of that Agreement and the Confidentiality Agreements. At issue is whether the two Rand Reports contain information which, if published without UDSMR's consent, would violate UDSMR's rights.

Your letter states HCFA's belief that publication is appropriate because the reports do not reveal any information from UDSMR's licensed system. However, as stated in my prior letter, UDSMR always understood that the work of HCFA's subcontractor would be only for HCFA's benefit and would be communicated only to the Agency. Furthermore, protection under the Agreements extends well beyond the "licensed system" to encompass any of UDSMR's copyrighted, confidential or proprietary materials; any data or information from the Adult FIMSM Database, including but not limited to, any such data or information modified by HCFA or any third party during the course of the project; any trade secret

UBF1082

William Buzcko, Ph.D.
July 11, 1997
Page 2

information related to use of the Adult FIMSM Database; and any data or files extracted or derived from the files released into Rand's custody.

As evidence of the foregoing, Paragraph 3 of the License Agreement ("Terms and Conditions") states:

"HCFA shall not be authorized to use, and shall not use, nor authorize any Third Party to use any copyrighted, proprietary or confidential materials of UDSMR, or the Marks, except as expressly authorized by Sections 1 and 2 of this Agreement, and shall not violate the intellectual property rights of UDSMR."

Included among UDSMR's protected materials are the proprietary, confidential analyses and information from the Adult FIMSM Database which were provided to HCFA and sublicensed to Rand for the sole initial purpose of evaluating the Licensed System for use in the PPS.

Paragraph 6 of the License Agreement ("Confidentiality") provides that UDSMR's confidential and proprietary information disclosed to HCFA or any Third Party "shall be subject to the confidentiality covenants and other restrictions contained in this Agreement and the HCFA Confidentiality Agreement or any Third Party Confidentiality Agreement."

Turning to these latter two Agreements (Exhibits A and B to the License Agreement), the restriction on publication by HCFA or any Third Party, without UDSMR's consent, applies to any "Information," defined as any data or information provided to HCFA or any Third Party from the Adult FIMSM Database, or any data or information related to the use of the Adult FIMSM Database which constitutes trade secrets, or any such data and information as may be modified by HCFA or any Third Party during the course of the Project (Confidentiality Agreement, Paragraph 2).

Clearly, Rand is also subject to these provisions and to the important prohibitions contained in the Terms and Conditions for Sublicense (Exhibit C to the License Agreement) and in the Agreement for Release of Proprietary Data which Grace Carter and Daniel Relles also signed in October, 1996 at HCFA's request. The terms of that latter Agreement specifically apply to all files released to Rand by HCFA, and to any data or files extracted or derived from the files released into their custody.

William Buzcko, Ph.D.

July 11, 1997

Page 3

Both Rand Reports include information and materials covered by the language found in the foregoing sections of the above referenced Agreements, as for example, Rand's version of the FIMSM/FRGs, the CART regression trees and predictive cut points based on FIMSM scores and age, the LOS values, the frequency distribution of the FRGs and facility locations, and costs by FRG. Based on the foregoing, we believe distribution of the first Rand Report should not have occurred and publication of the final report should not proceed except upon UDSMR's consent.

We also reiterate our surprise that Rand disclosed UDSMR's confidential and proprietary material, including the FIMSM/FRGs, to certain panels of experts. We have not received evidence that any of these experts executed the Third Party Confidentiality Agreements required by Subparagraphs 1(a) and (b) of the License Agreement. As provided in Paragraph 2(a) of the License Agreement, if HCFA decides not to adopt the Licensed System as a basis for its payment system, all rights granted under the License Agreement will automatically terminate and each Third Party shall promptly return to UDSMR "all of UDSMR's materials and data" in its or any Third Party's possession relating to the Licensed System or the Adult FIMSM Database, and all copies thereof." In order for UDSMR to have the benefit of that provision, the data and reports should have been given only to licensed Third Parties who had agreed in writing to comply with all of the third party terms. If any such Third Party Confidentiality Agreements have been signed, we would appreciate receiving copies of them.

We are particularly concerned about this point because some of the members of Rand's advisory panels are allied with UDSMR's commercial competitors. As mentioned in my prior letter, Rand's preliminary distribution of its draft report has already been seized upon by others for commercial purposes, all to UDSMR's detriment.

In order to facilitate a resolution of this issue, UDSMR is willing to consent to a limited publication of the final Rand report to a list of proper recipients agreed to by UDSMR on the following terms:

1. Each copy of the report will include a prominent "Reservation of Rights" clause confirming UDSMR's ownership of its proprietary material including the Licensed System, the data from the Adult FIMSM Database, and all materials derived therefrom, to be provided by UDSMR, and a notice barring further distribution of the report or publication on any electronic forums;

UBF1084

2. The report will not include the CART trees or cut points, the LOS values, frequency distributions of FRGs, facility geographic distribution, or costs by FRG;
3. All individuals who received the earlier draft report will be instructed in writing that the report was delivered in error, that it may not be used and should not have been used or disclosed to others, that misuse may have legal consequences, and that the report must be returned to Rand or to HCFA together with all copies and all derivative works. Those recipients should also be asked to identify all other parties to whom they revealed the report and be required to convey to those other parties the foregoing restrictions.

As I am sure you know, UDSMR's principal objective is to benefit the rehabilitation community by protecting the uniformity, integrity, and reliability of the FIMSM database and the associated FIMSM measuring instruments. Understandably, UDSMR's many subscribers have a reasonable expectation that this uniformity, integrity, and reliability will be maintained. To that end, it is essential that UDSMR's proprietary rights be respected and that it act in an appropriate manner to protect its intellectual property so that inconsistent and/or misleading use of the measuring system and data by competitive commercial entities does not lead to confusion and loss of value. UDSMR has also made a significant investment in its materials which it is entitled to preserve.

We are confident you will understand this position and assist UDSMR as required by the contract documents. As long as its intellectual property rights are protected and its objectives are met, UDSMR is willing to grant licenses to third parties on reasonable terms for proper purposes and is willing to consent to release of the unedited final report for compelling reasons as appropriate.

William Buzcko, Ph.D.

July 11, 1997

Page 5

We would like to resolve this matter promptly along the lines suggested above and look forward to your response. If I am unavailable, please direct your communications to my partner, Tricia T. Semmelhack, who is fully familiar with this matter.

Very truly yours,

David V. L. Bradley

tak

Copies to: Mr. James Phillips (via facsimile)
Ms. Kathleen Dann (via facsimile)
Barbara O. Wynn, Deputy Director (via facsimile)

CORPORATE:131353 was 127056_1 (2Q1C_1)

UBF1086



DEPARTMENT OF HEALTH & HUMAN SERVICES

Health Care Financing Administration

*Office of Research and Demonstrations
7500 Security Boulevard
Baltimore, MD 21244-1850*

August 4, 1997

David V. L. Bradley, Esq.
Hodgson, Russ, Andrews, Woods & Goodyear, LLP
1800 One M&T Plaza
Buffalo, New York 14203-2391

Dear Mr. Bradley:

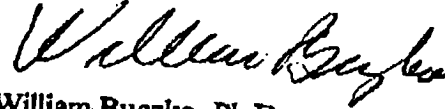
This is in response to your letter of July 11, 1997, in which you expressed Uniform Data System for Medical Rehabilitation's (UDSmr) concerns with the publication of two RAND reports relating to its evaluation of UDSmr's FIM system and the development of a prospective payment system for rehabilitation. The two reports in question are:

1. A Patient Classification System for Inpatient Rehabilitation Patients: A Review and Proposed Revisions to the FIM-FRG's (MR-857-HCFA).
2. A Prospective Payment System for Inpatient Rehabilitation (DRR-1593-HCFA).

In your letter, you again refer to various provisions of the License Agreement between UDSmr and the Health Care Financing Administration (HCFA) which, in your view, restrict the publication of the evaluation reports. You present guidelines for limited publication of the RAND reports. We would like to discuss these guidelines with you. If it would facilitate matters, we can send you copies of both RAND reports if you do not already have them. We would like you to indicate with specific page references which sections of the reports you feel violate your client's proprietary information. If you feel that the markup of the reports would not be useful, we still would like to schedule a telephone meeting with you and your client at the earliest opportunity to discuss your letter of July 11, 1997. If this course of action is acceptable to you, please notify us by August 12, 1997.

Page 2 - David V. L. Bradley, Esq.

Sincerely yours,



William Buczko, Ph.D.
Research Analyst
Office of Strategic Planning
Division of Payment Research

cc: Barbara Wynn
Rodney Benson
Tom Gustafson

UBF1088



DEPARTMENT OF HEALTH & HUMAN SERVICES

Health Care Financing Administration

Office of Research and Demonstrations
7500 Security Boulevard
Baltimore, MD 21244-1850

August 18, 1997

David V. L. Bradley, Esq.
Hodgson, Russ, Andrews, Woods & Goodyear, LLP
1800 One M&T Plaza
Buffalo, New York 14203-2391

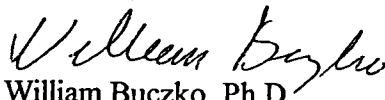
Dear Mr. Bradley:

In response our phone conversation of August 14, 1997, I have enclosed two copies of the two RAND reports relating to its evaluation of UDSmr's FIM system and the development of a prospective payment system for rehabilitation. The two reports in question are:

1. A Patient Classification System for Inpatient Rehabilitation Patients: A Review and Proposed Revisions to the FIM-FRG's.
2. A Prospective Payment System for Inpatient Rehabilitation.

You and your client have agreed to indicate the specific sections of each report which contain proprietary material that you wish to have removed from each report. We would like you to indicate with specific page references which sections of the reports you feel violate your client's proprietary information. We will be expecting your written markup of the RAND reports by August 31, 1997. I am also enclosing revised titles of HCFA staff contacts that reflect HCFA's July 1997 reorganization.

Sincerely yours,


William Buczko, Ph.D.
Research Analyst
Office of Strategic Planning
Division of Payment Research

UBF1089

Post-reorganization Changes in Titles and Office Locations.

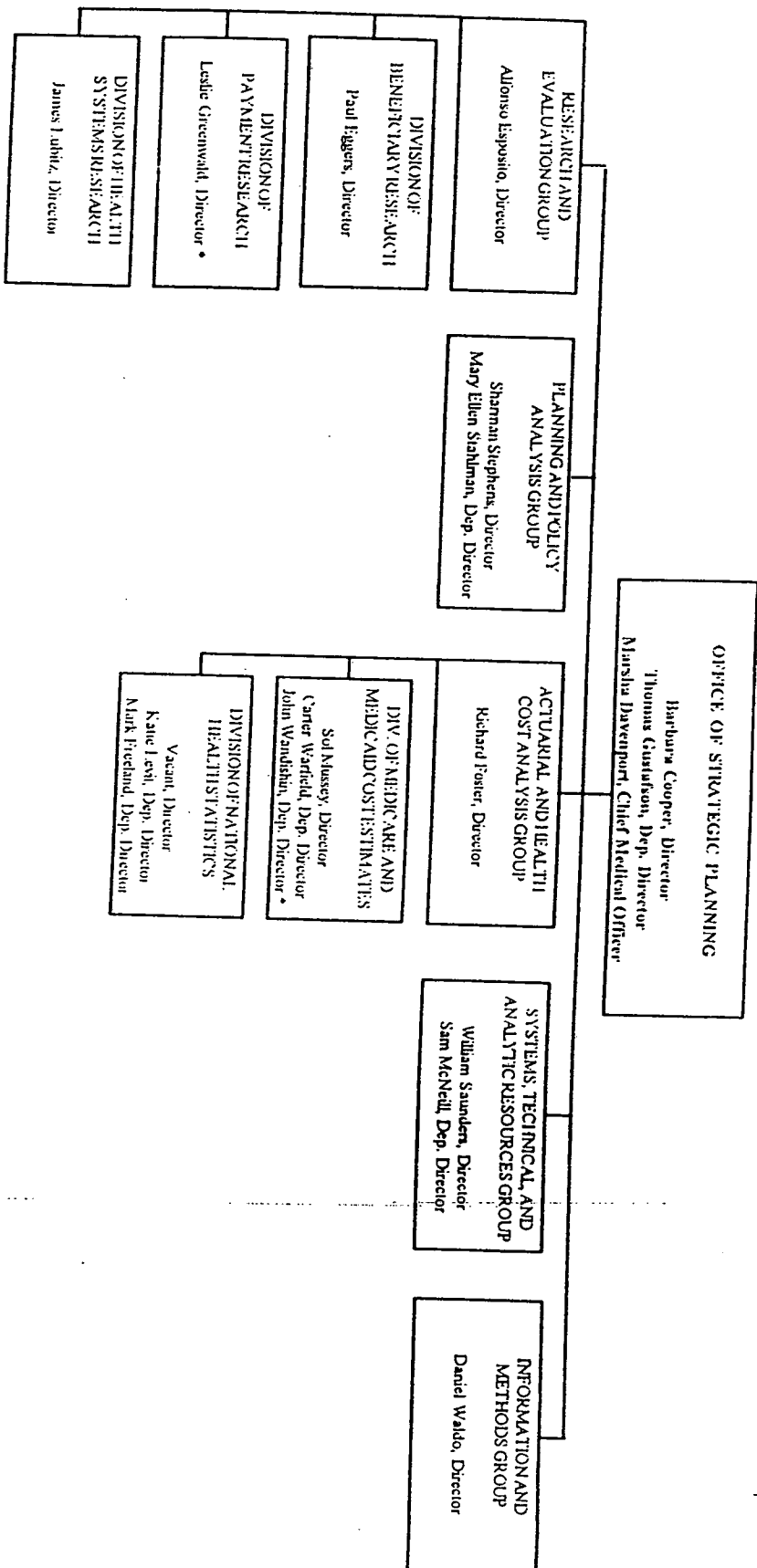
Barbara Wynn, Director, Plan and Provider Purchasing Policy Group, Center for Health Plans & Providers, C5-02-23, (410) 786-5674.

William Buczko, PhD, Research Analyst, Division of Payment Research, Research & Evaluation Group, Office of Strategic Planning, C3-16-26, (410) 786-6593.

On 9/15/97, Nancy-Ann Min DeParle replaces Bruce Vladeck as HCFA Administrator.



DEPARTMENT OF HEALTH AND HUMAN SERVICES
HEALTH CARE FINANCING ADMINISTRATION



UBF1092

APPROVED
LEADERSHIP
As of
June 25, 1997

Acting

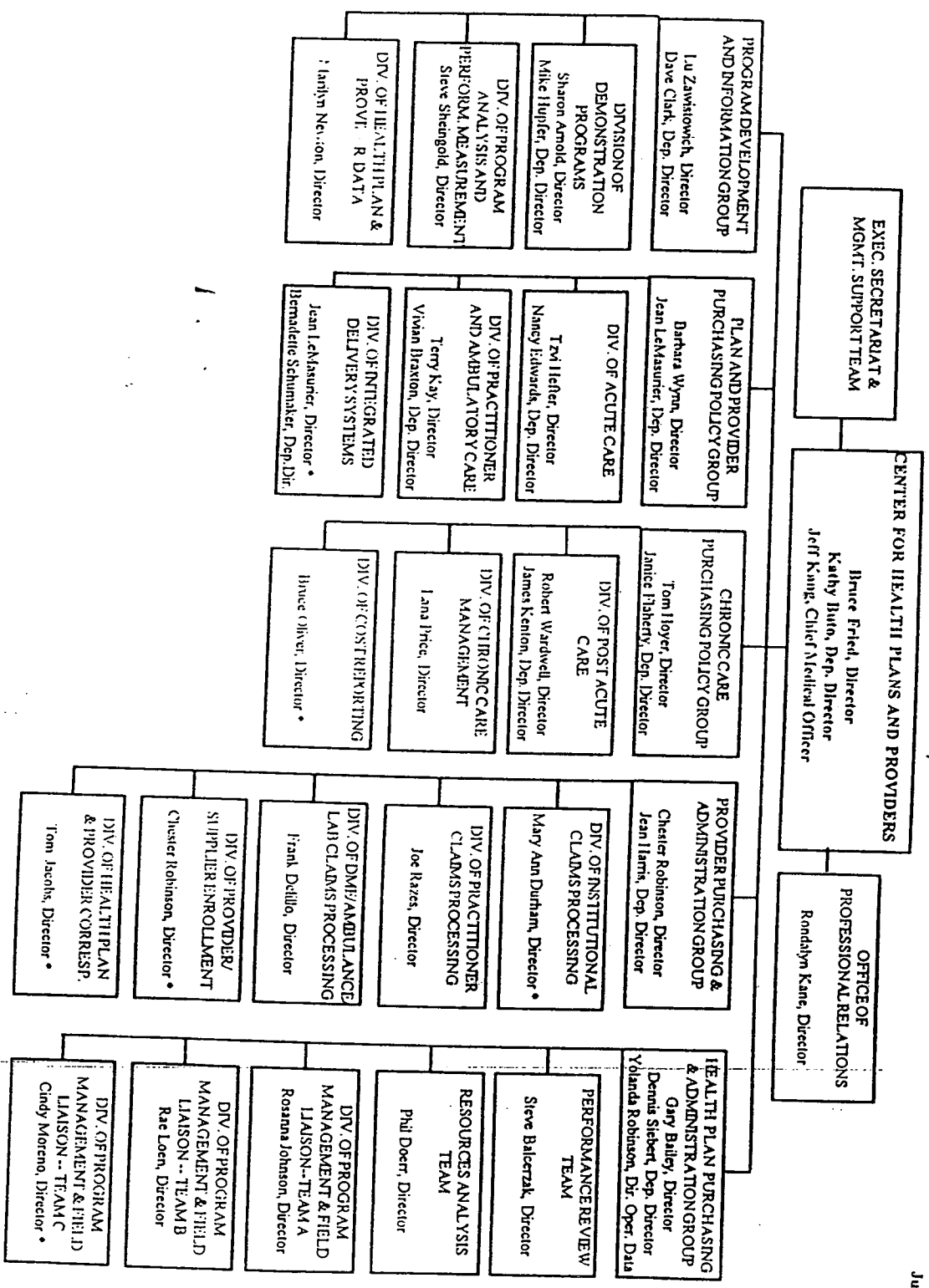


**DEPARTMENT OF HEALTH AND HUMAN SERVICES
HEALTH CARE FINANCING ADMINISTRATION**

APPROVED
LEADERSHIP

As of
July 22, 1997

UBF1093



Acting

As of August 8, 1997

CENTER FOR HEALTH PLANS AND PROVIDERS (CHPP)

| <u>NAME</u> | <u>PHONE #</u> | <u>LOCATION</u> | <u>MAILSTOP</u> |
|-----------------------------------|----------------|-----------------|-----------------|
| Bruce Fried, Director | 6-4164 | C5-24-04 | S3-02-01 |
| Kathy Buto, Dep. Director | 6-4165 | C5-24-04 | S3-02-01 |
| Jeff Kang, Chief Medical Officer | 6-1058 | C5-24-04 | S3-02-01 |
| Tom Hutchinson, Special Assistant | 6-8953 | C5-24-04 | S3-02-01 |
| Susan Hill, Special Assistant | 6-2754 | C5-24-04 | S3-02-01 |
| Martha Dixon, Secretary | (202)690-2505 | 315H HHH | 315H HHH |
| Carol Reitz, Secretary | 6-4164 | C5-24-04 | S3-02-01 |
| Sharon Little, Secreatry | 6-4165 | C5-24-04 | S3-02-01 |

EXECUTIVE SECRETARIAT AND MANAGEMENT SUPPORT TEAM (ESMS)

| | | | |
|------------------|--------|----------|----------|
| Doyle, Frank | 6-5673 | C5-03-16 | S3-02-01 |
| Espey, Patti | 6-7399 | S3-23-26 | S3-02-01 |
| McCabe, Kathleen | 6-7601 | S3-26-15 | S3-02-01 |
| McCann, Susan | 6-4046 | S3-23-23 | S3-02-01 |
| Regulski, Frank | 6-6278 | S3-01-03 | S3-02-01 |

OFFICE OF PROFESSIONAL RELATIONS (OPR)

| | | | |
|-------------------------|----------------|----------|----------|
| Rondalyn Kane, Director | (202) 205-5044 | 435H HHH | 435H HHH |
| Hardy Jr., Robert | (202) 690-8059 | 435H HHH | 435H HHH |
| Harper, Bernice | (202) 690-7899 | 445G HHH | 435H HHH |
| Lanigan, John | (202) 690-7418 | 435H HHH | 435H HHH |
| Merchant, Jay, M. | (202) 690-6616 | 428H HHH | 435H HHH |
| Wilson Jr., Chapin | (202) 690-7897 | 435H HHH | 435H HHH |

PLAN AND PROVIDER PURCHASING POLICY GROUP (PPPP)

| | | | |
|----------------------------------|--------|----------|----------|
| Barbara Wynn, Director | 6-5674 | C5-02-17 | C5-02-23 |
| Jean LeMasurier, Deputy Director | 6-1091 | S3-26-13 | S3-02-01 |
| Geisbert, Donna, Secretary | 6-5674 | C5-02-23 | C5-02-23 |
| Cumberland, Helen | 6-4514 | C4-04-03 | C4-02-06 |
| McCann, Barton | 6-4492 | C4-01-14 | C4-02-06 |

UBF1094

David V. L. Bradley
Partner
DIRECT:716-848-1208
dbradley@hodgsonruss.com

August 28, 1997

VIA FEDERAL EXPRESS

William Buczko, Ph.D.
Research Analyst
Office of Strategic Planning
Division of Payment Research
Health Care Financing Administration
Office of Research and Demonstrations
7500 Security Boulevard
Baltimore, Maryland 21244-1850

Dear Dr. Buczko:

We have received and reviewed your copies of the final two Rand reports
titled:

1. A Classification System for Inpatient Rehabilitation Patients: A Review and Proposed Revisions to the Functional Independence Measure - Function Related Groups.
2. A Prospective Payment System for Inpatient Rehabilitation.

Enclosed are marked pages from each report indicating those materials which we wish to have removed prior to any unrestricted publication of the reports.

We have also made a few changes in the Preface to each report in order to clarify that it is not available for public distribution and to clarify the distinction between our client, which is commonly referred to as UDSMR, and our client's products and services, which include, among other things, the FIM measuring instruments and the Adult FIM Database. The Rand report attempts to make the distinction by referring to our client as "UDSMR" and referring to the Adult FIM Database and/or data from the Adult FIM Database as "UDSmrSM." The language, however, is somewhat confusing because it suggests that the Database is the "Uniform Data System for Medical Rehabilitation." We hope the few changes clarify the difference.

UBF1095

Dr. William Buczko
August 28, 1997
Page 2

We will forward by fax tomorrow some additional language which should be printed in the Preface and/or the Summary of each report. The purpose of the added language is to provide notice regarding UDSMR's confidential information and its copyright and trademark rights in the FIM measuring instruments, the Uniform Dataset, the Guide, and the Adult FIM Database. We also want the reports to note that the copyrights to the FRGs belong to the University of Pennsylvania, and that UDSMR has the exclusive license to use the FRGs, including the cut point data, in any services or products.

Please let us know before September 4, 1997, if any of these proposed deletions and additions pose a problem. As we have mentioned before, we are willing to allow distribution of the full reports to individuals or entities in the rehabilitation community who have a bona fide need to know the information, on condition that they obtain UDSMR's consent and agree to respect UDSMR's proprietary rights. Any such parties who want to use the proprietary information or any of the FIM/FRGs or data in any services or products should also acknowledge the need for a license from UDSMR. Because of widespread interest in the Rand report and the FIM/FRGs and data, we want to be in a position to grant the consents and necessary licenses as soon as possible.

We believe the foregoing complies with our prior discussions. Since our purpose is to facilitate issuance of the report, we don't think it is necessary at this time to further itemize our concerns regarding our client's proprietary rights. So long as HCFA or Rand sends an appropriate notice to all individuals or entities to whom the draft report was distributed, we will agree to issuance of the final report as noted above. We will forward a proposed notice also by fax tomorrow.

UDSMR is preparing the necessary non-disclosure and/or license agreements and consent forms to ensure that all parties desiring quick access to the full Rand reports and the right to use the FIM data, the FIM/FRGs and/or FRG data disclosed in them can obtain those rights at a reasonable cost without delay. We look forward to a prompt resolution of this matter.

Very truly yours,

David V. L. Bradley

/jc
Enclosure
cc: James Phillips
Kathleen Dann
bcc: Tricia T. Semmelhack

UBF1096

David V. L. Bradley
Partner
DIRECT: 716-848-1208
dbradley@hodgsonruss.com

September 23, 1997

VIA TELECOPY AND MAIL

Rodney Benson, Esq.
Health Care Financing Administration
7500 Security Boulevard
Baltimore, Maryland 21244

Dear Mr. Benson:

Re: **UDSMR Objection to Publication of Rand Reports**

In response to Al Esposito's letter to me dated September 8, I sent a preliminary response via e-mail to William Buczko on September 11. We have received no further communication from HCFA and I have therefore enclosed a copy of my e-mail in case you did not see it. We have now had an opportunity to further review Mr. Esposito's letter with Sam Markello and others at UDSMR and have confirmed that HCFA's refusal to delete certain portions of the Rand Reports is a significant concern to UDSMR.

As I stated in my e-mail, we cannot understand why HCFA is so intent on publishing the Reports and is resisting so strongly our requests to delete information from the Reports. We do not believe our requested deletions substantially detract from the Reports nor is it clear what HCFA gains by publishing the full Reports. Furthermore, HCFA has never adequately explained the legal basis for its position that publication of the Reports will not violate UDSMR's rights. As we understand it, HCFA's primary argument is that the License Agreement, the confidentiality agreements and the other agreements signed among HCFA, UDSMR and Rand only protect UDSMR against publication of specific confidential data disclosed by UDSMR to HCFA/Rand.

As you know, and as we have spelled out in some detail in our previous correspondence to HCFA, we strongly disagree with HCFA's narrow reading of the agreements. It is our position that, even focusing on the confidentiality provisions alone, the definition of "Information" is broad enough to require HCFA to withhold publication. The

UBF1097

Rodney Benson, Esq.
September 23, 1997
Page 2

Confidentiality Agreements define "Information" to include not only "data and information" from UDSMR's database, but also information related to the use of the database and any such data and information as "may be hereafter modified by HCFA." This language encompasses all the material we believe ought to be deleted from the Reports.

We do not feel it is productive to again spell out in detail the other bases upon which we object to publication of the Reports. We refer you to our prior letters of April 9 and July 11. Suffice it to say that, beyond the basic point that a publication such as the Rand Reports was not envisioned by UDSMR when the License Agreement was negotiated nor would it have been acceptable, we believe publication of the Reports without the deletions we requested is a violation of UDSMR's intellectual property rights and is beyond the scope of the license. We have not received a satisfactory response to the arguments raised in our prior letters.

We have directed our letter to counsel because, as stated in my e-mail, we believe it is essential that the discussion of legal issues be conducted between counsel who are familiar with this matter. We also believe the continued exchange of letters will not lead to an efficient or timely resolution of this matter. We would be glad to arrange a meeting with you at HCFA's offices at your earliest convenience to attempt to resolve these matters. While we may have some room to compromise, we are unwilling to accept the proposal in Mr. Esposito's September 8 letter that the Reports be published with only the minor modifications cited.

We look forward to hearing from you.

Very truly yours,

David V. L. Bradley

tak

Copies to: Carl V. Granger
James Phillips
Kathleen Dann
Tricia T. Semmelhack

October 16, 1997

VIA TELECOPY AND MAIL

William Buczko, Ph.D.
Research Analyst
Office of Strategic Planning
Division of Payment Research
Health Care Financing Administration
7500 Security Boulevard
Baltimore, Maryland 21244-1850

Dear Dr. Buczko:

Re: Publication of Rand Reports

On behalf of our client, Uniform Data System for Medical Rehabilitation (UDSMR), we confirm that UDSMR has withdrawn its request for additional edits to the two Rand reports identified below. We understand that the reports as released by HCFA will incorporate the edits outlined in the letter from Al Esposito dated September 8, 1997.

1. A Classification System for Inpatient Rehabilitation Patients: A Review and Proposed Revisions to the Functional Independence Measure-Function Related Groups (PM-682-HCFA).
2. A Prospective Payment System for Inpatient Rehabilitation (PM-683-HCFA).

You indicated that the Rand reports have already been modified to incorporate the edits outlined in the September 8 letter. UDSMR would appreciate receiving a copy of the reports as released, but is not requesting the right to review the modified reports prior to their release. As you know, UDSMR's primary concern is the prompt dissemination of the reports to the field. UDSMR will rely on its copyright rights vis-a-vis third parties.

UBF1099

William Buczko, Ph.D.
October 16, 1997
Page 2

UDSMR also looks forward to receiving from HCFA a letter confirming the conversation yesterday between HCFA and UDSMR regarding UDSMR's rights to the modified version of the FIM-FRGs developed by Rand. As you know, should HCFA adopt a PPS based on the FIM-FRGs, HCFA would receive broad license rights from UDSMR to use the FIM-FRGs for the PPS pursuant to the existing License Agreement.

Finally, UDSMR will honor your request to include in its reporting and other mailings to its subscribers an appropriate statement reminding them that HCFA has not committed to adopting a PPS based on the FIM-FRGs. Any implication to the contrary in UDSMR's previous mailings was unintended.

On behalf of UDSMR, we are glad to bring this matter to resolution and look forward to a long and mutually beneficial relationship between UDSMR and HCFA.

Very truly yours,



David V. L. Bradley

cc: Carl V. Granger, MD
James A. Phillips
Kathleen M. Dann
Tricia T. Semmelhack, Esq.

CORPORATE:146519_1 (351Z_1)



The Functional Assessment Specialists

Uniform Data System

for Medical Rehabilitation

Telephone
716.829.2076
Facsimile
716.829.2080

E-mail
info@udsmr.org

Website
www.udsmr.org

232 Parker Hall
University at Buffalo
3435 Main Street
Buffalo, New York
14214

May 29, 2001

Mr. Robert Sander
Rehab Services Manager
Rehab Department
Life Care Center of St. Louis
3520 Choutenu Avenue
St. Louis, MO 63103

Dear Mr. Sander:

This correspondence is being sent in follow up to a letter dated April 6, 2001. As of today, we have not received a reply. If we do not hear from you by June 15, 2001, we will have to consider turning the matter over to our attorneys for further investigation.

We understand the following to be the facts involved: A copy of the FIM™ instrument was obtained from RehabCare and used for research purposes, without a license, at the Life Care Center of St. Louis facility. A voicemail message was left at my extension in March indicating that you are no longer using the instrument for any purposes.

If you are willing to confirm to the above-mentioned facts, we would consider this to be a closed matter. Please address all correspondence to my attention. Thank you.

Sincerely,

Marisa Smith
Paralegal



University at Buffalo



3520 Chouteau Avenue / St. Louis, Missouri 63103 / (314) 771-2100 / FAX (314) 771-7667

TELECOPIER COVER SHEET

DATE OF TRANSMISSION: 6/12/01 1-716-829-2080

TO: MARISA SMITH

NUMBER OF PAGES: 3

FROM: BOB SANDER

ORIGINAL DOCUMENT IS ~~BEING~~ BEING SENT BY MAIL.

