



JOSH STEIN
ATTORNEY GENERAL

STATE OF NORTH CAROLINA
DEPARTMENT OF JUSTICE

SETH DEARMIN
CHIEF OF STAFF

July 13, 2017

North Carolina Senate President Pro Tempore Phil Berger
North Carolina House of Representatives Speaker Tim Moore
Co-Chairs, Joint Legislative Commission on Governmental Operations

Senator Warren Daniel
Senator Shirley Randleman
Senator Norman W. Sanderson
Representative James Boles, Jr.
Representative Ted Davis, Jr.
Representative Allen McNeill
Representative Rena W. Turner
Co-Chairs, Appropriations Subcommittee on Justice and Public Safety

North Carolina General Assembly
Raleigh, North Carolina 27601-1096

Re: G.S. §114-2.5; Report on Settlement Agreements for Rehoboth
Consulting Agency and Piedmont Pathology Associates, Inc.

Dear Members:

Section 114-2.5 of the North Carolina General Statutes requires the Attorney General to report to the Joint Legislative Commission on Governmental Operations and the Chairs of the Appropriations Subcommittees on Justice and Public Safety regarding all settlements and court orders which result in more than \$75,000.00 being paid to the State. Pursuant to that statute, I am writing regarding the settlement of claims for Medicaid reimbursement to the state and federal governments in the above-referenced matters. Pursuant to federal law (42 C.F.R. § 433.320) recoveries in these cases are shared on a pro rata basis by the state and federal governments.

Rehoboth Consulting Agency

A Settlement has been executed between Rehoboth and the State of North Carolina.

The settlement resolves allegations that from January 1, 2011 through December 31, 2011, Rehoboth billed for individual, group and family outpatient behavioral health services that were not rendered, individual group and family outpatient behavioral services rendered by unqualified therapists, and individual group and family outpatient behavioral services with no supporting clinical documentation that were not medically necessary.

Under the terms of North Carolina's settlement, the State of North Carolina will recover \$132,713.00. Of that amount the federal government will receive \$86,263.45 for North Carolina's federal portion of Medicaid recoveries. The North Carolina Medicaid Program will receive \$42,407.05 as restitution and interest. Pursuant to G.S. § 108A-70.12(b)(3), the North Carolina Department of Justice will receive \$4,042.50 for investigative costs.

Piedmont Pathology Associates, Inc.

A Settlement has been reached with Piedmont Pathology. The settlement resolves allegations that from August 14, 2012 through February 3, 2015, Piedmont Pathology conducted confirmatory Alcian Blue, Periodic Acid Schiff and Immunohistochemistry stains on gastric biopsy specimens before the specimens were reviewed by a pathologist to determine if the stains were medically necessary.

Under the terms of the settlement, the State of North Carolina will recover \$616,000.00. Of that amount the federal government will receive \$562,127.89 for North Carolina's federal portion of Medicare and Medicaid recoveries. Pursuant to G.S. § 1-610, the qui tam plaintiffs whose whistleblower actions brought this matter to the government's attention will receive \$10,818.00 of North Carolina's recovery. The North Carolina Medicaid Program will receive \$39,200.65 as restitution and interest. Pursuant to G.S. § 108A-70.12(b)(3), the North Carolina Department of Justice will receive \$3,853.46 for investigative costs.

We will be happy to respond to any questions you may have regarding this report.

Very truly yours,



Seth Dearmin
Chief of Staff

SD:ng

cc: Kristine Leggett, NCGA Fiscal Research Division

EXECUTION COPY

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), and Piedmont Pathology Associates, Inc. and Piedmont Pathology, Professional Corporation (together the "Defendants"), and Kim R. Geisinger (the "Relator," and hereafter collectively referred together with Defendants and the United States as "the Parties"), through their authorized representatives.

RECITALS

A. Defendants are a private pathology laboratory and related physician practice doing business in Hickory, North Carolina.

B. On July 14, 2014, Relator filed a qui tam action in the United States District Court for the Western District of North Carolina captioned *United States ex rel. Kim R. Geisinger, MD v. Piedmont Pathology Associates, Inc. and Piedmont Pathology, PC*, pursuant to the qui tam provisions of the False Claims Act, 31 U.S.C. § 3730(b) (the Civil Action). Relator alleges Defendants conducted medically unnecessary procedures for which they then billed government health programs. The United States intervened in part in the Civil Action on November 18, 2016. The United States has not yet filed a complaint in the case.

