

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 State of Rhode Island, acting through the Office of the Attorney General for the State of Rhode Island; Park Square Urgent Care, Inc., Primacare, Inc., Biltmore Medical, Biltmore Medical A, and Advanced Urgent Care (Park Square Defendants); and Zaheer Shah, M.D. (Dr. Shah) (hereafter collectively referred to as “the Parties”), through their authorized representatives.

RECITALS

A. Park Square Defendants and Dr. Shah are medical providers whose practice has included the performance of urine drug screens for Medicare and Medicaid beneficiaries.

B. On March 5, 2020, the United States filed a Complaint in the United States District Court for the District of Rhode Island captioned *United States of America v. Park Square Urgent Care, Inc.; PrimaCare, Inc.; Biltmore Medical; Biltmore Medical A; Advanced Urgent Care; Rhode Island Health Group, LLC; and Zaheer Shah, M.D.*, No. 20-cv-00110-WES-LDA. The United States’ Complaint alleges that Park Square Urgent Care, Inc. and its affiliated entities, under the direction of Dr. Shah, submitted tens of thousands of false claims to Medicare and Medicaid, seeking reimbursement for urine drug tests that they did not, and could not, perform, based on the capabilities of their laboratory. Specifically, the United States’ Complaint alleges that from March 5, 2014 to December 31, 2015, the Park Square Defendants and Dr. Shah knowingly billed the government for the performance of “high complexity” and quantitative urine drug tests purportedly provided for Medicare and Medicaid beneficiaries, when, in fact, only moderate complexity urine drug screen panels were performed that produced qualitative or semi-quantitative results.

C. The United States and the State of Rhode Island contend that Park Square Urgent Care, Inc.; PrimaCare, Inc.; Biltmore Medical; Biltmore Medical A; Advanced Urgent Care; and Zaheer Shah, M.D. 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) and the Medicaid Program, 42 U.S.C. §§ 1396-1396w-5 (Medicaid).

D. The United States and the State of Rhode Island contend that they have certain civil claims against the Park Square Defendants and Dr. Shah, as described in the four Causes of Action listed in the United States' Complaint. That conduct is referred to below as the "Covered Conduct."

E. In August 2018, Dr. Shah sold the assets of the Park Square Defendants to Rhode Island Health Group, LLC (RIHG), and was given a five percent member interest in RIHG. Effective December 31, 2020, Dr. Shah assigned and transferred his five percent member interest in RIHG to another individual. As of December 31, 2020, Dr. Shah has no ownership or control interest in the Park Square Defendants.

F. This Settlement Agreement is neither an admission of liability by Dr. Shah or the Park Square Defendants 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. Dr. Shah shall pay to the United States the sum of \$625,000.00, plus interest as described below ("Settlement Amount"). Within 15 days of the Effective Date of this Agreement, Dr. Shah will make a payment to the United States in the amount of \$550,000.00. Payment shall be made by electronic funds transfer pursuant to written instructions to be provided by the United States Attorney for the District of Rhode Island.

a. Within 30 days of the Effective Date of this Agreement, Dr. Shah will pay the remaining \$75,000.00, plus accrued interest at a rate of .875% per annum from April 1, 2021.

Payments shall be made by electronic funds transfer pursuant to written instructions to be provided by the United States Attorney for the District of Rhode Island.

b. If a significant portion of the assets of Dr. Shah or of any entity owned by Dr. Shah are sold, merged, or transferred into another non-affiliated entity, Dr. Shah shall promptly notify the United States, and all remaining payments owed pursuant to the Settlement Agreement shall be accelerated and become immediately due and payable.

c. The Settlement Amount may be prepaid, in whole or in part, without penalty or premium.