RE: LIFE CARE CENTER OF ST. LOUIS

The information contained in this facsimile message is attorney privileged and confidential information intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, or the employee or agent responsible to deliver it to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please immediately notify us by telephone; and return the original of this transmittal to us at the above address via the U.S. Postal Service. Thank You.

PLEASE CALL AT (314) 771-2100 IMMEDIATELY IF YOU HAVE ANY PROBLEMS RECEIVING THIS TRANSMITTAL.

THANK YOU.

Bob Sander, P.T.



3520 Chouteau Avenue / St. Louis, Missouri 63103
(314) 771-2100 / FAX (314) 771-7667 / WWW.LCCA.COM

June 11, 2001

Ms. Marisa Smith
Paralegal
Uniform Data System
232 Parker Hall
University at Buffalo
3435 Main Street
Buffalo, New York 14214

Dear Ms. Smith

I am sorry that you have not received my previous correspondence, therefore I will be faxing and mailing this letter. As I have stated to you, we are not using the FIM™ instrument at Life Care Center of St. Louis. The facts that you reported in your May 29, 2001 correspondence are correct. If you have any further questions or need additional information, please contact me at 314-771-2100.



Bob Sander, P.T.
Rehab Services Manager
Life Care Center of St. Louis

For K. Wall

April 8, 1998

John N. Morris, Ph.D.
Director of Social & Health Policy Research
Co-Director, HRCA Research and Training Institute
Hebrew Rehabilitation Center for Aged
1200 Center Street
Boston, MA 02131-1097

Dear John:

This letter provides the follow-up information you requested in your role as Principal Investigator for Minimum Data Set – Post Acute Care project. Enclosed is a comparison of the Minimum Data Set (MDS) and the Functional Independence Measure (FIM instrument) and recommendations. Also enclosed are graphs that summarize the crosstabulation results, the Kappa statistic values, and the motor and cognitive score frequency distributions.

Please be mindful that this material is covered by the copyright of Uniform Data System for Medical Rehabilitation, a division of UB Foundation Activities, Inc. According to signed agreements, the Health Care Financing Administration (HCFA) and their authorized subcontractors have the rights to have and assess this information, during this evaluation phase. There would be restrictions with regard to distribution to other parties.

I will be out of town next week, please call Anne Deutsch (716-829-2076 ext. 39) should you have any questions.

Sincerely,

Carl V. Granger, MD
Professor of Rehabilitation Medicine
Director of CFAR & UDSMR

UBF1104

May 28, 1998

Ms. Bettina Mueller
I.A. Deutsche Gesellschaft fuer Neurologie
Lukasstrasse 4
Bubenreuth, 91088
Germany

Dear Ms. Mueller:

Re: Uniform Data System for Medical Rehabilitation ("UDSMR")

I am a partner at Hodgson, Russ, Andrews, Woods & Goodyear, LLP, the Buffalo, New York law firm that represents UDSMR. UDSMR recently accessed your Internet site and was surprised to find that it contained a German translation, purportedly copyrighted by you, of materials relating to The FIM SystemSM. You may not be aware that UDSMR is the owner of The FIM SystemSM, including, but not limited to, all copyrights, service marks and trademarks relating to The FIM SystemSM. The translation of materials relating to The FIM SystemSM from English into any other language without UDSMR's permission is a violation of UDSMR's copyrights and other intellectual property rights and is regarded as a very serious matter by UDSMR. UDSMR therefore asks that you immediately and permanently withdraw all references to any aspect of The FIM SystemSM from your Internet site and cease using your translations of any FIM-related materials.

UDSMR anticipates your cooperation in this matter and will monitor your Internet site to determine whether or not you have complied with its request. If we find that you continue your infringement of UDSMR's rights, we will take the appropriate steps to protect UDSMR's rights.

If you have any questions about this matter, you may contact me or Kathy Dann of UDSMR at her e-mail address, which is k.dann@udsmr.org.

Very truly yours,

Kathleen A. Wall

Copy to: Kathy Dann, UDSMR


**HODGSON RUSS
ANDREWS
WOODS &
GOODYEAR_{LLP}**
ATTORNEYS AT LAW

Kathleen A. Wall
Partner
DIRECT: 716-848-1287
kwall@hodgsonruss.com

1800 One M&T Plaza
Buffalo, NY 14203-2391
716-856-4000
FAX: 716-849-0349 M&T

*Albany
Boca Raton
Buffalo
New York
Rochester
Toronto
West Palm Beach*

SENT VIA INTL. FED. EX.

806234204222

ON 8-3-98

July 29, 1998

Via Telecopier 0114935143709432

Dr. Bettina Mueller
Elsa-Brandstrom-Str. 10
D-1219 Dresden
Germany

Dear Dr. Mueller

Re: Uniform Data Systems for Medical
Rehabilitation ("UDSMR")

As you may recall, I wrote to you on behalf of my firm's client, UDSMR, on May 28th concerning your Internet site, which incorporated a German translation of materials relating to The FIM SystemSM. I understand that while I was on vacation, you sent several e-mail messages to Kathy Dann of UDSMR. This letter is intended to respond to the questions raised in your messages and to provide you with additional information about UDSMR's ownership of The FIM System and its position with respect to the copying and translation of materials relating to the system.

First, I apologize for having sent my May 28th letter to your clinic address. Unfortunately, it was the only address available to me at the time and I had no way of knowing that it was not appropriate to contact you there. I hope that my inadvertent error did not cause you any inconvenience.

As background information, I am enclosing a copy of UDSMR's Statement of Ownership of The FIM System, which is self explanatory. As you can see, UDSMR owns The FIM System in its entirety and all of the related trademarks and servicemarks, including the "FIM" mark for its services and for the measurement instrument pertaining to the adult rehabilitation population. As I mentioned in my May 28th letter, UDSMR owns the copyrights to all components of The FIM System.

The FIM instrument was developed in the 1980s at the State University of New York at Buffalo. The Center for Functional Assessment Research Foundation to which

UBF1106

HODGSON, RUSS, ANDREWS, WOODS & GOODYEAR LLP

Ms. Bettina Mueller

July 29, 1998

Page 2

you refer in your May 28th message is part of the School of Medicine at the State University of New York at Buffalo. All of the University's copyrights and other proprietary rights associated with that research have been assigned in their entirety to UDSMR and registered with the United States Copyright Office. I am confident that all of these rights would be accorded copyright protection under German law.

In your May 28th message, you also refer to the note in the original Guide for the Uniform Data Set for Medical Rehabilitation (the "Guide") permitting copying and distribution. The purpose of that note was to promote uniformity in the use of the system within the facilities authorized to use the Guide. However, UDSMR learned that its policy with respect to copying and distribution was confusing to some users of the Guide. Therefore, the permission to copy and distribute granted by the earlier note does not apply to any new or updated copies or versions of Guide materials. Moreover, the earlier permission to copy did not carry with it the right to make translations or other derivative works. Please note that UDSMR has already informed Klinik Bavaria that its translation and distribution of the Guide was unauthorized.

You also mention in your May 28th message that you have written your own evaluation program based on the unauthorized German translation of the Guide and have used the program to analyze data for almost 7,000 patients. Please note that the permission to copy contained in earlier versions of the Guide did not authorize others to use the FIM measuring instrument and call the resulting data "FIM" data. Use of the FIM mark by others to identify data that has not been processed in a manner having the approval of UDSMR infringes upon and dilutes the valuable FIM mark and its reputation for integrity. UDSMR cannot permit such activities to continue.

UDSMR shares your view that the FIM measuring instrument should be distributed as widely as possible. However, such distribution must only be accomplished through arrangements with UDSMR that both recognize UDSMR's ownership of The FIM System and permit UDSMR to insure the integrity of the data resulting from any application of the system. Although you do not currently have such an arrangement with UDSMR, UDSMR would be happy to discuss with you the terms of the standard agreements it offers for such purposes. At this time, however, UDSMR must repeat its request that you discontinue any use of (1) The FIM System and (2) the unauthorized translations of all FIM-related materials.

HODGSON, RUSS, ANDREWS, WOODS & GOODYEAR LLP

Ms. Bettina Mueller

July 29, 1998

Page 3

Please note that UDSMR's Dr. Carl Granger has in the past been required to publicly document that certain published research improperly used FIM data. Research results based on unauthorized translations of outdated versions of the Guide would likely prompt a similar response from Dr. Granger.

I trust that this information is helpful to you. UDSMR continues to monitor your Internet site and anticipates that you will not take any further actions that violate UDSMR's copyrights or other intellectual property rights.

Very truly yours,

Kathleen A. Wall/ema

Kathleen A. Wall

kaw

cc: Kathy Dann, UDSMR

CORPORATE:193411_1 (458J_1)



Bob Taft, Governor

Maureen O'Connor, Lt. Governor/Director

Maureen O'Connor
Director
1970 West Broad Street
P.O. Box 182081
Columbus, Ohio 43218-2081
(614) 466-2550

OHIO DEPARTMENT OF PUBLIC SAFETY

- Administration
- Ohio State Highway Patrol
- Bureau of Motor Vehicles
- Emergency Medical Services Division
- Emergency Management Agency

May 12, 1999

Carl V. Geauzed, Director
Center for Functional Assessment Research and UDSMR
232 Parker Hall
3435 Main Street
Buffalo, NY 14214-3007

Dear Mr. Geauzed:

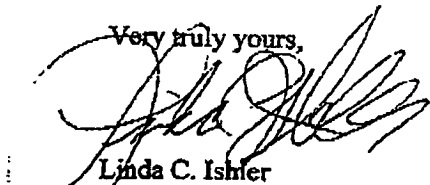
In response to your letter of March 24, 1999, regarding our reference to "FIM scores". Let me please assure you, there was no intent on the Ohio Department of Public Safety's, Division of Emergency Medical Services part to infringe upon your copyright to the "FIM mark" owned by UDSMR.

The information used in the Ohio Trauma Registry, Data Element Description was taken from the American College of Surgeons, National Trauma Data Bank, Data Elements.

Our plan is to change pages 74, 75, 76, 77, 78 and 79 as suggested by you. This will take place in our next reprinting. We will also be producing a revision to our Trauma Registry Reporting Software package within the next six months and will discontinue using "FIM" in that software. We will send out within the next three weeks to all Ohio hospitals the changes in pages 74, 75, 76, 77, 78 and 79 and will ask them to replace the old pages in the "Data Element Description" handbook.

If you have any other concerns, please contact me.

Very truly yours,


Linda C. Ishler
Executive Administrator

Mission Statement

To save lives, reduce injuries and economic loss, to administer Ohio's motor vehicle laws and to preserve the safety and well being of all citizens with the most cost-effective and service-oriented methods available.

UDSMR™**Uniform Data
System for
Medical
Rehabilitation**

*The Leader
in Outcomes
Assessment
for Medical
Rehabilitation
across the
Continuum of Care*

May 18, 1999

Linda C. Ishler
Executive Administrator
Ohio Department of Public Safety
1970 West Broad Street
PO Box 182081
Columbus, Ohio 43218-2081

FIM™
System

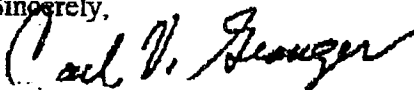
Dear Ms. Ishler:

WeeFIM®
System

I was pleased to receive your letter dated May 12, 1999 indicating your plan to make the necessary changes in the Data Element Description and in the Trauma Registry Reporting Software. Thank you for your willingness to address our concerns in such a timely fashion. When you have completed the changes, please forward a copy of the revised pages 74, 75, 76, 77, 78 and 79 to our Copyright Librarian, Susan Braun. If you need further assistance, please feel free to contact her directly.

LIFeware®
System

Sincerely,



Carl V. Granger, MD
Center for Functional Assessment Research and UDSMR



Joint Commission
on Accreditation of Healthcare Organizations

UDSMR

232 Parker Hall

3435 Main Street

Buffalo, NY 14214-3007

Phone: (716) 829-2076

FAX: (716) 829-2080

E-mail: info@udsmr.org

Web site: www.udsmr.org



University at Buffalo

Center for Functional
Assessment Research

Department of
Rehabilitation Medicine

School of Medicine
and Biomedical Sciences

UBF1110



The
Functional
Assessment
Specialists

Uniform Data System

for Medical
Rehabilitation

Telephone
716.829.2076

Facsimile
716.829.2080

E-mail
info@udsmr.org

Website
www.udsmr.org

232 Parker Hall
University at Buffalo
3435 Main Street
Buffalo, New York
14214

Carolyn C. Zollar
Vice President for Government Relations and Policy Development
American Medical Rehabilitation Providers Association
1606 20th Street, NW, Third Floor
Washington, D.C. 20009

Dear Carolyn:

Thank you for your August 8th letter. In light of the issues you raise in that letter, I believe it is important for both UDSMR and AMRPA to bear in mind that use of the FIM™ instrument for purposes of the CMS inpatient rehabilitation facility prospective payment system is governed solely and exclusively by the License Agreement between UDSMR and the Health Care Financing Administration (now CMS) dated September 21, 1995, as amended. In particular, the following provisions of the License Agreement directly address a number of the issues raised in your letter:

1. Section 5(a), which states that "HCFA acknowledges that all right, title and interest in and to the Licensed System [which, under the terms of the License Agreement, includes the Uniform Data Set, the FIM™ instrument and the related impairment codes], the Marks, and all copyrights shall remain the sole and exclusive property of UDSMR." Furthermore, Section 5(a) states that the License Agreement "shall not operate to transfer or convey to HCFA or to any Third Party any ownership interest whatsoever in the Licensed System, the Marks or any derivative works thereof created by UDSMR."

2. Section 5(b) of the License Agreement also provides in part that "HCFA shall take all steps reasonable and necessary to acknowledge UDSMR's ownership and copyright rights to the Licensed System and the Marks."

3. Section 2(b), which provides in its entirety as follows:

"In the event that UDSMR receives notice of HCFA's intent to adopt the Licensed System pursuant to Section 2(a), UDSMR hereby grants to HCFA, effective automatically upon and as of the date of UDSMR's receipt of HCFA's said notice, and without further action by either party, a limited, irrevocable (except as provided in Section 7 hereof), non-exclusive, royalty-free license for the following permitted uses: (i) to use the Licensed System solely and exclusively in connection with the development, design, implementation, maintenance, operation and evaluation of the Payment System; (ii) to sublicense one or more Third Parties to use the Licensed System in connection with any continuing evaluation of the Licensed System as the basis for the Payment System or for the limited purpose of assisting HCFA under its limited license herein in its development, design, implementation, maintenance or operation of the Payment System, and for no other purpose, pursuant to a sublicense agreement containing the minimum terms and conditions set forth in Exhibit C attached hereto, and subject to HCFA providing UDSMR prompt notice of the identity of any Third Party provided a



sublicense pursuant to the terms of this Agreement; (iii) to sublicense hospitals to use the Licensed System solely to the extent necessary for purposes of compliance with the Payment System without fee or obligation to UDSMR for such use (provided, however, that HCFA acknowledges that some of the facilities which will use the Licensed System for purposes of compliance with the Payment System may also be or become UDSMR subscribers who pay fees to UDSMR for statistical analysis and reporting services); (iv) to use the Licensed System for other HCFA program needs related to the Payment System, including quality assurance, hospital certification and research; (v) subject to the procedures outlined in Section 4 of this Agreement, to modify, alter, improve and make derivative works of and from the Licensed System solely and exclusively in connection with the permitted uses identified in the preceding clauses (i), (ii), (iii) and (iv); and (vi) to use the Marks solely to the extent necessary to refer to the Licensed System in connection with the exercise by HCFA of the license granted pursuant to this Section 2(b).

UDSMR would be happy to discuss with AMRPA, within the framework of the License Agreement provisions discussed above, the specific services that AMRPA would like to provide to inpatient rehabilitation facilities.

Very truly yours,



Richard T. Linn, Ph.D.
Director

facsimile transmittal

To: Kathleen Wall Fax: 716-849-0349

From: Pam Hentschke Date: 01/02/04

Re: Verbage Pages: 1

CC:

Urgent For Review Please Comment Please Reply Please Recycle



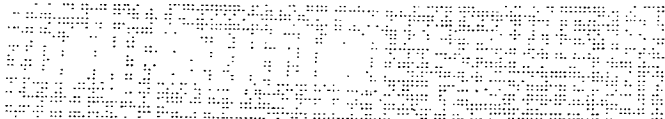
Dear Kathleen,

As in response to your mail please know first of all, that I am no longer at the address with which you were sending information. As in response to the content please know that I was unaware that UDS MR had a copyright on the phrase "Piece of the PAI" and that it was not available for others' use. I will certainly think of a different phrase to use in the future for I would not want UDS to think that I was trying to take something from them in terms of marketing efforts or misleading any others to think that I was working for UDS by using that particular phrase.

Sorry for any confusion. I hope this will resolve the matter.

Sincerely,

Pam Hentschke





Hodgson Russ
ATTORNEYS • LLP

Kathleen A. Wall
Partner
Direct Dial: 716.848.1287
Direct Facsimile: 716.849.0349
kwall@hodgsonruss.com



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| 8395 | 6628 | 8551 | Form ID. No. 0205 |
|------|------|------|-------------------------|

FedEx Tracking Number — PULL UP ORANGE TAB

December 31, 2003

Federal Express

Ms. Pam Hentschke
5118 Rotherfield Court
Charlotte, North Carolina 28277

Dear Ms. Hentschke:

Re: "A Piece of the PAI"

As you know, we represent Uniform Data System for Medical Rehabilitation, the lawful owner of the trademark "A PIECE OF THE PAI." In my December 11, 2003 letter to you, a copy of which is enclosed, I asked that you or your counsel confirm by December 22, 2003 that you have discontinued your unlawful use of "A Piece of the PAI." You have not responded to that letter.

We now ask that you or your counsel confirm for us immediately that you have discontinued unlawful use of "A Piece of the PAI." We continue to hope to resolve this matter amicably and look forward to your immediate response.

Very truly yours,

Kathleen A. Wall

UBF1114

Ms. Pam Hentschke
December 31, 2003
Page 2

bcc: Dr. Richard Linn

BFLODOCS 883855v1 (SXZJ01LDOC)

UBF1115

Kathleen A. Wall
Partner
Direct Dial: 716.848.1287
Direct Facsimile: 716.848.0349


Hodgson Russ
ATTORNEYS • L.L.C.



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| 8395 | 6628 | 8460 | Form ID. No. 0205 |
|------|------|------|-------------------------|

FedEx Tracking Number — PULL UP ORANGETAB

December 11, 2003

BY FEDERAL EXPRESS

Ms. Pam Hentschke
5118 Rotherfield Court
Charlotte, North Carolina 28277

Dear Ms. Hentschke:

Re: "A Piece of the PAI"

We represent Uniform Data System for Medical Rehabilitation ("UDSMR"), the lawful owner of the trademark "A PIECE OF THE PAI". As a former UDSMR trainer, you know that UDSMR offers a wide range of services and products to its subscribers that enable them to document the severity of patient disability and the results of medical rehabilitation in a uniform way. UDSMR has used "A PIECE OF THE PAI" continuously in commerce since July 2002 to promote and identify a series of educational pamphlets it created for its subscribers. As a result, the trademark "A PIECE OF THE PAI" has come to be associated in a very meaningful and favorable way in the mind of the public with UDSMR and has become distinctive of the business, goods and services of UDSMR.

It has recently been brought to our attention that, although you were aware of UDSMR's development of the "A PIECE OF THE PAI" pamphlets, which occurred while you were associated with UDSMR, you created slides and printed materials bearing "How each Piece of the 'PAI' makes a whole" and displayed and distributed them at a seminar held on November 2, 2003 at which you were a presenter. We understand the seminar participants were representatives of inpatient rehabilitation facilities, the same type of facilities to whom UDSMR offers its products and services, and who are familiar with such products and services. In addition, we understand that the topic of your presentation was the Inpatient Rehabilitation Facility-Patient Assessment Instrument (IRF-PAI), which is the subject of UDSMR's "A PIECE OF THE PAI" pamphlets.

As a result of the facts described above, it is our belief that your use of "A Piece of the PAI" would likely cause mistake and confusion in the mind of the public and poses a potential threat of substantial damage to the goodwill which our client has built up. Your use of "A Piece of the PAI" is likely to lead the public to assume that your activities are associated with, endorsed by, or in some way related to UDSMR.

Accordingly, it is demanded that you immediately and permanently discontinue all use of this trademark, or any other confusingly similar mark. We would ask that you or your

UBF1116

Ms. Pam Hentschke
December 11, 2003
Page 2

counsel confirm for us by Monday, December 22, 2003 that you have discontinued unlawful use of "A Piece of the PAP".

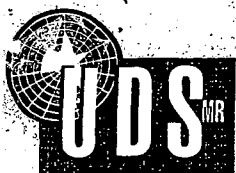
We hope to resolve this matter amicably and look forward to hearing from you.

Very truly yours,



Kathleen A. Wall

UBF1117



The
Functional
Assessment
Specialists

August 22, 2001

Anne Scadding, Managing Editor
Opus Communications, Inc.
200 Hoods Lane
Marblehead, MA 01945

Dear Ms. Scadding:

I recently had an opportunity to review Volume 1, Number 7 (August 2001) of the *PPS Alert for Inpatient Rehab* and am respectfully requesting that you share the following information with the editorial board of this publication.

Uniform Data System

for Medical
Rehabilitation

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716.829.2076

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716.829.2080

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Website
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232 Parker Hall
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3435 Main Street
Buffalo, New York
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As you know, Uniform Data System for Medical Rehabilitation, as a division of UB Foundation Activities, Inc., (UDSMR) is the developer and sole owner of the FIM™ instrument (previously known as the "Functional Independence Measure"). The Centers for Medicare and Medicaid Services (CMS) incorporated the FIM™ instrument, together with appropriate copyright information indicating UDSMR's continuing ownership of the instrument, into its new Inpatient Rehabilitation Facility-Patient Assessment Instrument. This is a reflection of the fact that UDSMR licensed CMS to use the FIM instrument in connection with the development and implementation of CMS's new prospective payment system (PPS). Contrary to beliefs apparently expressed by some, UDSMR did not assign its ownership of the instrument to CMS. Instead, UDSMR has authorized CMS to grant to rehabilitation facilities subject to the PPS a perpetual, royalty-free license to use the FIM™ instrument as part of the Inpatient Rehabilitation Facility-Patient Assessment Instrument for PPS purposes only. CMS has clearly acknowledged UDSMR's continued ownership of the FIM instrument in the Final Ruling as well as in every version of the Inpatient Rehabilitation Facility-Patient Assessment Instrument that it has released.

In light of the foregoing, please note the following:

1. On page 2 of the publication, the FIM™ instrument is incorrectly referenced as the "FIM". Please refer to the enclosed information sheets about the proper application of UDSMR's trademarks and service marks as well as the correct citations for its publications. This information may be freely shared with your colleagues and authors of any articles that reference UDSMR's products and services in future issues of your newsletters.
2. The first complete paragraph on Page 3, beginning with the phrase "Computer Software", is somewhat misleading, in that it does not give the reader any indication that UDSMR's license with CMS does not extend to third parties such as software vendors and consultants. As has always been the case, such parties must obtain a license from UDSMR to use the FIM instrument in connection with any products or services they offer. Not only is UDSMR looking forward to working with vendors who will be providing software and consulting services to facilities implementing the PPS; we are actively encouraging such vendors to contact us to make suitable arrangements.



University at Buffalo

UBF1118

Please refer to the enclosed information sheets about the proper use of our trademarks and service marks and the correct citations for our publications in future issues of your newsletters. Francis Hagerty, our product manager for UDSMR's new UDS-PRO product, would be happy to answer any questions that you may have. He may be reached at 716.829.2076 ext. 25.

Thank you for your attention to these matters.

Sincerely,

Richard T. Linn Ph.D.
Director

Enclosures

Copy to: ✓ Kathleen Wall, Esq.
Francis J. Hagerty, Product Manager, UDS-PRO SystemSM



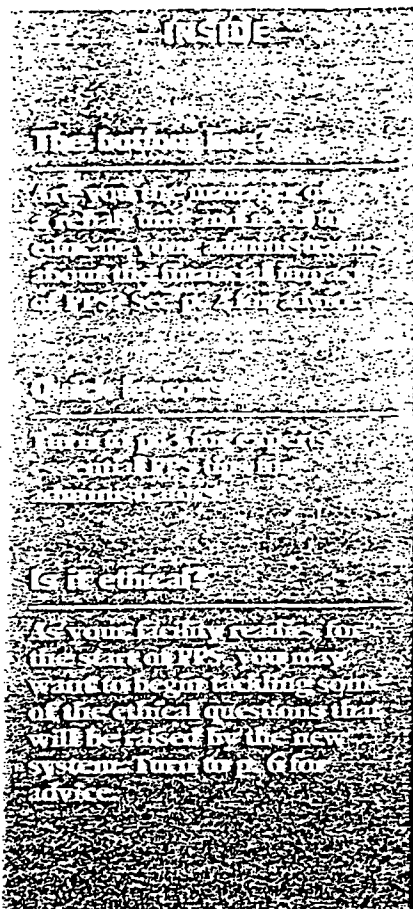
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Vol. 1 No. 7
August 2001

PPS Alert

for Inpatient Rehab

Your source for PPS success



CMS releases PPS final rule Implementation date set for January 1, 2002

After months of delays that kept inpatient rehab providers on edge, the Centers for Medicare and Medicaid Services (CMS), formerly known as the Health Care Financing Administration, issued the final rule outlining the prospective payment system (PPS) on its Web site August 1.

At first glance, the final rule appears to contain few surprises compared to industry expectations. The new payment system will dramatically change the way in which inpatient rehab units and facilities receive reimbursement for Medicare patients. The new

rule was scheduled to be published in the *Federal Register* on August 7.

Inpatient rehab providers, who currently receive cost-based reimbursement, will start the new payment system on January 1, 2002, according to the final rule.

Under the new payment system, facilities will fill out and submit an assessment tool, which is known as the Inpatient Rehabilitation Facility Patient Assessment Instrument (IRF-PAI). The tool reflects the patient's characteristics and conditions, including age, diagnosis, and comorbidities. > p. 8

How do you prepare for PPS?

Look toward the skilled nursing facility industry for clues

As an inpatient rehabilitation provider, you're likely to be worrying about the transition from the current, cost-based system to the prospective payment system (PPS).

The final rule, issued on August 1, sets the implementation date of January 1, 2002.

Although most providers have begun to prepare for the transition to PPS, many voice the same frustration in trying to both pre-

pare for and predict the demands of the new system.

For some clues—and reassurance—it may be a good idea to look toward skilled nursing facilities (SNFs), which transitioned a couple of years ago to its own form of PPS.

To be sure, there are many differences that exist between SNF PPS and the payment system outlined in the proposed rule for inpatient rehabilitation facilities. The > p. 4

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What do rehab managers need to tell administrators about the effects of the new payment system?

Industry experts: They may be concerned about the financial bottom line

You're the manager or director of an inpatient rehab unit in a hospital or medical center struggling with the demands of the proposed prospective payment system (PPS).

Although you're working hard to educate yourself on the details of the payment system—ranging from its financial implications to patient case-mix groups (CMGs), you have one additional responsibility.

You must educate your hospital's administrator about PPS. The question naturally arises: What issues must the administrator be familiar with, and how much must he or she need to know?

The need to purchase potential software systems, the impact on existing staff and productivity levels, and the potential need to hire new employees will all need to be discussed with your administration. Ultimately, however, administrators are going to have to understand the financial implications of PPS on the facility's bottom line.

"Your boss is going to be most interested in what the impact will be on the unit financially and what changes will need to be made," says **Carolyn Zollar, JD**, vice president for government resources and policy development for the American Medical Rehabilitation Providers Association (AMRPA) in Washington, DC.

For example, the administration of your unit is going to recognize that it takes money to be effective under PPS, says **Frances J. Fowler**, president of Fowler Healthcare Affiliates in Atlanta.

Fowler estimates that hospital units with 20 to 30 beds may require anywhere from \$30,000 to \$60,000 in start-up costs to ready for PPS.

This money would be used to purchase software, some short-term staffing needs, consulting costs, as well as the need to cover your staff's decreased

productivity as they train and adjust to PPS, she says.

What are the biggest financial items that your administrators need to know about? Our industry experts offer the following areas to consider:

Assessment tool. One of the biggest outlays of cash will be spent training and retraining staff on the patient assessment tool, the Inpatient Rehabilitation Facilities Patient Assessment Instrument (IRF-PAI), says **Sam Fleming**, a financial consultant who works for the AMRPA's Positioning for 2000 and Beyond data service.

Under PPS, facilities will need to fill out the IRF-PAI, which records the patient's condition, comorbidities and other information. Based on this information, a patient is assigned to a CMG which in turn will determine your reimbursement.

Although the IRF-PAI contains portions of the FIM—an evaluation tool that an estimated 85% of the inpatient rehab world uses now—it has additional questions about medical conditions and comorbidities.

Staff need to be trained on these sections, as well as the need to fill out the assessment correctly and timely. The IRF-PAI will be due at both admission and discharge.

As an example of the potential cost, Fleming cites a statistic that shows the average rehab facility treats 265 patients in a year. If one estimates that it takes an hour to fill out the IRF-PAI at admission, as well as at discharge, staff would be spending 531 hours a year filling out assessments. Administrators need to consider whether their staffing costs will rise.

"Under current operations, most facilities do patient-level assessments, but it's not mandated," Fleming notes. "Under the new system, it's going to be mandated. Should you count the costs needed

to fill in the assessments as a new cost, or would it not be considered a new cost because people are doing them anyway?"

Computer software. Your unit may need to purchase an information system that will help organize the information you collect on the IRF-PAI, as well as other data associated with the new system, Fleming says.

While the Centers for Medicare and Medicaid Services (CMS), formerly known as the Health Care Financing Administration, is expected to release free software that will allow you to transmit the assessments, several other organizations and consultants are expected to develop their own software package, including the AMRPA's "eRehabdata" service. If you should choose to subscribe to such a service, it would likely become a yearly cost.


Stepdown costs. The current Medicare payment is cost-reimbursed, Fleming notes. In some cases, a portion of Medicare reimbursement for rehab patients could, in some degree, be allocated for the hospital's overhead costs, such as hardware or software.

Under PPS, administrators may need to study how they were allocating these "stepdown" costs to Medicare. This system should be studied prior to PPS implementation.

Lab test, radiology, and drug costs. It's important for administrators to understand that physicians need to be educated about parameters of PPS, Fowler says.

Physicians control the ordering of lab tests, radiology, pharmacy, and other ancillary costs. Under the current cost-based reimbursement system, there has been little oversight of costs associated with tests or ordering drugs, Fowler says.


Administrators should make sure that physicians receive PPS education so that they understand the ramifications of what they order, as well as the possibility of developing new treatment protocols for rehab patients.

Fowler estimates that there may be a 5% to 8% cost savings per Medicare discharge by addressing the physician component of PPS. 

A quick lesson for administrators

There are many areas that inpatient rehab unit managers can suggest administrators focus on as they prepare for the start of the inpatient rehab facility prospective payment system (PPS).

