

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 Brockton Urology Clinic LLC (“Brockton Urology”) (hereafter collectively referred to as “the Parties”), through their authorized representatives.

RECITALS

- A. Brockton Urology is a physician practice located in North Easton, Massachusetts.
- B. Steward Good Samaritan Medical Center, Inc. (“GSMC”) is a hospital in Brockton, Massachusetts.
- C. The United States contends that Brockton Urology 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. Brockton Urology admits, acknowledges, and accepts its responsibility for the following facts. Brockton Urology entered into an Administrative Services Agreement with GSMC, dated May 1, 2011. That agreement obligated Brockton Urology to provide a physician to serve as the director of a “Prostate Cancer Program at Good Samaritan Medical Center.” More specifically, Brockton Urology agreed to administer a “Prostate Cancer Center of Excellence” at GSMC. GSMC never created a Prostate Cancer Center of Excellence, and Brockton Urology never provided a physician to serve as the director of a Prostate Cancer Program at Good Samaritan Medical Center. From April 2011 through December 2017, GSMC paid Brockton Urology purportedly pursuant to the agreement. Brockton Urology did provide on-call services to GSMC during that time. Brockton Urology contends that GSMC paid fair market value to Brockton Urology for the call coverage. From April 2011 through December

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2017, Brockton Urology and GSMC did not enter into any written agreements, other than the Administrative Services Agreement dated May 1, 2011 (and its amendments), for Brockton Urology to provide services to GSMC in return for financial compensation. From April 2011 through December 2017, Brockton Urology referred patients to GSMC.

E. The United States contends that it has certain civil claims against Brockton Urology arising from the facts described in Recital D. That conduct is referred to below as the “Covered Conduct.”

In consideration of the mutual promises and obligations of this Settlement Agreement, the Parties agree and covenant as follows:

TERMS AND CONDITIONS

1. Contemporaneously with the execution of this Agreement, Brockton Urology shall pay to the United States by electronic funds transfer pursuant to written instructions to be provided by the United States Attorney’s Office for the District of Massachusetts, \$100,000 plus interest at a rate of 1.50% per annum from December 15, 2021 and continuing through the date of payment (“Settlement Amount”), all of which is considered restitution.

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 Brockton Urology 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; and
- f. Any liability of individuals.

4. Brockton Urology has provided financial disclosures and supporting documents (together "Financial Disclosures") to the United States and the United States has relied on the accuracy and completeness of those Financial Disclosures in reaching this Agreement. Brockton Urology warrants that the Financial Disclosures are complete, accurate, and current as of the Effective Date of this Agreement. If the United States learns of asset(s) in which Brockton Urology had an interest of any kind as of the Effective Date of this Agreement (including, but not limited to, promises by insurers or other third parties to satisfy Brockton Urology's obligations under this Agreement) that were not disclosed in the Financial Disclosures, or if the United States learns of any false statement or misrepresentation by Brockton Urology on, or in connection with, the Financial Disclosures, and if such nondisclosure, false statement, or misrepresentation changes the estimated net worth set forth in the Financial Disclosures by \$10,000 or more, the United States may at its option: (a) rescind this Agreement and file suit based on the Covered Conduct or (b) collect the full Settlement Amount in accordance with the Agreement plus one hundred percent (100%) of the net value of Brockton Urology's previously undisclosed assets. Brockton Urology agrees not to contest any collection action undertaken by



the United States pursuant to this provision, and agrees that it will immediately pay the United States the greater of (i) a ten-percent (10%) surcharge of the amount collected in the collection action, as allowed by 28 U.S.C. § 3011(a), or (ii) the United States' reasonable attorneys' fees and expenses incurred in such an action. In the event that the United States, pursuant to this paragraph rescinds this Agreement, Brockton Urology waives and agrees not to plead, argue, or otherwise raise any defenses under the theories of statute of limitations, laches, estoppel, or similar theories, to any civil or administrative claims that (a) are filed by the United States within 120 calendar days of written notification to Brockton Urology that this Agreement has been rescinded, and (b) relate to the Covered Conduct, except to the extent these defenses were available on May 11, 2021.

5. Brockton Urology waives and shall not assert any defenses Brockton Urology 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 this Agreement bars a remedy sought in such criminal prosecution or administrative action 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.

6. Brockton Urology 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 Brockton Urology 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) or any state payer, related to the Covered Conduct; and Brockton Urology agrees not to resubmit to any Medicare 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. Brockton Urology 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 Brockton Urology, 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, and criminal investigation of the matters covered by this Agreement;
- (3) Brockton Urology's investigation, defense, and corrective actions undertaken in response to the United States' audit(s) civil investigation, and criminal investigation of the matters covered by this Agreement (including attorneys' fees);
- (4) the negotiation and performance of this Agreement; and
- (5) the payment Brockton Urology 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 by Brockton Urology, and Brockton Urology 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 Brockton Urology or any of its subsidiaries or affiliates to the Medicare, Medicaid, TRICARE, or FEHBP Programs.

c. Treatment of Unallowable Costs Previously Submitted for Payment: If applicable, Brockton Urology 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 Brockton Urology 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. Brockton Urology agrees that the United States, at a minimum, shall be entitled to recoup from Brockton Urology 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.