2. Subject to the exceptions in Paragraph 4 (concerning reserved claims) below, and subject to Paragraph 5 (concerning disclosure of assets), Paragraph 12 (concerning default), and Paragraph 13 (concerning bankruptcy) below, and upon the United States' receipt of the Settlement Amount, the United States releases Park Square Urgent Care, Inc.; Primacare, Inc.; Biltmore Medical; Biltmore Medical A; Advanced Urgent Care; and Zaheer Shah, M.D. 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. Subject to the exceptions in Paragraph 4 (concerning reserved claims) below, and subject to Paragraph 5 (concerning disclosure of assets), Paragraph 12 (concerning default), and Paragraph 13 (concerning bankruptcy) below, and conditioned upon payment of the Settlement Amount, the State of Rhode Island releases Park Square Urgent Care, Inc.; Primacare, Inc.; Biltmore Medical; Biltmore Medical A; Advanced Urgent Care; and Zaheer Shah, M.D. from any

civil or administrative monetary claim the State of Rhode Island has for the Covered Conduct under the Rhode Island False Claims Act, R.I.G.L. § 9-1.1-1 *et seq.* or the common law theories of payment by mistake, unjust enrichment, and fraud.

4. Notwithstanding the releases given in Paragraphs 2-3 of this Agreement, or any other term of this Agreement, the following claims and rights of the United States and the State of Rhode Island 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 the State of Rhode Island (or their agencies) for any conduct other than the Covered Conduct;
- e. Any liability based upon obligations created by this Agreement; or
- f. Except as explicitly stated in this Agreement, any liability of individuals (including current or former directors, officers, employees, agents, or shareholders of Park Square Defendants) who receive written notification that they are the target of a criminal investigation (as defined in the United States Attorneys' Manual), are indicted or charged, or who enter into a plea agreement, related to the Covered Conduct.

5. Dr. Shah has provided sworn financial disclosures and supporting documents (together "Financial Disclosures") to the United States, and the United States and State of Rhode Island have relied on the accuracy and completeness of those Financial Disclosures in reaching this Agreement. Dr. Shah 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 Dr. Shah 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 Dr. Shah'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 Dr. Shah 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 \$62,500 or more, the United States may at its option: (a) rescind this Agreement and reinstate its suit or 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 Dr. Shah's previously undisclosed assets. Dr. Shah agrees not to contest any collection action undertaken by the United States pursuant to this provision, and agrees that he 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, Park Square Defendants and Dr. Shah waive and agree 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 Park Square Defendants and Dr. Shah that this Agreement has been rescinded, and (b) relate to the Covered Conduct, except to the extent these defenses were available on March 5, 2020.

6. The Park Square Defendants and Dr. Shah waive and shall not assert any defenses the Park Square Defendants or Dr. Shah 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.

7. The Park Square Defendants and Dr. Shah fully and finally release the United States and the State of Rhode Island, their agencies, officers, agents, employees, and servants, from any claims (including attorneys' fees, costs, and expenses of every kind and however denominated) that the Park Square Defendants or Dr. Shah have asserted, could have asserted, or may assert in the future against the United States or the State of Rhode Island, and their agencies, officers, agents, employees, and servants, related to the Covered Conduct or the United States' investigation or prosecution thereof.

8. 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, or carrier) or any state payer, related to the Covered Conduct; and the Park Square Defendants and Dr. Shah agree not to resubmit to any Medicare contractor or any state payer any previously denied claims related to the Covered Conduct, agree not to appeal any such denials of claims, and agree to withdraw any such pending appeals.

9. The Park Square Defendants and Dr. Shah agree 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 the Park Square Defendants or Dr. Shah, their 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) the Park Square Defendants' and Dr. Shah'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 Dr. Shah 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 the Park Square Defendants and Dr. Shah, and the Park Square Defendants and Dr. Shah 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 the Park Square Defendants, Dr. Shah, or any of their subsidiaries or affiliates to the Medicare, Medicaid, TRICARE, or FEHBP Programs.

c. Treatment of Unallowable Costs Previously Submitted for Payment: The Park Square Defendants and Dr. Shah further agree 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 the Park Square Defendants or Dr. Shah or any of their 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. The Park Square Defendants and Dr. Shah agree that the United States, at a minimum, shall be entitled to recoup from the Park Square Defendants and Dr. Shah 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 the Park Square Defendants, Dr. Shah, or any of their subsidiaries or affiliates on the effect of inclusion of Unallowable Costs (as defined in this paragraph) on the Park Square Defendants, Dr. Shah, or any of their 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 Dr. Shah's or the Park Square Defendants' books and records to determine that no Unallowable Costs have been claimed in accordance with the provisions of this Paragraph.

