

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”), and the Defense Health Agency (“DHA”), acting on behalf of the TRICARE Program (collectively, the “United States”); Ascension Michigan as defined herein; and Relators Pamela Satchwell, Dawn Kasdorf, and Bethany Silva-Gomez (the “Relators”) (hereafter, the United States, Ascension Michigan and the Relators are collectively referred to as the “Parties”), through their authorized representatives.

RECITALS

A. Ascension Michigan, a Michigan non-profit and tax-exempt organization under § 501(c)(3) of the Internal Revenue Code, is the parent corporation of the following entities: Providence Park Hospital, which owns and operates an acute care hospital located in Southfield, Michigan; St. John Hospital and Medical Center, a hospital located in Detroit, Michigan; St. John Macomb Oakland Hospital, an acute care hospital located in Warren, Michigan, and Ascension Crittenton Hospital, an acute care hospital located in Rochester, Michigan (the “Hospitals”, collectively “Ascension Michigan”).

B. On July 18, 2017, the Relators filed a *qui tam* action in the United States District Court for the Eastern District of Michigan captioned [REDACTED], No. 2:17-cv-12315, and the Complaint was amended, pursuant to the *qui tam* provisions of the False Claims Act, 31 U.S.C. § 3730(b) (the “Civil Action”).

C. On June 28, 2018, Ascension Michigan submitted a combined submission to the OIG-HHS on behalf of the Hospitals, under the Provider Self-Disclosure Protocol, related to professional and facility fees for radical hysterectomies, chemotherapy, and evaluation and

management (“E&M”) services it billed to Medicare, Medicaid and TRICARE (defined below) (the “Self-Disclosure”). In particular, these fees related to medical care provided by Dr. [REDACTED], a gynecologic oncologist, previously under contract with Ascension Michigan.

C. The United States contends that Ascension Michigan submitted or caused to be submitted false claims for payment to the Medicare Program, Title XVIII of the Social Security Act, 42 U.S.C. §§ 1395-1395lll (“Medicare”); the Medicaid Program, 42 U.S.C. §§ 1396-1396w-5 (“Medicaid”); and the TRICARE Program, 10 U.S.C. §§ 1071-1110b (“TRICARE”).

D. The United States contends that, from February 1, 2011 through June 30, 2017 (the “Relevant Period”), Ascension Michigan submitted or caused to be submitted false claims for payment to Medicare, Medicaid, and TRICARE for professional fees and facility fees related to: (1) radical hysterectomies that Dr. [REDACTED] performed on women when only a simple hysterectomy was medically necessary; (2) chemotherapy services that Dr. [REDACTED] administered or ordered that were not medically necessary; and (3) evaluation and management services by Dr. [REDACTED] that were not performed or not rendered as represented. The United States further contends that Ascension Michigan had concerns about the quality of care provided by Dr. [REDACTED], particularly due to patient complaints and his suspected higher than average rates of pulmonary embolisms and surgical infections. The United States further contends that, as a result of these concerns, in 2016, Ascension Michigan engaged a third-party doctor to conduct a peer review of a sample of Dr. [REDACTED]’s patients, which found that, for the majority of the radical hysterectomies and chemotherapy performed by Dr. [REDACTED], a less aggressive surgery or medical intervention would have been the standard of care. The United States further contends that, prior to submitting the Self Disclosure, Ascension Michigan retained the monies from Medicare, Medicaid, and TRICARE billings related to the professional and facility fees resulting from medical care provided by Dr. [REDACTED] although Ascension Michigan was aware of the

standard of care that Dr. [REDACTED] had previously provided. The conduct described in this Paragraph D is referred to below as the “Covered Conduct.”

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

F. Relators claim entitlement under 31 U.S.C. § 3730(d) to a share of the proceeds of this Settlement Agreement and to Relators’ reasonable expenses, attorneys’ fees and costs.

