

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is entered into among the United States of America, acting through the United States Department of Justice and on behalf of the Office of Inspector General (OIG-HHS) of the Department of Health and Human Services (HHS) (collectively, the “United States”), and Dr. Manish G. Kumar and Eastern Iowa Dermatology, PLC (together, the “Provider”), hereafter collectively referred to as “the Parties”, through their authorized representatives.

RECITALS

A. Eastern Iowa Dermatology, PLC, is a dermatology practice located in Bettendorf, Iowa, within the Southern District of Iowa, which is owned and operated by Dr. Manish G. Kumar.

B. The United States contends that Provider submitted or caused to be submitted claims for payment to the Medicare Program, Title XVIII of the Social Security Act, 42 U.S.C. §§ 1395-1395lll (“Medicare”).

D. The United States contends that it has certain civil claims against Provider under the Federal False Claims Act, 31 U.S.C. §§ 3729-3733 (“FCA”) arising from Provider’s submissions of up-coded Medicare claims under CPT Codes 99214 (Established Patient Office Visit), 17110, 17111 (Destruction of Benign Lesions), 17000, 17003, 17004 (Destruction of Premalignant Lesions), 11200, 11201 (Removal of Skin Tags), 11310-11313 (Shaving of Lesions, Face, Ears, Eyelids, Nose, Lips), and 11100, 11101 (Biopsy of Skin) during the period from April 1, 2013 through September 30, 2019. That conduct is referred to below as the “Covered Conduct.”

To avoid the delay, uncertainty, inconvenience, and expense of protracted litigation of the above claims, and in consideration of the mutual promises and obligations of this Settlement Agreement, the Parties agree and covenant as follows:

TERMS AND CONDITIONS

1. Provider shall pay to the United States \$1,660,000.00 (“Settlement Amount”), of which \$830,000.00 is restitution, no later than thirty (30) days after the Effective Date of this Agreement by electronic funds transfer pursuant to written instructions to be provided by the United States Attorney’s Office for the Southern District of Iowa.

2. Subject to the exceptions in Paragraph 4 (concerning reserved claims) below, and upon the United States’ receipt of the Settlement Amount, the United States releases Provider from any civil or administrative monetary claim the United States has for the Covered Conduct under the False Claims Act, 31 U.S.C. §§ 3729-3733; the Civil Monetary Penalties Law, 42 U.S.C. § 1320a-7a; the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801-3812; or the common law theories of payment by mistake, unjust enrichment, and fraud.

3. In consideration of the obligations of Provider in this Agreement and the Integrity Agreement (IA), entered into between OIG-HHS and Provider and upon the United States’ receipt of full payment of the Settlement Amount, the OIG-HHS shall release and refrain from instituting, directing, or maintaining any administrative action seeking exclusion from Medicare, Medicaid, and other Federal health care programs (as defined in 42 U.S.C. § 1320a-7b(f)) against Provider under 42 U.S.C. § 1320a-7a (Civil Monetary Penalties Law) or 42 U.S.C. § 1320a-7(b)(7) (permissive exclusion for fraud, kickbacks, and other prohibited activities) for the Covered Conduct, except as reserved in this paragraph and in Paragraph 4 (concerning reserved claims), below. The OIG-HHS expressly reserves all rights to comply with any statutory obligations to exclude Provider from Medicare, Medicaid, and other Federal health care

programs under 42 U.S.C. § 1320a-7(a) (mandatory exclusion) based upon the Covered Conduct. Nothing in this paragraph precludes the OIG-HHS from taking action against entities or persons, or for conduct and practices, for which claims have been reserved in Paragraph 4, below.

4. Notwithstanding the release given in Paragraph 2 of this Agreement, or any other term of this Agreement, the following claims and rights of the United States are specifically reserved and are not released:

- a. Any liability arising under Title 26, U.S. Code (Internal Revenue Code);
- b. Any criminal liability;
- c. Except as explicitly stated in this Agreement, any administrative liability or enforcement right, including mandatory exclusion from Federal health care programs;
- d. Any liability to the United States (or its agencies) for any conduct other than the Covered Conduct;
- e. Any liability based upon obligations created by this Agreement;
- f. Except as explicitly stated in this Agreement, any liability of individuals.