If applicable, 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 Brockton



Urology or any of its subsidiaries or affiliates on the effect of inclusion of Unallowable Costs (as defined in this paragraph) on Brockton Urology 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 Brockton Urology'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. Brockton Urology 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. In exchange for valuable consideration provided in this Agreement, Brockton Urology acknowledges the following:

a. Brockton Urology has reviewed its financial situation and warrants that it is solvent within the meaning of 11 U.S.C. §§ 547(b)(3) and 548(a)(1)(B)(ii)(I) and shall remain solvent following payment to the United States of the Settlement Amount.

b. In evaluating whether to execute this Agreement, the Parties intend that the mutual promises, covenants, and obligations set forth herein constitute a contemporaneous exchange for new value given to Brockton Urology, within the meaning of 11 U.S.C. § 547(c)(1), and the Parties conclude that these mutual promises, covenants, and obligations do, in fact, constitute such a contemporaneous exchange.



c. The mutual promises, covenants, and obligations set forth herein are intended by the Parties to, and do in fact, constitute a reasonably equivalent exchange of value.

d. The Parties do not intend to hinder, delay, or defraud any entity to which Brockton Urology was or became indebted to on or after the date of any transfer contemplated in this Agreement, within the meaning of 11 U.S.C. § 548(a)(1).

e. If Brockton Urology's obligations under this Agreement are avoided for any reason (including but not limited to, through the exercise of a trustee's avoidance powers under the Bankruptcy Code) or if, before the Settlement Amount is paid in full, Brockton Urology or a third party commences a case, proceeding, or other action under any law relating to bankruptcy, insolvency, reorganization, or relief of debtors seeking any order for relief of Brockton Urology's debts, or to adjudicate Brockton Urology as bankrupt or insolvent; or seeking appointment of a receiver, trustee, custodian, or other similar official for Brockton Urology or for all or any substantial part of Brockton Urology's assets:

(i) the United States may rescind the releases in this Agreement and bring any civil and/or administrative claim, action, or proceeding against Brockton Urology for the claims that would otherwise be covered by the releases provided in Paragraph 2 above; and

(ii) the United States has an undisputed, noncontingent, and liquidated allowed claim against Brockton Urology in the amount of \$495,000, less any payments received pursuant to Paragraph 1 of this Agreement, provided, however, that such payments are not otherwise avoided and recovered from the United States by Brockton Urology, a receiver, trustee, custodian, or other similar official for Brockton Urology.

f. Brockton Urology agrees that any civil and/or administrative claim, action, or proceeding brought by the United States under Paragraph 11.e is not subject to an "automatic stay" pursuant to 11 U.S.C. § 362(a) because it would be an exercise of the United States' police



and regulatory power. Brockton Urology shall not argue or otherwise contend that the United States' claim, action, or proceeding is subject to an automatic stay and, to the extent necessary, consents to relief from the automatic stay for cause under 11 U.S.C. § 362(d)(1). Brockton Urology waives and shall not plead, argue, or otherwise raise any defenses under the theories of statute of limitations, laches, estoppel, or similar theories, to any such civil or administrative claim, action, or proceeding brought by the United States within 120 days of written notification to Brockton Urology that the releases have been rescinded pursuant to this paragraph, except to the extent such defenses were available on May 11, 2021.

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

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

14. 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 District of Massachusetts. 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.

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

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

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



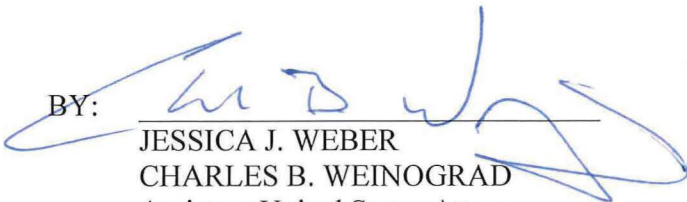
18. This Agreement is binding on Brockton Urology's successors, transferees, heirs, and assigns.

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

20. 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: 2/9/22 BY: 
JESSICA J. WEBER
CHARLES B. WEINOGRA
Assistant United States Attorneys
United States Attorney's Office for the
District of Massachusetts


DATED: 02/02/2022 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

BROCKTON UROLOGY CLINIC LLC

DATED: 2/9/22

BY: 
Dr. Ryan E. Frankel, Manager
Brockton Urology Clinic LLC

DATED: 2/9/22

BY: 
DAN RABINOVITZ
Counsel for Brockton Urology Clinic LLC