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. Ascension Michigan shall pay to the United States \$2,800,000 (the “Settlement Amount”), of which \$1,714,010 is restitution, plus interest at the rate of 1.125 percent per annum from March 1, 2021 through the date of payment, no later than 7 days after the Effective Date of this Agreement by electronic funds transfer pursuant to written instructions to be provided by U.S. Department of Justice, Civil Division.

2. Conditioned upon the United States receiving the Settlement Amount and as soon as feasible after receipt, the United States shall pay \$532,000 to Relators by electronic funds transfer to the client trust account of Relators’ counsel (the “Relators’ Share”).

3. No later than 7 days after the Effective Date of this Agreement and receipt of written instructions for the Relators, Ascension Michigan agrees to pay Relators an aggregate total of \$45,000 pursuant to 31 U.S.C. § 3730(d) for their attorney’s fees, expenses and costs related to and arising from the filing of the Civil Action in the manner specified above in Paragraph 2.

4. Subject to the exceptions in Paragraph 8 (concerning excluded claims) below, and upon the United States' receipt of the Settlement Amount, plus interest due under Paragraph 1, the United States releases Ascension Michigan and its current or former direct or indirect parent or subsidiary corporations 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.

5. Subject to the exceptions in Paragraph 8 below, and upon the United States' receipt of the Settlement Amount, plus interest due under Paragraph 1, and Relators' receipt of the amount under Paragraph 3, Relators, for themselves and for their heirs, successors, attorneys, agents, and assigns, release Ascension Michigan and its current or former direct or indirect parent or subsidiary corporations from any civil monetary claim the Relators have asserted, could have asserted or may assert in the future on behalf of the United States for the Covered Conduct under the False Claims Act, 31 U.S.C. §§ 3729-3733, or any liability related to or arising from the filing of the Civil Action, the facts and/or circumstances regarding the Civil Action, or otherwise under 31 U.S.C. § 3730(d) for expenses and attorneys' fees and costs, and 31 U.S.C. § 3730(h) related to retaliatory actions.

6. In consideration of the obligations of Ascension Michigan in this Agreement and upon the United States' receipt of full payment of the Settlement Amount, plus interest due under Paragraph 1, 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 Ascension Michigan 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 8 (concerning reserved claims), below. The OIG-HHS expressly reserves all rights to comply with any statutory obligations to exclude Ascension Michigan 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 8, below.

7. In consideration of the obligations of Ascension Michigan set forth in this Agreement, and upon the United States' receipt of full payment of the Settlement Amount, plus interest due under Paragraph 1, DHA shall release and refrain from instituting, directing, or maintaining any administrative action seeking exclusion from the TRICARE Program against Ascension Michigan under 32 C.F.R. § 199.9 for the Covered Conduct, except as reserved in this paragraph and in Paragraph 8 (concerning reserved claims), below. DHA expressly reserves authority to exclude Ascension Michigan from the TRICARE Program under 32 C.F.R. §§ 199.9 (f)(1)(i)(A), (f)(1)(i)(B), and (f)(1)(iii) (mandatory exclusion), based upon the Covered Conduct. Nothing in this paragraph precludes DHA or the TRICARE Program from taking action against entities or persons, or for conduct and practices, for which claims have been reserved in Paragraph 8, below.

8. Notwithstanding the releases given in Paragraphs 4 and 5 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. 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; and,
- i. Any liability for personal injury or property damage or for other consequential damages arising from the Covered Conduct.

9. Relators and their heirs, successors, attorneys, agents, and assigns shall not object to this Agreement but agree and confirm that this Agreement is fair, adequate, and reasonable under all the circumstances, pursuant to 31 U.S.C. § 3730(c)(2)(B). Conditioned upon Relators' receipt of the Relators' Share, Relators and their heirs, successors, attorneys, agents, and assigns fully and finally release, waive, and forever discharge the United States, its agencies, officers, agents, employees, and servants, from any claims arising from the filing of the Civil Action or under 31 U.S.C. § 3730, and from any claims to a share of the proceeds of this Agreement and/or the Civil Action.

