

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 United States Department of Labor, Office of Workers' Compensation Programs (“DOL-OWCP”), and the United States Postal Service (“USPS”) (collectively the “United States”); Bonnie Lammers, M.D. (“Relator”); and Defendants Farideh Heidarpour, Ali Heidarpour, and A.B.C. Billing, Inc. (collectively “Defendants”), through their authorized representatives. The United States, Relator, and Defendants are hereafter collectively referred to as “the Parties.”

RECITALS

A. Defendants are the following entities and individuals:

- (1) Defendant A.B.C. Billing Inc. was incorporated in Texas in April 2008.
- (2) Defendant Farideh Heidarpour is an Oklahoma resident.
- (3) Defendant Ali Heidarpour is a Virginia resident.

B. On July 15, 2008, Relator filed a *qui tam* Complaint in the United States District Court for the Northern District of California captioned *United States ex rel. Bonnie Lammers, M.D. v. Michael Hebrard, M.D., Richard Lavigna, D.P.M., Farideh Heidarpour, Ali Heidarpour, Advanced Physical Medicine & Rehab Group, Inc., Advanced Occupational Rehabilitation, Inc., Advanced Medicine and Rehabilitation of Texas, Inc., Advanced Medicine and Rehabilitation of Texas, P.A.*, Case No. CV 08-3411 WHA, pursuant to the *qui tam* provisions of the False Claims Act (“FCA”), 31 U.S.C. §§ 3729-33 (the “Civil Action”). The United States intervened in the Civil Action on October 31, 2011.

C. The United States contends that it has certain civil claims against Defendants arising from Defendants’ conduct in knowingly submitting or causing to be submitted claims to DOL-OWCP (1) during the period January 1, 2005 through December 31, 2009 for supplies and services not provided, not supported by medical documentation, and/or not medically necessary for CPT codes 97110, 97530, 97750, 99070, 99080, 99090, 99215, and 99354; and (2) during the period January 1, 2005 through July 31, 2010 for supplies and services not provided, not supported by medical documentation, and/or not medically necessary for CPT code RP100, which resulted in damages to

the United States. The conduct described in this paragraph C is referred to below as the “Covered Conduct.”

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

E. Relator claims entitlement under 31 U.S.C. § 3730(d) to a share of the proceeds of this Settlement Agreement and to Relator’s 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. Defendants shall pay the United States the sum of \$1,700,000 (the “Settlement Amount”), payable as follows, pursuant to the written instructions to be provided by the U. S. Department of Justice:

a. \$1,000,000 to be paid in accordance with Farideh Heidapour’s plea agreement in Case No. CR-11-109-M (W. D. Oklahoma).

b. Within ten business days of the Effective Date of this Agreement, Defendants will make a payment to the United States in the amount of \$160,000 by electronic funds transfer.

c. Over a period of two (2) years, Defendants will pay the remaining \$540,000 in two (2) installments of \$270,000 due no later than on the anniversaries of the Effective Date of this Agreement in 2014, and 2015, plus interest at 3% per annum, pursuant to a promissory note (the “Note”) in the form of Exhibit A hereto, that Defendants agree to execute contemporaneously with this settlement agreement. Defendants have the right to pay the settlement amounts noted above before the due dates specified herein and thereby may avoid paying interest they otherwise would have been owed.

d. As security for the prompt and complete payment when due of all amounts due under this Settlement Agreement and in accordance with the Security Agreement attached as Exhibit B hereto, Defendants hereby grant to the United States a lien on, and a security interest in the following collateral: (a) Defendant Farideh Heidarpour’s interest in the promissory note dated