C. The United States contends that Defendants 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") and the Medicaid Program, 42 U.S.C. §§ 1396-1396w-5 ("Medicaid").

EXECUTION COPY

D. The United States contends that it has certain civil claims against Defendants arising from Defendants practice of conducting confirmatory Alcian Blue, Periodic Acid Schiff and Immunohistochemistry stains on gastric biopsy specimens before the specimens were reviewed by a pathologist to determine if the aforementioned stains were medically necessary, from August 14, 2012 through February 3, 2015. That conduct is referred to below as the "Covered Conduct."

E. 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.

F. 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 agree to pay to the United States six hundred one thousand dollars (\$601,000.00) (the Settlement Amount) under the following terms:
 - a. Defendants shall make an initial payment of \$201,000.00 (the "Initial Payment") no later than 15 days after the Effective Date of this Agreement (as defined in Paragraph 29) by electronic funds transfer pursuant to written instructions to be provided by the United States Attorney's Office for the Western District of North Carolina.
 - b. Over a period of two years, Defendants shall pay the remaining \$400,000.00, plus interest at a rate of 2.5 percent per annum, in accordance with the payment schedule attached as Exhibit A (the "Annual Payments"). The

EXECUTION COPY

Annual Payment may be prepaid, in whole or in part, with no penalty or premium.

2. Conditioned upon the United States receiving the Settlement Amount payments from Defendants, the United States agrees that it shall pay to Relator by electronic funds transfer 20% percent of each such payment received under the Settlement Agreement as soon as feasible after receipt of the payment. All such payments on Relator's behalf shall be made pursuant to written instructions to the trust account of Relator's counsel (Higgins Benjamin, PLLC).

3. Subject to the exceptions in Paragraph 5 (concerning excluded claims) below, and conditioned upon Defendants' full payment of the Settlement Amount and subject to Paragraph 18, below (concerning bankruptcy proceedings commenced within 91 days of the Effective Date of this Agreement or any payment made under this Agreement), the United States releases Defendants 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 below, and conditioned upon Defendants' full payment of the Settlement Amount and subject to Paragraph 18, below (concerning bankruptcy proceedings commenced within 91 days of the Effective Date of this Agreement or any payment made under this Agreement), Relator, for himself and for his heirs, successors, attorneys, agents, and assigns, releases Defendants from any civil monetary claim the Relator has on behalf of the United States for the Covered Conduct under the False Claims Act, 31 U.S.C. §§ 3729-3733.

EXECUTION COPY

5. Notwithstanding the releases given in paragraph 3 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;
- c. Except as explicitly stated in this Agreement, any administrative liability, including mandatory or permissive exclusion from Federal health care programs;
- d. Any liability to the United States (or its agencies) for any conduct other than the Covered Conduct;
- e. Any liability based upon obligations created by this Agreement;
- f. Any liability of individuals;

6. Relator and his 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 payments described in Paragraph 2, Relator and his 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.

7. Relator, for himself, and for his heirs, successors, attorneys, agents, and assigns, releases Defendants, and its officers, agents, and employees, from any liability to Relator arising from the filing of the Civil Action, with the exception of any claim under 31 U.S.C. § 3730(d) for expenses or attorney's fees and costs, provided, however, that nothing in this agreement shall

EXECUTION COPY

be construed as an acknowledgment or agreement by Defendants that Relator is entitled to attorney's fees or expenses.

8. Defendants have provided financial information to the United States and the United States has relied on the accuracy and completeness of the information in reaching this Agreement. Defendants warrant that the Financial Statements are complete and accurate, and were current when provided. If the United States learns of asset(s) in which Defendants had an interest at the time of those Financial Statements that were not disclosed in the information, or if the United States learns of any misrepresentation by 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 information by \$500,000 or more, the United States may immediately accelerate all payments due under this Agreement to be due five days from such discovery by the United States.

9. 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.

10. 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

EXECUTION COPY

servants, related to the Covered Conduct and the United States' investigation and prosecution thereof.