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 11 (waiver for beneficiaries paragraph), below.

11. The Park Square Defendants and Dr. Shah agree that they waive 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. The Settlement Amount represents the amount the United States is willing to accept in compromise of its civil claims arising from the Covered Conduct due solely to Dr. Shah's financial condition as reflected in the Financial Disclosures referenced in Paragraph 5.

a. In the event that Dr. Shah fails to pay the Settlement Amount as provided in the payment schedule set forth in Paragraph 1 above, Dr. Shah shall be in Default of Dr. Shah's payment obligations ("Default"). The United States will provide a written Notice of Default, and Dr. Shah shall have an opportunity to cure such Default within seven (7) calendar days from the date of receipt of the Notice of Default by making the payment due under the payment schedule and paying any additional interest accruing under the Settlement Agreement up to the date of payment. Notice of Default will be delivered to Dr. Shah, or to such other representative as Dr. Shah shall designate in advance in writing. If Dr. Shah fails to cure the Default within seven (7) calendar days of receiving the Notice of Default and in the absence of an agreement with the United States to a modified payment schedule ("Uncured Default"), the remaining unpaid balance of the Settlement Amount shall become immediately due and payable, and interest on the remaining unpaid balance shall thereafter accrue at the rate of 12% per annum, compounded daily from the date of Default, on the remaining unpaid total (principal and interest balance).

b. In the event of Uncured Default, Dr. Shah and the Park Square Defendants agree that the United States, at its sole discretion, may (i) retain any payments previously made, rescind this Agreement and pursue the Civil Action or bring any civil and/or administrative claim, action, or proceeding against Dr. Shah and/or the Park Square Defendants for the claims that would otherwise be covered by the releases provided in Paragraphs 2-3 above with any recovery reduced by the amount of any payments previously made by Dr. Shah to the United States under this

Agreement; (ii) take any action to enforce this Agreement in a new action or by reinstating the Civil Action; (iii) offset the remaining unpaid balance from any amounts due and owing to Dr. Shah and/or affiliated companies by any department, agency, or agent of the United States at the time of Default or subsequently; and/or (iv) exercise any other right granted by law, or under the terms of this Agreement, or recognizable at common law or in equity. The United States shall be entitled to any other rights granted by law or in equity by reason of Default, including referral of this matter for private collection. In the event the United States pursues a collection action, Dr. Shah agrees immediately to pay the United States the greater of (i) a ten-percent (10%) surcharge of the amount collected, 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 opts to rescind this Agreement pursuant to this paragraph, Dr. Shah and the Park Square Defendants waive and agree not to plead, argue, or otherwise raise any defenses of statute of limitations, laches, estoppel or similar theories, to any civil or administrative claims that are (i) filed by the United States against Dr. Shah or the Park Square Defendants within 120 days of written notification that this Agreement has been rescinded, and (ii) relate to the Covered Conduct, except to the extent these defenses were available on March 5, 2020. Dr. Shah and the Park Square Defendants agree not to contest any offset, recoupment, and/or collection action undertaken by the United States pursuant to this paragraph, either administratively or in any state or federal court, except on the grounds of actual payment to the United States.

c. In the event of Uncured Default, OIG-HHS may exclude Dr. Shah from participating in all Federal health care programs until Dr. Shah pays the Settlement Amount, with interest, as set forth above (Exclusion for Default). OIG-HHS will provide written notice of any such exclusion to Dr. Shah. Dr. Shah waives any further notice of the exclusion under 42 U.S.C. § 1320a-7(b)(7), and agrees not to contest such exclusion either administratively or in any state or

federal court. Reinstatement to program participation is not automatic. If at the end of the period of exclusion, Dr. Shah wishes to apply for reinstatement, he must submit a written request for reinstatement to OIG-HHS in accordance with the provisions of 42 C.F.R. §§ 1001.3001-.3005. Dr. Shah will not be reinstated unless and until OIG-HHS approves such request for reinstatement. The option for Exclusion for Default is in addition to, and not in lieu of, the options identified in this Agreement or otherwise available.

