

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) (collectively the “United States”); and the Commonwealth of Kentucky, acting through the Office of the Attorney General and the Cabinet for Health and Family Services, Department for Medicaid Services (collectively the “Commonwealth”); and Forrest S. Kuhn, Jr., M.D. (“Dr. Kuhn”) (hereafter collectively referred to as “the Parties”), through their authorized representatives.

RECITALS

A. Dr. Kuhn is a physician specializing in allergy, asthma and immunology with offices in Louisville, Danville, and Glasgow, Kentucky. Dr. Kuhn provides services to Medicare, Medicaid, TRICARE and FEHBP beneficiaries.

B. The United States and the Commonwealth contend that Dr. Kuhn submitted or caused to be submitted claims for payment to the Medicare Program, Title XVIII of the Social Security Act, 42 U.S.C. §§ 1395-1395kkk-1 (“Medicare”); the Medicaid Program, 42 U.S.C. §§ 1396-1396w-5 (“Medicaid”); the TRICARE Program, 10 U.S.C. §§ 1071-1110b (“TRICARE”); and the FEHBP, 5 U.S.C. §§ 8901-8914.

C. The United States and the Commonwealth contend that they have certain civil claims against Dr. Kuhn arising from improperly billing for intracutaneous tests using CPT Code 95024 that were never performed. In particular, the United States and the Commonwealth contend that:

1. Between January 18, 2006, and July 31, 2015, Dr. Kuhn billed Medicare for intracutaneous tests using CPT Code 95024 that were never performed;
2. Between January 5, 2006, and July 29, 2015, Dr. Kuhn billed Medicaid for intracutaneous tests using CPT Code 95024 that were never performed;
3. Between January 2, 2006, and June 29, 2015, Dr. Kuhn billed TRICARE for intracutaneous tests using CPT Code 95024 that were never performed; and
4. Between December 28, 2011, and July 13, 2015, Dr. Kuhn billed FEHBP for intracutaneous tests using CPT Code 95024 that were never performed.

Said conduct is hereinafter referred to as the "Covered Conduct."

D. 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. Kuhn shall pay to the United States FOUR HUNDRED SIXTEEN THOUSAND EIGHT HUNDRED SIXTY-FIVE DOLLARS AND FOUR CENTS (\$416,865.04) (the "Federal Settlement Amount") no later than 10 days after the Effective Date of this Agreement by electronic funds transfer pursuant to written instructions to be provided by the United States Attorney's Office for the Western District of Kentucky.
2. Dr. Kuhn shall pay to the Commonwealth THREE HUNDRED THIRTY-FOUR THOUSAND EIGHT HUNDRED SIXTEEN DOLLARS AND TWELVE CENTS (\$334,816.12) (the "State Settlement Amount") of which TWO HUNDRED FORTY-TWO THOUSAND ONE HUNDRED ONE DOLLARS AND SEVENTY-SIX CENTS (\$242,101.76) shall be paid no later than 10 days after the Effective Date of this Agreement by electronic funds transfer pursuant to written instructions to be provided by

the Commonwealth of Kentucky Attorney General's Medicaid Fraud and Abuse Control Unit. The remaining amount of the State Settlement Amount shall be satisfied using an amount of suspended funds, (totaling \$92,714.36) currently retained by the Department of Medicaid Services and/or Managed Care Organizations as follows:

- a. The Department of Medicaid Services shall retain forevermore \$7,663.49 which is currently held in escrow as a result of the suspension of payments to Dr. Kuhn implemented by the Kentucky Department of Medicaid Services on or about July 12, 2016, pursuant to 907 KAR 1:671, Section 4 and 42 CFR §455.23, and Dr. Kuhn agrees that he relinquishes ownership of the funds and will not seek the release of such funds. Any additional amounts being held in escrow shall be released to Dr. Kuhn.
- b. Aetna shall retain forevermore \$21,552.07 which is currently held in escrow as a result of the suspension of payments to Dr. Kuhn implemented by the Kentucky Department of Medicaid Services on or about July 12, 2016, pursuant to 907 KAR 1:671, Section 4 and 42 CFR §455.23, and Dr. Kuhn agrees that he relinquishes ownership of the funds and will not seek the release of such funds. Any additional amounts being held in escrow shall be released to Dr. Kuhn.
- c. Anthem shall retain forevermore \$668.68 which is currently held in escrow as a result of the suspension of payments to Dr. Kuhn implemented by the Kentucky Department of Medicaid Services on or about July 12, 2016, pursuant to 907 KAR 1:671, Section 4 and 42 CFR §455.23, and Dr. Kuhn agrees that he relinquishes ownership of the funds and will not seek the release of such funds. Any additional amounts being held in escrow shall be released to Dr. Kuhn.

- d. Humana shall retain forevermore \$1,624.89 which is currently held in escrow as a result of the suspension of payments to Dr. Kuhn implemented by the Kentucky Department of Medicaid Services on or about July 12, 2016, pursuant to 907 KAR 1:671, Section 4 and 42 CFR §455.23, and Dr. Kuhn agrees that he relinquishes ownership of the funds and will not seek the release of such funds. Any additional amounts being held in escrow shall be released to Dr. Kuhn.
 - e. Passport Health Plan shall retain forevermore \$35,786.23 which is currently held in escrow as a result of the suspension of payments to Dr. Kuhn implemented by the Kentucky Department of Medicaid Services on or about July 12, 2016, pursuant to 907 KAR 1:671, Section 4 and 42 CFR §455.23, and Dr. Kuhn agrees that he relinquishes ownership of the funds and will not seek the release of such funds. Any additional amounts being held in escrow shall be released to Dr. Kuhn.
 - f. WellCare shall retain forevermore \$25,419.00 which is currently held in escrow as a result of the suspension of payments to Dr. Kuhn implemented by the Kentucky Department of Medicaid Services on or about July 12, 2016, pursuant to 907 KAR 1:671, Section 4 and 42 CFR §455.23, and Dr. Kuhn agrees that he relinquishes ownership of the funds and will not seek the release of such funds. Any additional amounts being held in escrow shall be released to Dr. Kuhn.
3. Subject to the exceptions in Paragraph 5 (concerning excluded claims) below, and conditioned upon Dr. Kuhn's full payment of the Federal Settlement Amount and the State Settlement Amount, the United States releases Dr. Kuhn 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.

4. Subject to the exceptions in Paragraph 5 (concerning excluded claims) below, and conditioned upon Dr. Kuhn's full payment of the Federal Settlement Amount and the State Settlement Amount, the Commonwealth releases Dr. Kuhn from any civil or administrative monetary claim the Commonwealth of Kentucky has for the Covered Conduct under the following: Assistance Program Fraud in violation of KRS § 194A.505(6); Medicaid fraud in violation of KRS § 205.8463(1), KRS § 205.8463(2) and KRS § 205.5463(4); breach of Kentucky Medicaid Provider Agreement; and common law causes of action.
5. Notwithstanding the releases provided in paragraphs 3 and 4 of this Agreement, or any other term of this Agreement, the following claims of the United States and the Commonwealth are specifically reserved and are not released:
 - a. Any liability arising under Title 26, U.S. Code (Internal Revenue Code) or any liability arising under Title IX of the Kentucky Revised Statutes (Kentucky Tax Code);
 - b. Any criminal liability;
 - c. Except as explicitly stated in this Agreement, any administrative liability, including mandatory or permissive exclusion from State or Federal health care programs;
 - d. OPM expressly reserves all rights to institute, direct, or maintain any administrative action seeking debarment against Dr. Kuhn from the FEHBP under 5 U.S.C. § 8902a(b) (mandatory debarment) or (c) and (d) (permissive debarment);
 - e. Any liability to the United States or the Commonwealth (or their agencies) for any conduct other than the Covered Conduct; and