Frances J. Fowler, president of Fowler Healthcare Affiliates in Atlanta, and **Carolyn Zollar, JD**, vice president for government relations and policy development for the American Medical Rehabilitation Providers Association in Washington offer the following tips for administrators to remember:

- 1** Make sure the medical records department understands the importance and knows how to code secondary diagnoses, as they will affect payment. Discharge coding must match what the staff codes at the time of admission.
- 2** Build communication between the financial departments and the rehabilitation units. You want to ensure that the billing of a claim reflects the case-mix group. Develop a strategy for how your facility will challenge denied claims.
- 3** Understand that your staff will, most likely, operate at somewhat below its productivity level in the first year, or until the system is fully understood.
- 4** Work with medical records and the management team to speed up the approval process of new forms that may need to be added to a patient's chart.
- 5** Consider "brown-bag" training sessions. The lunch hour may be the easiest time to schedule PPS training for those who find their calendars too filled. 



**The
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Specialists**

**Uniform Data System for Medical Rehabilitation
Service Marks and Trademarks**

The following service marks and trademarks are owned and currently used by the Uniform Data System for Medical Rehabilitation ("UDSMR"), a division of UB Foundation Activities, Inc. These marks are either registered or pending registration with the United States Patent and Trademark Office. When referring to these, please use the following forms. At minimum, the service mark or trademark symbol should be included the first time each mark is used in every work, table or chart. Service marks and trademarks must be used as adjectives and not as nouns or verbs.

**Uniform
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The explanation of the service mark or trademark is usually placed at the bottom of a page or the front of a document. Here are two examples:

1. FIM™ is a trademark of the Uniform Data System for Medical Rehabilitation, a division of UB Foundation Activities, Inc.
2. UDSMR® is a registered trademark of the Uniform Data System for Medical Rehabilitation, a division of UB Foundation Activities, Inc.

For more specific copyright information, please contact:

Marisa Smith
Legal Services Specialist
Uniform Data System for Medical Rehabilitation
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Buffalo, New York
14214

Correct Citations for UDSMR Publications

Citation for the FIM™ Guide:

Guide for the Uniform Data Set for Medical Rehabilitation (including the FIM™ instrument), Version 5.1. Buffalo, NY 14214: State University of New York at Buffalo; 1997.

Citation for the Australian Version of the FIM™ Guide:

Guide for the Uniform Data Set for Medical Rehabilitation (including the FIM™ instrument), Version 5: Australia. Buffalo, NY 14214: University at Buffalo; 1999.

Citation for the WeeFIM® Guide:

WeeFIM SystemSM Clinical Guide: Version 5.01. Buffalo, NY 14214: University at Buffalo; 1998, 2000.

Citation for FIMware® Software Manual:

FIMware® User Guide and Self-guided Training Manual, Version 5.20. Buffalo, NY 14214: State University of New York at Buffalo; 1999.

Citation for WeeFIMware™ Manual:

WeeFIM SystemSM WeeFIMware™ Software Manual, Version 5.0. Buffalo, NY 14214: University at Buffalo; 1999.

Citation for Getting Started Manual:

Getting Started with the Uniform Data System for Medical Rehabilitation, Version 5.1. Buffalo, NY 14214: State University of New York at Buffalo; 1999.

Citation for the FIM™ Video:

The FIM™ Video: Assessing Function with the FIM™ Instrument. Buffalo, NY 14214: University at Buffalo; 1999.

Citation for the WeeFIM® Video:

Introduction to the WeeFIM SystemSM: Rating Function 1999. Buffalo, NY 14214: University at Buffalo; 1999

Revised 5/01



Kathleen A. Wall
Partner
Direct Dial: 716.848.1287
kwall@hodgsonruss.com



November 14, 2002

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Mr. John Shinn
PPS Plus Software
1636 Popp's Ferry Road
Suite 219
Biloxi, MS 39532-2216

Dear Mr. Shinn:

I represent Uniform Data System for Medical Rehabilitation (UDSMR). UDSMR is the owner of the copyrights to certain portions of the Inpatient Rehabilitation Facility-Patient Assessment Instrument (IRF-PAI) and the Training Manual for the IRF-PAI, as well as the compilation copyright in the entire Training Manual.

It has come to the attention of UDSMR that you may have incorporated UDSMR-owned portions of the IRF-PAI and the Training Manual into products that you sell to rehabilitation facilities. If that is in fact the case, PPS Plus's use of such items is unauthorized until PPS Plus obtains an appropriate license from UDSMR. As you may be aware, numerous vendors have entered into license agreements with UDSMR authorizing them to offer products similar to those offered by PPS Plus. I enclose UDSMR's form of license agreement for your review.

I look forward to hearing from you, or your legal representative, at your earliest convenience.

Very truly yours,

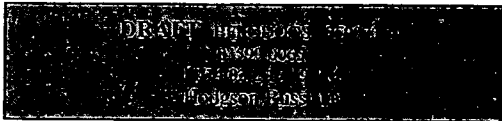
A handwritten signature in black ink, appearing to read "Kathleen A. Wall". The signature is fluid and cursive.

Kathleen A. Wall

/eb

Copy to: Dr. Richard Linn
Director, UDSMR

UBF1125



SERVICE PROVIDER LICENSE AGREEMENT

THIS AGREEMENT, dated the ___ day of _____, 2002, is between **UB FOUNDATION ACTIVITIES, INC.**, a New York not-for-profit corporation with an address at 270 Northpointe Parkway, Suite 300, Amherst, New York 14228, acting through its division, **UNIFORM DATA SYSTEM FOR MEDICAL REHABILITATION (“UDSMR”)**; and _____, a _____ with an address at _____ (the “Licensee”).

Introductory Statement. UDSMR developed and is the owner of all copyrights and other rights and interests in and to the Uniform Data Set, the FIM™ scale for adult rehabilitation patients and the impairment codes which pertain to the Uniform Data Set and the FIM™ scale, which together constitute UDSMR’s outcomes-oriented measurement system for medical rehabilitation known as The FIM SystemSM (the “System”).

Pursuant to the terms of a License Agreement, dated September 21, 1995, between the Department of Health and Human Services, Health Care Financing Administration, which is now known as the Centers for Medicare and Medicaid Services (“CMS”), and UDSMR (the “CMS License”), UDSMR has granted CMS a license to use elements of the System as the basis for CMS’s prospective payment system for inpatient medical rehabilitation (the “PPS”). A new Inpatient Rehabilitation Facility - Patient Assessment Instrument (the “IRF-PAI”) has been created to implement the PPS. The IRF-PAI incorporates elements of the System and certain refinements thereto owned by UDSMR (collectively, the “Licensed System”). Pursuant to the CMS License, UDSMR has authorized CMS to grant to rehabilitation facilities required to use the PPS a perpetual, royalty-free sublicense to use the Licensed System for PPS purposes only. However, neither the license granted by UDSMR to CMS nor the sublicense granted to any facility pursuant thereto permits service providers to create products that incorporate the Licensed System.

UDSMR is engaged primarily in developing, promoting, implementing and refining various products and services directly or indirectly related to the System and the Licensed System, collecting and compiling outcomes data from rehabilitation facilities, and performing statistical analysis, reporting and consulting services in connection therewith. UDSMR conducts its activities relating to the System and the Licensed System under various trademarks and service marks (the “Marks”), which represent UDSMR’s extremely high standards of (1) data collection, compilation and statistical analysis of outcomes data and (2) training and credentialing of clinicians and rehabilitation facilities in the use and application of the System and the Licensed System. The Marks are listed on Exhibit A attached to and made a part of this Agreement.

The Licensee desires to provide to inpatient medical rehabilitation facilities that are required to implement the PPS certain services and/or related products that incorporate the

Licensed System and that are described on Exhibit B attached to and made a part of this Agreement (the "Vendor Services"). UDSMR is willing to grant to the Licensee a limited, personal, nonexclusive license to incorporate the Licensed System in the Vendor Services, upon the terms and conditions set forth in this Agreement.

NOW, THEREFORE, the Licensee and UDSMR agree as follows:

1. **License Grant.**

(a) **License.** Subject to the limitations set forth in this Agreement, UDSMR hereby grants to the Licensee a limited, personal, nonexclusive license to use the Licensed System, in the form in which it is incorporated in the IRF-PAI, solely and exclusively in connection with the performance by the Licensee of the Vendor Services. The Licensee acknowledges that the Licensed System is licensed "as is" without any warranties whatsoever.

(b) **General Limitations.** In no event shall the Licensee (i) amend, alter, modify, supplement or delete all or any portion of the Licensed System in any manner or create any derivative works thereof or (ii) use the Marks or any other trademark or service mark owned by UDSMR in connection with or in reference to anyone other than UDSMR or anything other than the Licensed System. Without limiting the foregoing, the Licensee shall not (i) use any of the Marks as part of the name of any product or service offered as part of the Vendor Services or (ii) register, or cause to be registered, on its own behalf or otherwise, any trademark or service mark that is identical to or substantially or confusingly similar to any of the Marks.

(c) **Reservation of Rights.** All rights not specifically granted herein are reserved to UDSMR.

2. **Terms of Licensee's Agreements with Clients.** Any agreement between the Licensee and any of its clients pursuant to which Vendor Services will be provided shall contain (a) an acknowledgment by the client of UDSMR's ownership of the Licensed System, (b) an agreement by the client that (i) it will use any products or other materials from the Licensee that incorporate any elements of the Licensed System only in the form provided by the Licensee and only for the purposes authorized under the agreement between the Licensee and the client and (ii) it will not provide any such products or other materials to any third party and (c) a provision stating that the agreement between the Licensee and the client will automatically terminate in the event that this Agreement terminates for any reason.

3. **Annual License Fee.** In consideration of UDSMR granting to the Licensee the license and rights described in this Agreement, the Licensee shall pay to UDSMR an annual license fee payable (a) upon execution of this Agreement with respect to the initial term of this Agreement and (b) on or before the first day of any renewal term thereafter. The license fee for the initial term of this Agreement is \$1,500.00.

4. **Proprietary Rights.**

(a) **Ownership.** This Agreement shall not operate to transfer or convey any proprietary interest whatsoever in the Licensed System to the Licensee. The Licensee acknowledges that all right, title and interest in and to the Licensed System and any and all copyrights, trademarks and other intellectual property rights relating thereto are and shall remain the sole and exclusive property of UDSMR, subject only to the license granted to the Licensee under this Agreement.

(b) **Notices.** As a condition to the rights and license granted to the Licensee pursuant to this Agreement, the Licensee shall take all steps requested by UDSMR to acknowledge UDSMR's ownership and copyright rights to the Licensed System. Without limiting the foregoing, any product of Licensee that refers to or incorporates any portion of the Licensed System shall contain the following notice:

The Uniform Data Set, the FIM™ instrument and the related impairment codes incorporated or referenced herein are the property of UB Foundation Activities, Inc. ©1993, 2001 UB Foundation Activities, Inc. The FIM and UDS-PRO marks are owned by UB Foundation Activities, Inc.

(c) **Samples.** Upon UDSMR's request from time to time, the Licensee shall provide to UDSMR samples of (a) screen displays from any software used by the Licensee in connection with the Vendor Services that incorporates any portion of the Licensed System and (b) any marketing materials describing the Vendor Services.

5. **Limitations.** Except with respect to the Vendor Services, the Licensee shall not provide any products or services incorporating any portion of the Licensed System to any individual, corporation, partnership, limited liability company, governmental entity, association or other entity (a "Person"), whether or not such Person is a UDSMR Subscriber. Nothing herein shall be construed to prevent the Licensee from providing to any of Licensee's clients any services or products that do not incorporate any portion of the Licensed System or any other product or system owned by UDSMR. The Licensee shall not use the Licensed System to create for itself or any other Person any regional or national database of patient information or any regional or national reporting services.

6. **Term and Termination.**

(a) **Term.** Unless sooner terminated under and in accordance with the provisions of this Section 6, this Agreement shall be effective for an initial term of one (1) year commencing on the date of this Agreement, and thereafter shall be automatically renewed for successive one (1) year renewal terms, unless terminated as of the end of the initial term or any

such renewal term by either party by its giving ninety (90) days advance written notice to the other party of its intent to terminate. All renewals shall be subject to (a) UDSMR's then-current fees, which fees shall be disclosed to the Licensee not later than one hundred twenty (120) days prior to the end of any term, and (b) confirmation by the Licensee that the Vendor Services continue to be as described on Exhibit B.

(b) Licensee Default. If the Licensee shall at any time default in the payment of any sum due UDSMR, or shall commit a material breach of any of its other agreements, covenants or obligations, and shall fail to remedy such default or breach within thirty (30) days after receipt of written notice from UDSMR specifying the nature of the breach, UDSMR may at its option terminate this Agreement by notice to that effect given in writing to the Licensee.

(c) UDSMR Default. If UDSMR shall commit any material breach of its agreements or obligations contained in this Agreement, and shall fail to remedy such breach within thirty (30) days after receipt of written notice from the Licensee specifying the nature of the breach, the Licensee may at its option terminate this Agreement by notice to that effect given in writing to UDSMR.

(d) Bankruptcy. This Agreement shall automatically terminate immediately in the event of (i) the voluntary or involuntary institution of bankruptcy, insolvency or other similar proceedings involving either party, (ii) the appointment of a trustee or receiver for substantially all of the property or assets of either party or an assignment of such property or assets for the benefit of creditors, or (iii) the institution of any proceedings for the dissolution, liquidation or winding up of either party or any reorganization resulting in a material (i.e., greater than 50%) change in its ownership, business or character of such party.

(e) Termination of License. If this Agreement is terminated under any of the provisions listed above, the Licensee shall immediately and automatically forfeit the license and all other rights granted by UDSMR hereunder and shall immediately discontinue all use of the Licensed System and the Marks.

(f) Survival. The provisions of Sections 5 and 7 of this Agreement shall survive the termination of this Agreement indefinitely.

7. Indemnity; Limitation of Liability. The Licensee shall indemnify, defend and hold UDSMR harmless from, and UDSMR shall in no event be responsible for, any and all liabilities, claims, damages, costs and expenses (including without limitation reasonable attorneys' fees and disbursements) in connection with or arising out of the Licensee's performance of the Vendor Services. Under no circumstances shall UDSMR be liable to the Licensee for any incidental, indirect, special, consequential or punitive damages arising out of or in connection with this Agreement or the Vendor Services, whether or not UDSMR has been

advised of the possibility of such damages, or for any sum whatsoever which, in the aggregate, exceeds the total amount paid by the Licensee to UDSMR for the initial term of this Agreement.

8. **Equitable Relief.** The Licensee acknowledges that any alteration of any portion of the Licensed System will cause confusion in the marketplace as to what products and services the Marks represent, and will, among other things, dilute and detrimentally affect the statistical integrity, reliability, uniformity and effectiveness of such products and services. The Licensee further acknowledges and agrees that its breach of the covenants contained in any of Sections 2, 5, and 6(e) of this Agreement will cause irrevocable harm to UDSMR and that a remedy at law for any such breach would be inadequate. Therefore, the Licensee agrees that UDSMR may, in the instances described in this Section 8, seek and obtain an injunction, specific performance or other available equitable remedies from a court of competent jurisdiction.

9. **Governing Law.** This Agreement shall be construed and interpreted in accordance with the laws of the State of New York without regard to conflicts of laws principles.

10. **Jurisdiction and Venue.** The Licensee consents to jurisdiction in the State of New York and sole venue in Erie County with respect to any proceeding instituted in connection with or arising out of or relating to this Agreement.

11. **Assignment.** This Agreement, and the personal license granted pursuant hereto, shall not be assignable or transferable by the Licensee or by operation of law without the prior written consent of UDSMR.

12. **Severability.** If any Section or portion thereof of this Agreement shall be determined to be unenforceable or invalid, then such Section or portion thereof shall be modified in the letter and spirit of this Agreement to the minimum extent permitted by applicable law so as to be rendered enforceable and valid, and no such determination shall affect the remainder of this Agreement, which shall remain binding and effective against both parties.

13. **Notices.** All notices and other communications required to be given pursuant to this Agreement shall be deemed to have been validly given if hand delivered or if delivered by facsimile, first class mail or reputable courier service to the address of the appropriate party set forth below, or to such other address as such party shall designate by written notice pursuant to this Section.

UDSMR: Uniform Data System for Medical Rehabilitation
270 Northpointe Parkway
Suite 300
Amherst, New York 14228
Attention: Chief Operating Officer
Phone: 716-817-7800
Fax: 716-568-0037
E-mail: infor@udsmr.org

Copy to: Hodgson Russ LLP
One M&T Plaza, Suite 2000
Buffalo, New York 14203
Attention: Kathleen A. Wall, Esq.
Phone: 716-856-4000
Fax: 716-849-0349
E-mail: kwall@hodgsonruss.com

Licensee: _____

Attention: _____
Phone: _____
Fax: _____
E-mail: _____

Copy to: _____

Attention: _____
Phone: _____
Fax: _____
E-mail: _____

14. **General.** This Agreement (a) shall be binding upon and inure to the benefit of each of UDSMR and the Licensee and each of their respective successors and assignees, subject to the limitations of Section 11, (b) constitutes the entire agreement between UDSMR and the Licensee with respect to the subject matter of this Agreement and (c) supersedes all prior correspondence, negotiations, understandings and other writings between UDSMR and the Licensee relating to such subject matter including, without limitation, any Special Purpose-Third Party Software License Agreement between UDSMR and the Licensee. Neither this Agreement nor any provision hereof may be waived, modified or amended, in whole or in part, orally or by

any course of conduct but only by an agreement in writing duly executed by UDSMR and the Licensee. This Agreement does not create any agency, joint venture, partnership or similar relationship between UDSMR and the Licensee.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date shown at the beginning of this Agreement.

U B FOUNDATION ACTIVITIES, INC.

By: _____
Edward P. Schneider, Executive Director

By: _____
_____, _____

Exhibit A

The Marks

UDSMR®

FIM™

FIMSM

The FIM SystemSM

FIMware®

UDS-PRO™

UDS-PROSM

UDS-PRO SystemSM

Exhibit B

Vendor Services

[Licensee must provide a detailed description of the services to which this License Agreement applies and must check one or both of the boxes below, if applicable]

1. If the box is checked, the Vendor Services include the incorporation of the Licensed System into software created by the Licensee.

2. If the box is checked, the Vendor Services include the incorporation of UDSMR's data layout specifications into software created by the Licensee.

Kathleen A. Wall
Partner
Direct Dial: 716.848.1287
kwall@hodgsonruss.com



December 5, 2002

Certified Mail - 7000 1670 0007 0833 4192
Return Receipt Requested

Mr. John Shinn, President
PPS Plus Software
1636 Popps Ferry Road, Suite 219
Biloxi, Mississippi 39532

Dear Mr. Shinn:

Thank you for your November 20, 2002 letter. Your letter states that it is UDSMR's position that "PPS Plus Software needs to obtain an appropriate license from UDSMR to use the IRF-PAI." By way of clarification, please note that in my letter to you I more precisely stated that vendors who incorporate UDSMR-owned portions of the IRF-PAI into products they sell for commercial purposes need to obtain a license from UDSMR.

Your letter refers to the MDS and OASIS assessment tools. It is my understanding that these assessment tools, unlike the FIM™ instrument, are not proprietary. Therefore, no comparisons should be drawn between those two tools and the FIM™ instrument.

With respect to your inquiry concerning the basis for the license requirement, I refer you to *Practice Management Info. Corp. v. American Medical Ass'n*, 121 F.3d 516 (9th Cir. 1997), opinion amended by 133 F.3d 1140 (9th Cir. 1998). With respect to your inquiry regarding UDSMR's copyright claims, please refer to Copyright Office registration number TX-5-574-858. The Centers for Medicare and Medicaid Services (CMS) is not UDSMR's agent and cannot speak for UDSMR with respect to copyright matters.

A list of vendors who have entered into license agreements with UDSMR is available on UDSMR's website at www.udsmr.org. It is not UDSMR's policy to disclose the terms of its agreements with others to third parties. The license agreement I provided to you is the standard form that UDSMR currently provides to vendors expressing an interest in incorporating UDSMR-owned portions of the IRF-PAI into their products.

UBF1136

Mr. John Shinn, President
December 5, 2002
Page 2

I look forward to hearing from you at your earliest convenience.

Sincerely,



Kathleen A. Wall

/eb

cc: Dr. Richard Linn
Director, UDSMR

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
Mr. John Shinn, President
PPS Plus Software
1636 Popp's Ferry Rd. Suite 20
Biloxi, Mississippi
39532

COMPLETE THIS SECTION ON DELIVERY

A. Received by (Please Print Clearly) B. Date of Delivery
Angela M. Brown 12-10-02

C. Signature Agent
x Angela M. Brown Addressee

D. Is delivery address different from item 1? Yes
If YES, enter delivery address below: No

3. Service Type
 Certified Mail Express Mail
 Registered Return Receipt for Merchandise
 Insured Mail C.O.D.

4. Restricted Delivery? (Extra Fee) Yes

2. Article Number (Copy from service label)

7000 1670 0007 0833 4192

PS Form 3811, July 1999

Domestic Return Receipt

102595-00-M-0952

UBF1138

Kathleen A. Wall
Partner
Direct Dial: 716.848.1287
kwall@hodgsonruss.com



January 3, 2003

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Mr. John Shinn
PPS Plus Software
1636 Popp's Ferry Road
Suite 219
Biloxi, MS 39532-2216

Dear Mr. Shinn:

In response to your December 19, 2002 letter, you may access a list of vendors who have entered into license agreements with UDSMR on UDSMR's website (www.udsmr.org) by clicking on "UDS-PRO" and then clicking on "Partners."

While I understand that you may wish to discuss licensing matters with UDSMR-licensed vendors, the need for PPS Plus to enter into an appropriate licensing arrangement with UDSMR is not contingent on your ability or inability to do so. UDSMR has instructed me to take whatever steps are necessary to conclude this matter in a timely manner.

I look forward to hearing from you no later than January 14, 2003 concerning the issues raised in my initial letter to you.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Kathleen A. Wall".

Kathleen A. Wall

/eb

Copy to: Dr. Richard Linn
Director, UDSMR

UBF1139

U.S. Postal Service
CERTIFIED MAIL RECEIPT
 (Domestic Mail Only; No Insurance Coverage Provided)

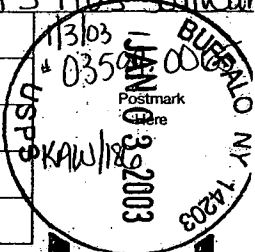
999T 6009 9000 00HE 6602

Article Sent To:
 Mr. John Shinn - PPS Plus Software

| | |
|--|---------------|
| Postage | \$.60 |
| Certified Fee | 2.30 |
| Return Receipt Fee (Endorsement Required) | 1.75 |
| Restricted Delivery Fee (Endorsement Required) | |
| Total Postage & Fees | \$4.65 |

Memo (Please Print Clearly) to be completed by mailer:
 PPS-PLUS Software
 Street, Apt. No. or PO Box No. 113103
 113103 Popp's Ferry Road, Suite 114
 City, State, ZIP+4 BILoxi, MS 39532-2216

PS Form 3800, July 1999 See Reverse for Instructions



SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
 Mr. John Shinn
 PPS Plus Software
 11310 Popp's Ferry Road, Rt. 219
 Biloxi, MS 39532-2216

COMPLETE THIS SECTION ON DELIVERY

A. Signature Agent
 Angela Shinn Addressee

B. Received by (Printed Name)
 Angela Shinn C. Date of Delivery

D. Is delivery address different from item 1? Yes
 If YES, enter delivery address below: NO
 KAW/186
 113103
 #03599.0005

3. Service Type
 Certified Mail Express Mail
 Registered Return Receipt for Merchandise
 Insured Mail C.O.D.
 4. Restricted Delivery? (Extra Fee) Yes

2. Article Number (Transfer from service label): 7099 3400 0008 6009 1866
 PS Form 3811, August 2001 Domestic Return Receipt 102595-01-M-2508

#7099 3400 0017 1610 5102

Kathleen A. Wall
Partner
Direct Dial: 716.848.1287
kwall@hodgsonruss.com


Hodgson Russ
ATTORNEYS • L.L.P.

March 10, 2003

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Mr. John Shinn
PPS Plus Software
1636 Popps Ferry Road
Suite 219
Biloxi, MS 39532-2216

Dear Mr. Shinn:

In my January 3 letter to you, I had asked that you respond to me by January 14 concerning a proposed license agreement with UDSMR. I conclude from your lack of response that PPS Plus has determined that the products and services it offers do not incorporate UDSMR-owned portions of the IRF-PAI and that a license agreement with UDSMR is therefore not required. UDSMR will continue to monitor this situation closely. PPS Plus will not, of course, be listed on UDSMR's website as a licensed vendor and UDSMR will provide that information in response to any direct inquiries it receives about the status of PPS Plus.

Very truly yours,



Kathleen A. Wall

/eb

Copy to: Dr. Richard Linn
Director, UDSMR

UBF1141

SENDER

- Complete this card for all items, including restricted items.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Mr. John Shinn
 PPS Plus Software
 1636 Popp's Ferry Road
 Suite 219
 Biloxi, MS 39532-2216

2. Article Number (Copy from service label)

7099 3400 0017 1610 5102

PS Form 3811, July 1999

Domestic Return Receipt

102595-00-M-0952

THIS SECTION ON DELIVERY

A. *Angela Brown* (Please Print Clearly) B. Date of Delivery

C. Signature
 X *Angela Brown* Agent Addressee

D. Is delivery address different from item 1? Yes
 If YES, enter delivery address below: No

3. Service Type

- Certified Mail Express Mail
- Registered Return Receipt for Merchandise
- Insured Mail C.O.D.

4. Restricted Delivery? (Extra Fee) Yes

UBF1142


**HODGSON RUSS
ANDREWS
WOODS &
GOODYEAR_{LLP}**
ATTORNEYS AT LAW

Kathleen A. Wall
Partner
DIRECT: 716-848-1287
kwall@hodgsonruss.com

1800 One M&T Plaza
Buffalo, NY 14203-2391
716-856-4000
FAX: 716-849-0349 M&T

*Albany
Boca Raton
Buffalo
New York
Rochester
Toronto
West Palm Beach*

May 28, 1998

Bavaria Klinik Kreischa
An der Wolfsschlucht 1-2
D-01731 Kreischa
Germany
Attention: Dr. Bernd J. Eversmann MSP

Dear Dr. Eversmann:

Re: Uniform Data System for Medical Rehabilitation ("UDSMR")

My firm represents UDSMR. I am sending this letter to your attention because you are apparently the last person who has communicated with UDSMR on behalf of Klinik Bavaria.

UDSMR recently accessed the Internet site of Klinik Bavaria and was surprised to find that it included UDSMR's FIM™ instrument in its entirety with minor additions relating to spinal cord injuries. According to correspondence sent by Dr. Jurgen K. Wentz of Heiss & Partner to Dr. Carl Granger of UDSMR in February of 1996, Klinik Bavaria was supposedly unable to implement The FIM SystemSM because of its incompatibility with the German health care system. Dr. Wentz's letter also informed Dr. Granger that "the software provided by UDSMR had never been used at [Klinik Bavaria's] premises." Despite these alleged shortcomings, Klinik Bavaria has apparently found some applications for The FIM SystemSM.

As UDSMR has made clear in all of its correspondence with Klinik Bavaria and its representatives, UDSMR is the owner of all aspects of The FIM SystemSM, including, but not limited to, all copyrights, service marks and trademarks relating to The FIM SystemSM. As you may be aware, Klinik Bavaria has no agreement with UDSMR that permits it to use any aspect of The FIM SystemSM. Therefore, Klinik Bavaria's use of The FIM SystemSM, as evidenced by its Internet site, is a violation of UDSMR's intellectual property rights and is regarded as a very serious matter by UDSMR.

UBF1143

In order to settle this matter, we request the following from Klinik Bavaria, to be received no later than the close of business on June 30, 1998:

1. A letter confirming (a) Klinik Bavaria's immediate and permanent withdrawal of all references to any aspect of The FIM SystemSM, including, but not limited to, the FIMTM instrument, from Klinik Bavaria's Internet site and from any other medium in which Klinik Bavaria has published such references, including all promotional materials in whatever manner produced and (b) that Klinik Bavaria has ceased using any aspect of The FIM SystemSM; and

2. Klinik Bavaria's payment of the sum reflected on the enclosed statement from UDSMR, which UDSMR believes is reasonable compensation for Klinik Bavaria's previous infringing uses of various aspects of The FIM SystemSM.

Please note that the payment of the sum described in paragraph 2 above will not give Klinik Bavaria the right to use any aspect of The FIM SystemSM now or in the future. Klinik Bavaria may only obtain such rights by entering into the appropriate agreement with UDSMR.

If we do not receive a response from Klinik Bavaria within the time stated above, we will proceed with such actions as we deem appropriate without further notice to Klinik Bavaria.

Very truly yours,

Kathleen A. Wall/ema

Kathleen A. Wall

kaw

Enclosure

cc: Kathy Dann, UDSMR

CORPORATE:184121_1 (3Y2H_1)

UBF1144

HEISS & PARTNER

Neues Postfach:
Postfach 10 07 63
80081 München

VIA TELECOPIER: 001-716-849-0349
001-716-852-5185

Hodgson Russ, Andrews
Woods & Goodyear
Attorneys at Law
Ms. Kathleen A. Wall
1800 One M&T Plaza

Buffalo, NY 14203-2391
USA

DR. FRANZ LUDWIG HEISS, LL.M.
DR. JÜRGEN K. WENTE, LL.M.
PAUL M. KOSSLER, M.C.J.
DR. CHRISTOPH M. KEIM
ARNE JOHANNES REIF
DR. REINHARD M. EHRL
PETER WILHELM KREMER
DR. JÜRGEN E. KAMMERLOHR, M.C.L.
DR. FLORIAN V. BAUM
RECHTSANWÄLTE

BRIENNER STRASSE 1
80333 MÜNCHEN

POSTANSCHRIFT:
POSTFACH 2010 26
80010 MÜNCHEN

TELEFON: (089) 290829-0
TELEFAX: (089) 290829-29
E-MAIL: HP@HEISSPARTNER.DE

June 29, 1998
6/93049-04
JKW/ED

Durchwahl:
089 - 29 08 29-17

Re.: Uniform Data System for Medical Rehabilitation ("UDSMR ") Klinik Bavaria
Kreisch

Dear Ms Wall:

As you may remember, my firm represents the Klinik Bavaria group in Germany. I am responding to your letter of May 28, 1998, directed to Dr. Eversmann on behalf of UDSMR, and a letter by Ms. Kathleen Dann of UDSMR to Dr. Eversmann. The response to these letters is delayed since Dr. Eversmann is not working at Klinik Bavaria in Kreisch, but in the Institute for Quality Management of the Klinik Bavaria Group in Straubing, which is located in a different state as well. To secure fast communication, please be kind enough to direct any further letters and notices to us.

Before I come to the merits, please allow me to explain my understanding of FIM and the FIM-implementation by UDSMR. Please be kind enough to point out where I am not correct. I can assure you, that my client is interested in solving the issues raised by you and your client in a reasonable way.