10. Ascension Michigan waives and shall not assert any defenses Ascension Michigan 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.

11. Ascension Michigan 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 Ascension 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 or the United States' investigation or prosecution thereof.

12. Ascension Michigan fully and finally releases the Relators from any claims (including attorneys' fees, costs, and expenses of every kind and however denominated) that Ascension Michigan has asserted, could have asserted, or may assert in the future against the Relators, related to the Covered Conduct and the Relators' investigation and prosecution thereof.

13. 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 Ascension Michigan 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.

14. Ascension Michigan 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 Ascension Michigan, 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) Ascension Michigan'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 Ascension Michigan makes to the United States pursuant to this Agreement and any payments that Ascension Michigan may make to Relators, including costs and attorneys' fees.

b. Future Treatment of Unallowable Costs: Unallowable Costs shall be separately determined and accounted for by Ascension Michigan, and Ascension Michigan 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 Ascension Michigan or any of its subsidiaries or affiliates to the Medicare, Medicaid, or TRICARE Programs.

c. Treatment of Unallowable Costs Previously Submitted for Payment: Ascension Michigan 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 fiscal agents, any Unallowable Costs (as defined in this paragraph)

included in payments previously sought from the United States, including, but not limited to, payments sought in any cost reports, cost statements, information reports, or payment requests already submitted by Ascension Michigan 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. Ascension Michigan agrees that the United States, at a minimum, shall be entitled to recoup from Ascension Michigan 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 Ascension Michigan or any of its subsidiaries or affiliates on the effect of inclusion of Unallowable Costs (as defined in this paragraph) on Ascension Michigan 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 Ascension Michigan's books and records to determine that no Unallowable Costs have been claimed in accordance with the provisions of this paragraph.

15. Ascension Michigan agrees to cooperate fully and truthfully with the United States' investigation of individuals and entities not released in this Agreement. Upon reasonable notice, Ascension Michigan shall encourage, and agrees not to impair, the cooperation of its directors, officers, and employees, and shall use its best efforts to make available, and encourage, the cooperation of former directors, officers, and employees for interviews and testimony,

consistent with the rights and privileges of such individuals. Ascension Michigan further agrees to furnish to the United States, upon request, complete and unredacted copies of all non-privileged documents, reports, memoranda of interviews, and records in its possession, custody, or control concerning any investigation of the Covered Conduct that it has undertaken, or that has been performed by another on its behalf.

16. 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 21, below.

17. Ascension Michigan 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.

18. Upon receipt of the payment described in Paragraphs 1, 2 and 3, above, the Relators and the United States shall promptly sign and file in the Civil Action a Joint Stipulation of Dismissal with prejudice of the Civil Action pursuant to Rule 41(a)(1).

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

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

21. This Agreement is governed by the laws of the United States. The exclusive jurisdiction and venue for any dispute relating to this Agreement is the United States District Court for the Eastern District of Michigan. 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.

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

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

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

25. This Agreement is binding on Ascension Michigan's successors, transferees, heirs, and assigns.

26. This Agreement is binding on Relators' successors, transferees, heirs, and assigns.

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

28. 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: 6/14/2021

BY: Denise Barnes
DENISE M. BARNES
Trial Attorney
Commercial Litigation Branch
Civil Division
United States Department of Justice

DATED: _____

BY: _____
CAROLYN BELL HARBIN
Assistant United States Attorney
U.S. Attorney's Office for the
Eastern District of Michigan

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

DATED: _____

BY: _____
SALVATORE M. MAIDA
General Counsel
Defense Health Agency
United States Department of Defense

THE UNITED STATES OF AMERICA

DATED: _____

BY: _____

DENISE M. BARNES
Trial Attorney
Commercial Litigation Branch
Civil Division
United States Department of Justice