August 1, 2011, from Virginia Pain & Rehab, LLC to Advanced Physical Medicine and Rehabilitation of Virginia, Inc. for \$500,000; (b) Defendant Farideh Heidarpour's interest in the promissory note dated August 1, 2011, from Oklahoma Pain & Rehab, LLC to Advanced Occupational Rehabilitation, Inc for \$1,200,000; and (c) Defendant Farideh Heidarpour's interest in the promissory note dated May 30, 2013 from Oklahoma Pain & Rehab, LLC to Avondale Healthcare, LLC. Defendants agree to execute contemporaneously with this Agreement the Form UCC-1 attached as Exhibit C hereto, and to file or record it with the California Secretary of State within 14 days of the Effective Date of this Agreement. Defendants shall pay the costs of, or incidental to, any recording or filing of Exhibit C, shall do all things reasonably necessary to perfect and keep in full force the security interest granted in favor of the United States, including, but not limited to, the prompt payment of all reasonable fees and expenses incurred in connection with any filings made to perfect the security interest in favor of the United States until the Settlement Amount has been paid in full. Defendants will send proof of filing of Exhibit C to the United States within 10 days of filing. If Defendants fail to meet any of their payment obligations under this Agreement, the United States may take whatever steps are warranted upon 30 days written notice to Defendants to use the collateral identified in this paragraph to satisfy Defendants' outstanding obligations under this Agreement.

e. Interest shall accrue on the unpaid settlement amount as indicated in the Note. Collectively the settlement amount and interest received by the United States shall be referred to as the "Settlement Proceeds."

2. If Defendants fail to make any of the payments pursuant to Paragraph 1 above, Defendant A.B.C. Billing, Inc. hereby consents to exclusion from DOL-OWCP's federal health care program, provided that Defendants will have 30 days to cure any payment default following notice to Defendants of the failure to receive payment, and A.B.C. Billing, Inc. will not be excluded from the DOL-OWCP federal health care program unless Defendants fail to cure within 30 days following the notice.

3. Conditioned upon the United States receiving the Settlement Amount from Defendants, the United States shall pay 19% of each such payment received under the Settlement Agreement to Relator by electronic funds transfer as soon as feasible after receipt of the payment. No other Relator payments shall be made by the United States with respect to the matters covered by this Agreement.

4. Defendants agree to pay undersigned Relator's counsel \$40,000 in complete satisfaction of any rights of Relator and/or her counsel to attorneys' fees and/or costs pursuant to 31 U.S.C. § 3730(d)(1) or otherwise. Defendants agree to make payment of this amount by electronic funds transfer within ten (10) business days after the Effective Date of the Agreement as defined in Paragraph 28, below, to Relator's counsel pursuant to written direction provided by McBreen & Senior. Defendants agree to fully and finally release the Relator from any claims (including attorneys' fees, costs, and expenses of every kind and however denominated) that Defendants have asserted, could have asserted, or may assert in the future against the Relator, arising from the Civil Action and the Relator's investigation and prosecution thereof; provided that such release shall not be effective unless Relator and her counsel comply strictly and completely with the obligations set forth in Paragraph 18, below, and provided further that such release shall not be effective if any of the statements signed by Relator (as required by Paragraph 18) are not completely truthful, current, accurate and complete.

5. Subject to the exceptions in Paragraph 7 (concerning excluded claims) below, and upon Defendants' full payment of the Settlement Amount, the United States agrees to release Defendants Farideh Heidarpour, Ali Heidarpour, A.B.C. Billing, Inc., and their respective officers, directors, agents, and employees, from any civil or administrative monetary claim the United States has for the Covered Conduct, including but not limited to liability 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 breach of contract, payment by mistake, unjust enrichment, and fraud.

6. Subject to the exceptions in Paragraph 7 below, and upon Defendants' full payment of the Settlement Amount, Relator, individually and on behalf of her representatives, successors, beneficiaries, heirs, attorneys, agents and assigns, and all of them, fully and unconditionally agrees to release and forever discharge Defendants and its affiliates, subcontractors, agents, current and former employees, directors, officers, representatives, partners, owners, successors, assigns, patients, beneficiaries, sponsors, and providers from any and all causes of action, claims, obligations, demands, damages, compensation, costs, expenses, losses, liabilities, disputes and controversies of every nature and description in law or in equity, whether arising by statute under federal, state, foreign, or other law, or at common law, whether assertable directly or in any representative capacity whatsoever, whether known or unknown, whether accrued or unaccrued,

from the beginning of the world up to and including the date of this release, including, but not limited to, any claims on behalf of the United States for the Covered Conduct under the False Claims Act, 31 U.S.C. §§ 3729-3733, and any claims for retaliatory discharge under the False Claims Act.