UBF1145

SOZIOFAT RECHTSANWÄLTE, STEUERBERATER, WIRTSCHAFTSPROFESSOR

ZULASSUNGEN: DR. HEISS (AUCH F.A.S.R., S.B., WP), DR. WENTE, DR. KEIM, REIF, DR. EHRL, DR. KAMMERLOHR, KREMER,
LANDGERICHTE MÜNCHEN I UND II, OBERLANDESGERICHT MÜNCHEN UND
BAYERISCHES OBERSTES LANDESGERICHT, DR. V. BAUM; LANDGERICHTE MÜNCHEN I UND II.

HYPO-BANK (BLZ 700 20001) KTO.-NR. 5850154760, HAUCK & ALFHAUSER (BLZ 502 20900) KTO.-NR. 6148803
POSTBANK MÜNCHEN (BLZ 70010080) KTO.-NR. 363437-904

- 2 -

1. The measuring of functional independence as such is subject of scientific discussions all over the world, and as such cannot be subject to any intellectual property right protection, but is part of the public domain.
2. UDSMR developed a software, which encompasses a specific implementation of a functional independence measure and an ability to compare clinical data. Of course, any software like the one developed by your client and used by the FIM System, is copyright protected, and, please confirm, your client is the holder of the copyright.
3. The same applies in general to the FIM-Guidebook. However, the holder of the copyright is the "Center for Functional Assessment Research Foundation", which is, as I understand, not identical with your client. In addition, the FIM-Guidebook bears a note according to which it may be copied and distributed without changes.
4. The abbreviation FIM for Functional Independence Measurement is used in the scientific literature as a technical term, and there is no trademark protection for the three consecutive letters FIM, but - as indicated in your letter - for "FIM System" and "UDSMR FIM" in the US. Nobody at Klinik Bavaria uses those service or trade marks.

Now to the merits:

1. In our letter of February 12, 1996, which has been quoted by you, we stated that the specific implementation of a functional independence measure system into the UDSMR system is an implementation mainly for the needs of American hospitals, and thus, our client fears that an implementation of the UDSMR system is not appropriate in Germany. This is still true. The UDSMR system to measure functional independence as such as well as the UDSMR functions to compare such data have not been implemented by our client. However, our client has for its own use - without using any software delivered or owned by your client - established a functional independence measurement system which is suited to fit to the needs in Germany.

However, as the page on the site referenced by you shows, our client adopted the specific measurement scale, which is not only a minor part of the UDSMR system, but also is pre-determined by scientific requirements. With respect to the latter, it is doubtful whether this scale is in fact subject to copyright protection under German law.

UBF1146

- 3 -

2. As stated in my letter of February 12, 1996, it is still true and correct that the software provided by UDSMR has never been used at Klinik Bavaria's premises, and in fact, the trial versions provided had a time limit which expired long before Dr. Eversmann joined Klinik Bavaria. Thus, it would have been impossible to use the software.
3. With respect to the translation of the FIM-Guidebook, our client is somewhat surprised by the request for explanation by Ms. Dann. As your client is well aware, in the course of the evaluation of the feasibility of the UDSMR system a translation of UDSMR's FIM Guidebook was prepared by Klinik Bavaria first for evaluation purposes only. It was found that the system in its totality does not fit to German needs, but also that the UDSMR's FIM Guidebook is helpful.

With the note attached to the English language version of the FIM-Guidebook, according to which it may be copied and distributed without changes, the copyright holder indicated its interest in a wide distribution to make the system described in the FIM-Guidebook popular. Thus, our client came to the conclusion that it acted in the interest of the copyright holder when distributing the translation. By the way: the distribution was for free.


Nevertheless, as shown by my letter of February 12, 1996, our client tried to obtain a right to copy and distribute the translation. To our clients regret, we never received a clear answer or response, which again indicated, that nobody cared whether or not this translation was distributed.

After all, our client is surprised by your clients request to pay a license fee for a use of the UDSMR's FIM-System. Does your client really consider the FIM measurement scale to be proprietary and not public - scientific domain? And does your client really not want to have the FIM Guidebook distributed as far as possible?

If so, and without giving up its legal standpoint, our client kindly asks your client to reconsider the amount it is asking for, to find a reasonable basis for a settlement, and to propose a scheme according to which your client could agree on a distribution of the FIM-Guidebook and use of the scale in the future.

Yours sincerely,

HEISS & PARTNER


Dr. Jürgen K. Wente
Rechtsanwalt

UBF1147

GESAMT S. 03


**HODGSON RUSS
ANDREWS
WOODS &
GOODYEAR^{LLP}**
ATTORNEYS AT LAW

Kathleen A. Wall
Partner
DIRECT: 716-848-1287
kwall@hodgsonruss.com

1800 One M&T Plaza
Buffalo, NY 14203-2391
716-856-4000
FAX: 716-849-0349 M&T

*Albany
Boca Raton
Buffalo
New York
Rochester
Toronto
West Palm Beach*

July 21, 1998

Via Telecopier 08929082929

Jurgen K. Wentz, LL.M.
Heiss & Partner
Rechtsanwälte
Postfach 10 07 63
80081 München

Dear Dr. Wentz

Re: Uniform Data Systems for Medical
Rehabilitation/Klinik Bavaria Kreischa

We have reviewed your letter of June 29, 1998, with our client and are pleased that Klinik Bavaria is interested in solving our outstanding issues in a reasonable manner. As a preliminary matter, we accept your request to correct certain misunderstandings concerning The FIM SystemSM and its component parts.

Enclosed is a copy of our client's Statement of Ownership of The FIM System which is self explanatory. As you can see, UDSMR owns The FIM System in its entirety and all of the related trademarks and servicemarks, including the "FIM" mark for its services and for the measurement instrument pertaining to the adult rehabilitation population. While, as you suggest, others may have discussed various ways to measure functional independence, the specific research that resulted in the measuring instrument identified as the "Functional Independence Measure", i.e., the FIM instrument, was developed in the 1980s at the State University of New York at Buffalo. All of the University's copyrights and other proprietary rights associated with that research have been assigned in their entirety to our client and registered with the United States Copyright Office. The Center for Functional Assessment Research to which you referred in your letter is part of the School of Medicine at the State University of New York at Buffalo. Thus, there is no confusion regarding our client's ownership rights, and I am confident the works would be accorded copyright protection under German law.

The purpose of the note in the original Guide for the Uniform Data Set for Medical Rehabilitation (the "Guide") permitting copying and distribution was to promote

UBF1148

HODGSON, RUSS, ANDREWS, WOODS & GOODYEAR LLP

Jurgen K. Wentz, LLM

July 21, 1998

Page 2

uniformity in the use of the system within the facility using the Guide. However, our client learned that its policy with respect to copying and distribution was confusing to some users of the Guide. Therefore, the permission to copy and distribute granted by the earlier note does not apply to any new or updated copies or versions of Guide materials. Moreover, the earlier permission to copy did not carry with it the right to make translations or other derivative works.

The earlier permission to copy also did not authorize others to use the FIM measuring instrument and call the resulting data "FIM" data. Thus, use of the FIM mark by others to identify data that has not been processed in a manner having the approval of our client infringes upon and dilutes the valuable FIM mark and its reputation for integrity. Hence, it cannot be allowed to continue.

With respect to your points on the merits, we appreciate that your client has not used any of UDSMR's software. However, our prior letter on the subject did not seek compensation for use of the software. Rather, the letter was directed to use of the FIM measuring instrument, and related materials. In prior correspondence between the parties your client clearly acknowledged UDSMR's proprietary rights in the Guide for the Uniform Data Set for Medical Rehabilitation, the FIM measuring instrument and other proprietary materials. It cannot now be heard to suggest that the measurement scale is in the public domain and/or that its use of that scale and the Guide were minimal or covered by some previous consent. In fact, we are very surprised by your client's assumption, contrary to all the evidence, that "nobody cared" whether the German language translation (originally created only for purposes of evaluation as you have admitted) was distributed for free throughout your market area.

With respect to a scheme for going forward, UDSMR is still willing to proceed with an international license, so long as your client acts promptly to resolve this matter.

Basically, UDSMR is prepared to give Klinik Bavaria a nonexclusive, limited, revocable license to use the FIM measurement instrument and certain copyrighted materials within its own facilities for a license fee of \$15,000 (US dollars). The license would include the right to translate and distribute the copyrighted Guide to those facilities but not to any other parties. Our client necessarily would have to verify that the German translation is accurate and appropriate.

HODGSON, RUSS, ANDREWS, WOODS & GOODYEAR LLP

Jurgen K. Wentz, LLM

July 21, 1998

Page 3

With respect to payment for past unauthorized use, as you can see, the \$10,000 (US dollars) combined sum for three years of prior use is already a severely discounted sum. It was proposed in the interest of an early settlement because it matched the sum offered in the agreement proposed by Klinik Bavaria and attached to Dr. Wentz's letter of February 12, 1996. Until we have a better understanding of your client's willingness to proceed on the basis outlined above, we are not prepared to discuss any further reduction in the fee for prior use.

We look forward to a prompt response.

Very truly yours,

Kathleen A. Wall/ema

Kathleen A. Wall

dmp

cc: Kathy Dann

CORPORATE:191851_1 (4417_1)

HODGSON, RUSS, ANDREWS, WOODS & GOODYEAR LLP

Jurgen K. Wente, LLM

July 21, 1998

Page 4

bcc: Tricia T. Semmelhack

STATEMENT OF OWNERSHIP OF THE FIM SYSTEMSM
BY UNIFORM DATA SYSTEM FOR MEDICAL REHABILITATION

- The FIM SystemSM refers generally to a comprehensive system for developing and maintaining data sets including measurement instruments that may be used to measure the severity of a person's disability and the outcomes of medical rehabilitation. The instruments are based on and include, but are not limited to, measurement scales for determining functional levels of independence in adults and children; software for data entry, reporting and transmission of data; and guides for the use of the software and the measurement scales.

- The research, statistical reporting and analysis services and other activities relating to The FIM SystemSM are owned and provided by Uniform Data System for Medical Rehabilitation (UDSMR), a division of UB Foundation Activities, Inc. (UBFA). UBFA is a New York not-for-profit corporation that is a supporting organization of the State University of New York at Buffalo.

- UDSMR markets its statistical, reporting and analysis services incorporating The FIM SystemSM under the "FIMSM" and "UDSMRSM" marks, and has developed considerable goodwill in these marks as representing UDSMR's very high standards for (a) the uniformity, reliability and integrity of The FIM SystemSM and UDSMR's database of patient data, (b) collection, processing, compilation, statistical analysis and reporting of patient data and (c) training of clinicians and credentialing of rehabilitation facilities in the application of The FIM SystemSM.

- All copyrights, service marks and trademarks relating to The FIM SystemSM are owned by UBFA and none of The FIM SystemSM is or has ever been in the public domain. Any unauthorized or unlicensed incorporation of portions of copyrighted works relating to The FIM SystemSM into other works, any modification of any such modified works by third parties and any unauthorized or unlicensed use of any such copyrighted works or of the UDSMR or FIM service marks or trademarks are and remain improper and in violation of UDSMR's intellectual property rights.

CORPORATE:181794_1 (3W9U_1)

HEISS & PARTNER

Via telefax 001-716-849-0349

Hodgson Russ, Andrews
Woods & Goodyear
Attorneys at Law
Ms. Kathleen A. Wall
1800 One M&T Plaza
Buffalo, NY 14203-2391
USA

DR. FRANZ LUDWIG HEISS, LL.M.
DR. JÜRGEN K. WENTE, LL.M.
PAUL M. KOSSLER, M.C.J.
DR. CHRISTOPH M. KEIM
ARNE JOHANNES REIF
DR. REINHARD M. EHRL
PETER WILHELM KREMER
DR. JÜRGEN E. KAMMERLOHR, M.C.L.
DR. FLORIAN V. BAUM
RECHTSANWÄLTE

BRIENNER STRASSE 1
80333 MÜNCHEN

POSTANSCHRIFT:
POSTFACH 100783
80081 MÜNCHEN

TELEFON: (089) 29 08 29-0
TELEFAX: (089) 29 08 29-29
E-MAIL: HP@HEISSPARTNER.DE

September 18, 1998
9/93049-01.doc
JKW/ED-HB

Direct line:
++89 - 29 08 29-17

Re: Use of the FIM Scale by Klinik Bavaria

Dear Ms. Wall:

Thank you very much for your letter of July 21, 1998.

I sincerely regret to have to inform you that in the meanwhile the operator of the Klinik Bavaria Kreischa, the "Rudolf Presl GmbH & Co. Klinik Bavaria Rehabilitations KG" filed an application for the so called Gesamtvollstreckungsverfahren, which is comparable to a chapter eleven or bankruptcy proceeding under US-law. Thus, all claims from the past have to be registered with the receiver, and it is up to the receiver to decide whether he will acknowledge the claim and pay the claim proportionately or not. Therefore, we no longer have the authority to discuss any issue related to the past.

Due to the status of the proceeding, there is an intermediate receiver appointed, who will most likely become

SOZIALTÄT RECHTSANWÄLTE, STEUERBERATER, WIRTSCHAFTSPROFESSOR

ZULASSUNGEN: DR. HEISS (AUCH FASR, SIB, WP), DR. WENTE, DR. KEIM, REIF, DR. EHRL, DR. KAMMERLOHR, KREMER;
LANDGERICHTE MÜNCHEN I UND II, OBERLANDESGERICHT MÜNCHEN UND
BAYERISCHES OBERSTES LANDESGERICHT, DR. V. BAUM: LANDGERICHTE MÜNCHEN I UND II.

HYPO-BANK (BLZ 70020001) KTO-NR. 6850164760, HAUCK & AUFHAUSER (BLZ 50220900) KTO-NR. 6148003
POSTBANK MÜNCHEN (BLZ 70010080) KTO-NR. 383437-804

the receiver in the near future. His name is Uwe Ludwig Alheidt, and I am acting now upon his directions.

With respect to the future we have to assume that most likely the hospital will be taken over by another legal entity in full or part. With respect to this future entity there is a strong indication that it shall be interested to acquire a licence as proposed in your letter with respect to the future use of FIM. Such future licence then should cover the usage of the UDSMR FIM-System internally as well as its use for billing purposes (not the software, but only the scale), i.e. exchange of data with the health insurance entities. However, as long as this future entity is not yet in existence, nothing can be agreed.

As soon as things have been sorted out and the future of the enterprise is stabilised, we will get in touch again.

Yours sincerely,

HEISS & PARTNER


Dr. Jürgen K. Wente
Rechtsanwalt

UBF1154

SIMPSON & SIMPSON, PLLC
PATENTS, TRADEMARKS, COPYRIGHTS,
COMPUTER LAW, LICENSING & RELATED MATTERS

ROBERT P. SIMPSON*
ELLEN SWARTZ SIMPSON+

EDWARD W. TRACY, JR.**
S. PETER KONZEL
C. RICHARD LOHRMAN**

* Also admitted in Connecticut, Florida and before The United States Patent and Trademark Office

+ Also admitted in Florida, Certified Public Accountant

** Also admitted before The United States Patent and Trademark Office

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WWW.IDEALAWYERS.COM

TELEPHONE: (716) 626-1564
FACSIMILE: (716) 626-0366

WRITER'S E-MAIL: ESIMPSON@IDEALAWYERS.COM

OF COUNSEL

HOWARD M. ELLIS, Registered Patent Attorney
R. CRAIG KAUFFMAN, Registered Patent Attorney

REGISTERED PATENT AGENT

SUMITA CHOWDHURY-GHOSH, Ph.D.

February 19, 2003

Kathleen A. Wall, Esq.
Hodgson Russ LLP
One M & T Plaza, Suite 2000
Buffalo, New York 14203

**RE: License Agreement
UDSmr to IT Health Track, Inc.
Our Ref: 1120.SAIA:101US**

Dear Ms. Wall:

Please know that we represent Pamela Smith and IT HealthTrack, Inc. in relation to the above referenced license agreement.

We have reviewed the license agreement forwarded to Nancy Saia, Esq. by Amy J. McCormack, Legal Services Specialist, UDSmr. We raise the following issues in order of importance:

1. Paragraph 6 – Restrictive Covenants

Our client is not agreeable to this clause of the agreement. In the past, our client has provided services to UDSmr and other entities. This clause is more restrictive than in past agreements, and would require our client to eliminate a portion of its business – something our client is unwilling to do. Of course, our client would not utilize any proprietary software owned by UDSmr in servicing these other entities.

2. Paragraph 4 – Proprietary Rights

Subparagraph (a) – Our client is agreeable to the first two sentences in this subparagraph in that it agrees that the license agreement does not transfer or convey any proprietary interest in the licensed products or licensed mark to the licensee, nor will it register or cause to be registered any trademark or service mark which is confusingly similar to UDSmr's trademarks and/or service marks.

UBF1155

Kathleen A. Wall, Esq.
Hodgson Russ LLP
Our Ref: 1120.SAIA:101US
February 19, 2003
Page 2

However, we do not see the necessity that our client affirm that UDSmr owns the rights, title, and interest in and to the licensed products, licensed marks, copyrights, and other intellectual property rights relating thereto, or to expressly state that it will not question the ownership of these intellectual property rights. Whether or not UDSmr owns the intellectual property rights is a matter of law to which our client cannot expressly attest.

Similarly, as to subparagraph (b), there is no legal reason that our client should agree to take reasonable steps to acknowledge UDSmr's ownership and copyright rights in the licensed products, and to other intellectual property, as it is a matter of law as to whether or not UDSmr owns these specific rights. There is simply no legal significance to our client's express statements regarding its opinion as to the ownership of certain intellectual property rights. To the extent that UDSmr has registered trademarks, our client will agree to note that UDSmr is the owner of such registered trademark for the goods so associated with the trademark.

3. Introductory Statement

Corresponding with the above comments, we suggest that the introductory statement be amended to state that UDSmr "claims ownership" of the licensed products. Additionally, we request that the third paragraph in the introductory statement be amended to delete the phrase "to UDSmr UDS-PRO System subscribers (the "UDSmr Subscribers") and add in its place the phrase "to its customers."

4. Paragraph 1 - License

Corresponding with the above comments, we suggest that Paragraph 1(a)(i) be amended to delete the phrase "to UDSmr Subscribers."

Paragraph 1(b) – We request that the second paragraph beginning with the word "Notwithstanding" be amended to read "Notwithstanding the foregoing, neither the Licensee's creation, modification and utilization of its *ITH Quality Indicators or Facility Defined Items* for the collection of..." in place of the words "own extra customer questions."

Kathleen A. Wall, Esq.
Hodgson Russ LLP
Our Ref: 1120.SAIA:101US
February 19, 2003
Page 3

5. Paragraph 2 – Obligations of Licensee

Subparagraph (b) – We request that the following language be substituted for subparagraph (b):

“The licensee shall insure that its data collectors are trained in accordance with applicable guidelines and score all patients using the IRF-PAI Training Manual available on the CMS web site.”

6. Paragraph 3 – Fees

Subparagraph (a) – We request that an annual cap of two (2%) percent be placed on any rate increases.

7. Paragraph 4(c)(i) – Improvements

The terms “Licensee Extra Questions” and “License Customer Questions” should be changed to state the terms as *ITH Quality Indicators and Facility Defined Items* as discussed above.

Please contact us to discuss the proposed revisions to the license agreement. We look forward to hearing from you.

Very truly yours,



Ellen S. Simpson

ESS:

UBF1157

Kathleen A. Wall
Partner
Direct Dial: 716.848.1287
kwall@hodgsonruss.com



March 19, 2003

Ellen S. Simpson, Esq.
Simpson & Simpson, PLLC
5555 Main Street
Buffalo, New York 14221

Dear Ms. Simpson:

Re: Proposed License Agreement Between Uniform Data System for Medical Rehabilitation (UDSMR) and IT Health Track, Inc.

Thank you for your February 19 letter addressing IT Health Track, Inc.'s issues concerning the proposed license agreement with UDSMR. The following are our responses to those issues, addressed in the order presented in your letter:

1. Section 6 - Restrictive Covenants

Neither your client, IT Health Track, Inc., nor National Follow Up Services, Inc. (NFS), the corporation with which the principal of IT Health Track, Inc. was formerly associated, has ever provided services to UDSMR. NFS, under a previously-existing license agreement with UDSMR, provided follow up services to UDSMR's subscribers. That license agreement specifically prohibited NFS from using UDSMR's proprietary intellectual property to provide services to facilities that are not UDSMR subscribers. The proposed form of license agreement that UDSMR provided to your client does not impose any additional restrictions in this regard, and is therefore no more restrictive than the previous NFS license agreement. Furthermore, the data collection form that your client would use pursuant to the proposed license agreement is a UDSMR-owned form that is part of UDSMR's UDS-PRO software and its related guide. Both the software and the guide are registered with the United States Copyright Office. Therefore, your client would in fact be using a portion of UDSMR's proprietary software in servicing non-UDSMR subscribers. In light of the forgoing, UDSMR is unwilling to modify the restrictions in Section 6 of the proposed license agreement.

2. Section 4 - Proprietary Rights

UDSMR is unwilling to make the modifications requested in subparagraph (a) of Section 4. It is not unreasonable for UDSMR to expect that a licensee to whom it has given the right to use its intellectual property will acknowledge UDSMR's ownership of such property and will not take actions that question the ownership of such property. Similarly, with respect to subparagraph (b) of Section 4, there is no reason that your client should object to properly acknowledging UDSMR's ownership of the licensed intellectual property. UDSMR owns various

UBF1158

Ellen S. Simpson, Esq.
March 19, 2003
Page 2

copyrights and trademarks associated with the property your client wishes to use, and we would expect that your client would reflect such ownership when using or referring to such property.

3. Introductory Statement

We decline to make the changes requested in the Introductory Statement.

4. Section 1(a)(i)

We decline to make the requested change to Section 1(a)(i) of the license agreement.

5. Section 1(b)

The requested change to Section 1(b) is acceptable.

6. Section 2(b)

We decline to make the requested change to Section 2(b).

7. Section 3(a)

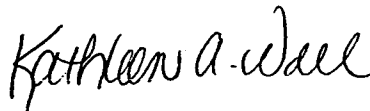
We would agree to modify Section 3(a) to provide for an annual cap of 5% on rate increases.

8. Section 4(c)(i)

The requested change to Section 4(c)(i) is acceptable.

I look forward to discussing these issues with you at your earliest convenience.

Very truly yours,



Kathleen A. Wall

KAW/kms

cc: Richard Linn, Ph.D.
Director, UDSmr

Kathleen A. Wall
Partner
Direct Dial: 716.848.1287
kwall@hodgsonruss.com



April 28, 2003

Certified Mail - Return Receipt Requested

Ellen S. Simpson, Esq.
Simpson & Simpson, PLLC
5555 Main Street
Buffalo, New York 14221

Dear Ms. Simpson:

Re: Proposed License Agreement Between Uniform Data System for Medical Rehabilitation (UDSMR) and IT Health Track, Inc.

I am assuming from your lack of response to my March 19, 2003 letter that your client IT Health Track, Inc. is no longer interested in obtaining a license agreement from UDSMR in order to use UDSMR's proprietary intellectual property in providing the follow up services it offers. Under the circumstances, we must require that IT Health Track, Inc. immediately:

1. Cease all use of any UDSMR-owned intellectual property, including, without limitation, all versions of the FIM™ instrument, the WeeFIM® instrument and any element of the LIFEware SystemSM;
2. Remove from its website all references to UDSMR-owned intellectual property; and
3. Return to UDSMR all UDSMR-copyrighted materials, including, without limitation, any such materials to which it gained access through Dr. Pamela Smith's former association with National Follow-Up Services, Inc.

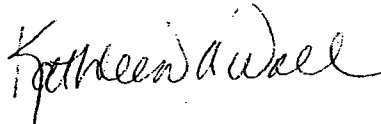
IT Health Track, Inc. will not be listed as a UDSMR licensee in any UDSMR publications or on its website and UDSMR will provide that information in response to any direct inquiries it receives about the status of IT Health Track, Inc.

UBF1160

Ellen S. Simpson, Esq.
April 28, 2003
Page 2

Please contact me if you have any questions.

Very truly yours,

A handwritten signature in cursive script that reads "Kathleen A. Wall".

Kathleen A. Wall

/eb

cc: Richard Linn, Ph.D.
Director, UDSMR

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UBF1161

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
 Ellen S. Simpson, Esq.
 Simpson & Simpson, PLLC
 5555 Main Street
 Buffalo, NY 14221

2. Article Number
 (Transfer from service label) 7099 3400 0008 6009 1880

COMPLETE THIS SECTION ON DELIVERY

A. Signature Agent
 X Addressee

B. Received by (Printed Name) C. Date of Delivery

D. Is delivery address different from item 1? Yes
 If YES, enter delivery address below: No

3. Service Type
 Certified Mail Express Mail
 Registered Return Receipt for Merchandise
 Insured Mail C.O.D.

4. Restricted Delivery? (Extra Fee) Yes

PS Form 3811, August 2001

Domestic Return Receipt

102595-02-M-1035

TO:
 Ellen S. Simpson, Esq.
 Simpson & Simpson
 5555 Main Street
 Buffalo, New York 14221

(A PARTNERSHIP IS)

One M&T Plaza, S
 Buffalo, NY 14203
 (716)856-4000

Hodgson
 A T T O R N E Y

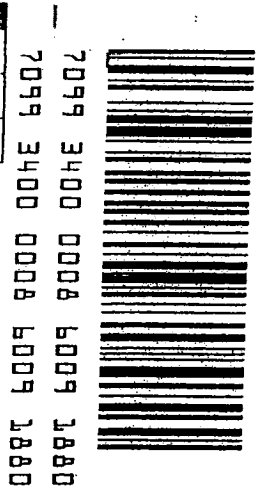
U.S. Postal Service
CERTIFIED MAIL RECEIPT
 (Domestic Mail Only; No Insurance Coverage Provided)

Article Sent To: Ellen S. Simpson 5555 Main St

| | |
|--|--|
| Postage \$ | |
| Certified Fee | |
| Return Receipt Fee (Endorsement Required) | |
| Restricted Delivery Fee (Endorsement Required) | |
| Total Postage & Fees \$ | |

Name (Please Print Clearly) (to be completed by mailer)
 Street, Apt. No., or PO Box No.
 City, State, ZIP+4

PS Form 3800, July 1999



U.S. Postal Service
CERTIFIED MAIL RECEIPT
 (Domestic Mail Only; No Insurance Coverage Provided)

7099 3400 0008 6009 1880

Article Sent To: Ellen S. Simpson 5555 Main St.

| | |
|--|---------------------|
| Postage | \$.60 |
| Certified Fee | 2.30 |
| Return Receipt Fee (Endorsement Required) | 1.75 |
| Restricted Delivery Fee (Endorsement Required) | |
| Total Postage & Fees | \$ 4.65 USPS |



Name (Please Print Clearly) (to be completed by mailer)
 Street, Apt. No., or PO Box No.
 City, State, ZIP+4
 PS Form 3800, July 1999 See Reverse for Instructions

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
Ellen S. Simpson, CSJ
Simpson & Simpson, PLLC
5555 Main Street
Buffalo, NY 14221

COMPLETE THIS SECTION ON DELIVERY

A. Signature [Signature] Agent Addressee

B. Received by (Printed Name) _____ C. Date of Delivery 4/29/03

D. Is delivery address different from item 1? Yes No
 If YES, enter delivery address below: _____

3. Service Type
 Certified Mail Express Mail
 Registered Return Receipt for Merchandise
 Insured Mail P.O.D.

4. Restricted Delivery? (Extra Fee) Yes



2. Article Number (Transfer from service label) 7099 3400 0008 6009 1880

UBF1163

SIMPSON & SIMPSON, PLLC

PATENTS, TRADEMARKS, COPYRIGHTS,
COMPUTER LAW, LICENSING & RELATED MATTERS

ROBERT P. SIMPSON*
ELLEN SWARTZ SIMPSON+

EDWARD W. TRACY, JR.**
S. PETER KONZEL
C. RICHARD LOHRMAN**

* Also admitted in Connecticut, Florida and before The United States Patent and Trademark Office

+ Also admitted in Florida, Certified Public Accountant

** Also admitted before The United States Patent and Trademark Office

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WWW.IDEALAWYERS.COM

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WRITER'S E-MAIL: ESIMPSON@IDEALAWYERS.COM

OF COUNSEL

HOWARD M. ELLIS, Registered Patent Attorney
R. CRAIG KAUFFMAN, Registered Patent Attorney

REGISTERED PATENT AGENT

SUMITA CHOWDHURY-GHOSH, Ph.D.

May 5, 2003

Kathleen A. Wall, Esq.
Hodgson Russ LLP
One M & T Plaza, Suite 2000
Buffalo, New York 14203

**RE: License Agreement
UDSmr to IT Health Track, Inc.
Our Ref: 1120.SAIA:101US**

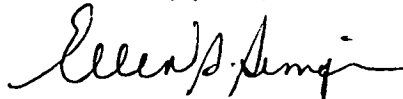
Dear Ms. Wall:

We are in receipt of your letter of April 28, 2003 regarding the above referenced license agreement.

We were quite surprised by your assumption that our client was no longer interested in obtaining a license from UDSmr. Your letter of March 19, 2003 was not received in our office until March 25, 2003. After reviewing the letter, we forwarded it to our client shortly thereafter. Dr. Smith was out of her office much of April, 2003, and had not yet gotten back to us at the time of our receipt of your follow-up letter.

Please know that our client has been reviewing your counter-proposal, and we will be responding shortly. As it took over a month to receive a response from you to our first proposal, we are sure you and your client will extend our client the same courtesy.

Very truly yours,



Ellen S. Simpson

ESS:

UBF1164

Kathleen A. Wall
Partner
Direct Dial: 716.848.1287
kwall@hodgsonruss.com



October 17, 2003

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Ellen S. Simpson, Esq.
Simpson & Simpson, PLLC
5555 Main Street
Buffalo, New York 14221

Dear Ms. Simpson:

Re: Proposed License Agreement Between Uniform Data System for Medical Rehabilitation (UDSMR) and IT Health Track, Inc.

In your letter dated May 5, 2003, you indicated that your client was still reviewing the UDSMR counter-proposal concerning the license agreement. As you know, we have had no further communication from you in nearly six months. UDSMR has no wish to continue any discussions or negotiations with your client. Therefore, I must insist that your client take the following actions by November 20, 2003:

1. Cease all use of any UDSMR-owned intellectual property, including, without limitation, all versions of the FIM™ instrument, the WeeFIM® instrument and any element of the LIFEware SystemSM;
2. Remove from its website all references to UDSMR-owned intellectual property;
3. Remove the reference to "UDSMR.org" on the "Valuable Links for Our Visitors" section of its website; and
4. Return to UDSMR all UDSMR-copyrighted materials, including, without limitation, any such materials to which it gained access through Dr. Pamela Smith's former association with National Follow-Up Services, Inc.

If you need to contact me concerning the matters discussed in this letter, please note that I will be out of the office until Monday, November 3rd.

UBF1165

Ellen S. Simpson, Esq.
October 17, 2003
Page 2

We anticipate your client's cooperation in this matter.