- f. Any liability based upon obligations created by this Agreement.
6. Dr. Kuhn waives and shall not assert any defenses Dr. Kuhn 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. Nothing in this paragraph or any other provision of this Agreement constitutes an agreement by the United States concerning the characterization of the Federal Settlement Amount or State Settlement Amount for purposes of the Internal Revenue laws, Title 26 of the United States Code.
7. Dr. Kuhn fully and finally releases the United States and the Commonwealth, their agencies, officers, agents, employees, and servants, from any claims (including attorneys' fees, costs, and expenses of every kind and however denominated) that Dr. Kuhn has asserted or could have asserted against the United States or the Commonwealth, and their agencies, officers, agents, employees, and servants related to the United States' and the Commonwealth's investigation and prosecution of the Covered Conduct.
8. Neither the Federal Settlement Amount nor the State Settlement Amount shall 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 or FEHBP carrier or payer or any state payer, related to the Covered Conduct; and Dr. Kuhn agrees not to resubmit to any Medicare contractor, TRICARE or 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. However, this paragraph shall have no

bearing on the reduction of the State Settlement Amount by the amount of the Suspended Funds discussed in paragraph 2.

9. Dr. Kuhn 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. §§ 1395-1395kkk-1 and 1396-1396w-5; and the regulations and official program directives promulgated thereunder) incurred by or on behalf of Dr. Kuhn, his employees and agents in connection with:

- i. the matters covered by this Agreement;
- ii. the United States' audit(s) and civil investigation(s) of the matters covered by this Agreement;
- iii. Dr. Kuhn's investigation, defense, and corrective actions undertaken in response to the United States' or the Commonwealth's audit(s) and civil investigation(s) in connection with the matters covered by this Agreement (including attorneys' fees);
- iv. the negotiation and performance of this Agreement; and
- v. the Federal Settlement Amount and the State Settlement Amount

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 Dr. Kuhn and Dr. Kuhn 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 Dr. Kuhn or any of its subsidiaries or affiliates to the Medicare, Medicaid, TRICARE, or FEHBP Programs.

- c. Treatment of Unallowable Costs Previously Submitted for Payment: Dr. Kuhn further agrees that within 90 days of the Effective Date of this Agreement he 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 Dr. Kuhn 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. Dr. Kuhn agrees that the United States and the Commonwealth, at a minimum, shall be entitled to recoup from Dr. Kuhn 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 or the Commonwealth pursuant to instruction by the Kentucky Attorney General's Medicaid Fraud Control Unit. The United States and the Commonwealth reserve their rights to disagree with any calculations submitted by Dr. Kuhn or any of its subsidiaries or affiliates on the effect

of inclusion of Unallowable Costs (as defined in this Paragraph) on Dr. Kuhn or any of his 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 or the Commonwealth to audit, examine, or re-examine Dr. Kuhn's books and records to determine that no Unallowable Costs have been claimed in accordance with the provisions of this Paragraph.

10. Dr. Kuhn agrees not to impair the cooperation of his employees in the United States' and Commonwealth's investigation of the Covered Conduct and shall use his best efforts to encourage the cooperation of former employees for interviews and testimony, consistent with the rights and privileges of such individuals. Dr. Kuhn further agrees to furnish to the United States or the Commonwealth, 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 he has undertaken, or that has been performed by another on his behalf.

11. 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 12 (waiver for beneficiaries paragraph), below.

12. Dr. Kuhn agrees that he 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.

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

14. Each party and signatory to this Agreement represents that they freely and voluntarily enters into this Agreement without any degree of duress or compulsion.
15. 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 Western District of Kentucky. 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.
16. This Agreement constitutes the complete agreement between the Parties. This Agreement may not be amended except by written consent of the Parties.
17. The undersigned counsel represent and warrant that they are fully authorized to execute this Agreement on behalf of the persons and entities indicated below.
18. This Agreement may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same Agreement.
19. This Agreement is binding on Dr. Kuhn's successors, transferees, heirs, and assigns.
20. All Parties consent to the United States', the Commonwealth's, and Dr. Kuhn's disclosure of this Agreement, and information about this Agreement, to the public.
21. 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.