7. Notwithstanding the releases given in Paragraphs 5 and 6 of this Agreement, or any other term of this Agreement, the following claims 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 of individuals or entities not covered by the Superseding Indictment in Case No. CR-11-109-M (W. D. Oklahoma), or the non-prosecution letter issued in favor of the Defendant Ali Heidarpour by the United States Attorney's Office in the Western District of Oklahoma;
- c. Except as explicitly stated in this Agreement, any administrative liability related to 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; or
- e. Any liability based upon obligations created by this Agreement.

8. Relator and her representatives, beneficiaries, 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 Relator's receipt of the payment described in Paragraph 3 above, Relator and their representatives, successors, beneficiaries, 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.

9. Relator, for herself, and for her representatives, beneficiaries, heirs, successors, attorneys, agents, and assigns, specifically releases Defendants from any liability to Relator arising from the filing of the Civil Action, or under 31 U.S.C. § 3730(d) for expenses or attorney's fees and costs.

10. Defendants waive and shall not assert any defenses Defendants 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 Settlement Amount for purposes of the Internal Revenue laws, Title 26 of the United States Code.

11. Defendants have provided sworn financial disclosure statements (“Financial Statements”) to the United States and the United States has relied on the accuracy and completeness of those Financial Statements in reaching this Agreement. Defendants warrant that each of their Financial Statements is complete, accurate, and current. If the United States learns of asset(s) in which one or more of Defendants had an interest at the time of this Agreement that were not disclosed in the Financial Statements, or if the United States learns of any misrepresentation by one or more of Defendants on, or in connection with, the Financial Statements, and if such nondisclosure or misrepresentation changes the estimated net worth set forth in the Financial Statements by \$100,000 or more, the United States may at its option: (a) rescind this Agreement and file suit based on the Covered Conduct, or (b) let the Agreement stand and collect the full Settlement Amount plus one hundred percent (100%) of the value of the net worth of Defendant(s) previously undisclosed. Defendants agree not to contest any collection action undertaken by the United States pursuant to this provision, and immediately to pay the United States all reasonable costs incurred in such an action, including attorney’s fees and expenses.

12. In the event that the United States, pursuant to Paragraph 11 (concerning disclosure of assets), above, opts to rescind this Agreement, Defendants 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 Defendants that this Agreement has been rescinded, and (b) relate to the Covered Conduct, except to the extent these defenses were available on the Effective Date of this Agreement.

13. Defendants fully and finally release 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 Defendants have 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 and the United States' investigation and prosecution thereof.

14. The Settlement Amount shall not be decreased as a result of the denial of claims for payment now being withheld from payment by any federal health care program, or any state payer, related to the Covered Conduct; and Defendants agree not to resubmit to any federal health care program or any state payer any previously denied claims related to the Covered Conduct, and agrees not to appeal any such denials of claims.

15. Defendants 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. §§ 1395-1395kkk-1 and 1396-1396w-5; and the regulations and official program directives promulgated thereunder) incurred by or on behalf of Defendants, 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) Defendants' 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 attorney's fees);
- (4) the negotiation and performance of this Agreement; and
- (5) the payment Defendants make to the United States pursuant to this Agreement and any payments that Defendants may make to Relator, including costs and attorneys fees.

b. **Future Treatment of Unallowable Costs:** Unallowable Costs shall be separately determined and accounted for by Defendants, and Defendants 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 Defendants or any of its subsidiaries or affiliates to any federal health care program.

c. Treatment of Unallowable Costs Previously Submitted for Payment: Defendants further agree that within 90 days of the Effective Date of this Agreement they shall identify to the Department of Labor Contracting Signatory to this Agreement 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 Defendants 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. Defendants agree that the United States, at a minimum, shall be entitled to recoup from Defendants 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 Defendants or any of their subsidiaries or affiliates on the effect of inclusion of Unallowable Costs (as defined in this Paragraph) on Defendants 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 Defendants' books and records to determine that no Unallowable Costs have been claimed in accordance with the provisions of this Paragraph 15.