Very truly yours,



Kathleen A. Wall

/hr
Copy to: Richard Linn, Ph.D.
Director, UDSMR

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UBF1166

LAW OFFICES OF
BAGLEY, LYNETT & SAIA
1925 KENSINGTON AVENUE NEAR HARLEM,
BUFFALO, NEW YORK 14215-1491
716-832-1118

NANCY WIECZOREK SAIA
CAROL J. LABRUNA
WILLIAM C. MEYER
OF COUNSEL
LEO M. LYNETT, JR.

FREDERICK G. BAGLEY (1906-1933)
JOSEPH A. WECHTER (1908- 1951)
GLENN A. IRVIN (1916-1979)
FAX 716-832-7074

November 5, 2003

Kathleen A. Wall, Esq.
One M&T Plaza
Suite 2000
Buffalo, New York 14203

Re: UDSmr License Agreement with IT Healthtrack, Inc.

Dear Ms. Wall:

I realize that you had been negotiating with Ellen Simpson regarding the Licensing Agreement for IT Healthtrack, Inc. and the UDSmr. Those negotiations seemed to have stalled.

However, we are very excited to learn that the UDS no longer requires that its licencees have an exclusive relationship with the UDS. My client is very excited about this positive change and is anxious to reinstitute the negotiations about the license agreement. I'd like to have Ms. Simpson commence work on these negotiations, but just wanted to confirm this policy change.

We know that the UDS permits my client's former partner, Sandy Illig and her new company, MedTel Outcomes, Inc., to do business with E-Rehab Data customers, including one very new client.

My client was told that she could not do business with any E-Rehab Data customers. Obviously, this was a problem, as my client already had several customers not using the UDSmr program. Now given that exclusivity is not required by your client, my client is most anxious to enter into an agreement.

Please confirm that this policy change has occurred, I will then contact Ellen Simpson to finalize the agreement.

UBF1167

Kathleen A. Wall, Esq.

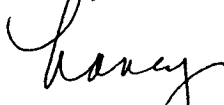
November 5, 2003

Page 2

Thank you for your assistance in this matter. If you have any questions, please do not hesitate to contact me.

Very truly yours,

BAGLEY, LYNETT & SALA

A handwritten signature in cursive script, appearing to read "Nancy", written in black ink.

By: Nancy W. Sala, Esq.

NWS/pad

Cc: Dr. Pamela Smith

UBF1168

LAW OFFICES OF
BAGLEY, LYNETT & SAIA

1925 KENSINGTON AVENUE NEAR HARLEM
BUFFALO, NEW YORK 14215-1491
716-832-1118

NANCY WIECZOREK SAIA
CAROL J. LABRUNA
WILLIAM C. MEYER
OF COUNSEL
LEO M. LYNETT, JR.

FREDERICK G. BAGLEY (1906-1933)
JOSEPH A. WECHTER (1908- 1951)
GLENN A. IRVIN (1916-1979)
FAX 716-832-7074

November 24, 2003

Kathleen A. Wall, Esq.
One M&T Plaza, Suite 2000
Buffalo, New York 14203

*Re: Proposed License Agreement between UDSMR
and IT Health Track, Inc.*

Dear Ms. Wall:

Thank you for your letter of November 17, 2003 regarding the above-captioned matter. I just wanted to clarify my client's position and the source of our confusion. Perhaps there has been some misunderstanding.

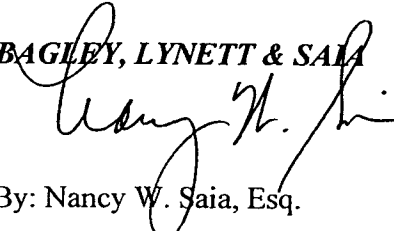
One of the requirements of your proposed license was that my client not use the "Functional Independence Measure" (FIM) unless it was in connection with UDSMR subscribers. My client could not agree to this because your client could not prove that the FIM was the proprietary intellectual property of the UDSMR. In fact, I understand that the UDSMR is just now applying for a trademark on the FIM.

The clarification I need to have is whether or not this restriction to only use the FIM for UDSMR subscribers still remains. We have confirmed that MedTel Outcomes, a company formed by Dr. Smith's former business associate, does use the FIM for non-UDSMR subscribers. Is this permitted?

I look forward to your answer to this simple question. Thank you.

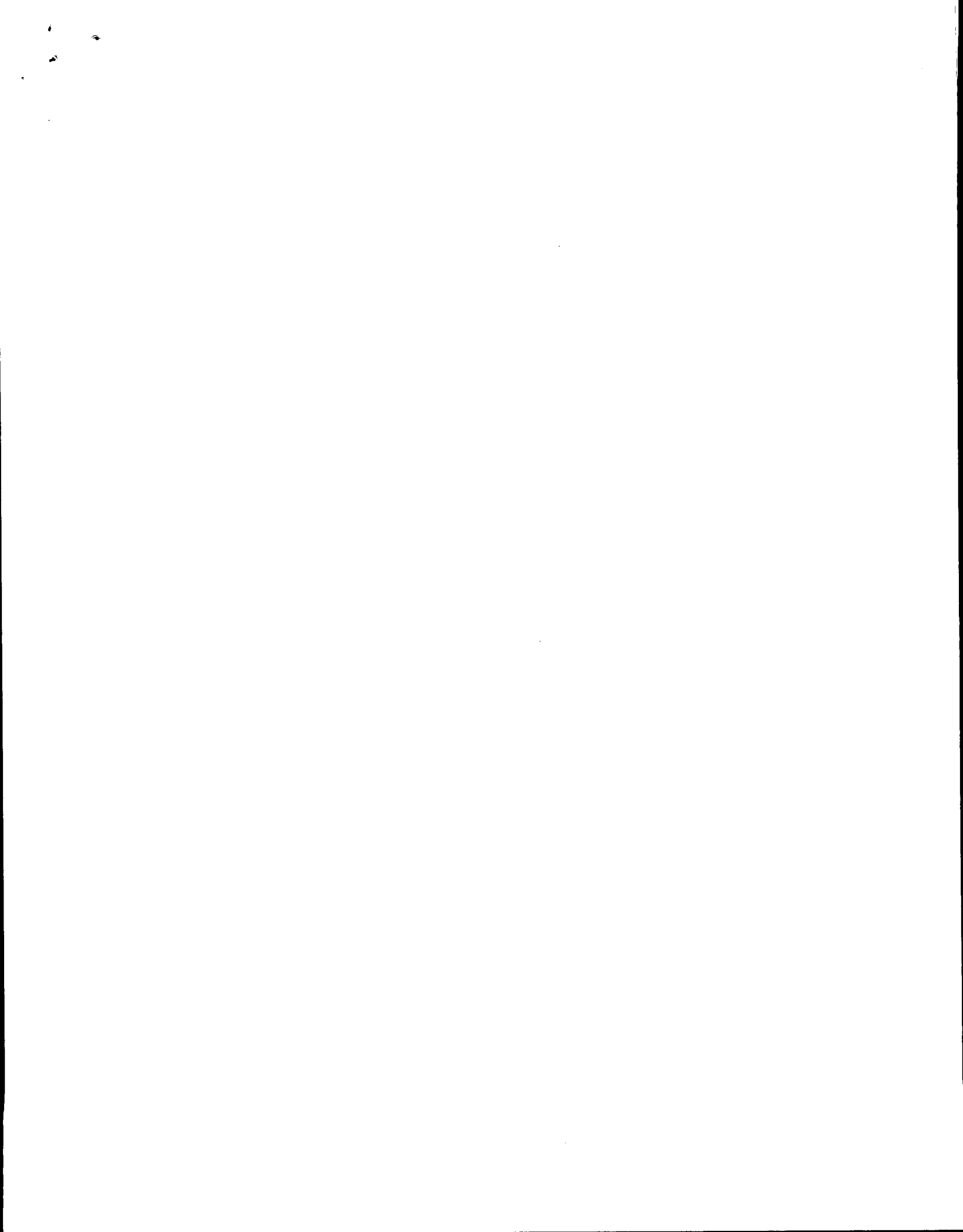
Very truly yours,

BAGLEY, LYNETT & SAIA


By: Nancy W. Saia, Esq.

NWS/pad
Cc: Dr. Pamela Smith

UBF1171



Kathleen A. Wall
Direct Dial: 716.848.1287
Direct Facsimile: 716.849.0349
kwall@hodgsonruss.com



November 17, 2003

Certified Mail
Return Receipt Requested

Nancy W. Saia, Esq.
1925 Kensington Avenue
Buffalo, New York 14215-1491

Dear Ms. Saia:

Re: Proposed License Agreement Between
Uniform Data System for Medical
Rehabilitation (UDSMR) and IT Health Track, Inc.

I have reviewed your November 5, 2003 letter regarding your client, IT Health Track, Inc. It appears that you may not have had an opportunity to review my letter of October 17, 2003 to Ellen S. Simpson, Esq. concerning the position of Uniform Data System for Medical Rehabilitation (UDSMR) with respect to IT Health Track, Inc. I am enclosing a copy of that letter for your convenience. Please note that the letter continues to reflect UDSMR's position with respect to IT Health Track, Inc. Specifically, as stated in the letter, UDSMR has no wish to engage in further negotiations with IT Health Track.

Please note that, contrary to several references in your letter, the form of license agreement that UDSMR offered to IT Health Track, Inc. did not require IT Health Track, Inc. to have "an exclusive relationship with" UDSMR nor did it prohibit IT Health Track, Inc. from doing business with eRehabdata customers.

We anticipate your client's timely compliance with the requirements described in the enclosed copy of my October 17th letter.

Very truly yours,

A handwritten signature in cursive script that reads "Kathleen A. Wall".

Kathleen A. Wall

KAW/hr

cc: Richard Linn, Ph.D.
Director, UDSMR

UBF1169

Kathleen A. Wall
Direct Dial: 716.848.1287
Direct Facsimile: 716.849.0349
kwall@hodgsonruss.com



December 10, 2003

Certified Mail (Return Receipt Requested)

Nancy W. Saia, Esq.
Bagley, Lynett & Saia
1925 Kensington Avenue
Buffalo, New York 14215-1491

Dear Ms. Saia:

Re: Proposed License Agreement Between UDSMR and IT Health Track, Inc.

In response to your letter of November 24th, I am astonished that your client is only now raising the issue of UDSMR's ownership of the FIM™ instrument as a justification for the termination of its license agreement negotiations with UDSMR. Your client's attorney Ellen Simpson, in her comments regarding the proposed license agreement, did not raise proof of ownership issues. Furthermore, your client, as a principal of the former National Follow Up Services, Inc., previously acknowledged UDSMR's ownership of the FIM™ instrument by entering into a license agreement with UDSMR for use of that instrument.

Your comment regarding the "FIM" trademark is irrelevant as well as inaccurate. With respect to your inquiry regarding MedTel Outcomes, please be advised that UDSMR does not discuss with third parties its relationships with its licensees. You may, however, wish to verify the accuracy of your information concerning MedTel Outcomes.

Your letter has only reinforced that your client has no interest in negotiating in good faith the terms of a license agreement with UDSMR. Therefore, we continue to expect that your client will comply with the requirements listed in my October 17, 2003 letter to Ellen Simpson.

Very truly yours,

A handwritten signature in cursive script that reads "Kathleen A. Wall".

Kathleen A. Wall


KAW/hr
cc: Dr. Richard Linn

UBF1172

| SENDER: COMPLETE THIS SECTION | COMPLETE THIS SECTION ON DELIVERY |
|---|--|
| <input type="checkbox"/> Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. <input type="checkbox"/> Print your name and address on the reverse so that we can return the card to you. <input type="checkbox"/> Attach this card to the back of the mail piece or on the front if State permits. | Signature: <i>[Handwritten Signature]</i> E-mail address: _____ Date of delivery: _____ |
| Article addressed to: <i>WANCY W. SAIA, ESQ.</i> <i>BARCLAY LLOYD SAIA</i> <i>1925 Kensington Ave</i> <i>BUFFALO, NY 14215-1491</i> | <input type="checkbox"/> If delivery address different from item 1, enter delivery address below: <input type="checkbox"/> Insured mail <input type="checkbox"/> Registered mail <input type="checkbox"/> Registered mail (Priority Mail) <input type="checkbox"/> Registered mail (Priority Mail Express) <input type="checkbox"/> Registered mail (Priority Mail Express) (International) |
| Article Number: Please print article ID: | 7002 2030 0005 4270 8602 |
| PS Form 3801, AUGUST 2001 | (Domestic Mail Only) |

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| PS Form 3800, June 2002 See Reverse for Instructions | |

UBF1173



**HODGSON RUSS
ANDREWS
WOODS &
GOODYEAR_{LLP}**
ATTORNEYS AT LAW

Tricia T. Semmelhack
Partner
DIRECT: 716-848-1249
tsemmelh@hodgsonruss.com

One M&T Plaza, Suite 2000
Buffalo, NY 14203-2391
716-856-4000
FAX: 716-849-0349

*Albany
Boca Raton
Buffalo
New York
Toronto
Palm Beach Gardens*

July 14, 2000

Robert M. LaRose
Thompson Coburn LLP
1 Firststar Plaza
St. Louis, Missouri 63101-1693

Dear Mr. LaRose:

Re: UDSMR

We have now reviewed your last letter in detail with our client. In order to move things along, we will deal first with our proposed settlement and license terms, and will then address your unwarranted comments concerning our client's intellectual property rights. We are very confident of our position which, of course, goes beyond the issue of copyright infringement and includes misuse of trademarks and unfair competition. However, if a settlement is genuinely desired, UDSMR is willing to enter into an agreement with RehabCare on the following terms:

1. Payment by RehabCare of \$100,000 for all past infringements.
2. Execution of a one-year license agreement for ongoing use of the FIM instrument, consistent with its current use, upon payment of a license fee of \$25,000.
3. Renewal of the license for a second year, at RehabCare's option, upon payment of another \$25,000 fee. Renewal thereafter will occur only pursuant to a separate agreement negotiated prior to the end of the second year.
4. RehabCare will be permitted to state that its system is based on the FIM instrument but must make it clear that the resulting data is not FIM data. RehabCare must also warrant that its subscribers understand that the data collected under the RehabCare system is not being provided to UDSMR for analysis and cannot be referred to by them as FIM data.
5. UDSMR must be provided with a copy of the RehabCare subscriber's agreement.

UBF1174

Robert M. LaRose
July 14, 2000
Page 2

6. RehabCare must advise UDSMR which pages of the Guide it is using and which pages it wants to continue using.
7. Those pages used must be marked to indicate that they are being used with permission from UDSMR and that they are not to be reproduced or used to create derivative works.
8. RehabCare must add a statement to its website indicating that it is not a corporate subscriber of UDSMR (i.e., it has not contracted with UDSMR for the services that UDSMR typically provides to corporate owners of multiple facilities that are UDSMR subscribers).
9. UDSMR will be free to respond to inquiries from RehabCare subscribers, and will not be restricted from marketing to RehabCare subscribers or adding them as UDSMR subscribers.
10. RehabCare must acknowledge UDSMR's intellectual property rights.

Turning now to the issue of infringement and dealing first with the trademark issue, enclosed is a copy of a flyer which was used in a mass mailing by a RehabCare facility in Nebraska. UDSMR received this flyer from one of its subscribers who was very upset that the RehabCare facility appeared to be publishing selected UDS information, which compares their outcomes with national and regional averages. Obviously, the UDSMR subscriber was confused by the use of the FIM mark by the RehabCare facility and believed that facility was using genuine FIM data. In fact, the brochure states flat out "BryanLGH RehabCare tracks patient rehabilitation results with a nationally recognized evaluation system of 18 Functional Independence Measures (FIM)." This is clearly an erroneous and damaging statement. Moreover, it constitutes clear evidence of confusion and evidence that RehabCare and its subscribers are trading on the reputation UDSMR has built for its FIM data in violation of Section 43(a) of the Lanham Act. I am sure that you will agree that this activity must stop.

With respect to your comments regarding UDSMR's copyright rights, your reference to U&B Associates as compared to UB Associates is a puzzle. We do not know of any copyright registration document that states the owner of the subject work is "UB Associates" or "U&B Associates". The word "Associates" is not part of our client's name. The Guide for the Uniform Data Set for Medical Rehabilitation (Adult FIM™) Version 4.0, registered 8/18/95, identified the copyright claimant as University at Buffalo Foundation Activities, Inc.; see copy attached. Your client's failure to locate that registration is neither a defense nor any excuse for

Robert M. LaRose

July 14, 2000

Page 3

the blatant copying that has occurred. Please also note that much of the material copied by RehabCare from Version 5 of the Guide exists in the same language in Version 4, which was the subject of the registration. Based on the foregoing, we know of no legal basis for your continued assertion that UDSMR would have no claim for statutory damages or attorneys fees. Clearly it would.

With respect to the other arguments and issues raised in your letter, including questions related to the research grant and the language in the contract with HCFA, we are not prepared to spend a lot more time and effort belaboring the obvious. We can go down that road if your client cares to engage in litigation. Suffice it to say, the copyrights in the research results supported by the grant were, by contract, owned by the University, not the government, and thereafter were assigned to UDSMR. Moreover, Versions 4 and 5 of the Guide which have been infringed by your client are original to UDSMR and were developed after the conclusion of the grant. For reasons previously stated, the agreement with HCFA will not be produced.

As noted previously, we are fully prepared to defend our client's ownership of the FIM measurement scale, the Guide and all of its other intellectual property rights if we are required to do so. On that subject, I commend to your review, in addition to the cases I previously have mentioned, the decision from the Seventh Circuit in *American Dental Association v. Delta Dental Plans*, 126 F3rd 977 (1997).

The point of the current communication is to see if settlement is a realistic possibility. The foregoing settlement and license proposal is our client's rock bottom offer. We look forward to your prompt response.

Very truly yours,



Tricia T. Semmelhack

Enclosures

BFLODOCS:409222_1 (8RR@01)

UBF1176

RehabCare patients achieve greater independence than national average

Patients who complete rehabilitation in the RehabCare program at BryanLGH Medical Center achieve greater independence than the average rehabilitation patient, according to national and local statistics compiled for 1998. "The statistics show we reduced our patients' average length of stay while improving outcomes," says Carol Ernst, RehabCare program director. "We're doing more for patients in less time." BryanLGH RehabCare tracks patient rehabilitation results with a nationally recognized evaluation system of 18 Functional Independence Measures (FIM).

National accreditation earned

In June, the BryanLGH RehabCare program was awarded a three-year accreditation from the Commission on Accreditation of Rehabilitation Facilities (CARF). In its evaluation report, CARF noted positive results for patients and highlighted the following program strengths.

- Documented improvement in patients' functional gains during a shorter average length of stay.
- Maximum use of the full range of rehabilitative care.
- Strong knowledge and leadership that is actively involved in all aspects of the program.
- Community education and resource program, and
- Patient education.

"Accreditation indicates we are continuing to meet and exceed nationally recognized standards," says Ernst. Seeking accreditation is voluntary.

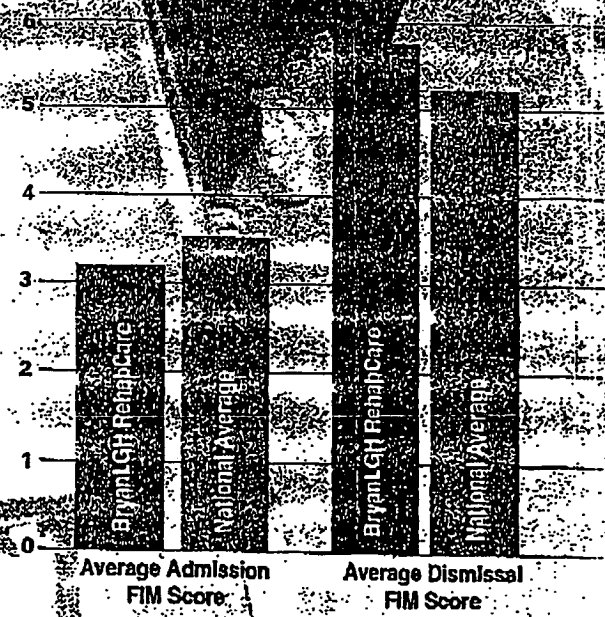
Wide range of patient conditions served

The RehabCare program benefits patients with varying disabling conditions due to illness and injury, such as

- Multiple system trauma,
- Bone and joint disorders,
- Stroke,
- Mild to moderate head injury,
- Spinal cord injury,
- Neurological impairment (i.e. multiple sclerosis),
- Amputation, and
- Other disabling conditions.

Our treatment team includes a medical director, program director, social worker, nurse manager, specially trained nurses, admissions coordinator, nutritionist, psychologist, physical therapists, occupational therapists, recreational therapists, a speech therapist, physical therapy assistants, occupational therapy assistants and rehab techs.

For more information about RehabCare program services, please call Ernst at 481-5280.



FIM scores indicate a patient's level of independence in achieving daily living tasks. The scale ranges from 1 (most dependent) to 7 (independent).

As shown above, BryanLGH RehabCare patients enter treatment more dependent on others for care and leave treatment more independent, making greater gains than the national average.

CERTIFICATE OF REGISTRATION

FORM TX

For a Literary Work

UNITED STATES COPYRIGHT OFFICE



This Certificate issued under the seal of the Copyright Office in accordance with title 17, United States Code, attests that registration has been made for the work identified below. The information on this certificate has been made a part of the Copyright Office records.

TX 4-119-729



EFFECTIVE DATE OF REGISTRATION

Marybeth Peters 8 18 95
 Month Day Year

REGISTER OF COPYRIGHTS
 United States of America

DO NOT WRITE ABOVE THIS LINE. IF YOU NEED MORE SPACE, USE A SEPARATE CONTINUATION SHEET.

1 TITLE OF THIS WORK ▼

Guide for the Uniform Data Set for Medical Rehabilitation (Adult FIM™)
 Version 4.0

PREVIOUS OR ALTERNATIVE TITLES ▼

PUBLICATION AS A CONTRIBUTION If this work was published as a contribution to a periodical, serial, or collection, give information about the collective work in which the contribution appeared. Title of Collective Work ▼

If published in a periodical or serial give: Volume ▼ Number ▼ Issue Date ▼ On Pages ▼

2 NAME OF AUTHOR ▼

a University at Buffalo Foundation Activities, Inc.

Was this contribution to the work a "work made for hire"?
 Yes
 No

AUTHOR'S NATIONALITY OR DOMICILE
 Name of Country
 OR { Citizen of ►
 Domiciled in ►

DATES OF BIRTH AND DEATH
 Year Born ▼ Year Died ▼

WAS THIS AUTHOR'S CONTRIBUTION TO THE WORK
 Anonymus? Yes No
 Pseudonymous? Yes No
If the answer to either of these questions is "Yes," see detailed instructions

NATURE OF AUTHORSHIP Briefly describe nature of material created by this author in which copyright is claimed. ▼
 entire text

NAME OF AUTHOR ▼

Was this contribution to the work a "work made for hire"?
 Yes
 No

AUTHOR'S NATIONALITY OR DOMICILE
 Name of Country
 OR { Citizen of ►
 Domiciled in ►

DATES OF BIRTH AND DEATH
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NAME OF AUTHOR ▼

Was this contribution to the work a "work made for hire"?
 Yes
 No

AUTHOR'S NATIONALITY OR DOMICILE
 Name of Country
 OR { Citizen of ►
 Domiciled in ►

DATES OF BIRTH AND DEATH
 Year Born ▼ Year Died ▼

WAS THIS AUTHOR'S CONTRIBUTION TO THE WORK
 Anonymus? Yes No
 Pseudonymous? Yes No
If the answer to either of these questions is "Yes," see detailed instructions

NATURE OF AUTHORSHIP Briefly describe nature of material created by this author in which copyright is claimed. ▼

3 a YEAR IN WHICH CREATION OF THIS WORK WAS COMPLETED
 1993
This information must be given in all cases.

b DATE AND NATION OF FIRST PUBLICATION OF THIS PARTICULAR WORK
 Month ► October Day ► 15 Year ► 1994
 United States of America
Complete this information ONLY if this work has been published.

4 COPYRIGHT CLAIMANT(S) Name and address must be given even if the claimant is the same as the author given in space 2. ▼
 University at Buffalo Foundation Activities, Inc.
 P.O. Box 590
 Buffalo, New York 14231

TRANSFER If the claimant(s) named here in space 4 is (are) different from the author(s) named in space 2, give a brief statement of how the claimant(s) obtained ownership of the copyright. ▼

APPLICATION RECEIVED
 AUG 18 1995
 ONE DEPOSIT RECEIVED

TWO DEPOSITS RECEIVED
 AUG 18 1995
 REMITTANCE NUMBER AND DATE

UBF1178

EXAMINED BY _____ FORM TX
 CHECKED BY *dep*
 CORRESPONDENCE
 Yes
 FOR COPYRIGHT OFFICE USE ONLY

DO NOT WRITE ABOVE THIS LINE. IF YOU NEED MORE SPACE, USE A SEPARATE CONTINUATION SHEET.

PREVIOUS REGISTRATION Has registration for this work, or for an earlier version of this work, already been made in the Copyright Office?
 Yes No If your answer is "Yes," why is another registration being sought? (Check appropriate box) ▼ **5**

a. This is the first published edition of a work previously registered in unpublished form.
 b. This is the first application submitted by this author as copyright claimant.
 c. This is a changed version of the work, as shown by space 6 on this application.
 If your answer is "Yes," give: Previous Registration Number ▼ Year of Registration ▼

DERIVATIVE WORK OR COMPILATION Complete both space 6a and 6b for a derivative work; complete only 6b for a compilation. **6**

a. **Preexisting Material** Identify any preexisting work or works that this work is based on or incorporates. ▼
Guide for the Use of the Uniform Data Set for Medical Rehabilitation

b. **Material Added to This Work** Give a brief, general statement of the material that has been added to this work and in which copyright is claimed. ▼
Compilation and additional text. See instructions before completing this space.

—space deleted— **7**

REPRODUCTION FOR USE OF BLIND OR PHYSICALLY HANDICAPPED INDIVIDUALS A signature on this form at space 10 and a check in one of the boxes here in space 8 constitutes a non-exclusive grant of permission to the Library of Congress to reproduce and distribute solely for the blind and physically handicapped and under the conditions and limitations prescribed by the regulations of the Copyright Office: (1) copies of the work identified in space 1 of this application in Braille (or similar tactile symbols); or (2) phonorecords embodying a fixation of a reading of that work; or (3) both. **8**

a Copies and Phonorecords b Copies Only c Phonorecords Only See instructions.

DEPOSIT ACCOUNT If the registration fee is to be charged to a Deposit Account established in the Copyright Office, give name and number of Account. **9**

Name ▼ Account Number ▼

CORRESPONDENCE Give name and address to which correspondence about this application should be sent. Name/Address/Apt/City/State/ZIP ▼ **10**

Librarian - Uniform Data System for Medical Rehabilitation
 232 Parker Hall, SUNY South Campus
 3435 Main Street
 Buffalo, NY 14214-3007 Area Code and Telephone Number ▶ (716) 829-2076

Be sure to give your daytime phone number

CERTIFICATION* I, the undersigned, hereby certify that I am the **11**

Check only one ▶ author
 other copyright claimant
 owner of exclusive right(s)
 authorized agent of University at Buffalo Foundation Activities, Inc.
 Name of author or other copyright claimant, or owner of exclusive right(s) ▲

of the work identified in this application and that the statements made by me in this application are correct to the best of my knowledge.

Typed or printed name and date ▼ If this application gives a date of publication in space 3, do not sign and submit it before that date.
 M. Bud Nelson date ▶ August 15, 1995

Handwritten signature (X) ▼ *M. Bud Nelson*

MAIL CERTIFICATE TO

Name ▼ Administrator
 Uniform Data System for Medical Rehabilitation

Number/Street/Apartment Number ▼
 232 Parker Hall - SUNY South Campus
 3435 Main Street

City/State/ZIP ▼
 Buffalo, New York 14214-3007 UBF1179

Certificate will be mailed in window envelope

YOU MUST:

- Complete all necessary spaces
- Sign your application in space 10

SEND ALL 3 ELEMENTS IN THE SAME PACKAGE:

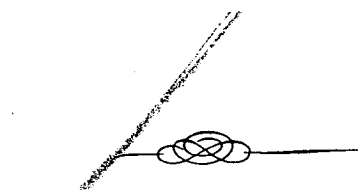
1. Application form
2. Nonrefundable \$20 filing fee in check or money order payable to Register of Copyrights
3. Deposit material

MAIL TO:
 Register of Copyrights
 Library of Congress
 Washington, D.C. 20559

The Copyright Office has the authority to adjust fees at 5-year intervals, based on changes in the Consumer Price Index. The next adjustment is due in 1996. Please contact the Copyright Office after July 1995 to determine the actual fee schedule.

11

*17 U.S.C. § 506(e): Any person who knowingly makes a false representation of a material fact in the application for copyright registration provided for by section 409, or in any written statement filed in connection



**HODGSON RUSS
ANDREWS
WOODS &
GOODYEAR LLP**
ATTORNEYS AT LAW

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Partner
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Buffalo, NY 14203-2391
716-856-4000
FAX: 716-849-0349

*Albany
Boca Raton
Buffalo
New York
Toronto
Palm Beach Gardens*

September 12, 2000

Robert M. LaRose
Thompson Coburn LLP
1 Firststar Plaza
St. Louis, Missouri 63101-1693

Dear Mr. LaRose:

Re: UDSMR

This is a reminder that we have not received a response to my letter of July 14, 2000. For your convenience, I have enclosed a copy. While our client remains willing to consider a reasonable settlement, the negotiations cannot drag on indefinitely.

Please let us have your response at your earliest convenience.

Very truly yours,



Tricia T. Semmelhack

Enclosure
Copy to: Kathleen Dann

BFLODOCS:438375_1 (9#9301)

UBF1180

Tricia T. Semmelhack
Partner
DIRECT: 716-848-
tsemmelh@hodgsonruss.co,

November 13, 2000

Robert M. La Rose, Esq.
Thompson Coburn LLP
One Firststar Plaza
St. Louis, Missouri 63101-1693

FOR SETTLEMENT PURPOSES ONLY
WITHOUT PREJUDICE

Dear Mr. LaRose:

Re: Uniform Data System for Medical Rehabilitation ("UDSMR")

Thank you for your letter of October 2, 2000. UDSMR has reviewed RehabCare's responses to its counterproposals and believes that, except for what appears to be a misconception about the lump-sum settlement amount as described more fully below, the responses are generally acceptable.

In the first numbered paragraph of your letter, you state that your client does not see any reason to increase its offer of a \$50,000 lump-sum payment for its past use of UDSMR's FIM™ instrument. The justification for your client's position, which is that it did not receive any services or support from UDSMR during its period of previous use, does not address the purpose of the requested settlement amount. In our experience, infringers never receive any "services." Rather, the \$100,000 amount for past use is based on the fact that RehabCare Group, Inc. has been, for a number of years, copying pages from UDSMR's copyrighted *Guide for the Uniform Data Set for Medical Rehabilitation*, incorporating the copied pages into materials distributed to RehabCare's customers and marketing its services as being based on UDSMR's FIM SystemSM. The fact that RehabCare copied so extensively from the *Guide* is an indication of the intrinsic value of the FIM instrument and the recognition accorded to it in the medical rehabilitation field. RehabCare's use of the FIM instrument has been both financially rewarding to it and the source of damaging confusion in the marketplace, all of which has come at the expense of UDSMR.