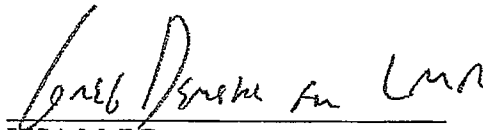
THE UNITED STATES OF AMERICA

JOHN E. KUHN, JR.
United States Attorney, Western District of Kentucky

DATED: 4/25/17

BY: 
BENJAMIN S. SCHECTER
Assistant United States Attorney

DATED: 4/12/17

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: _____
LEIGH A. BRADLEY
General Counsel, Defense Health Agency
United States Department of Defense

DATED: _____

BY: _____
MARGARET P. PEARSON
Acting Assistant Director of Federal Employee
Insurance Operations
Healthcare and Insurance
United States Office of Personnel Management

THE UNITED STATES OF AMERICA

JOHN E. KUHN, JR.
United States Attorney, Western District of Kentucky

DATED: _____

BY: _____
BENJAMIN S. SCHECTER
Assistant United States Attorney

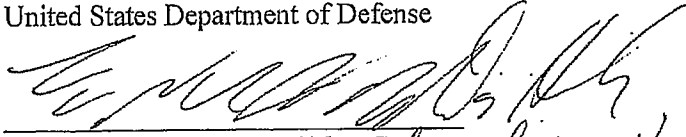
DATED: _____

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: _____
LEIGH A. BRADLEY
General Counsel, Defense Health Agency
United States Department of Defense

DATED: 4/14/17

BY: 
MARGARET P. PEARSON Edward M. Vethard
Acting Assistant Director of Federal Employee
Insurance Operations
Healthcare and Insurance
United States Office of Personnel Management

THE UNITED STATES OF AMERICA

JOHN E. KUHN, JR.
United States Attorney, Western District of Kentucky

DATED: _____

BY: _____
BENJAMIN S. SCHECTER
Assistant United States Attorney

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: 4/11/2017

BY: S.1099873821
BLEY.PAUL.NICHOLA
Digitally signed by BLEY.PAUL.NICHOLA.S.1099873821
DN: c=US, o=U.S. Government, ou=DoD, ou=PKI,
ou=DHA, cn=BLEY.PAUL.NICHOLA.S.1099873821
Date: 2017.04.11 17:40:41 -0400
LEIGH A. BRADLEY
for
General Counsel, Defense Health Agency
United States Department of Defense

DATED: _____

BY: _____
MARGARET P. PEARSON
Acting Assistant Director of Federal Employee
Insurance Operations
Healthcare and Insurance
United States Office of Personnel Management

THE COMMONWEALTH OF KENTUCKY

DATED: 4/19/17

BY: Michelle Rudovich
MICHELLE GRANT RUDOVICH
Executive Director
Office of Medicaid Fraud & Abuse
Kentucky Office of the Attorney General

DATED: 4/15/17

BY: Stephen P. Miller
STEPHEN P. MILLER
Commissioner, Department of Medicaid Services
Kentucky Cabinet for Health and Family Services

FORREST S. KUHN, JR., M.D.

DATED: _____

BY: _____
FORREST S. KUHN, JR., M.D.

DATED: _____

BY: _____
CRAIG C. DILGER
Counsel for Forrest S. Kuhn, Jr.

THE COMMONWEALTH OF KENTUCKY

DATED: _____

BY: _____

MICHELLE GRANT RUDOVICH
Executive Director
Office of Medicaid Fraud & Abuse
Kentucky Office of the Attorney General

DATED: _____

BY: _____

STEPHEN P. MILLER
Commissioner, Department of Medicaid Services
Kentucky Cabinet for Health and Family Services

FORREST S. KUHN, JR., M.D.


DATED: 4-24-2017

BY: _____


FORREST S. KUHN, JR., M.D.

DATED: 4-24-2017

BY: _____


CRAIG C. DILGER
Counsel for Forrest S. Kuhn, Jr.