5. Provider waives and shall not assert any defenses Provider may have to any criminal prosecution or administrative action relating to the Covered Conduct that may be based in whole or in part on a contention that, under the Double Jeopardy Clause in the Fifth Amendment of the Constitution, or under the Excessive Fines Clause in the Eighth Amendment of the Constitution, this Agreement bars a remedy sought in such criminal prosecution or administrative action.

6. Provider fully and finally releases the United States, its agencies, officers, agents, employees, and servants, from any claims (including attorney's fees, costs, and expenses of every kind and however denominated) that Provider has asserted, could have asserted, or may

assert in the future against the United States, and its agencies, officers, agents, employees, and servants related to the Covered Conduct and the United States' investigation and prosecution thereof.

7. The Settlement Amount shall not be decreased as a result of the denial of claims for payment now being withheld from payment by any Medicare contractor (e.g., Medicare Administrative Contractor, fiscal intermediary, carrier), if any, or any state payer, related to the Covered Conduct; and Provider agrees not to resubmit to any Medicare contractor or any state payer any previously denied claims related to the Covered Conduct, agrees not to appeal any such denials of claims, and agrees to withdraw any such pending appeals.

8. Provider agrees to the following:

a. Unallowable Costs Defined: All costs (as defined in the Federal Acquisition Regulation, 48 C.F.R. § 31.205-47; and in Titles XVIII and XIX of the Social Security Act, 42 U.S.C. §§ 1395-1395lll and 1396-1396w-5; and the regulations and official program directives promulgated thereunder) incurred by or on behalf of Provider, its present or former officers, directors, employees, shareholders, and agents in connection with:

- (1) the matters covered by this Agreement;
- (2) the United States' audit(s) and civil investigation(s) of the matters covered by this Agreement;
- (3) Provider's investigation, defense, and corrective actions undertaken in response to the United States' audit(s) and civil investigation(s) in connection with the matters covered by this Agreement (including attorneys' fees);
- (4) the negotiation and performance of this Agreement;

- (5) the payment Provider makes to the United States pursuant to this Agreement; and
- (6) the negotiation of, and obligations undertaken pursuant to the IA to: (i) retain an independent review organization to perform annual reviews as described in Section III of the IA; and (ii) prepare and submit reports to the OIG-HHS,

are unallowable costs for government contracting purposes and under the Medicare Program, Medicaid Program, TRICARE Program, and Federal Employees Health Benefits Program (FEHBP) (hereinafter referred to as Unallowable Costs). However, nothing in paragraph 8.a.(6) that may apply to the obligations undertaken pursuant to the IA affects the status of costs that are not allowable based on any other authority applicable to Provider.

b. Future Treatment of Unallowable Costs: Unallowable Costs shall be separately determined and accounted for by Provider, and Provider shall not charge such Unallowable Costs directly or indirectly to any contracts with the United States or any State Medicaid program, or seek payment for such Unallowable Costs through any cost report, cost statement, information statement, or payment request submitted by Provider or any of its subsidiaries or affiliates to the Medicare, Medicaid, TRICARE, or FEHBP Programs.

c. Treatment of Unallowable Costs Previously Submitted for Payment: Provider further agrees that within 90 days of the Effective Date of this Agreement it shall identify to applicable Medicare and TRICARE fiscal intermediaries, carriers, and/or contractors, and Medicaid and FEHBP fiscal agents, any Unallowable Costs (as defined in this Paragraph) included in payments previously sought from the United States, or any State Medicaid program, including, but not limited to, payments sought in any cost reports, cost statements, information reports, or payment requests already submitted by Provider or any of its subsidiaries or affiliates,

and shall request, and agree, that such cost reports, cost statements, information reports, or payment requests, even if already settled, be adjusted to account for the effect of the inclusion of the unallowable costs. Provider agrees that the United States, at a minimum, shall be entitled to recoup from Provider any overpayment plus applicable interest and penalties as a result of the inclusion of such Unallowable Costs on previously-submitted cost reports, information reports, cost statements, or requests for payment.

