

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) and the Centers for Disease Control and Prevention (CDC) of the Department of Health and Human Services (collectively, the “United States”), and MorseLife Health System Inc. (“MorseLife”) (hereafter collectively referred to as “the Parties”), through their authorized representatives.

RECITALS

A. MorseLife is a not-for-profit corporation located at 4855 Fred Gladstone Drive, West Palm Beach, Florida, that oversees various health care facilities on the MorseLife campus, including the nursing home and skilled nursing facility, a larger assisted living facility (ALF) and a smaller Memory Care ALF, as well as an independent living facility (ILF). To support its services, MorseLife has an independent foundation (the “Foundation”) which fundraises for the MorseLife community.

B. The COVID-19 pandemic is the most significant pandemic in the past 100 years and CDC was integral in formulating a nationwide response. On July 21, 2020, the United States Government executed its first contract with Pfizer Inc. and BioNTech SE for the purchase of millions of doses of one of the first vaccines under development against SARS-CoV-2, the virus that causes COVID-19.

C. CDC’s independent federal advisory committee on vaccines, the Advisory Committee on Immunization Practices (ACIP), formed specialized working groups and convened to review and discuss data from clinical trials; and public health, medical, and scientific information on the most vulnerable groups with respect to COVID-19 in the United States. In addition, CDC’s experts on infectious diseases, immunization, vulnerable populations,

and vaccine equity worked on creating and implementing an effective COVID-19 vaccination program to distribute vaccines in the United States (“CDC COVID-19 Vaccination Program”).

D. In the earliest stages of the CDC COVID-19 Vaccination Program, when numbers of the first Food and Drug Administration (FDA)-authorized COVID-19 vaccine doses were limited following FDA’s Emergency Use Authorization (EUA) of the first COVID-19 vaccines in December 2020, the CDC focused on reaching the most vulnerable people in the United States first.

E. Based in part on advice from the ACIP’s deliberations, CDC concluded that health care workers and residents of long-term care facilities (LTCFs) were at the highest risk and therefore should be prioritized to receive those initial limited numbers of vaccine doses.

F. Nursing homes, and other LTCFs were disproportionately impacted by the COVID-19 pandemic. By December 2020, the United States had over 20 million cases of COVID-19 causing over 385,000 deaths, with 40% of those deaths in residents or staff of LTCFs.

G. Given the vulnerable nature of the LTCF population, and in order to protect the LTCF population against COVID-19 as quickly as possible when vaccine availability was limited, the CDC announced the launch of the Pharmacy Partnership for Long-Term Care Program (“LTC PPP”) in October 2020, to begin as soon as FDA authorized administration of the first COVID-19 vaccines in December 2020. Under this program, the CDC engaged pharmacy partners to provide “end to end” management of the COVID-19 vaccination process, including cold chain management of the vaccines, on-site vaccinations, and fulfillment of reporting requirements. The LTC PPP began the week of December 21, 2020. Over 8 million vaccine doses were administered to LTCF residents and staff through the LTC PPP.

H. Applicable CDC guidance relating to COVID-19 vaccination of LTC residents and staff defined facility “healthcare personnel” eligible for COVID-19 vaccination through the LTC PPP as “all paid and unpaid persons serving in healthcare settings who have the potential for direct or indirect exposure to patients or infectious materials.” For purposes of testing for COVID-19, the Centers for Medicare and Medicaid Services (CMS) defined facility staff as “employees, consultants, contractors, volunteers, and caregivers who provide care and services to residents on behalf of the facility”

I. On December 23, 2020, the Governor of Florida issued an Executive Order (EO) that only LTC facility residents and staff, persons 65 years of age and older, and health care personnel with direct patient contact were eligible to receive the vaccine from providers administering COVID-19 vaccines. MorseLife was not a provider of the vaccine to the general public, but was eligible to participate in the LTC PPP. The EO did not alter the eligibility requirements of the LTC PPP, which was limited only to LTCF residents and staff.

J. Diversion of United States Government-purchased COVID-19 vaccines from those at highest risk from COVID-19 at the earliest stage of the CDC COVID-19 Vaccination Program was contrary to the public health purpose of the LTC PPP, which was created to distribute limited available doses to the highest risk groups first.

K. The United States contends that MorseLife submitted or caused to be submitted false statements and claims to the Medicare Program, Title XVIII of the Social Security Act, 42 U.S.C. §§ 1395-1395lll (“Medicare”) and the CDC by facilitating the vaccination of persons ineligible to participate in the LTC PPP. The United States also contends that MorseLife was unjustly enriched when it received donations from facilitating the vaccination of persons ineligible to participate in the LTC PPP, many of whom MorseLife targeted for donations.

