

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); the Defense Health Agency (DHA), acting on behalf of the TRICARE program; the Office of Personnel Management (OPM), which administers the Federal Employees Health Benefits Program (FEHBP); the United States Department of Veterans Affairs (VA); and the Office of Inspector General (OIG-RRB) of the Railroad Retirement Board (RRB) (collectively, the “United States”), and St. Peter’s Health (hereafter collectively referred to as “the Parties”), through their authorized representatives.

RECITALS

A. St. Peter’s Health (SPH) is a nonprofit health care system located in Helena, Montana.

B. SPH has been credited in this settlement under the Department of Justice’s Guidelines for Taking Voluntary Disclosure, Cooperation, and Remediation into Account in False Claims Act Matters, Justice Manual 4-4.112. In addition to voluntarily self-disclosing the misconduct, SPH performed and disclosed results of an internal investigation; disclosed relevant documents beyond existing business practices or legal requirements; identified individuals who were

aware of relevant information or conduct; made available for interviews officers and employees who possessed relevant information; assisted in the determination of the losses caused by the misconduct; and has taken steps to enhance its Corporate Compliance Program.

C. The United States contends that SPH 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”); the Medicaid Program, 42 U.S.C. §§ 1396-1396w-5 (“Medicaid”); the TRICARE Program, 10 U.S.C. §§ 1071-1110b (“TRICARE”); the FEHBP, 5 U.S.C. §§ 8901-8914; the Department of Veterans Affairs, Veterans Health Administration, 38 U.S.C. Chapter 17; and the Railroad Retirement Medicare Program (RRMP), administered under the Railroad Retirement Act of 1974, 45 U.S.C. §§ 231-231v, by the United States Railroad Retirement Board (collectively, the “Federal Health Care Programs”).

D. The United States contends that it has certain civil claims against SPH arising from claims for payment it submitted or caused to be submitted to the Federal Health Care Programs relating to health care services performed and referred by Dr. Thomas Weiner, an oncologist employed by SPH at its cancer treatment center:

1. The United States contends that between January 1, 2015 and December 31, 2020, SPH, relying on Dr. Thomas Weiner’s documentation and

certification, submitted claims which were determined to be false by SPH, and included by SPH in a Self-Disclosure, which claims submissions the United States believes to be an act of reckless disregard and therefore false between such dates, to the Federal Health Care Programs for the following Evaluation and Management (E&M) services performed by Dr. Thomas Weiner: office/outpatient (CPT Codes 99202-99215); and hospital/inpatient (CPT Codes 99217-99220; 99224-99226; 99221-99223; 99231-99239). Specifically, SPH relied on Dr. Thomas Weiner's documentation and certification when it knew, or should have known, that Dr. Thomas Weiner assigned CPT Codes to his E&M services that were either: (1) coded at a higher level of service than was actually performed ("upcoded" claims); or (2) did not meet the requirements of a significant, separately identifiable service ("non-payable" claims). Accordingly, the United States contends that SPH violated the False Claims Act by knowingly submitting the upcoded and non-payable, and therefore false, claims to the Federal Health Care Programs.

2. The United States contends that between June 1, 2019 and July 1, 2020, SPH, relying on Dr. Weiner's documentation and certification, and with whom they had a financial relationship, submitted claims for payment to the Medicare and Medicaid programs from referrals by Dr. Weiner for designated health services which were determined to be false by SPH, and included in a Self-Disclosure, which claims submissions the United States believes to be an act of

reckless disregard and therefore false and violated the Physician Self-Referral Law, 42 U.S.C. § 1395nn (commonly referred to as the “Stark Law”). Specifically, SPH, relying on Dr. Weiner’s documentation and certification, compensated Dr. Weiner with a salary that was based on the false claims, which caused the salary to be inconsistent with fair market value and improperly tied to referrals that were claimed as office visits. The United States contends that this employment relationship failed to satisfy the requirements of the bona fide employment exception to the Stark Law detailed at 42 U.S.C. § 1395nn(d)(2) and 42 C.F.R. 411.357(c). Accordingly, the United States contends that, because the financial relationship between SPH and Dr. Weiner did not satisfy an exception to the Stark Law, SPH violated the False Claims Act by knowingly submitting false claims to Medicare and Medicaid for designated health services Dr. Weiner ordered and referred to SPH.

Collectively, this conduct is referred to below as the “Covered Conduct.”

E. 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. SPH shall pay to the United States Ten Million Eight Hundred Forty-Four Thousand Two Hundred and One Dollars (\$10,844,201) (“Settlement Amount”), of which \$9,988,970.15 is restitution, no later than 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 for the District of Montana.

2. Subject to the exceptions in Paragraph 3 (concerning reserved claims) below, and upon the United States’ receipt of the Settlement, the United States releases SPH together with its current and former parent corporations, direct and indirect subsidiaries, brother or sister corporations, and divisions 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; the civil monetary provisions of the Stark Law at 42 U.S.C. §§ 1395nn(g)(3), (g)(4); or the common law theories of payment by mistake, unjust enrichment, and fraud.