Any payments due after the adjustments have been made shall be paid to the United States pursuant to the direction of the Department of Justice and/or the affected agencies. The United States reserves its rights to disagree with any calculations submitted by Provider or any of its subsidiaries or affiliates on the effect of inclusion of Unallowable Costs (as defined in this paragraph) on Provider or any of its subsidiaries or affiliates' cost reports, cost statements, or information reports.

d. Nothing in this Agreement shall constitute a waiver of the rights of the United States to audit, examine, or re-examine Provider's books and records to determine that no Unallowable Costs have been claimed in accordance with the provisions of this paragraph.

9. This Agreement is intended to be for the benefit of the Parties only. The Parties do not release any claims against any other person or entity, except to the extent provided for in Paragraph 10 (waiver for beneficiaries paragraph), below.

10. Provider agrees that it waives and shall not seek payment for any of the health care billings covered by this Agreement from any health care beneficiaries or their parents, sponsors, legally responsible individuals, or third party payors based upon the claims defined as Covered Conduct.

11. Each Party shall bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

12. Each Party and signatory to this Agreement represents that it freely and voluntarily enters into this Agreement without any degree of duress or compulsion.

13. This Agreement is governed by the laws of the United States. The exclusive venue for any dispute relating to this Agreement is the United States District Court for the Southern District of Iowa. For purposes of construing this Agreement, this Agreement shall be deemed to have been drafted by all Parties to this Agreement and shall not, therefore, be construed against any Party for that reason in any subsequent dispute.

14. This Agreement constitutes the complete agreement between the Parties. This Agreement may not be amended except by written consent of the Parties.

15. The undersigned counsel represent and warrant that they are fully authorized to execute this Agreement on behalf of the persons and entities indicated below.

16. This Agreement may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same Agreement.

17. This Agreement is binding on Provider's successors, transferees, heirs, and assigns.

18. All Parties consent to the United States' disclosure of this Agreement, and information about this Agreement, to the public.

19. This Agreement is effective on the date of signature of the last signatory to the Agreement (Effective Date of this Agreement). Facsimiles and electronic transmissions of signatures shall constitute acceptable, binding signatures for purposes of this Agreement.

THE UNITED STATES OF AMERICA

DATED: _____

BY: _____

RICHARD D. WESTPHAL
United States Attorney
Southern District of Iowa

DATED: _____

BY: _____

LISA M. RE
Assistant Inspector General for Legal Affairs
Office of Counsel to the Inspector General
Office of Inspector General
United States Department of Health and Human Services

PROVIDER

DATED: 6/28/2022

BY: 

Dr. Manish G. Kumar
Eastern Iowa Dermatology, PLC


DATED: 7/20/2022

BY: 

Mark Weinhardt
Counsel for Dr. Manish G. Kumar and Eastern Iowa
Dermatology, PLC

THE UNITED STATES OF AMERICA

DATED: 7/21/22

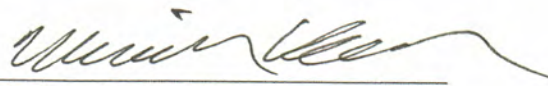
BY: 
RICHARD D. WESTPHAL
United States Attorney
Southern District of Iowa

DATED: _____

BY: _____
LISA M. RE
Assistant Inspector General for Legal Affairs
Office of Counsel to the Inspector General
Office of Inspector General
United States Department of Health and Human Services

PROVIDER

DATED: 6/28/2022

BY: 
Dr. Manish G. Kumar
Eastern Iowa Dermatology, PLC

DATED: _____

BY: _____
Mark Weinhardt
Counsel for Dr. Manish G. Kumar and Eastern Iowa
Dermatology, PLC

THE UNITED STATES OF AMERICA

DATED: _____

BY: _____

RICHARD D. WESTPHAL
United States Attorney
Southern District of Iowa

DATED: 7/21/2022

BY: Lisa M. Re / RMP

LISA M. RE
Assistant Inspector General for Legal Affairs
Office of Counsel to the Inspector General
Office of Inspector General
United States Department of Health and Human Services

PROVIDER

DATED: _____

BY: _____

Dr. Manish G. Kumar
Eastern Iowa Dermatology, PLC

DATED: _____

BY: _____

Mark Weinhardt
Counsel for Dr. Manish G. Kumar and Eastern Iowa
Dermatology, PLC