DATED: 6/14/2021

BY: _____

Carolyn Bell Harbin
CAROLYN BELL HARBIN
Assistant United States Attorney
U.S. Attorney's Office for the
Eastern District of Michigan

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

DATED: _____

BY: _____

SALVATORE M. MAIDA
General Counsel
Defense Health Agency
United States Department of Defense

THE UNITED STATES OF AMERICA

DATED: _____

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DENISE M. BARNES
Trial Attorney
Commercial Litigation Branch
Civil Division
United States Department of Justice

DATED: _____

BY: _____
CAROLYN BELL HARBIN
Assistant United States Attorney
U.S. Attorney's Office for the
Eastern District of Michigan

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

DATED: 06/11/2021

BY: _____
BLEY.PAUL.NICHO²¹ Digitally signed by
BLEY.PAUL.NICHOLAS.10998738
LAS.1099873821 Date: 2021.06.11 17:45:59 -04'00'
SALVATORE M. MAIDA
General Counsel
Defense Health Agency
United States Department of Defense

for

THE UNITED STATES OF AMERICA

DATED: _____

BY: _____

DENISE M. BARNES
Trial Attorney
Commercial Litigation Branch
Civil Division
United States Department of Justice

DATED: _____

BY: _____

CAROLYN BELL HARBIN
Assistant United States Attorney
U.S. Attorney's Office for the
Eastern District of Michigan

DATED: 6/14/2021

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

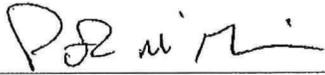
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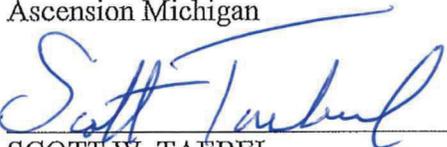
SALVATORE M. MAIDA
General Counsel
Defense Health Agency
United States Department of Defense

DEFENDANT ASCENSION MICHIGAN

DATED: 6/14/21

BY: 
PATRICK MCGUIRE
Chief Financial Officer
Ascension Michigan

DATED: 6/14/2021

BY: 
SCOTT W. TAEBEL
Hall Render Killian Heath & Lyman
Counsel for Ascension Michigan

**RELATORS PAMELA SATCHWELL, DAWN KASDORF,
AND BETHANY SILVA-GOMEZ**

DATED: _____

BY: _____

PAMELA SATCHWELL
Relator

DATED: 6/14/2021

BY: _____

DAWN KASDORF
Relator

DATED: _____

BY: _____

BETHANY SILVA-GOMEZ
Relator

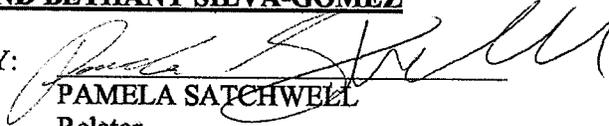
DATED: 6/14/21

BY: _____

MARK BENDURE
Counsel for Relators

**RELATORS PAMELA SATCHWELL, DAWN KASDORF,
AND BETHANY SILVA-GOMEZ**

DATED: 6-13-21

BY: 
PAMELA SATCHWELL
Relator

DATED: _____

BY: _____
DAWN KASDORF
Relator

DATED: _____

BY: _____
BETHANY SILVA-GOMEZ
Relator

DATED: _____

BY: _____
MARK BENDURE
Counsel for Relators

RELATORS PAMELA SATCHWELL, DAWN KASDORF,
AND BETHANY SILVA-GOMEZ

DATED: _____ BY: _____
PAMELA SATCHWELL
Relator

DATED: _____ BY: _____
DAWN KASDORF
Relator

DATED: 6/11/21 BY: _____
BETHANY SILVA-GOMEZ
Relator

DATED: _____ BY: _____
MARK BENDURE
Counsel for Relators