The explanation provided above is not an attempt to cover old ground or rekindle disagreements between our clients. Nor is the settlement sum for RehabCare's lengthy period of infringement related in any way to the proposed license for future use. Rather, the foregoing is intended as an explanation of why \$100,000 is reasonable compensation for the economic harm caused to UDSMR by RehabCare's actions. It is also a sum well supported by the Copyright Act. Therefore, in order to bring the matter to a final conclusion, and in the absence of any counter

UBF1181

November 13, 2000

Page 2

offer on the settlement sum from your client, we must reiterate UDSMR's original requirement for payment of the full lump-sum settlement amount.

Once the settlement sum issue is resolved, we believe the parties can promptly work out the final details of an acceptable settlement based on the responses outlined in your letter. For the most part, those responses represent a workable solution for both parties. We look forward to your further reply.

Very truly yours,

Tricia T. Semmelhack

Copy to: Kathleen Dann
Susan Braun
Janet Bailey

BFLODOCS:458182_2 (9TJ@02)

UBF1182

Kathleen A. Wall
Partner
DIRECT: 716-848-1287
kwall@hodgsonruss.com

February 9, 2001

Robert M. LaRose, Esq.
Thompson Coburn LLP
One Firststar Plaza
St. Louis, Missouri 63101-1693

Dear Mr. LaRose:

Re: Uniform Data System for Medical Rehabilitation ("UDSMR")

Quite some time has elapsed since my partner, Tricia Semmelhack, sent you a letter concerning the settlement offer of your client, RehabCare, Inc. The letter outlined UDSMR's concern with your client's justification for its offer of a \$50,000 lump-sum payment for its past use of UDSMR's FIM™ instrument. We would like to bring this matter to a conclusion, and await your response to Tricia's letter.

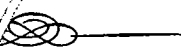
Very truly yours,

Kathleen A. Wall

Copy to: Kathleen Dann
Susan Braun
Janet Bailey
bcc: Tricia T. Semmelhack, Esq.

BFLODOCS:497861_1 (@_5H01)

UBF1183


HODGSON RUSS
ANDREWS
WOODS &
GOODYEAR^{LLP}
ATTORNEYS AT LAW

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716-856-4000
FAX: 716-849-0349

Albany
Boca Raton
Buffalo
New York
Toronto
Palm Beach Gardens

April 13, 2001

Robert M. La Rose, Esq.
Thompson Coburn LLP
One Firststar Plaza
St. Louis, Missouri 63101-1693

**FOR SETTLEMENT PURPOSES ONLY
WITHOUT PREJUDICE**

Dear Mr. LaRose:

Re: Uniform Data System for Medical Rehabilitation ("UDSMR")

We assume by your failure to respond to our last two letters that your client has lost interest in settling the matter along the lines previously discussed. If that assumption is incorrect, please advise immediately. Unless we see some positive movement within the next two weeks, we will consult with our client concerning all of its available options and will proceed to take the steps necessary to protect UDSMR's interest without further notice to RehabCare.

I sincerely hope that we do not reach that point and look forward to your prompt response.

Very truly yours,



Tricia T. Semmelhack

BFLODOCS:528224_1 (BBKW01)

Copy to: Kathleen Dann
Kathleen A. Wall, Esq.

UBF1184

Kathleen A. Wall
Partner
Direct Dial: 716.848.1287
kwall@hodgsonruss.com



October 14, 2002

L. Jane Maynard
Assistant Vice President, Program Services
RehabCare Group, Inc.
7733 Forsyth Boulevard, Suite 1700
St. Louis, MO 63105

Dear Ms. Maynard:

I represent Uniform Data System for Medical Rehabilitation (UDSMR) and am writing in response to your request to create a staff competency training video and/or interactive CD-ROM that incorporates the guidelines for both Functional Modifier and FIM™ scoring from the Training Manual for the Inpatient Rehabilitation Facility-Patient Assessment Instrument. As you know, UDSMR created and holds the copyright to those sections of the Training Manual.

As you may be aware, UDSMR has had previous dealings with RehabCare concerning RehabCare's admitted unauthorized reproduction and use of portions of UDSMR's copyrighted Guide for the Uniform Data Set for Medical Rehabilitation. UDSMR was in settlement negotiations with RehabCare concerning this matter when RehabCare abruptly ceased all communication with UDSMR. The previous unauthorized use of UDSMR's copyrighted materials, which resulted in profit to RehabCare and confusion in the marketplace concerning the services offered by UDSMR and RehabCare, is a very important matter to UDSMR. Until this matter is satisfactorily resolved, UDSMR cannot give RehabCare permission to use UDSMR-owned portions of the Training Manual for the purposes described in your letter.

If you wish to discuss this matter further, please contact me.

Very truly yours,

A handwritten signature in black ink that reads "Kathleen A. Wall". The signature is written in a cursive, flowing style.

Kathleen A. Wall

KAW/cd
Copy to: Alan C. Henderson, CEO, RehabCare Group, Inc.
Dr. Richard Linn, Director, UDSMR

UBF1185

UDS^{MR}/FIM

UNIFORM DATA SYSTEM FOR MEDICAL REHABILITATION / FUNCTIONAL INDEPENDENCE MEASURE

March 12, 1997

VIA FACSIMILE
412-826-3518

*Also mailed
3/13*

Christine A. Rohe, CEO
Rehab Training Network, Inc.
495 William Pitt Way
Pittsburgh, PA 15238

Dear Ms. Rohe:

Thank you for enclosing information concerning Lori Vrbos and an outline of material being presented at your seminar. We appreciate the fact that Rehab Training Network views our FIMsm measuring instrument as a valuable tool, and do not object to a presentation which covers an accurate history of its development and its usefulness in current practice. However, as emphasized in the materials we sent previously, FIM is a service mark of UDS^{MR} and the measuring instrument is owned and copyrighted in the name of our organization. Any history of its development should include these facts.

Any organizations or entities which desire to use the FIMsm instrument are welcome to do so upon entering into an appropriate license agreement or becoming subscribers to UDS^{MR}'s data collection and reporting service. In order to ensure uniformity and control quality we conduct our own training programs to certify facilities and their clinicians in the use of the FIM instrument.

The only parts of the course outline which give us concern are Parts 4 and 5. As drafted, the outline descriptions suggest that Ms. Vrbos is going to instruct the audience in the proper use of the FIMsm instrument. Our concern is that rather than simply providing information regarding our instrument, this creates an implication that those participating in the seminar will have received certified FIM training. Since this can only be done by UDS^{MR}, or by trainers trained, certified and licensed by UDS^{MR}, it is necessary to include a disclaimer so that there can be no misunderstanding.

Uniform Data System for Medical Rehabilitation

232 Parker Hall, University at Buffalo, 3435 Main Street, Buffalo, N.Y. 14214-3007

Telephone: (716) 829-2076 • FAX: (716) 829-2080 • E-mail: fimnet@ubvms.cc.buffalo.edu

Center for Functional Assessment Research • Department of Rehabilitation Medicine
School of Medicine and Biomedical Sciences • State University of New York at Buffalo



UBF1186

Please also explain to Ms. Vrbos that she must make it clear during the session that in order to become properly trained in the use of the FIM instrument and to reproduce and use the FIM instrument, service providers must contact UDSmr for appropriate licenses or other permission.

Again, we appreciate your request for consent. Assuming the foregoing conditions are met and appropriate disclaimers of ownership and references to our service mark and copyrights are included, we are willing to grant our consent to Ms. Vrbos' to present information in her video conference relating to UDSmr's FIM instrument.

Sincerely,

April V. Peters, M.L.S.

April V. Peters, M.L.S.

Copyright Consultant

UBF1187



Rehab Training Network

February 27, 1997

April V. Peters, M.L.S.
Copyright Consultant
UDS_{MR} / FIM
232 Parker Hall
University at Buffalo
3435 Main Street
Buffalo, NY 14214-3007

Dear Ms. Peters,

I appreciate your prompt response to our request for permission to include the Functional Independence Measure in our continuing education seminar on March 17, 1997. I understand your concern for UDS's intellectual property rights. However, I can assure you that Rehab Training Network's intent for this seminar is to provide current information to our subscribers on Healthcare Outcomes, of which, FIM is the most valuable tool.

You requested additional information on several areas, including, the material to be presented, the faculty for the seminar and the participants of the seminar. I have enclosed for your review the content outline for the seminar as well as faculty biographical information. The faculty for this seminar, Lori Vrbos, has been in contact with Dr. Carl Granger to access information regarding the history, etc. of the FIM.

The audience for this seminar would include nurses, social workers, and case managers from subscribing facilities, such as, HealthSouth and many independent hospitals. The total number of sites that would view this seminar is approximately three hundred.

I hope this information can assist you in a decision of our request. I would like to state that FIM is the only outcome measurement tool that we will be highlighting as part of this seminar.

Thank you for your time and consideration. I hope that this will serve as an excellent medium, for both RTN and UDS in promoting the value, importance, and usage of outcome measurement tools, such as FIM.

Sincerely,



Christine A. Rohe, CEO
Rehab Training Network, Inc.

UBF1188

UDSMRSM/FIMSM

UNIFORM DATA SYSTEM FOR MEDICAL REHABILITATION / FUNCTIONAL INDEPENDENCE MEASURE

Faxed 10:08 a.m.
on 2/27

February 26, 1997

Christine A. Rohe, CEO
Rehab Training Network, Inc.
495 William Pitt Way
Pittsburgh, PA 15238

Dear Ms. Rohe,

Thank you for your request for permission to include the Functional Independence Measure (FIMSM instrument) in your continuing education workshops. Our attorneys have informed us that in order to protect our intellectual property rights, we must consider requests to use the FIM instrument carefully.

In order to make a decision about your request, we require more information. Please send a description of the material you would present in the course, who would take the course, who would teach the course, etc. The current version is the *Guide for the Uniform Data Set for Medical Rehabilitation (including the FIMSM instrument), Version 5.0.*

Please refer to the enclosed sheets giving correct citations and service and trademark uses for titles of UDSMRSM products.

Sincerely,



April V. Peters, M.L.S.
Copyright Consultant

UBF1189

Uniform Data System for Medical Rehabilitation
232 Parker Hall, University at Buffalo, 3435 Main Street, Buffalo, N.Y. 14214-3007
Telephone: (716) 829-2076 • FAX: (716) 829-2080 • E-mail: fimnet@ubvms.cc.buffalo.edu

Center for Functional Assessment Research • Department of Rehabilitation Medicine
School of Medicine and Biomedical Sciences • State University of New York at Buffalo





Position Statement

- Welcome
- Products
- Services
- Research
- Resources
- Subscribers
- Contacting Us

UDSMR POSITION STATEMENT CONCERNING HCFA/RAND REPORTS ON THE DEVELOPMENT OF A PROSPECTIVE PAYMENT SYSTEM FOR MEDICAL REHABILITATION

Summary Statement
(See Full Explanation below)

September 1997

UDSMR is becoming increasingly aware of statements (both verbal and published) being made within the rehabilitation community which imply that UDSMR is standing in the way of HCFA's efforts to adopt a prospective payment system (PPS) for medical rehabilitation based on UDSMR's FIM instrument and the FIM/FRGs. In light of this and other recent statements which contain inaccuracies and incomplete information, and because of the national significance of the implementation of a PPS for medical rehabilitation, UDSMR desires to disclose the facts and circumstances surrounding its involvement with HCFA and the Rand Corporation ("RAND") in order to correct any misunderstandings and so that future statements may be based on accurate information.

Summary of UDSMR Position

Dr. Carl Granger and his colleagues at UDSMR have worked diligently for almost 15 years to develop and implement an outcomes measurement system for medical rehabilitation which would benefit the rehabilitation community and its patients. The centerpiece of this effort has always been adherence to the uniformity, validity and scientific integrity of the FIM instrument and the associated data, as well as maintenance of UDSMR's strict independence to assure unbiased results. Although Dr. Granger has always believed strongly in the free flow of ideas among researchers and others, UDSMR has had no choice but to take steps to protect the FIM instrument and data so valuable to the field and to UDSMR's subscribers.

The present issue with HCFA over publication of the RAND Corporation reports involves the protection of UDSMR's **intellectual property rights under its agreements with HCFA**. The premature dissemination of the **draft reports** without UDSMR's consent has already led to improper commercial exploitation by third parties of the information contained in those reports, and UDSMR seeks only to avoid further breaches of its proprietary rights. UDSMR has requested deletion of certain information for purposes of general publication, and **has agreed to make the full reports available subject to appropriate terms and conditions**. Failure by UDSMR to take these steps will, UDSMR believes, lead to a deterioration in the uniformity and integrity of the FIM instrument and a significant loss of its importance to the rehabilitation field.

Current Status

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To develop, refine, promote and maintain the FIM measuring instrument and its accompanying dataset and technology (the "FIM System") in response to the need to measure, record and track the severity of patient disability and the outcomes of medical rehabilitation in a uniform manner.

UDSMR has carried out this mission through a not-for-profit entity with the primary purpose of serving the field of medical rehabilitation in an evenhanded, uniform way and has rejected all offers and proposals from third parties (including offers to purchase the FIM System) which might compromise or give the appearance of compromising UDSMR's mission or principles.

For more information, contact:

James A. Phillips, MS, CEO
Uniform Data System for Medical Rehabilitation
232 Parker Hall, 3435 Main Street
Buffalo, New York 14214
(716) 829-2076, ext. 31
(716) 829-2080 (FAX)

*****NOTE TO OUR SUBSCRIBERS*****

FOR INFORMATION REGARDING A CUSTOM REPORT
FOR YOUR FACILITY, PLEASE CONTACT
DAVID LUNTZ AT (716) 829-2076 x36

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September 1997

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UDSMR has carried out this mission through a not-for-profit entity with the primary purpose of serving the field of medical rehabilitation in an evenhanded, uniform way and has rejected all offers and proposals from third parties (including offers to purchase the FIM System) which might compromise or give the appearance of compromising UDSMR's mission

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or principles.

III. License Agreement with HCFA (1995)

A. Purpose: To grant to HCFA a limited license to evaluate and implement UDSMR's FIM System as the basis for a PPS for medical rehabilitation.

B. Summary of License Provisions:

1. The license granted to HCFA was in two distinct phases. The first phase license was solely for the purpose of evaluating the FIM System. The second phase license (not yet implemented) is contingent upon HCFA adopting the FIM System as the basis for a PPS.
2. In the first phase, UDSMR granted HCFA a license to evaluate the suitability of the proprietary FIM System and gave HCFA access to proprietary data from its Adult FIM database, as well as other related information including proprietary algorithms, processes, etc. ("Information"), all subject to the terms of a confidentiality agreement.
 - a. UDSMR subscribers were contacted individually and asked for permission to make their data available to HCFA.
 - b. UDSMR acknowledged that HCFA intended to hire a subcontractor to evaluate the FIM System and agreed HCFA could sublicense the FIM System to its subcontractor and give its subcontractor access to UDSMR's Information on the condition that the subcontractor sign a confidentiality agreement and consent to certain minimum sublicense terms and conditions aimed at protecting the proprietary nature of the material disclosed. HCFA subsequently designated RAND as its subcontractor and RAND signed the confidentiality agreement and agreed to the sublicense terms in October 1995.
 - c. The confidentiality agreement signed by RAND provides that RAND must keep confidential all Information supplied by UDSMR (including any such Information as modified by RAND). In particular, RAND is not authorized to market, modify, license or publish, or authorize anyone else to release the Information.
 - d. HCFA was granted a period of up to 10 years to accept or reject the FIM System as the basis for a PPS.
3. In the second phase, contingent upon HCFA adopting the FIM System at the conclusion of the evaluation phase, HCFA will receive a non-exclusive, royalty-free, perpetual license to use the FIM System in a PPS.

UBF1196

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UBF1197

- a. HCFA's license is limited to a PPS for Medicare inpatient rehabilitation services.
4. In the event that HCFA rejects the FIM System as the basis for a PPS, all rights and licenses granted to HCFA will automatically terminate and HCFA will be required to return, and cause its subcontractors to return, to UDSMR all materials and data relating to the licensed system, the Information and all modifications and derivatives thereof.
 5. As the license granted to HCFA was non-exclusive and expressly limited, UDSMR retains full rights to the FIM System, the Information and all modifications and derivatives thereof for all U.S. and international applications.

C. UDSMR Costs: Other Relevant Information:

1. All costs and expenses incurred by UDSMR in connection with the negotiation, execution and implementation of the License Agreement, including communications with and consents from subscribers, preparation and transfer of data, interpretation and explanation of FIM System and data, and drafting of legal contracts were absorbed 100% by UDSMR with no reimbursement from HCFA.
2. UDSMR will not receive any fees, royalties or other compensation whatsoever from HCFA or RAND in connection with the License Agreement.
3. The American Rehabilitation Association (ARA) was kept apprised of this process (including receiving copies of draft contracts) at each stage in the negotiations.

IV. Events Since Execution of License Agreement

- A. RAND was hired as subcontractor to HCFA to evaluate the FIM System.
- B. RAND completed its evaluation of the suitability of the FIM System as a basis for a PPS for medical rehabilitation.

Comment: UDSMR agrees with the RAND report findings that the FIM instrument and derivatives are an appropriate basis for an inpatient rehabilitation PPS.

1. In 1996, RAND released "drafts" of two reports of its evaluation and conclusions, which were designated as "Not Cleared for Open Publication". UDSMR contends that the RAND reports contain information to which UDSMR has proprietary rights under its agreements with HCFA (and HCFA's agreements with RAND), including without limitation the modified version of the FIM/FRGs which RAND developed using UDSMR's data and information.
2. UDSMR believes one or both of these draft reports were distributed to RAND's two "advisory panels", neither of which included any representative of UDSMR. Copies of the draft reports were also provided to UDSMR.

UBF1198

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UBF1199

3. The two RAND reports (listed below) have now been finalized by RAND and are awaiting release by HCFA for publication:
 - a. "A Classification System for Inpatient Rehabilitation Patients: A Review and Proposed Revisions to the Functional Independence Measure-Function Related Groups"
 - b. "A Prospective Payment System for Inpatient Rehabilitation"

C. One or more commercial enterprises have developed proprietary products incorporating data and information obtained from or derived using proprietary UDSMR information contained in the restricted draft RAND reports.

V. Current Status

A. HCFA wants to release the RAND reports for publication. The rehabilitation field (including various for-profit commercial ventures) is anxiously awaiting release of the reports in order to permit the rehabilitation industry to evaluate the usefulness of a PPS based on the FIM System and the modified version of the FIM/FRG.

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- A. To enable clinicians and facilities to document severity of patient disability and to measure outcomes of medical rehabilitation in a uniform way.
- B. To establish a common language which may be used to discuss disability across the disciplines.
- C. To evaluate the efficiency and effectiveness of rehabilitation care for purposes of continuous quality improvement.
- D. To establish and maintain STANDARDS for collection, reporting and uses of UDSMR data.
- E. To achieve and maintain UNIFORMITY through various elements, tools, processes, and methodologies that include uniform data sets and databases (national and international), education, training, credentialing, research and development, and feedback reporting.
- F. Other principles governing database management include: reliability; validity; integrity; independence; feasible for use in clinical settings; economical; supported by education, training and credentialing;

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F. Other principles governing database management include: reliability; validity; integrity; independence; feasible for use in clinical settings; economical; supported by education, training and credentialing;

accessibility to inquiries; continuous refinements; data conform to expected response patterns; facilitate data transmission; error identification and correction; external cross-validation (Medpar tapes); account for secondary gain (gaming/guessing scores); case mix adjustment.

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FIM is a trademark of UDSMR.

FIM System is a trademark of UDSMR. All copyrights in the FIM system and the components thereof are owned by UDSMR.

The FIM/FRGs were developed by Dr. Margaret Stineman at the University of Pennsylvania and are owned by the Trustees of the University of Pennsylvania. UDSMR has exclusive rights to use and incorporate the FIM/FRGs into products and services.

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UBF1202

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UDS^{MR}/FIMSM

UNIFORM DATA SYSTEM FOR MEDICAL REHABILITATION / FUNCTIONAL INDEPENDENCE MEASURE

November 5, 1997

Barry Goldstein, M.D., Ph.D.
Margaret Hammond, M.D.
University of Washington Medical Center
1959 Northeast Pacific Street
Seattle, WA 98195

Dear Dr. Goldstein and Dr. Hammond,

I have recently received a copy of your publication *Physical Medicine and Rehabilitation* in the journal *JAMA*. On page 1891, this publication refers to the *Functional Independence Measure (AdultFIMSM)* incorrectly. Our attorneys advise us that, in order to protect our intellectual property rights, we must follow-up when we become aware that titles of our products have been used incorrectly.

The enclosed information sheets give clear examples of the correct use of titles and references to products of the Uniform Data System for Medical Rehabilitation. Thank you for correcting the use of these titles in any future publications.

Sincerely,



April V. Peters, M.L.S., AHIP
Copyright Librarian

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Uniform Data System for Medical Rehabilitation
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Telephone: (716) 829-2076 • FAX: (716) 829-2080 • E-mail: fimnet@ubvms.cc.buffalo.edu

Center for Functional Assessment Research • Department of Rehabilitation Medicine
School of Medicine and Biomedical Sciences • State University of New York at Buffalo



UDS_{MR}SM/FIMSM

UNIFORM DATA SYSTEM FOR MEDICAL REHABILITATION / FUNCTIONAL INDEPENDENCE MEASURE

November 5, 1997

Michael L. Jones, Ph.D.
Shepherd Spinal Center
2020 Peachtree Road N.W.
Atlanta, GA 30309

Dear Dr. Jones,

I have recently received a copy of your publication *Early admits improve outcomes, cut cost for SCI patients*. This publication refers to the *Functional Independence Measure (AdultFIMSM)* incorrectly. Our attorneys advise us that, in order to protect our intellectual property rights, we must follow-up when we become aware that titles of our products have been used incorrectly.

The enclosed information sheets give clear examples of the correct use of titles and references to products of the Uniform Data System for Medical Rehabilitation. Thank you for correcting the use of these titles in any future publications.

Sincerely,

April V. Peters, M.L.S., AHIP
Copyright Librarian

UBF1205

Uniform Data System for Medical Rehabilitation
232 Parker Hall, University at Buffalo, 3435 Main Street, Buffalo, N.Y. 14214-3007
Telephone: (716) 829-2076 • FAX: (716) 829-2080 • E-mail: fimnet@ubvms.cc.buffalo.edu

Center for Functional Assessment Research • Department of Rehabilitation Medicine
School of Medicine and Biomedical Sciences • State University of New York at Buffalo



Elizabeth B. Devereaux, MSW, ACSW, OTR/L, FAOTA

304 Wood Lomond Court • Huntington, WV 25705-3254

December 3, 1997

April V. Peters, M.L.S., AHIP
Copyright Librarian
Uniform Data System for Medical Rehabilitation
University at Buffalo
232 Parker Hall
3435 Main Street
Buffalo, New York 14214-3007

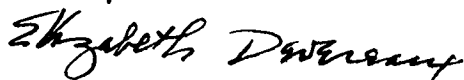
Dear Ms. Peters:

Thank you for your letter of November 5, 1997 notifying me of the incorrect citation in the chapter on Psychosocial Function in *Assessment in Occupational Therapy and Physical Therapy*. Specifically, the incorrect citation in this publication refers to the *Functional Independence Measure (Adult FIM™)* instrument. I was on the West coast when your letter arrived, so just today had the opportunity to discuss the matter with the chapter co-author, Melba Arnold.

Since Ms. Arnold is on the faculty in the College of Health Professions at the University of Florida with Editors Van Deusen and Brunt, she is planning to provide the information to them as well as the publisher, W.B. Saunders Company.

It is my hope that these steps will resolve the matter to your satisfaction until such time as the book may be reprinted, when the citation can be corrected.

Sincerely,



Elizabeth B. Devereaux

cc: Melba Arnold
Julia Van Deusen
Denis Brunt

UBF1206

Phone: (304) 736-0318
FAX: (304) 736-0318
E-mail: edevereaux@aol.com

03-068

Amy McCormack

From: "Amy McCormack" <amccormack@udsmr.org>
To: "Jerry Wright" <tbisci@tbi-sci.org>
Sent: Friday, April 16, 2004 12:07 PM
Subject: COMBI Website

Dear Mr. Wright:

I contacted you awhile back regarding some references to UDSMR's intellectual property on the Center for Outcome Brain Measurement in Brain Injury (COMBI) website. We recently reviewed the website again, and there are still a few issues regarding the FIM™ instrument that need to be corrected, located on this page: (<http://www.tbims.org/combi/FIM/index.html>)

The term Functional Independence Measure should not be used. The trademark term "FIM™" should be used in its place. Also the term "FIM" cannot be used on its own, it needs to modify a noun, such as instrument (FIM™ instrument)

UDSMR moved its offices in the summer of 2002 our current address is:

270 Northpointe Parkway
Suite 300
Amherst, New York 14228

Our phone number is 716-817-7800 and our fax line is 716-568-0037

For a general email address the only one that will work is
info@udsmr.org

You have been very helpful in the past, and I would appreciate any assistance you can give me with rectifying this situation. If you have any questions please contact me directly. Thank you.

Sincerely,

Amy J. McCormack
Legal Services Specialist

UBF1207

4/16/2004

Amy McCormack

From: "Amy McCormack" <amccormack@udsmr.org>
To: "Jerry Wright" <tbisci@tbi-sci.org>
Sent: Tuesday, December 18, 2001 12:13 PM
Attach: Proper SM and TM and Correct Citations August 2001.doc
Subject: Re: References on your website

12/18
Transfer
done
AJM give to
me for
Follow up
Thanks,
Amy

Jerry,

Thank you for your quick response. You are correct we do have concerns regarding trademarks etc. For instance, we no longer refer to the FIM(TM) instrument as the functional independence measure. Our attorneys have advised us that the instrument should only be referred to as the FIM(TM) instrument because of intellectual property concerns. In addition, there is no copyright statement provided, acknowledging UDSMR's ownership of the assessment tool.

When you are able to access the files to make the changes, please refer to the attached information sheets with examples of the correct uses of our copyrights, service marks, and trademarks.

If you have any questions or concerns, please do not hesitate to email me or phone me at (716) 829-2076 Ext. 53

Sincerely,

Amy J. McCormack

----- Original Message -----

From: "Jerry Wright" <tbisci@tbi-sci.org>
To: "Amy McCormack" <amccormack@udsmr.org>
Sent: Monday, December 17, 2001 5:22 PM
Subject: Re: References on your website

1/17 Make
Jerry
done
AJM Wright
The
Contact

- > Hello-
- >
- > My name is Jerry Wright and I can be your contact for FIM(TM) information
- > on the COMBI website. I think I realize what the issue is, we are not
- > using the (TM) symbol enough. Our ISP has moved our website to a new
- > server (migration). As soon as I can access the files, I will put in the
- > appropriate references.
- >
- > If you need to discuss a different issue, or wish for more elaboration,
- > please email me or call me.
- >
- > Thanks-
- >
- > Jerry Wright
- >

UBF1208

12/18/01

>>I work for UDSMR and would like to know who to contact regarding the
>>references to the FIM(TM) instrument on your website. Any assistance you
>>can give me in this matter would be greatly appreciated.

>>
>>Sincerely,

>>
>>Amy J. McCormack

>
>
> Rehabilitation Research Center for TBI & SCI
> Santa Clara Valley Medical Center
> 408.295.9896 x20
> FAX 408.295.9913
> jwright@tbi-sci.org
> www.tbi-sci.org
>

UBF1209

12/18/01



The
Functional
Assessment
Specialists

Uniform Data System

for Medical
Rehabilitation

Telephone
716.829.2076

Facsimile
716.829.2080

E-mail
info@udsmr.org

Website
www.udsmr.org

232 Parker Hall
University at Buffalo
3435 Main Street
Buffalo, New York
14214

October 24, 2001

The Center for Outcome Measurement In Brain Injury
Rehabilitation Research Center for TBI&SCI
Santa Clara Valley Medical Center
950 South Bascom Avenue #2011
San Jose, CA 95128

To whom it may concern:

We recently noticed on the Center for Outcome Measurement In Brain Injury website you have included referencing of the FIM™ instrument (a copy of the pages are attached hereto for your reference.) I was somewhat dismayed to see the lack of copyright and trademark acknowledgments. Our attorneys have advised us that, in order to protect our intellectual property rights, we must follow up whenever we become aware of any misuse of our marks.

The FIM™ instrument is referenced incorrectly on the above mentioned website. In addition, there is no copyright statement provided, acknowledging UDSMR's ownership in the assessment tool.

Please refer to the enclosed information sheets for examples of the correct uses of our copyrights, service marks and trademarks. I would be more than happy to review any future additions to your website for proper acknowledgments. All material should be forwarded directly to my attention.

If you have any questions or concerns, please do not hesitate to contact me directly at 716-829-2076 extension 53 or via email at amccormack@udsmr.org. Thank you.

Sincerely,

Amy J. McCormack
Legal Services Specialist

Enclosure



UBF1210

UDS_{MR}SM/FIMSM

UNIFORM DATA SYSTEM FOR MEDICAL REHABILITATION / FUNCTIONAL INDEPENDENCE MEASURE

November 28, 1995

Ollie Buckley
Department of Occupational Therapy
Xavier University
3800 Victory Parkway
Cincinnati, Ohio 45207-7341

Dear Mr. Buckley,

Thank you for your request for permission to use the Functional Independence Measure (FIMSM) for the purpose of completing your degree requirements in Occupational Therapy at Xavier University. I understand your project will study "Does a nursing home resident's ability to self-feed continue after discharge from an occupational therapy program which addressed feeding skills? Permission is hereby granted to use the FIM for your project. When your project is completed, we would be interested in receiving a copy of your results.

Please use the following citation:

Guide for the Uniform Data Set for Medical Rehabilitation (Adult FIM), Version 4.0.
Buffalo, NY 14214: State University of New York at Buffalo; 1993.

The following acknowledgment is to be included under each Figure or Table:

Functional Independence Measure, Copyright © 1993 Uniform Data System for Medical Rehabilitation (UDS_{MR}SM). All rights reserved. Reprinted with permission of the UDS_{MR}, University at Buffalo, 232 Parker Hall, 3435 Main Street, Buffalo, NY 14214.

Sincerely,



Carl V. Granger, M.D.
Director
Center for Functional Assessment Research

UBF1211

Uniform Data System for Medical Rehabilitation
232 Parker Hall, University at Buffalo, 3435 Main Street, Buffalo, N.Y. 14214-3007
Telephone: (716) 829-2076 • FAX: (716) 829-2080 • E-mail: fimnet@ubvms.cc.buffalo.edu

Center for Functional Assessment Research • Department of Rehabilitation Medicine
School of Medicine and Biomedical Sciences • State University of New York at Buffalo





UNIVERSITY AT BUFFALO
STATE UNIVERSITY OF NEW YORK

Center for Functional Assessment Research
Department of Rehabilitation Medicine
232 Parker Hall
3435 Main Street
Buffalo, New York 14214-3007
(716) 829-2076
FAX# (716) 829-2080

July 19, 1995

John Michael Linacre
Rasch Measurement Transactions
5835 S. Kimbark Ave.
Chicago, IL 60189

Dear Mr. Linacre,

It has come to our attention that a title has been used improperly in a recent publication. An example from your publication is enclosed. Our attorneys advise us that, in order to maintain our copyright, we must follow-up when we find products and titles cited improperly. The enclosed sheets give clear examples of the correct use of our titles and references for our products.