3. In consideration of the SPH’s self-disclosure of this matter and the SPH’s obligations in this Agreement 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 SPH 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 SPH 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 7, 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. Except as explicitly stated in this Agreement, any administrative liability or enforcement right, including mandatory exclusion from the FEHBP;
- e. Any liability to the United States (or its agencies) for any conduct other than the Covered Conduct;
- f. Any liability based upon obligations created by this Agreement;
- g. Any liability of individuals;
- h. Any liability for express or implied warranty claims or other claims for defective or deficient products or services, including quality of goods and services;
- i. Any liability for failure to deliver goods or services due; and
- j. Any liability for personal injury or property damage or for other consequential damages arising from the Covered Conduct.

5. SPH waives and shall not assert any defenses SPH 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. SPH 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 SPH 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), TRICARE carrier or payer, FEHBP carrier or payer, or any state payer, related to the Covered Conduct; and SPH agrees not to resubmit to any Medicare contractor, TRICARE carrier or payer, FEHBP carrier or payer, 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. SPH 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 SPH, 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 and any criminal investigation(s) of the matters covered by this Agreement;
- (3) SPH's investigation, defense, and corrective actions undertaken in response to the United States' audit(s) and civil and any criminal 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 SPH 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 (hereinafter referred to as Unallowable Costs).

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

c. Treatment of Unallowable Costs Previously Submitted for Payment: SPH 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, Medicaid fiscal agents, and FEHBP carriers and/or contractors, 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 SPH 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. SPH agrees that the United States, at a minimum, shall be entitled to recoup from SPH 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 SPH or any of its subsidiaries or affiliates on the effect of inclusion of Unallowable Costs (as defined in this paragraph) on SPH 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 SPH's books and records to determine that no Unallowable Costs have been claimed in accordance with the provisions of this paragraph.

9. SPH agrees to cooperate fully and truthfully with the United States' investigation of individuals and entities not released in this Agreement. Upon reasonable notice, SPH 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. SPH 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.

10. 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.

11. SPH 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.

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 Montana. 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 SPH'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.

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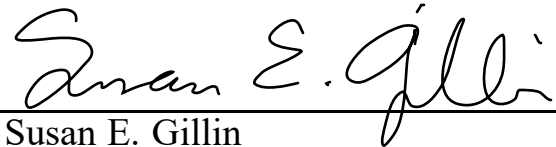
THE UNITED STATES OF AMERICA

JESSE A. LASLOVICH
United States Attorney

DATED: 07/19/24

BY: 
Shannon L. Clarke
Assistant U.S. Attorney

DATED: 7/19/24

BY: 
Susan E. Gillin
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: _____
Edward M. DeHarde
Deputy Associate Director of Federal Employee
Insurance Operations,
Healthcare and Insurance
United States Office of Personnel Management

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United States Department of Health and
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DATED: _____

BY: **EDWARD**
DEHARDE _____
Edward M. DeHarde
Deputy Associate Director of Federal Employee
Insurance Operations,
Healthcare and Insurance
United States Office of Personnel Management

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BY: _____

Paul St. Hillaire
Assistant Inspector General for Legal &
Legislative Affairs
Office of the Inspector General
United States Office of Personnel Management

DATED: _____

BY: _____

Salvatore M. Maida
General Counsel
Defense Health Agency
United States Department of Defense

ST. PETER'S HEALTH

DATED: _____

BY: _____

Wade Johnson, FACHE
Chief Executive Officer, St. Peter's Health

DATED: _____

BY: _____

Bob Wade
Nelson Mullins
Attorney for St. Peter's Health

DATED: _____

BY: _____

Paul St. Hillaire
Assistant Inspector General for Legal &
Legislative Affairs
Office of the Inspector General
United States Office of Personnel Management

DATED: 07/09/2024

BY: BLEY.PAUL.NICHO LAS.1099873821

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for
Salvatore M. Maida
General Counsel
Defense Health Agency
United States Department of Defense

ST. PETER'S HEALTH

DATED: _____

BY: _____

Wade Johnson, FACHE
Chief Executive Officer, St. Peter's Health

DATED: _____

BY: _____

Bob Wade
Nelson Mullins
Attorney for St. Peter's Health

DATED: _____

BY: _____

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United States Office of Personnel Management

DATED: _____

BY: _____

Salvatore M. Maida
General Counsel
Defense Health Agency
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ST. PETER'S HEALTH

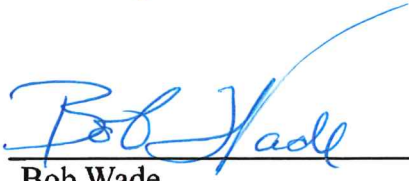
DATED: 8/26/24

BY: _____


Wade Johnson, FACHE
Chief Executive Officer, St. Peter's Health

DATED: 8/26/24

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Bob Wade
Nelson Mullins
Attorney for St. Peter's Health