- L. The United States contends that it has certain civil claims against MorseLife arising from the following alleged conduct (hereinafter referred to as the “Covered Conduct”):
1. On October 30, 2020, MorseLife enrolled in the LTC PPP and selected Walgreens as its pharmacy partner.
 2. On December 9, 2020, in anticipation of the FDA’s authorization of a COVID-19 vaccine, Walgreens contacted MorseLife to begin scheduling its vaccination clinics under the LTC PPP. The first vaccination clinic at MorseLife was scheduled for December 31, 2020 (the “December 31 Clinic”).
 3. On December 11, 2020, the FDA issued an EUA for the use of the Pfizer-BioNTech COVID-19 vaccine. This was the first COVID-19 vaccine authorized by the FDA and was the vaccine used for the MorseLife vaccination clinics.
 4. Although the LTC PPP was intended to vaccinate LTCF residents and staff given their particular vulnerability to the COVID-19 pandemic, MorseLife invited many individuals who were not residents or staff at MorseLife. At the time, MorseLife knew that the purpose of the LTC PPP was to vaccinate residents and staff of LTCFs and the vaccines provided under the LTC PPP were not for the general public.
 5. On December 22, 2020, the Chairman of MorseLife (“Chairman”) and the President and Chief Executive Officer of MorseLife (“CEO”) sent an email to 52 board members across five boards of directors inviting them to the December 31 Clinic. In addition to actual board members, MorseLife invited and ultimately facilitated the vaccination of 128 individuals as Board members, which included emeritus board members and Board members’ family members, spouses, children, and friends. The vast majority of MorseLife Board members were donors to MorseLife.
 6. MorseLife also informed certain individuals who were not eligible to receive the vaccine through the LTC PPP that they were “added” to the Board or otherwise be considered as “staff” so that they could be vaccinated at the December 31 Clinic. For example, the CEO sent a text message to an ineligible individual stating “I will find you when you come in the morning and we’re going to make you an employee of Morse . . . Guarantee you get the vaccine.” In another instance, an email sent by an administrative assistant who works at the direction of the Vice Chairman of MorseLife (“Vice Chairman”) to a 60 year old individual explained: “You [] have been put on the Community Relations Board of Morse because you are both too young to qualify for the vaccine, but being on this board will qualify you.”
 7. Starting on or about December 24, 2020, MorseLife’s CEO directed the MorseLife Foundation, the organization’s fundraising arm, to invite donors to the December 31 Clinic from whom they could fundraise. For example, in one text

message, MorseLife's CEO stated: "Of course go after the billionaires first hell we're taking care of their life what the hell do you think you little boys and girls in the foundation go for the 25,000 I'll go for the billions; I'm a little disappointed in the foundations mentality; I have delivered you 350 of the richest people in the country and you're still thinking \$25,000 gift Do not be weak be strong you have the opportunity to take advantage of everyone who needs the shot and figure out what they have and what we can go after and what their affinity [sic] as that's what I would do I was running the foundation."

8. In addition, MorseLife's CEO allowed the Vice Chairman and his brother to invite people to the December 31 Clinic (the "Referrals"). A significant number of the Referrals were members of the same country club as the Vice Chairman and his brother. Some of the Referrals flew into Florida just to get the vaccine at the December 31 Clinic. None of the Referrals lived or worked on the MorseLife campus. Most of the Referrals did not volunteer on MorseLife's campus and had no prior affiliation with MorseLife.
9. MorseLife did not oversee or control who the Vice Chairman invited. As described in a MorseLife Foundation strategy document, "[t]his group was 'recruited' by [Vice Chairman and his brother] and owe allegiance to them at least as much as they owe it to us;" "[w]e allowed these people to be vaccinated mostly because [Vice Chairman and his brother] wanted us to;" "[t]hese prospects understand that and owe allegiance to [Vice Chairman and his brother] for arranging for them to get the vaccine;" "[w]e should use that allegiance to effectively get significant gifts from that group in a short amount of time." The Vice Chairman and his brother invited approximately 290 individuals to the December 31 Clinic.
10. Before the December 31 Clinic, MorseLife communicated that it needed more vaccines than originally requested. On December 28, 2020, Walgreens reiterated to MorseLife that the December 31 Clinic was only for residents and staff of the Joseph L. Morse Health Center (which MorseLife requested include support staff, board members, volunteers, contracted staff, and spiritual staff). MorseLife characterized donors and potential donors that had no previous affiliation with MorseLife as volunteers. MorseLife did not communicate to Walgreens that it was including financial donors and prospective donors as volunteers.
11. At the conclusion of the December 31 Clinic, approximately 976 persons received the Pfizer COVID-19 vaccine. This was the single largest LTC PPP vaccination clinic operated by Walgreens in that district. Of that total, 409 vaccines were administered to nursing home and assisted living facility residents, employees, and onsite staff (representing all of the residents, employees, and onsite staff eligible for the vaccine who did not refuse it), while 567 vaccines were administered to ineligible persons, including board members, donors, prospective donors, and guests invited by the Vice Chairman and his brother, many of whom had no affiliation with MorseLife. MorseLife represented to the Florida Agency for Health Care Administration that 439 of the 567 were volunteers.