13. In exchange for valuable consideration provided in this Agreement, Dr. Shah and the Park Square Defendants acknowledge the following:

a. Dr. Shah has reviewed his financial situation and warrants that he 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 Dr. Shah and the Park Square Defendants, 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 Dr. Shah 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 Dr. Shah'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, Dr. Shah 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 Dr. Shah's debts, or to adjudicate Dr. Shah as bankrupt or insolvent; or seeking appointment of a receiver, trustee, custodian, or other similar official for Dr. Shah or for all or any substantial part of Dr. Shah's assets:

(1) the United States may rescind the releases in this Agreement and bring any civil and/or administrative claim, action, or proceeding against Dr. Shah or the Park Square Defendants for the claims that would otherwise be covered by the releases provided in Paragraphs 2-3 above; and

(2) the United States has an undisputed, noncontingent, and liquidated allowed claim against Dr. Shah in the amount of \$4,699,062.48, less any payments received pursuant to this agreement, provided, however, that such payments are not otherwise avoided and recovered from the United States by Dr. Shah, a receiver, trustee, custodian, or other similar official for Dr. Shah.

f. Dr. Shah and the Park Square Defendants agree that any civil and/or administrative claim, action, or proceeding brought by the United States under Paragraph 13.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. Dr. Shah and the Park Square Defendants 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). Dr. Shah and the Park Square Defendants waive 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 Dr. Shah or the Park Square Defendants

that the releases have been rescinded pursuant to this paragraph, except to the extent such defenses were available on March 5, 2020.

14. Upon receipt of the payment described in Paragraph 1, above, the Parties shall promptly sign and file in the Civil Action a Joint Stipulation of Dismissal of the Civil Action pursuant to Rule 41(a)(1).

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

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

17. 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 Rhode Island. 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.

18. This Agreement constitutes the complete agreement between the Parties. This Agreement may not be amended except by written consent of the Parties. Forbearance by the United States from pursuing any remedy or relief available to it under this Agreement shall not constitute a waiver of rights under this Agreement.

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

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

21. This Agreement is binding on Dr. Shah's and Park Square Defendants' successors, transferees, heirs, and assigns.


22. All Parties consent to the United States' and State of Rhode Island's disclosure of this Agreement, and information about this Agreement, to the public.

23. 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: 6/14/21

BY: Richard B. Myrus
Acting United States Attorney



Bethany N. Wong
Assistant United States Attorney
District of Rhode Island

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

THE STATE OF RHODE ISLAND

DATED: June 9, 2021

BY: Genevieve M. Allaire Johnson

Genevieve M. Allaire Johnson
Special Assistant Attorney General
State of Rhode Island

ZAHEER SHAH, M.D., DEFENDANT

DATED: 6/7/21

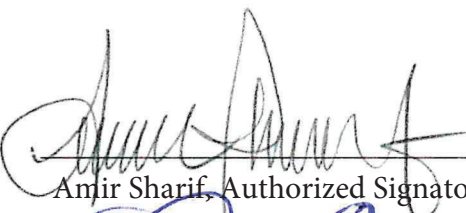
BY: Zaheer A Shah
Zaheer Shah, M.D.

DATED: 6/7/21

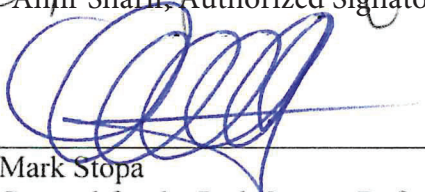
BY: Kim Friday
Kimberly Friday
Counsel for Zaheer Shah, M.D.

PARK SQUARE URGENT CARE, INC.; PRIMACARE, INC.; BILTMORE MEDICAL;
BILTMORE MEDICAL A; ADVANCED URGENT CARE, DEFENDANTS

DATED: 6/9/21

BY: 
Amir Sharif, Authorized Signatory

DATED: 6/9/2021

BY: 
Mark Stopa
Counsel for the Park Square Defendants