

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 Department of Justice, Bureau of Prisons (collectively the “United States”) and NaphCare, Inc. (hereafter collectively referred to as “the Parties”), through their authorized representatives.

RECITALS

A. NaphCare, Inc. is a private company headquartered in Birmingham, Alabama that provides healthcare and information technology services to local, state and federal government clients aimed at caring for incarcerated patients in prisons, jails, and other correctional facilities, including Bureau of Prisons facilities. Among other things, NaphCare provides clinical care and services through subcontracted medical providers who provide services to patients incarcerated in federal prisons on site at correctional facilities and at offsite medical centers.

B. The United States acknowledges that NaphCare cooperated with its investigation.

C. The United States contends that it has certain civil claims against NaphCare arising from its submission of claims for payment to the Bureau of Prisons during the period from January 1, 2014 through June 20, 2020 stemming from the following:

1. NaphCare’s selection of Common Procedural Terminology (CPT) codes for evaluation and management services provided by physicians T.O., N.M., R.T., and H.D. at an onsite cardiology clinic NaphCare provided on the site of the U.S.

Penitentiary in Terre Haute, Indiana, for services for which the physicians did not indicate any CPT code on onsite visit sheets. The United States contends that in some instances higher paying codes were selected for services that warranted a lesser-paying code, thereby falsely representing those services in claims for payment to BOP.

2. NaphCare's submission of claims for payment to the Federal Correctional Institution in Victorville, California, for CPT codes provided by physicians J.V. and M.P. for evaluation and management services, which the United States contends reflected higher levels of services than the physicians actually performed.

3. This conduct set forth in this Paragraph C is referred to below as the Covered Conduct.

D. This Settlement Agreement is neither an admission of liability by NaphCare nor a concession by the United States that its claims are not well founded.

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. NaphCare shall pay to the United States six hundred ninety four thousand five hundred ninety three (\$694,593) (Settlement Amount), of which \$408,980 is restitution, and interest on the Settlement Amount at rate of 1% per annum from April 1, 2021, by electronic funds transfer pursuant to written instructions to be provided by the Civil Division of the Department of Justice. The Settlement Amount and accrued interest must be paid no later than five days after the Effective Date of this Agreement.

2. Subject to the exceptions in Paragraph 3 (concerning reserved claims) below, and conditioned upon the United States' receipt of the Settlement Amount, plus interest due under Paragraph 1, the United States releases NaphCare from any civil or administrative monetary claim the United States has for the Covered Conduct under the common law theories of breach of contract, payment by mistake, unjust enrichment, and fraud. For the Covered Conduct described in Paragraph C.1. only, the United States further releases NaphCare for any civil claim or administrative monetary claim the United States has under the False Claims Act, 31 U.S.C. §§ 3729-3733 and the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801-3812.

3. 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 the suspension and debarment rights of any federal agency;
- 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. Any liability of individuals;

- g. Any liability for express or implied warranty claims or other claims for defective or deficient products or services, including quality of goods and services;
- h. Any liability for failure to deliver goods or services due;
- i. Any liability for personal injury or property damage or for other consequential damages arising from the Covered Conduct.

4. NaphCare waives and shall not assert any defenses NaphCare 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.

5. NaphCare fully and finally releases the United States, its agencies, officers, agents, employees, and servants, from any claims (including attorneys' fees, costs, and expenses of every kind and however denominated) that NaphCare has asserted, could have asserted, or may assert in the future against the United States, its agencies, officers, agents, employees, and servants, related to the Covered Conduct and the United States' investigation and prosecution thereof.

6. a. Unallowable Costs Defined: All costs (as defined in the Federal Acquisition Regulation, 48 C.F.R. § 31.205-47) incurred by or on behalf of NaphCare, and 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) NaphCare'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 makes NaphCare to the United States pursuant to this Agreement,

are unallowable costs for government contracting purposes (hereinafter referred to as Unallowable Costs).

b. Future Treatment of Unallowable Costs: Unallowable Costs will be separately determined and accounted for by NaphCare, and NaphCare shall not charge such Unallowable Costs directly or indirectly to any contract with the United States.

c. Treatment of Unallowable Costs Previously Submitted for Payment: Within 90 days of the Effective Date of this Agreement, NaphCare shall identify and repay by adjustment to future claims for payment or otherwise any Unallowable Costs included in payments previously sought by NaphCare or any of its subsidiaries or affiliates from the United States. NaphCare agrees that the United States, at a minimum, shall be entitled to recoup from NaphCare any overpayment plus applicable interest and penalties as a result of the inclusion of such Unallowable Costs on previously-submitted requests for payment. The United States, including the Department of Justice and/or the affected agencies, reserves its rights to audit, examine, or re-examine

NaphCare's books and records and to disagree with any calculations submitted by NaphCare or any of its subsidiaries or affiliates regarding any Unallowable Costs included in payments previously sought by NaphCare, or the effect of any such Unallowable Costs on the amount of such payments.

7. This Agreement is intended to be for the benefit of the Parties only.

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

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

10. 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 Northern District of Alabama. 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.

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

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

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

14. This Agreement is binding on NaphCare's successors, transferees, heirs, and assigns.

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

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

THE UNITED STATES OF AMERICA



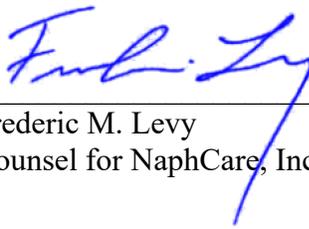
DATED: 6/25/2021

BY: _____

Jonathan Gold
Trial Attorney
Commercial Litigation Branch
Civil Division
United States Department of Justice

NAPHCARE

DATED: June 25, 2021

BY: 

Frederic M. Levy
Counsel for NaphCare, Inc.