12. On January 1, 2021, MorseLife’s CEO texted the Chairman: “This vaccination clinic was the best thing we could have done for the community. . . . I promise I will raise 5 to 7 million from this effort. And all u need to do is let me now exercise my cultivation skills and start strategizing what programs and or capital gifts people will have affinity to in the opportunities that exist at MorseLife Health System.” A number of ineligible persons who received vaccinations at the December 31 Clinic made donations to MorseLife.

M. MorseLife denies the United States’ allegations in Paragraphs K and L.

N. This Settlement Agreement is neither an admission of liability by MorseLife 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. MorseLife shall pay to the United States \$1,750,000 (“Settlement Amount”) no later than seven (7) business days after the Effective Date of this Agreement by electronic funds transfer pursuant to written instructions to be provided by the Civil Division of the United States Department of Justice.

2. Subject to the exceptions in Paragraph 3 (concerning reserved claims) below, and upon the United States’ receipt of the Settlement Amount, the United States releases MorseLife 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. 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 or permissive 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. 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. MorseLife waives and shall not assert any defenses MorseLife 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. MorseLife 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 MorseLife 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.

6. 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), or any state payer, related to the Covered Conduct; and MorseLife 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.

7. MorseLife 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. §§ 1395-1395III and 1396-1396w-5; and the regulations and official program directives promulgated thereunder) incurred by or on behalf of MorseLife, 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) MorseLife'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; and
- (5) the payment MorseLife makes to the United States pursuant to this Agreement,

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).

b. Future Treatment of Unallowable Costs: Unallowable Costs shall be separately determined and accounted for in nonreimbursable cost centers by MorseLife, and MorseLife 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 MorseLife or any of its subsidiaries or affiliates to the Medicare, Medicaid, TRICARE, or FEHBP Programs.

c. Treatment of Unallowable Costs Previously Submitted for Payment: MorseLife 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 MorseLife 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. MorseLife agrees that the United States, at a minimum, shall

be entitled to recoup from MorseLife 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 MorseLife or any of its subsidiaries or affiliates on the effect of inclusion of Unallowable Costs (as defined in this paragraph) on MorseLife 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 MorseLife's books and records to determine that no Unallowable Costs have been claimed in accordance with the provisions of this paragraph.

8. 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 9 (waiver for beneficiaries paragraph), below.

9. MorseLife 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.

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

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

12. 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 Florida. 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.

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

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

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

16. This Agreement is binding on MorseLife's successors, transferees, heirs, and assigns.


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

18. 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.

[SIGNATURE PAGES FOLLOW]

THE UNITED STATES OF AMERICA

DATED: 6/23/22

BY: 

Andy Mao
Deputy Director
Natalie A. Waites
Assistant Director
Elizabeth J. Kappakas
Jessica Sievert
Trial Attorneys
Commercial Litigation Branch
Civil Division
United States Department of Justice

DATED: _____

BY: _____

Rosaline Chan
Assistant United States Attorney
Southern District of Florida

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

THE UNITED STATES OF AMERICA

DATED: _____

BY: _____

Andy Mao
Deputy Director
Natalie A. Waites
Assistant Director
Elizabeth J. Kappakas
Jessica Sievert
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Commercial Litigation Branch
Civil Division
United States Department of Justice

DATED: 6/30/22

BY: Rosaline Chan

Rosaline Chan
Assistant United States Attorney
Southern District of Florida

DATED: _____

BY: _____

Lisa M. Re
Assistant Inspector General for Legal Affairs
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Office of Inspector General
United States Department of Health and Human Services

THE UNITED STATES OF AMERICA

DATED: _____

BY: _____

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Elizabeth J. Kappakas
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Trial Attorneys
Commercial Litigation Branch
Civil Division
United States Department of Justice

DATED: _____

BY: _____


Rosaline Chan
Assistant United States Attorney
Southern District of Florida

DATED: 6/22/2022


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

DATED: 6/29/22

MORSELIFE

BY: _____
Stephen A. Levin
Chairman of the Board of Directors of MorseLife Health
System, Inc.

DATED: 6/29/2022


BY: _____
Christopher L. Garcia
Steven A. Tyrrell
Zack Tripp
Raquel Kellert
Counsel for the Board of Directors of MorseLife
Health System, Inc.