Thank you for correcting the use of these titles in any future publications.

Sincerely,

A handwritten signature in cursive script that reads "Carl V. Granger".

Carl V. Granger, M.D.

Director

Center for Functional Assessment Research

A handwritten signature in cursive script that reads "Edward P. Schneider".

Edward P. Schneider

Vice President

University at Buffalo Foundation, Inc.

UBF1212



UNIVERSITY AT BUFFALO
STATE UNIVERSITY OF NEW YORK

Center for Functional Assessment Research
Department of Rehabilitation Medicine
232 Parker Hall
3435 Main Street
Buffalo, New York 14214-3007
(716) 829-2076
FAX# (716) 829-2080

July 19, 1995

Lisa M. Blumerman
LEARN Publications
1150 18th Street, N.W.
Washington, D.C. 20036

Dear Ms. Blumerman,

It has come to our attention that a title has been used improperly in a recent publication. An example from your publications is enclosed. Our attorneys advise us that, in order to maintain our copyright, we must follow-up when we find products and titles cited improperly. The enclosed sheets give clear examples of the correct use of our titles and references for our products.

Thank you for correcting the use of these titles in any future publications.

Sincerely,

A handwritten signature in cursive script that reads "Carl V. Granger".

Carl V. Granger, M.D.
Director
Center for Functional Assessment Research

A handwritten signature in cursive script that reads "Edward P. Schneider".

Edward P. Schneider
Vice President
University at Buffalo Foundation, Inc.



UNIVERSITY AT BUFFALO
STATE UNIVERSITY OF NEW YORK

Center for Functional Assessment Research
Department of Rehabilitation Medicine
232 Parker Hall
3435 Main Street
Buffalo, New York 14214-3007
(716) 829-2076
FAX# (716) 829-2080

July 19, 1995

Director
Office of the Forum for Quality
and Effectiveness in Health Care
AHCPR, Willco Building, Suite 310
6000 Executive Boulevard
Rockville, MD 20852

Dear Director,

It has come to our attention that a title has been used improperly in a recent publication. Our attorneys advise us that, in order to maintain our copyright, we must follow-up when we find products and titles cited improperly. The enclosed sheets give clear examples of the correct use of our titles and references for our products.

Thank you for correcting the use of these titles in any future publications.

Sincerely,

Carl V. Granger, M.D.
Director
Center for Functional Assessment Research

Edward P. Schneider
Vice President
University at Buffalo Foundation, Inc.

UBF1214



UNIVERSITY AT BUFFALO

STATE UNIVERSITY OF NEW YORK

Center for Functional Assessment Research
Department of Rehabilitation Medicine
232 Parker Hall
3435 Main Street
Buffalo, New York 14214-3007
(716) 829-2076
FAX# (716) 829-2080

July 19, 1995

Sandra Jean Painter
Senior Editor
Aspen Publishers, Inc.
200 Orchard Ridge Drive
Gaithersburg, MD 20878

Dear Ms. Painter,

It has come to our attention that a title has been used improperly in a recent publication. An example from your publications is enclosed. Our attorneys advise us that, in order to maintain our copyright, we must follow-up when we find products and titles cited improperly. The enclosed sheets give clear examples of the correct use of our titles and references for our products.

This publication, published in 1995, cites an obsolete version of the FIMSM. Correct references for the current version are on the enclosed sheet.

Thank you for correcting the use of these titles in any future publications.

Sincerely,

A handwritten signature in cursive script that reads "Carl V. Granger".

Carl V. Granger, M.D.

Director

Center for Functional Assessment Research

A handwritten signature in cursive script that reads "Edward P. Schneider".

Edward P. Schneider

Vice President

University at Buffalo Foundation, Inc.

UBF1215



1 CAMPUS DRIVE • ALLENDALE MICHIGAN 49401-9403 • 616-895-6611

C.V. Granger
Department of Rehabilitation Medicine
The Buffalo General Hospital
100 High Street
Buffalo, NY 14203
PERMISSIONS DEPARTMENT

May 23, 1994

To Whom It May Concern:

The University Library request copyright permission to make 2 photocopies of the following items and place them at the Circulation Desk for students to read for their course work. (We are not selling these materials nor are we asking to incorporate this material in another publication.) We need permission to place these on reserve for the academic year 1994/1995 and for Prof. Paschke for Psy 368.

Granger, C.V., Gresham, G.E. (Ed.), *Functional Assessment in Rehabilitation Medicine*. Baltimore: Williams & Wilkins, 1984, pp. 1-13.

The publisher has given us permission, but they requested we get permission from the author also.

Permission granted
C.V. Granger

Sincerely,

Carolyn Modderman

Carolyn Modderman
Closed Reserve Assistant
Zumberge Library
Fax: 616-895-3504

6/2/94

UBF1216



To Gresham
April

File Copy
CVS

1 CAMPUS DRIVE • ALLENDALE MICHIGAN 49401-9403 • 616-895-6611

Dr. C.V. Granger
Dept. of Rehabilitation Medicine
The Buffalo General Hospital
100 High Street
Buffalo, NY 14203

April 14, 1994

PERMISSIONS DEPARTMENT

To Whom It May Concern:

The University Library request copyright permission to make 2 photocopies of the following items and place them at the Circulation Desk for students to read for their course work. (We are not selling these materials nor are we asking to incorporate this material in another publication.) We need permission to place these on reserve for the academic year 1994/1995 and for Prof. Paschke for Psy 368. We have also sent a copy of this letter to the publisher.

Granger, C.V., & Gresham, G.E. (Ed.)
Functional Assessment in Rehabilitation Medicine
~~Baltimore~~ Williams & Wilkins, 1984
pp. 1-13

Permission granted —
Call V. Granger MD 4/26/94
Ben E. Gresham, M.D. 4/26/94

Sincerely,

Carolyn Modderman
Closed Reserve Assistant
Zumberge Library
Fax: 616-895-3504

June 25, 1997

Samantha Maher
University of Northumbria at Newcastle
Hunters Moor
Regional Rehabilitation Centre
Hunters Road
Newcastle upon Tyne NE2 4NR
England

Dear Ms. Maher,

Thank you for your request for permission to use the Functional Independence Measure (FIMSM) for the purpose of completing your postgraduate degree requirements at University of Northumbria. I understand your project will target a pilot physiotherapy service for people with Parkinson's disease. Limited permission is hereby granted to use the FIMSM for your project. When your project is completed, we would be interested in receiving a copy of your results.

Please refer to the enclosed sheets giving correct citations and service mark and trademark uses for titles of UDS^{MR} products.

I have enclosed an order form. Bibliographies available are listed in the enclosed *Far Horizons*.

Sincerely,



Carl V. Granger, M.D.
Director
Center for Functional Assessment Research

Uniform Data System for Medical Rehabilitation
232 Parker Hall, University at Buffalo, 3435 Main Street, Buffalo, N.Y. 14214-3007
Telephone: (716) 829-2076 • FAX: (716) 829-2080 • E-mail: fimnet@ubvms.cc.buffalo.edu



Center for Functional Assessment Research • Department of Rehabilitation Medicine
School of Medicine and Biomedical Sciences • State University of New York at Buffalo

UBF1218

UNIVERSITY of  at NEWCASTLE
NORTHUMBRIA

Samantha Maher
Postgraduate Research Student
University of Northumbria at Newcastle
Faculty of Health, Social Work and Education, Assistant Dean Professor D W Watson
Hunters Moor
Regional Rehabilitation Centre
Research Associates Office
Hunters Road
Newcastle upon Tyne
NE2 4NR
England

Uniform Data Systems for Medical Rehabilitation
State University of New York at Buffalo
232 Parker Hall
SUNI So. Campus
3435 Main Street
Buffalo
New York 14214-3007

Date as postmark

Dear Sir / Madam

As a postgraduate research student at the University of Northumbria, I am currently working on a project aimed at evaluating a targeted pilot physiotherapy service for people with Parkinson's disease.

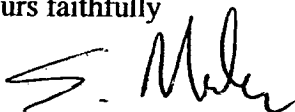
Evaluation is to be conducted primarily through use of a battery of outcome measures, one of which is the Functional Independence Measure (FIM). I am now seeking an up-to-date copy of an appropriate manual and user's guide and am informed that you may be able to assist me in this.

I have written to your organisation previously about this matter, but unfortunately that correspondence was mistakenly taken to be a request for permission to use the measure. I would like to stress again that I am seeking a manual only.

Secondly, I would like to enquire about the bibliographies available through the Functional Assessment Information Service and would ask that you send details of any you think may be of interest or use to me in my work.

Thank you for your time and assistance in this matter. I look forward to your reply.

Yours faithfully



Samantha Maher

UBF1219

UDS_{MR}[™]/FIM[™]

UNIFORM DATA SYSTEM FOR MEDICAL REHABILITATION / FUNCTIONAL INDEPENDENCE MEASURE

FAX & MAIL

COPY

February 3, 1997

Susan B. Greco, CRRN, MSN
Unit Manager, Rehab Unit
OCHSNER Medical Institutions
1516 Jefferson Highway
New Orleans, LA 70121

Dear Ms. Greco:

Enclosed is the fact sheet that you sent to me along with your credentialing examinations. Please note that the FIM[™] is a registered trademark of the Uniform Data System for Medical Rehabilitation, please change your fact sheet to reflect the trademark "FIM[™]".

If you have any questions or concerns, please feel free to contact our Copyright Librarians, either April Peters or Alicja Kacprowicz. If you have other issues, you may contact our Director of Subscriber Services, Janet Bailey.

Thank you very much for your time and attention in this matter.

Sincerely,



Patricia A. Mc Millon
Credentialing Assistant

Enclosure

Uniform Data System for Medical Rehabilitation
232 Parker Hall, University at Buffalo, 3435 Main Street, Buffalo, N.Y. 14214-3007
Telephone: (716) 829-2076 • FAX: (716) 829-2080 • E-mail: fimnet@ubvms.cc.buffalo.edu

Center for Functional Assessment Research • Department of Rehabilitation Medicine
School of Medicine and Biomedical Sciences • State University of New York at Buffalo



UBF1220

Ochsner's Inpatient Rehab Unit FACT SHEET

ADMISSION CRITERIA

- Medically Stable
- Will Benefit from Rehab Intervention
- Able to Participate in Therapy a Minimum of 3 hrs per day
- Requires Psychiatric Management

DIAGNOSTIC CATEGORIES SERVED

(not all inclusive)

- Stroke
- Head Injury (noncombative)
- Spinal Cord Injury
- Amputation
- Multiple Trauma
- Orthopedic Procedures
- Peripheral Neuropathy
- Neurological Complications of Diabetes
- Neuromuscular Diseases & Conditions
- Arthritis/Rheumatoid Arthritis
- Pulmonary, Cardiac and Oncological Disease with Severe Functional Impairment

PROGRAM COMPONENTS

- Preadmission Assessment
- Medical Management/Physiatry
- Case Management
- Interdisciplinary Treatment Team
- Outcome Goals and Assessment Using FIMTM Scores
- Patient and Family Education
- Counseling Services
- Family Conference
- Discharge Planning and Coordination of Outpatient Needs
- Satisfaction Survey Post-discharge

UDS^{MR}/FIMTM

UNIFORM DATA SYSTEM FOR MEDICAL REHABILITATION / FUNCTIONAL INDEPENDENCE MEASURE

Dawn Barrett, Director of Performance & Outcome Improvement
Rehabilitation Hospital of Rhode Island
One Rehabilitation Place
116 Eddie Dowling Highway
North Smithfield, RI 02896

Dear Ms. Barrett,

Thank you for your request to incorporate the FIMTM instrument in your Interdisciplinary Rehab Team Report for use in your facility. Please make the following changes and send a copy of the revised form to me for approval.

Add superscript TM after FIM in the title as shown.

Add the following copyright statement:

Adapted with permission of the Uniform Data System for Medical Rehabilitation, a division of UB Foundation Activities, Inc. (UDS^{MR}SM). Copyright 1996. *Guide for the Uniform Data Set for Medical Rehabilitation (including the FIMTM instrument), Version 5.0.* Buffalo, NY 14214: State University of New York at Buffalo; 1996.

Our attorneys advise us that this is necessary in order to protect our intellectual property rights. I apologize for any inconvenience this causes.

Sincerely,

April V. Peters, M.L.S., AHIP
Copyright Librarian

copy

UBF1222

Uniform Data System for Medical Rehabilitation
2 Parker Hall, University at Buffalo, 3435 Main Street, Buffalo, N.Y. 14214-3007
Telephone: (716) 829-2076 • FAX: (716) 829-2080 • E-mail: fimnet@ubvms.cc.buffalo.edu

Center for Functional Assessment Research • Department of Rehabilitation Medicine
School of Medicine and Biomedical Sciences • State University of New York at Buffalo



48-007

UNIFORM DATA SYSTEM FOR MEDICAL REHABILITATION

716-829-2076

FAX: 71829-2080

FACSIMILE TRANSMITTAL SHEET

| | |
|---|--|
| TO: Sandra Cesco-Cancian | FROM: Susan Braun |
| COMPANY: Riverview Rehabilitation Center | DATE: 01/24/98 |
| FAX NUMBER: 732 345 2034 | TOTAL NO. OF PAGES INCLUDING COVER: 7 |
| PHONE NUMBER: 732 530 2368 | SENDER'S REFERENCE NUMBER: |
| RE: Media Piece | YOUR REFERENCE NUMBER: |

- URGENT
 FOR REVIEW
 PLEASE COMMENT
 PLEASE REPLY
 PLEASE RECYCLE

NOTES/COMMENTS:
Please refer to the attached. Sam Markello and I made some suggestions for enhancing your media piece. I also made some changes in the way that your PR Department used the intellectual property marks. Please let me know if you have any other questions or need further assistance.

232 PARKER HALL
3435 MAIN STREET
BUFFALO, NEW YORK 14214

UBF1223

UDSMR™/FIM™

UNIFORM DATA SYSTEM FOR MEDICAL REHABILITATION / FUNCTIONAL INDEPENDENCE MEASURE

January 26, 1998

Sandra Cesco-cancian
Riverview Rehabilitation Center
One Riverview Plaza
Red Bank, NJ 07701

Dear Ms. Cesco-cancian:

Please refer to the attached information. I shared your media piece with Sam Markello, Director of Outcomes Analysis and Jan Bailey, Director of Subscriber Services. We made some suggestions for enhancement of your material. These are reflected in the bold type.

The title "FIM Outcomes" should be changed to "Impairment Mix". In addition, a copyright statement must be added below the bar graph if both of the tables will be displayed as shown in the final piece. If they appear on separate pages, then the statement will need to appear below both tables.

Functional Independence Measure. Copyright 1996. All rights reserved. Used with permission of Uniform Data System for Medical Rehabilitation, University at Buffalo, 232 Parker Hall, 3435 Main Street, Buffalo, New York. UDSMR is a service mark and FIM is a trademark belonging to UDSMR, a division of U B Foundation Activities, Inc.

We do have a seal of approval that you could add to your piece, if you desire. For more information, please contact Kevin Crosby at 716-829-2076.

Please feel free to contact me if you need more assistance.

Sincerely,

Susan Braun

Susan Braun, MLS, OTR
Copyright Librarian

UBF1224

Uniform Data System for Medical Rehabilitation
232 Parker Hall, University at Buffalo, 3435 Main Street, Buffalo, N.Y. 14214-3007
Telephone: (716) 829-2076 • FAX: (716) 829-2080 • E-mail: info@udsmr.org

Center for Functional Assessment Research • Department of Rehabilitation Medicine
School of Medicine and Biomedical Sciences • State University of New York at Buffalo



Measuring Outcomes

One of the methods that Riverview Rehabilitation Center utilizes to assess outcomes is the UDSMRSM/FIMTM System. The FIMTM instrument consists of 18 items that measure basic daily living skills such as eating, grooming, bathing, comprehension and expression, in order to determine a patient's severity of disability or level of functional independence. These 18 items are part of a larger data set that are used to collect demographic, diagnostic, and financial information as well as the functional status of patients undergoing comprehensive medical rehabilitation. Facilities submit all of this information to the Uniform Data System for Medical Rehabilitation where it is aggregated in a national database. Facilities that subscribe to UDSMR receive quarterly reports that help to assess the efficiency and effectiveness of their medical rehabilitation programs. As part of the implementation process, the rehabilitation staff is trained to use the FIM instrument and participates in a credentialing process to insure that the data is being collected in a reliable fashion. Thus, the FIM System enables facilities to collect information in a uniform manner that can then be used to make comparisons between similar facilities in a given geographic region as well as between similar facilities across the nation.

The FIM System is now being used at more than 588 credentialed inpatient comprehensive medical rehabilitation programs in the United States. Details in this outcome report illustrate comparisons of outcomes between Riverview Rehabilitation Center and 33 other similar medical rehabilitation programs in the geographic region.

UDSMRSM/FIMSM

UNIFORM DATA SYSTEM FOR MEDICAL REHABILITATION / FUNCTIONAL INDEPENDENCE MEASURE Uniform Data System for Medical Rehabilitation (UDSMRSM) Service Marks/ Trademarks

The following service marks and trademarks are owned and currently used by UDSMR. These marks are either registered or pending registration with the United States Patent and Trademark Office. When referring to these, please use the following forms. At minimum, the service mark or trademark symbol should be included the first time each mark is used in every work, table or chart. Service marks and trademarks must be used as adjectives and not as nouns or verbs.

UDSMRSM service

FIMTM instrument

FIMSM service

FIMware[®] software

MRFATM instrument

WeeFIMTM instrument

The following are trademarks belonging to the Trustees of the University of Pennsylvania:

Penn Ability Systems[®]

PASTM

A proper way to reference the Functional Independence Measure version of the Function Related Groups (FIM-FRGs) is Penn Ability Systems[®] (PASTM) FIM-FRG.

The explanation of the service mark/trademark is usually placed at the bottom of a page or the front of a document. Here are two examples:

1. FIMSM is a service mark of the Uniform Data System for Medical Rehabilitation, a division of UB Foundation Activities, Inc.
2. Penn Ability Systems[®] is a trademark of the Trustees of the University of Pennsylvania.

For more specific copyright information, please contact:

Copyright Librarian
Uniform Data System for Medical Rehabilitation
232 Parker Hall
3435 Main Street
Buffalo, New York 14214-3007

Phone: 716-829-2076

FAX: 716-829-2080

E-mail: udsmr@acsu.buffalo.edu

Revised August 20, 1997

UBF1226

Uniform Data System for Medical Rehabilitation

232 Parker Hall, University at Buffalo, 3435 Main Street, Buffalo, N.Y. 14214-3007

Telephone: (716) 829-2076 • FAX: (716) 829-2080 • E-mail: fimnet@ubvms.cc.buffalo.edu

Center for Functional Assessment Research • Department of Rehabilitation Medicine
School of Medicine and Biomedical Sciences • State University of New York at Buffalo



MERIDIAN HEALTH SYSTEM

RIVERVIEW REHABILITATION CENTER
RIVERVIEW MEDICAL CENTER CAMPUS
1 RIVERVIEW PLAZA
RED BANK, NEW JERSEY 07701

PHONE: 732-530-2368, 732-530-2392
FAX: 732-345-2034

FAX COVER SHEET

DATE: 1-13-98

TO: Susan Braun, Librarian, UDS

FROM: Sandra Cesco-Canaan

RE: Media piece for review/edit/approval process.

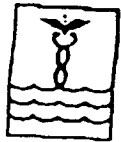
Number of Pages (including cover sheet): 4

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UBF1228



Riverview

REHABILITATION CENTER

ONE RIVERVIEW PLAZA, RED BANK, NJ 07701 ⁷³² (908) 530-2392

TO: Susan Braun, Librarian, UDS

FROM: Sandra Cesco-cancian, Director *SC*
Riverview Rehabilitation Center

DATE: 1-13-98

RE: Utilization of UDS/FIM Data for Media Piece

As you may recall from our telephone conversation about four weeks ago, Riverview Rehabilitation Center is very much interested in utilizing FIM data within our multi-piece facility brochure package. Following the instructions as outlined in my UDS handbook when using Center and Regional data results, our Media Center developed the enclosed document. Please forward it to the appropriate person(s) for review of its contents and methodology that UDS requires. I look forward to hearing from you, as we are trying to complete this piece prior to our CARF Survey which is tentatively scheduled for March 1998.

Thank you for your consideration.

I have included the data table utilized to design the media sheets.

Helping you meet the challenge

UBF1229

MEASURING OUTCOMES

SMRSM / FIM SystemSM *System*

One of the tools that Riverview Rehabilitation Center utilizes to assess outcomes is the ~~UIC~~ ~~FIM~~ ~~System~~. The ~~FIM~~ ~~Instrument~~ measures functional, demographic and fiscal data to assess program effectiveness and efficiency. Prior to ~~employing~~ ~~the~~ ~~FIM~~ ~~Instrument~~, the rehabilitation staff was educated, trained and credentialed to ensure reliability and validity in the manner in which the ~~set~~ ~~data~~ ~~is~~ ~~collected~~. Thus the FIM Instrument ~~is~~ ~~an~~ ~~opportunity~~ for rehabilitation professionals to measure the same data parameters, facility to facility, to compare programmatic outcomes.

FIM™ instrument

implementi

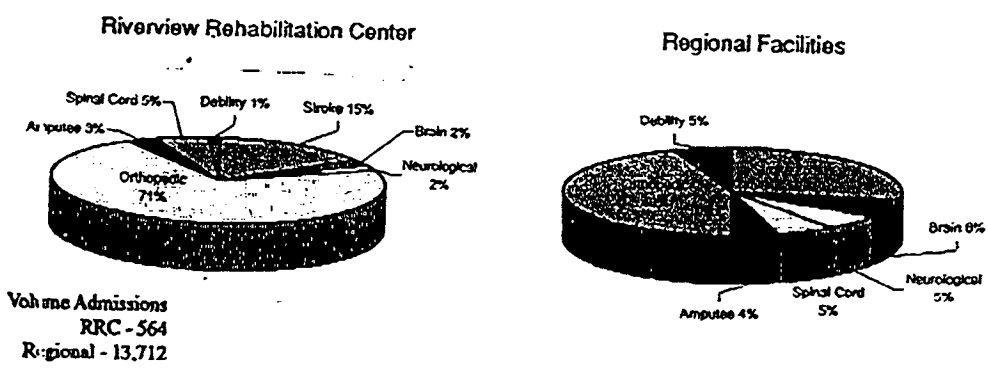
took a credentialing exam

The FIM Instrument is ~~utilized~~ *used* at more than ~~588~~ *588* acute inpatient comprehensive ~~rehabilitation~~ *medical* facilities across the country. Details in this outcome report illustrate data outcome comparisons between Riverview Rehabilitation Center and 33 ~~regional~~ *regional* acute inpatient rehabilitation facilities. *within the geographic region.*

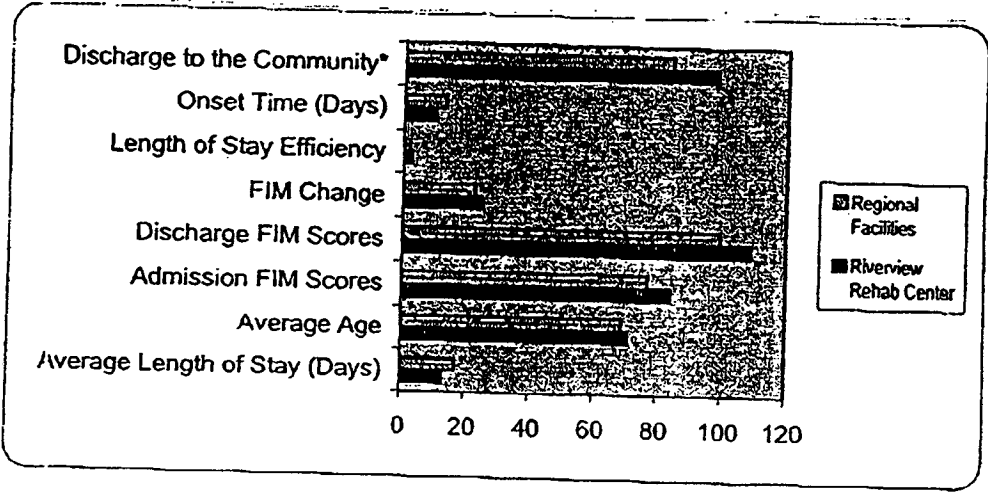
Impairment Mix FIM OUTCOMES

Data From Rolling Year • 10-01-96 - 09-30-97

Impairment Mix



Program Measures



Data is based upon all impairment groups
*Community Discharge is to Home, Board and Care or Transitional Living

Add copyright statement here.

UBF1230

Is this going to be included in your final document.

FIM OUTCOMES

DATA FROM ROLLING YEAR

10-1-96 - - 9-30-97

*Data is based upon 564 admissions to Riverview Rehabilitation Center and 13,712 admissions to Regional Facilities.

IMPAIRMENT MIX

| CATEGORY | RIVERVIEW REHABILITATION CENTER | REGIONAL FACILITIES |
|-----------------|--|----------------------------|
| Stroke | 15% | 25% |
| Brain | 2% | 6% |
| Neurological | 2% | 5% |
| Spinal Cord | 5% | 5% |
| Amputee | 3% | 4% |
| Orthopedic | 71% | 40% |
| Debil. ty | 1% | 5% |

PROGRAM MEASURES

| MEASURE** | RIVERVIEW REHABILITATION CENTER | REGIONAL FACILITIES |
|-------------------------------|--|----------------------------|
| Average Length of Stay | 13 Days | 17 Days |
| Average Age | 71 | 69 |
| Admission FIM Scores | 84.0 | 77.0 |
| Discharge FIM Scores | 109.0 | 99.4 |
| FIM Change | 25.0 | 22.4 |
| Length of Stay Efficiency | 2.40 | 1.90 |
| Onset Time | 10 Days | 13 Days |
| Discharge To The Community*** | 98% | 84% |

**Data is based upon all impairment groups.

***Community Discharge is defined as a discharge to Home, Board and Care or Transitional Living.

UBF1231



EASTERN
MAINE
MEDICAL
CENTER

489 STATE STREET
BANGOR, MAINE
04401-0073

FACSIMILE TRANSMISSION

UNIT: P03 Acute Rehabilitation
FAX: (207) 973-7394

TO: Uniform Data System

COMPANY: ATTN: Susan Braun

FAX NUMBER: 716-829-2080

DATE: September 18, 1996

FROM: Lisa Cyr Buchanan Rehab CNS

TELEPHONE NUMBER: (207) 973-9537

This transmission consists of 2 page(s) plus header.

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MESSAGE: Susan - Here is the form we developed for our Family Mtgs. I discussed this w/ you about 6 w ago. You requested I fax you a copy when we had the final draft. Here it is! Now I need

to know exactly what you (URS) want us to put on it for copyright language. Also, do you want us to indicate a © for the functional areas that come from FIM? (see table on left of 1st page) as well as the table & the levels on the right? (pg 1) Call come & questions. Would appreciate hearing from you soon! Shrub!

AND REPRINT PERMISSION

UBF1232

EASTERN MAINE MEDICAL CENTER

REHABILITATION CENTER

489 State Street, P.O. Box 404

Bangor, ME 04402-0404

Discharge Planning/Family Meeting Summary *PAGE 1*

Family Meeting Date/Time: _____ Primary Physician: _____

Present:

- Patient (if not present, why): _____
- Family: _____
- Physician: _____
- Nursing: _____ OT: _____ SW: _____
- Speech: _____ PT: _____ Other: _____

Rehabilitation Diagnosis: _____

Current Medical Issues: _____

| Functional Status | ADL | Instrumental ADL | Communication |
|----------------------------|-----|------------------|---------------|
| Eating | | | |
| Grooming | | | |
| Bathing | | | |
| Dressing: Upper Body | | | |
| Dressing: Lower Body | | | |
| Toileting | | | |
| Bladder Management | | | |
| Bowel Management | | | |
| Transfers: Bed, Chair, W/C | | | |
| Transfers: Toilet | | | |
| Transfers: Tub, Shower | | | |
| Kitchen | | | |
| Walk/Wheelchair | | | |
| Stairs | | | |
| Car Transfers | | | |
| Swallowing | | | |
| Comprehension | | | |
| Expression | | | |
| Social Interaction | | | |
| Problem Solving | | | |
| Memory | | | |
| | | | |
| | | | |
| | | | |
| | | | |

(FIMSM)

FUNCTIONAL INDEPENDENCE MEASURE (FIM) LEVELS

~~7-5~~

7 Complete Independence
(Timely, Safely)

6 Modified Independence
(Device)

~~4-3~~

Modified Dependence

5 Supervision

4 Minimal Assistance
(Subject = 75% +)

3 Moderate Assistance
(Subject = 50% +)

~~2-1~~

Complete Dependence

2 Maximal Assistance
(Subject = 25% +)

1 Total Assistance
(Subject = 0% +)

FIM is a service mark belonging to the IBM

due to
 Parake
 cation

Driving: License suspension recommended. Retest recommended. Handicapped placard application given. N/A

Patient and Family Goals: _____

Anticipated Discharge Plan:

- Home Alone
- Home: Family/ Caregiver
- Home: VNA Service
- SNF
- Boarding Home
- ICF
- Other: _____

MR-96-31 (9/96) ~~FEA~~

UBF1233

EASTERN MAINE MEDICAL CENTER
REHABILITATION CENTER
 489 State Street, P.O. Box 404
 Bangor, ME 04402-0404

Discharge Planning/Family Meeting Summary PAGE 2

Available Support for Home Discharge:

Family/caregiver: _____ (___ hrs/day); Any restrictions/exceptions? _____

Support services previously used: _____; Agency: _____

Preference for agency: _____

Equipment Needs (Supplier expected to use: _____):

- Wheelchair: _____ Transfer Aid: _____ Commode: _____ Mattress: _____
- Seat Cushion: _____ Walker/Cane: _____ Incont. Supplies: _____ _____
- Lap Tray: _____ Gait Belt: _____ Catheters: _____ _____
- Sliding Board: _____ Tub Seat: _____ Hospital Bed: _____ _____

Home Evaluation Needed: Yes No. Date/time: _____ Agency: _____

Expected Home Modifications Needed: _____

| Family/Caregiver/Physician | Frequency & Duration | Anticipated Date/Time | Schedule/Notes |
|--|----------------------|------------------------|----------------|
| <input type="checkbox"/> Physician: | | | |
| <input type="checkbox"/> Nursing: | | | |
| <input type="checkbox"/> Dietary: | | | |
| <input type="checkbox"/> Speech: | | | |
| <input type="checkbox"/> OT: | | | |
| <input type="checkbox"/> Activities: | | | |
| <input type="checkbox"/> PT: | | | |
| <input type="checkbox"/> Social Work: | | | |
| <input type="checkbox"/> | | | |
| <input type="checkbox"/> | | | |
| Expected Outpatient/Home Services Needed (Include Frequency) | | Appointments Scheduled | |
| <input type="checkbox"/> Primary Care Physician: | | | |
| <input type="checkbox"/> Other Physician(S): | | | |
| <input type="checkbox"/> | | | |
| <input type="checkbox"/> Nursing: | | | |
| <input type="checkbox"/> Speech: | | | |
| <input type="checkbox"/> OT: | | | |
| <input type="checkbox"/> PT: | | | |
| <input type="checkbox"/> Social Services: | | | |
| <input type="checkbox"/> Psychology: | | | |
| <input type="checkbox"/> Other: | | | |

Estimated Length of Stay: _____ Anticipated Discharge Date, If Known: _____

Meeting Length: _____ Minutes Recorded by: _____

Reviewed & Approved by (Physician): _____ Date: _____

Reviewed & Approved by (Patient/Family Member): _____ Date: _____

c:
 MR-96-31 (9/96)

UBF1234

EASTERN MAINE MEDICAL CENTER
REHABILITATION CENTER
 489 State Street, P.O. Box 404
 Bangor, ME 04402-0404

Discharge Planning/Family Meeting Summary PAGE 1

Leave one space so people understand these items are not part of FIM with consent.