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 otherwise provided for in this agreement.

17. Defendants 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.

18. Upon receipt of the payment described in Paragraph 1(a) above, pursuant to Rule 41(a)(1), the United States and the Relator shall, within (10) business days, promptly sign and file in the Civil Action a Joint Stipulation dismissing the action without prejudice. Upon receipt of all of the remaining payments described in Paragraph 1(b) above and the Note, pursuant to Rule 41(a)(1), the

United States and the Relator shall within (10) business days promptly sign and file in the Civil Action a Joint Stipulation dismissing the action with prejudice.

19. Except as provided in Paragraph 4 above, 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 Northern District of California. 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 with respect to civil and administrative monetary liability. 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 Defendants's successors, transferees, heirs, and assigns.

26. This Agreement is binding on Relator's 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 .pdf electronic transmissions of signatures shall constitute acceptable, binding signatures for purposes of this Agreement.


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THE UNITED STATES


MELINDA HAAG
United States Attorney

Dated: 8/28, 2013

By: 
SARA WINSLOW
MELANIE L. PROCTOR
Assistant United States Attorneys
Attorneys for the United States

OFFICE OF WORKERS' COMPENSATION PROGRAMS
UNITED STATES DEPARTMENT OF LABOR

Dated: 8/14, 2013

By: 
PETER KRAH
Branch Chief of Medical Standards and Rehabilitation
Office of Workers' Compensation Programs

RELATOR

McBREEN & SENIOR

Dated: _____, 2013

By: _____
MATTHEW WESTON
Attorney for *Qui Tam* Plaintiff-Relator Bonnie
Lammers, M.D.

Dated: _____, 2013

By: _____
BONNIE LAMMERS, M.D.

THE UNITED STATES

MELINDA HAAG
United States Attorney

Dated: _____, 2013

By: _____
SARA WINSLOW
MELANIE L. PROCTOR
Assistant United States Attorneys
Attorneys for the United States

OFFICE OF WORKERS' COMPENSATION PROGRAMS
UNITED STATES DEPARTMENT OF LABOR

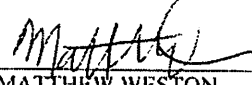
Dated: _____, 2013

By: _____
PETER KRAH
Branch Chief of Medical Standards and Rehabilitation
Office of Workers' Compensation Programs

RELATOR

McBREEN & SENIOR

Dated: 8/22/, 2013

By: 

MATTHEW WESTON
Attorney for *Qui Tam* Plaintiff-Relator Bonnie
Lammers, M.D.

Dated: _____, 2013

By: _____
BONNIE LAMMERS, M.D.

THE UNITED STATES

MELINDA HAAG
United States Attorney

Dated: _____, 2013

By: _____
SARA WINSLOW
MELANIE L. PROCTOR
Assistant United States Attorneys
Attorneys for the United States

OFFICE OF WORKERS' COMPENSATION PROGRAMS
UNITED STATES DEPARTMENT OF LABOR

Dated: _____, 2013

By: _____
PETER KRAH
Branch Chief of Medical Standards and Rehabilitation
Office of Workers' Compensation Programs

RELATOR

McBREEN & SENIOR

Dated: _____, 2013

By: _____
MATTHEW WESTON
Attorney for *Qui Tam* Plaintiff-Relator Bonnie
Lammers, M.D.

Dated: 8/21, 2013

By: 
BONNIE LAMMERS, M.D.

DEFENDANTS

ROGERS JOSEPH O'DONNELL

Dated: 8/28, 2013

By: Patricia A. Meagher
PATRICIA A. MEAGHER
Attorney for Defendants

Dated: 8/24, 2013

By: Farideh Heidarpour
FARIDEH HEIDARPOUR

Dated: 8-27, 2013

By: Ali Heidarpour
ALI HEIDARPOUR

ABC BILLING, INC.

Dated: 8/24, 2013

By: Farideh Heidarpour
FARIDEH HEIDARPOUR
Secretary