Family Meeting Date/Time: _____ Primary Care Physician: _____

- Present: Patient (if not present, why): _____ Physician: _____
- Family: _____
- Nursing: _____ OT: _____ SW: _____
- Speech: _____ PT: _____ Other: _____

Rehabilitation Diagnosis: _____

Current Medical Issues: _____

| Function/Status | Current | Discharge Plan | Long Term Status |
|----------------------------|---------|----------------|------------------|
| Eating | | | |
| Grooming | | | |
| Bathing | | | |
| Dressing: Upper Body | | | |
| Dressing: Lower Body | | | |
| Toileting | | | |
| Bladder Management | | | |
| Bowel Management | | | |
| Transfers: Bed, Chair, W/C | | | |
| Transfers: Toilet | | | |
| Transfers: Tub, Shower | | | |
| Walk/Wheelchair | | | |
| Stairs | | | |
| Comprehension | | | |
| Expression | | | |
| Social Interaction | | | |
| Problem Solving | | | |
| Memory | | | |
| Kitchen | | | |
| Car Transfers | | | |
| Swallowing | | | |
| | | | |
| | | | |
| | | | |

(FIMSM)

FUNCTIONAL INDEPENDENCE MEASURE (FIM) LEVELS

NEEDS HELP

7 Complete Independence (Timely, Safely)

6 Modified Independence (Device)

NEEDS HELP

Modified Dependence

5 Supervision

4 Minimal Assistance (Subject = 75% +)

3 Moderate Assistance (Subject = 50% +)

Complete Dependence

2 Maximal Assistance (Subject = 25% +)

1 Total Assistance (Subject = 0% +)

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Driving: License suspension recommended. Retest recommended. Handicapped placard application given. N/A

Patient and Family Goals: _____

Comments: _____

Anticipated Discharge Plan:

- Home Alone Home: Family/Caregiver Home: VNA Service SNF Boarding Home ICF Other: _____

MR-96-31 (9/96)

UBF1235

EASTERN MAINE MEDICAL CENTER

REHABILITATION CENTER

489 State Street, P.O. Box 404

Bangor, ME 04402-0404

Discharge Planning/Family Meeting Summary PAGE 2

Available Support for Home Discharge:

Family/caregiver: _____ (___ hrs/day), Any restrictions/exceptions? _____

Support services previously used: _____; Agency: _____

Preference for agency: _____

Equipment Needs (Supplier expected to use: _____):

- Wheelchair: _____ Transfer Aid: _____ Commode: _____ Mattress: _____
- Seat Cushion: _____ Walker/Cane: _____ Incont. Supplies: _____ _____
- Lap Tray: _____ Gait Belt: _____ Catheters: _____ _____
- Sliding Board: _____ Tub Seat: _____ Hospital Bed: _____ _____

Home Evaluation Needed: Yes No. Date/Time: _____ Agency: _____

Expected Home Modifications Needed: _____

| Family/Caregiver Teaching Needs | Needs of Patient | Estimated Time Frame | Scheduled Teaching Time |
|---------------------------------------|------------------|----------------------|-------------------------|
| <input type="checkbox"/> Physician: | | | |
| <input type="checkbox"/> Nursing: | | | |
| <input type="checkbox"/> Dietary: | | | |
| <input type="checkbox"/> Speech: | | | |
| <input type="checkbox"/> OT: | | | |
| <input type="checkbox"/> Activities: | | | |
| <input type="checkbox"/> PT: | | | |
| <input type="checkbox"/> Social Work: | | | |
| <input type="checkbox"/> | | | |
| <input type="checkbox"/> | | | |

| Expected Outpatient/Home Services Needed (Include Frequency) | Appointments Scheduled |
|--|------------------------|
| <input type="checkbox"/> Primary Care Physician: | |
| <input type="checkbox"/> Other Physician(s): | |
| <input type="checkbox"/> Other Physician(s): | |
| <input type="checkbox"/> Nursing: | |
| <input type="checkbox"/> Speech: | |
| <input type="checkbox"/> OT: | |
| <input type="checkbox"/> PT: | |
| <input type="checkbox"/> Social Services: | |
| <input type="checkbox"/> Neuropsychology: | |
| <input type="checkbox"/> Other: | |

Estimated Length of Stay: _____ Anticipated Discharge Date, if known: _____

Meeting Length: _____ Minutes Recorded by: _____

Reviewed & Approved by (Physician): _____ Date: _____

Reviewed & Approved by (Patient/Family Member): _____ Date: _____

_____ Date: _____

c:

MR-96-31 (9/96)

UBF1236



EASTERN
MAINE
MEDICAL
CENTER

489 STATE STREET
BANGOR, MAINE
04401-0074

FACSIMILE TRANSMISSION

UNIT: PO3 Acute Rehabilitation
FAX: (207) 973-7394

TO: Dusan Braun

COMPANY: UPS

FAX
NUMBER: 716-829-2080

DATE: 11/25/96

FROM: Jwa Cyr Buchanan

TELEPHONE
NUMBER: (207) 973-8537

This transmission consists of 2 page(s) plus header.

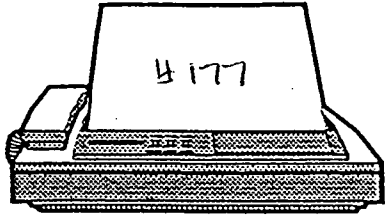
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MESSAGE: Here is the final draft of our form. I incorporated the changes you requested. Please let me know very soon if there is anything else that needs to be amended. Thank you!

UBF1237

UDS^{MR}/FIMTM

UNIFORM DATA SYSTEM FOR MEDICAL REHABILITATION / FUNCTIONAL INDEPENDENCE MEASURE



Date Fax Sent: 11/25/96

From: Susan Braun

Number of Pages Including Cover Sheet: 3

Facility Name: Eastern Maine Medical Center

Attention: Lisa Cyr Buchanan PO3- Acute Rehab

Phone #: _____ Fax #: 207-973-7394

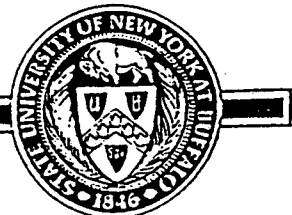
Subject: Form Corrections

Message: _____

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Uniform Data System for Medical Rehabilitation
232 Parker Hall, University at Buffalo, 3435 Main Street, Buffalo, N.Y. 14214-3007
Telephone: (716) 829-2076 • FAX: (716) 829-2080 • E-mail: fimnet@ubvms.cc.buffalo.edu



Center for Functional Assessment Research • Department of Rehabilitation Medicine
School of Medicine and Biomedical Sciences • State University of New York at Buffalo

UBF1238

UDS^{MR}/FIMSM

UNIFORM DATA SYSTEM FOR MEDICAL REHABILITATION / FUNCTIONAL INDEPENDENCE MEASURE

December 3, 1996

Lisa Lyn Buehamar
Eastern Maine Medical Center
489 State Street
Bangor, Maine 04401

Dear Ms. Buehamar,

Thank you for your request for permission to reproduce the FIMSM scoring sheet from *Guide for the Uniform Data Set for Medical Rehabilitation (Adult FIMSM), Version 4.0 in your Discharge Planning/Family Meeting Summary*. Permission is hereby granted to use those specific copyrighted parts of Version 4.0 for that purpose.

Please refer to the enclosed sheets giving correct citations and service mark and trademark uses for titles of UDS^{MR} products.

Sincerely,



Carl V. Granger, M.D.
Director
Center for Functional Assessment Research

Uniform Data System for Medical Rehabilitation
232 Parker Hall, University at Buffalo, 3435 Main Street, Buffalo, N.Y. 14214-3007
Telephone: (716) 829-2076 • FAX: (716) 829-2080 • E-mail: fimnet@ubvms.cc.buffalo.edu

Center for Functional Assessment Research • Department of Rehabilitation Medicine
School of Medicine and Biomedical Sciences • State University of New York at Buffalo



UBF1239



OK to reproduce
~~letter~~ send letter

EASTERN
MAINE
MEDICAL
CENTER

489 STATE STREET
BANGOR - MAINE
04401-0074

FACSIMILE TRANSMISSION

UNIT: PO3 Acute Rehabilitation
FAX: (207) 973-7394

TO: Dwain Brown

COMPANY: UDS

FAX NUMBER: 716-829-2080

DATE: 12/01/96

FROM: Russ Lyn Buchanan

TELEPHONE NUMBER: (207) 973-8537

This transmission consists of 2 page(s) plus header.

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MESSAGE: Thank you for your
prompt reply. Here is the
final (I hope! :) draft.
Thanks!

UBF1240

EASTERN MAINE MEDICAL CENTER

REHABILITATION CENTER

489 State Street, P.O. Box 404

Bangor, ME 04402-0404

Discharge Planning/Family Meeting Summary PAGE 1

Family Meeting Date/Time: _____ Primary Care Physician: _____

Present: Patient (if not present, why): _____ Physician: _____

Family: _____

Nursing: _____ OT: _____ SW: _____

Speech: _____ PT: _____ Other: _____

Rehabilitation Diagnosis: _____

Current Medical Issues: _____

| Functional Status | Current | Discharge | Long Term |
|----------------------------|---------|-----------|-----------|
| Eating | | | |
| Grooming | | | |
| Bathing | | | |
| Dressing: Upper Body | | | |
| Dressing: Lower Body | | | |
| Toileting | | | |
| Bladder Management | | | |
| Bowel Management | | | |
| Transfers: Bed, Chair, W/C | | | |
| Transfers: Toilet | | | |
| Transfers: Tub, Shower | | | |
| Walk/Wheelchair | | | |
| Stairs | | | |
| Comprehension | | | |
| Expression | | | |
| Social Interaction | | | |
| Problem Solving | | | |
| Memory | | | |
| Kitchen | | | |
| Car Transfers | | | |
| Swallowing | | | |
| | | | |
| | | | |

FUNCTIONAL INDEPENDENCE MEASURE (FIMSM) LEVELS

NO HELP

7 Complete Independence (Timely, Safely)

6 Modified Independence (Device)

HELP

Modified Dependence

5 Supervision

4 Minimal Assistance (Subject = 75% +)

3 Moderate Assistance (Subject = 50% +)

Complete Dependence

2 Maximal Assistance (Subject = 25% +)

1 Total Assistance (Subject = 0% +)

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Driving: License suspension recommended. Retest recommended. Handicapped placard application given. N/A

Patient and Family Goals: _____

Comments: _____

Anticipated Discharge Plan:

Home Alone Home: Family/Caregiver Home: VNA Service SNF Boarding Home ICF Other: _____

MR-96-31 (9/96)

UBF1241

EASTERN MAINE MEDICAL CENTER

REHABILITATION CENTER

489 State Street, P.O. Box 404

Bangor, ME 04402-0404

Discharge Planning/Family Meeting Summary PAGE 2

Available Support for Home Discharge:

Family/caregiver: _____ (___ hrs/day); Any restrictions/exceptions? _____

Support services previously used: _____; Agency: _____

Preference for agency: _____

Equipment Needs (Supplier expected to use: _____):

- | | | | |
|---|--|--|--|
| <input type="checkbox"/> Wheelchair: _____ | <input type="checkbox"/> Transfer Aid: _____ | <input type="checkbox"/> Commode: _____ | <input type="checkbox"/> Mattress: _____ |
| <input type="checkbox"/> Seat Cushion: _____ | <input type="checkbox"/> Walker/Cane: _____ | <input type="checkbox"/> Incont. Supplies: _____ | <input type="checkbox"/> _____ |
| <input type="checkbox"/> Lap Tray: _____ | <input type="checkbox"/> Gait Belt: _____ | <input type="checkbox"/> Catheters: _____ | <input type="checkbox"/> _____ |
| <input type="checkbox"/> Sliding Board: _____ | <input type="checkbox"/> Tub Seat: _____ | <input type="checkbox"/> Hospital Bed: _____ | <input type="checkbox"/> _____ |

Home Evaluation Needed: Yes No. Date/Time: _____ Agency: _____

Expected Home Modifications Needed: _____

| Family/Caregiver/Teaching Needs | Personnel/Restrictions | Estimated Time Frame | Scheduled/Waiting Times |
|---------------------------------------|------------------------|----------------------|-------------------------|
| <input type="checkbox"/> Physician: | | | |
| <input type="checkbox"/> Nursing: | | | |
| <input type="checkbox"/> Dietary: | | | |
| <input type="checkbox"/> Speech: | | | |
| <input type="checkbox"/> OT: | | | |
| <input type="checkbox"/> Activities: | | | |
| <input type="checkbox"/> PT: | | | |
| <input type="checkbox"/> Social Work: | | | |
| <input type="checkbox"/> | | | |
| <input type="checkbox"/> | | | |

| Expected Outpatient/Home Services Needed (include frequency) | Appointments Scheduled |
|--|------------------------|
| <input type="checkbox"/> Primary Care Physician: | |
| <input type="checkbox"/> Other Physician(s): | |
| <input type="checkbox"/> Other Physician(s): | |
| <input type="checkbox"/> Nursing: | |
| <input type="checkbox"/> Speech: | |
| <input type="checkbox"/> OT: | |
| <input type="checkbox"/> PT: | |
| <input type="checkbox"/> Social Services: | |
| <input type="checkbox"/> Neuropsychology: | |
| <input type="checkbox"/> Other: | |

Estimated Length of Stay: _____ Anticipated Discharge Date, if known: _____

Meeting Length: _____ Minutes Recorded by: _____

Reviewed & Approved by (Physician): _____ Date: _____

Reviewed & Approved by (Patient/Family Member): _____ Date: _____

Date: _____

c:
MR-96-31 (9/96)

UBF1242

JDSMRSM

Uniform Data
System for
Medical
Rehabilitation

*The Leader
in Outcomes
Assessment
for Medical
Rehabilitation
across the
Continuum of Care*

STATEMENT OF OWNERSHIP OF THE FIM SYSTEMSM BY UNIFORM DATA SYSTEM FOR MEDICAL REHABILITATION

• The FIM SystemSM refers generally to a comprehensive system for developing measurement instruments and for measuring medical rehabilitation based on patient function, level of independence and severity of disability. It includes, but is not limited to, measurement scales for determining functional independence in adults and children, software for the implementation of the measurement scales and guides for the use of the software and the measurement scales.

• The research, statistical reporting and analysis service and other activities relating to the FIM SystemSM are provided under the UDSMRSM service mark by Uniform Data System for Medical Rehabilitation (UDSMR), a division of UB Foundation Activities, Inc. (UBFA). UBFA is a New York not-for-profit corporation that is a supporting organization of the State University of New York at Buffalo.

• UDSMR markets statistical reporting and analysis services incorporating the FIM SystemSM under the service mark "FIM" and has developed considerable goodwill in the UDSMR and FIM service marks as representing UDSMR's very high standards for (a) the uniformity, reliability and integrity of the FIM SystemSM and UDSMR's database of patient data, (b) collection, processing, compilation, statistical analysis and reporting of patient data and (c) training and credentialing of clinicians and rehabilitation facilities in the application of the FIM SystemSM.

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FIMSM
System

VeeFIMSM
System

IFEwareSM
System



Joint Commission
Nation of Healthcare Organizations

UDSMR

132 Parker Hall
435 Main Street
Buffalo, NY 14214-3007
Phone: (716) 829-2076
Fax: (716) 829-2080
Email: info@udsmr.org
Website: www.udsmr.org

CORPORATE: 176272_1 (3500_1)



University at Buffalo

Center for Functional
Assessment Research

Department of
Rehabilitation Medicine

School of Medicine
and Biomedical Sciences

UBF1243



The
Functional
Assessment
Specialists

Uniform Data System

for Medical
Rehabilitation

Telephone
716.817.7800

Fax
716.568-0037

Website
www.udsmr.org

270 Northpointe Parkway
Suite 300
Amherst, New York 14228



University at Buffalo
The State University of New York

SP-007

FAX

Date: March 28, 2003

TO:

Name: Karen Bond, President
Organization: Cedaron Medical, Inc.
Fax #: 530-759-1699
Phone #: _____

FROM:

Name: Marisa Smith, Legal Services Supervisor
Fax #: (716) 568-0037
Phone: (716) 817-7804

Number of pages including cover: 2

Notes:

Please see the attached.

UBF1244

PLEASE CONTACT US IMMEDIATELY IF YOU DO NOT RECEIVE A LEGIBLE COPY OF ALL
THE ATTACHED PAGES.

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March 28, 2003

Uniform Data System

for Medical
Rehabilitation

Karen Bond, President
Cedaron Medical, Inc.
1655 DaVinci CT
Davis, CA 95616-000

Dear Ms. Bond;

In June of last year a copy of the initial screen display on your software was submitted to the attention of Susan Braun. While you did an excellent job at attempting to acknowledge UDSMR's ownership of copyrights and other rights in and to our Licensed Systems according to the terms of our current License Agreements, we recently realized it lacked the acknowledgement to the WeeFIM® instrument.

At this time we ask that you please insert proper referencing of such as your earliest convenience and submit a revised copy over to my attention via fax at 716-568-0037 or email to legalinfo@udsmr.org.

Thank you and I look forward to hearing from you.

Sincerely,

Marisa A. Busch
Legal Services Supervisor
Uniform Data System for Medical Rehabilitation

Telephone
716.817.7800

Facsimile
716.568.0037

E-mail
info@udsmr.org

Website
www.udsmr.org

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FAX

SP-007

Date: August 22, 2002

TO:

Name: Kathleen A. Wall, Esq.
 Organization: Hodgson & Russ
 Fax #: 849-0349
 Phone #: _____

FROM:

Name: Marisa Smith, Legal Services Supervisor
 Fax #: (716) 568-0037
 Phone: (716) 817-7804.

Number of pages including cover:

Notes:

Kathy,

Please see the attached. We'll discuss at your convenience.

Thank you,
Marisa

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UBF1246

Susan Braun

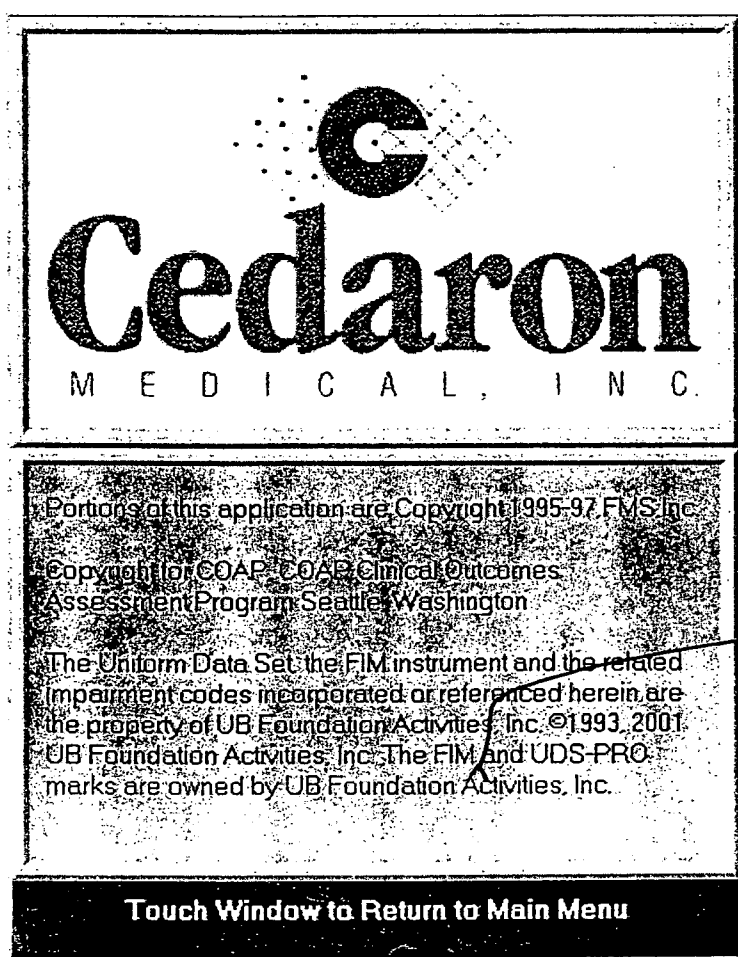
From: "Machell Gaston" <mgaston@cedaron.com>
To: <sbraun@udsmr.org>
Sent: Friday, June 07, 2002 5:16 PM
Attach: acknowledgements (2).JPG; Disable WeeFIM.JPG; UDSMR Notice.JPG
Subject: WeeFIM Screen Display - License Agreement Requirement

Dear Ms. Braun:

Per your request to Karen Bond faxed to Cedaron on 6/5/02, please find three screen shots enclosed in this email detailing our acknowledgements of UDSMR for the WeeFIM software and our ability to disable that portion of the software. If you have any questions please call us at 530-758-7007.

Regards,

Aaron Cohen
Cedaron Medical, Inc.



UBF1247

6/10/02

1a.

Facility Code

1b.

Facility Care Class

2.

Patient Code



Data Form Setup

Diabetes

ES/Ms

Review System

Upper Extremity

Pediatrics

Demographics

Lower Extremity

Spine

ADI

General Health

Ob/Gyn

HSC

Custom

Anesthesiology

GH/A Consumer Satisfaction Survey

Home Care

Sniners

UDSMP WebEM

Cardiology

Olyx Core Measures

Page Up

Cardiovascular Surgery

Surveys

Page Down

Make Active

Make Inactive

Done

Undo Changes



The Functional Assessment Specialists

FAXed 5:30 pm 6/5/02
SB
SP-007
ASAP

FAX COVER SHEET

(Please deliver immediately)

DATE: June 5, 2002

TO: Karen Bond, President
(Name)

Cedaron Medical, Inc
(Organization)

FAX #: 530-759-1699 PHONE #: 530-758-7007

Uniform Data System

for Medical Rehabilitation

Telephone
716.829.2076

Facsimile
716.829.2080

E-mail
info@udsmr.org

Website
www.udsmr.org

232 Parker Hall
University at Buffalo
3435 Main Street
Buffalo, New York
14214

FROM: Susan Braun, WeeFIM System Product Manager

Number of pages (Including Fax Cover): 2

MESSAGE: In follow-up to our conversation last week I am responding to your request.

PLEASE CONTACT US IMMEDIATELY IF YOU DO NOT RECEIVE A LEGIBLE COPY OF ALL OF THE ATTACHED PAGES. This transmitted message is for exclusive of the addressee and contains confidential and privileged information. If the recipient of this message is not the addressee, or a person responsible for delivering the message to the addressee, such recipient is prohibited from reading or using this message in any way. If you receive this message by mistake, please notify the sender immediately and destroy this document.

UBF1250



**The
Functional
Assessment
Specialists**

June 5, 2002

Karen Bond
President
Cedaron Medical, Inc.
PO Box 2100
Davis, CA 95617

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Buffalo, New York
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Dear Ms. Bond:

In follow-up to our telephone conversation May 31, 2002, I wanted to advise you that your request for permission to use the algorithm for the WeeFIM® instrument norms in your software product has been denied. The algorithm is considered confidential intellectual property and as such, is not available for use outside of the Uniform Data System for Medical Rehabilitation.

You may not be aware that the terms of your License Agreement for the WeeFIM Software require you to furnish us with screen displays of the acknowledgments of our copyright, trademarks and service marks. At this time, I am requesting that you forward those displays to us as soon as possible. You may fax the displays to my attention (716.829.2080) or you may email them to me at sbraun@udsmr.org. In addition, please provide evidence of your ability to disable the portion of the software that includes the WeeFIM instrument when non-subscribers to UDSMR use the software.

If you have any questions, please feel free to contact me at 716.829.2076 x18.

Thank you for your prompt attention to this matter.

Sincerely,

Susan Braun, MLS, OTR
Product Manager, WeeFIM SystemSM

Kathleen A. Wall
Partner
Direct Dial: 716.848.1287
kwall@hodgsonruss.com



December 12, 2002

Dr. Lynne Turner-Stokes
Regional Rehabilitation Unit
Northwick Park Hospital
Watford Road
Harrow, Middlesex, UK
HA1 3UJ

Dear Dr. Turner-Stokes:

Re: The UK FIM + FAM

I represent Uniform Data System for Medical Rehabilitation (UDSMR), with regard to the enforcement of its intellectual property rights, including its rights in the FIM™ instrument. It has been brought to UDSMR's attention that a document created by you entitled "The UK FIM + FAM (Functional Assessment Measure)," Version 1.1 incorporates elements of the FIM™ instrument. UDSMR requires that you obtain its written permission to use the FIM™ instrument in this manner.

You may be interested to know that The Center for Outcome Measurement in Brain Injury, which has a discussion of the FAM and the FIM™ instrument on its website, specifically recognizes that the FIM™ instrument is proprietary to UDSMR. I enclose a copy of the relevant web page for your information.

Your use of the elements of the FIM™ instrument in "The UK FIM + FAM" is unauthorized and violates UDSMR's intellectual property rights. I therefore ask that you contact UDSMR at your earliest convenience to discuss appropriate arrangements for your continued use of the FIM™ instrument elements.

Very truly yours,

A handwritten signature in cursive script that reads "Kathleen A. Wall".

Kathleen A. Wall

/eb

cc: Richard Linn, UDSMR

UBF1252

COMBI

The Center for
Outcome Measurement
in Brain Injury

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[Survey](#)
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- [Functional Assessment Measure \(FAM\)](#)

FAM FAQ (Frequently Asked Questions)

1. Is there a system similar to UDS that manages the FAM data?
2. What are the benefits to using both the FIM and the FAM?
3. Can the FAM be done over the phone?
4. Who rates the FAM?
5. How do you know whether to get the information from the Person with injury or Significant Other or Caregiver?
6. What do I score if the person cannot do the activity?, ie car transfers?
7. If the person doesn't write by hand, but uses a keyboard, how is that rated?
8. Can we change or modify the FAM for our sites?
9. If we use the FIM plus FAM, do we need to be a member of UDS?
10. What about employability? How do you rate someone who is retired?
11. At our facility, the descriptions "max", "mod" or "min assist" are frequently used to describe the functional level of the patient. Some of the FAM definitions have the same terms. Are they equivalent?
12. When in doubt, should I rate higher or lower?

1. Is there a system similar to UDS that manages the FAM data?
 a. No. Approximately 600 individuals and agencies were surveyed about the need for a database similar to UDS for the FAM. There wasn't sufficient interest in establishing a system to manage the data.

2. What are the benefits to using both the FIM and the FAM?
 a. The FIM has a limited number of items that address cognitive, behavioral, communication and community functioning; issues that are important in the brain injury population. The FAM was specifically developed for those with brain injury, and meant to enhance the FIM. Ceiling effects are less of a problem during rehabilitation when FAM items are included as well.

3. Can the FAM be done over the phone?

UBF1253

a. Yes. Although the FAM was developed for inpatient rehabilitation use, the Decision Tree was designed to assist in follow-up assessments. It is important to note that the assessment is self report when done over the phone.

4. Who rates the FAM?

a. For inpatient use the FAM can be completed in conference by the team, by individual team members, e.g., OTs, Nursing, PTs, Speech Pathologists, Psychologists, etc., or by a case manager or data collector who gathers the data from the treating team. When used for follow-up it is recommended that the interviewer have a clinical rehabilitation background. All raters should successfully complete the training for inter-rater reliability.

5. How do you know whether to get the information from the Person with injury or Significant Other or Caregiver?

a. It is sometimes difficult to know if the individual with TBI can assess him/herself honestly, however, it is preferred that the evaluator contacts the person with TBI first. A roommate or caregiver can be asked in the event the person with the injury is not available.

6. What do I score if the person cannot do the activity?, ie car transfers?

a. If the person cannot do the activity because of physical or cognitive problems, rate the person "1", even if the person can instruct others. If the activity is not going to be addressed during the rehab stay, rate the admission and discharge the same to prevent inaccurate reporting. On very rare occasions, an item may be left blank if the item is not addressed.

7. If the person doesn't write by hand, but uses a keyboard, how is that rated?

a. A person can be rated for writing skills via typewriter and/or computer. The item "writing" is defined as the spelling, grammar, and completeness of written communication.

8. Can we change or modify the FAM for our sites?

a. Changing the FAM is not recommended, however, some sites have augmented the present rating material. For example, one site developed a set of reading materials for several grade levels and included specific questions to answer. They use the responses to help rate the person's reading, writing and comprehension skills.

UBF1254

9. If we use the FIM plus FAM, do we need to be a member of UDS?

a. UDS expects that all facilities who use their materials (FIM) are members. For more information please contact:

Uniform Data System (UDS)
 232 Parker Hall, SUNY South Campus
 3435 Main Street
 Buffalo, NY 14214-3007
 (716) 829-2076

FAM item materials are in the public domain.

10. What about employability? How do you rate someone who is retired?

a. "Employability" is not employment. Rather it is the ability to work, assume all household responsibilities, maintain a full load as a student. So, all can be rated, even retired persons.

11. At our facility, the descriptions "max", "mod" or "min assist" are frequently used to describe the functional level of the patient. Some of the FAM definitions have the same terms. Are they equivalent?

a. Not necessarily. These sub-headings can be misleading. The FAM is rated on an ordinal* scale from 1-7, but the interpretation of the item can differ greatly from your common meaning of the terms. Read definitions carefully before rating.

*The functional abilities of the patient are rated on an ordinal scale which reflects a "better than" or "worse than" relationship between adjacent categories. Although the numbers have been assigned to each level of the scale to facilitate computerization of the data, the reader is cautioned that these numbers do not necessarily represent equal distances between any comparable point on the scale. Therefore, the mathematical operations performed on these ordinal data points will not necessarily result in valid computations. Conclusions drawn from invalid computations will be of questionable validity.

12. When in doubt, should I rate higher or lower?

a. Your scores should reflect the actual observed performance, not capability. In general, if the person is between scores, mark the lower score.

FAM [[FAQ](#) | [Syllabus](#) | [Rating Form](#) | [Training & Testing](#) | [Properties](#) | [References](#) | [UK FAM](#) | [FAM Forum](#)]

UBF1255