11. Defendants fully and finally release the Relator 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 Relator, related to the Covered Conduct and the Relator's investigation and prosecution thereof. Defendants agree not to contest, challenge, or dispute Relator's share and receipt of settlement proceeds referenced in Paragraph 2 of this Agreement for any reason, in this action or any subsequent action.

12. The Settlement Amount shall not be decreased as a result of the denial of claims for payment now being withheld from payment by any Medicare contractor (e.g., Medicare Administrative Contractor, fiscal intermediary, carrier or any state payer, related to the Covered Conduct; and Defendants agree not to resubmit to any Medicare contractor 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.

13. 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, 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 investigation(s) of the matters covered by this Agreement;

EXECUTION COPY

- (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 makes to the United States pursuant to this Agreement and any payments that Defendants may make to Relator, including costs and attorney fees.

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 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 the Medicare, Medicaid, TRICARE, or FEHBP Programs.

c. Treatment of Unallowable Costs Previously Submitted for Payment: Defendants 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 Defendants or any of its subsidiaries or

EXECUTION COPY

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 its subsidiaries or affiliates on the effect of inclusion of Unallowable Costs (as defined in this Paragraph) on Defendants 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 Defendants' books and records to determine that no Unallowable Costs have been claimed in accordance with the provisions of this Paragraph.

14. In the event that Defendants fail to pay any amount as provided in paragraph 1 within ten (10) business days of the date on which such payment is due, Defendants shall be in default of their payment obligations ("Payment Default"). The United States will provide written notice of the Payment Default to Defendants, and Defendants shall have ten (10) business days from the date of mailing, by First Class Mail, of notice of Default to cure the Default. If Defendants fail to cure such Payment Default within this ten (10) business day time period, all remaining unpaid portions of the Settlement Amount shall become accelerated and immediately due and payable and interest shall accrue at the rate of 12% per annum compounded daily from the date of Payment Default on the remaining unpaid Settlement Amount (principal and interest), until the

EXECUTION COPY

date of full payment. Defendants shall pay United States all reasonable costs of collection and enforcement under this paragraph, including attorneys' fees and expenses.

15. Notwithstanding the foregoing, in the event of Payment Default as defined in Paragraph 14, above, OIG-HHS may exclude Defendants from participating in all Federal health care programs until Defendants pay the Settlement Amount and reasonable costs as set forth in Paragraph 14, above. OIG-HHS will provide written notice of any such exclusion to Defendants. Defendants waive any further notice of the exclusion under 42 U.S.C. § 1320a-7(b)(7), and agree 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 Defendants wish to apply for reinstatement, each must submit a written request for reinstatement to OIG-HHS in accordance with the provisions of 42 C.F.R. §§ 1001.3001-.3005. Defendants will not be reinstated unless and until OIG-HHS approves such request for reinstatement.

15. 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 16 (waiver for beneficiaries paragraph), below.

16. 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 payers based upon the claims defined as Covered Conduct.

17. Defendants warrant that they have reviewed their financial situation and that they currently are 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. Further, the Parties warrant that, in evaluating whether to execute this Agreement, they (a) have intended that the mutual promises, covenants, and obligations set forth constitute a contemporaneous

EXECUTION COPY

exchange for new value given to Defendants within the meaning of 11 U.S.C. § 547(c)(1), and (b) conclude that these mutual promises, covenants, and obligations do, in fact, constitute such a contemporaneous exchange. Further, the Parties warrant that the mutual promises, covenants, and obligations set forth herein are intended to and do, in fact, represent a reasonably equivalent exchange of value that is not intended to hinder, delay, or defraud any entity to which Defendants was or became indebted to on or after the date of this transfer, within the meaning of 11 U.S.C. § 548(a)(1).

18. If within 91 days of the Effective Date of this Agreement or of any payment made under this Agreement, Defendants commence, or a third party commences, any case, proceeding, or other action under any law relating to bankruptcy, insolvency, reorganization, or relief of debtors (a) seeking to have any order for relief of Defendants' debts, or seeking to adjudicate Defendants as bankrupt or insolvent; or (b) seeking appointment of a receiver, trustee, custodian, or other similar official for Defendants or for all or any substantial part of Defendants' assets, Defendants agree as follows:

a. Defendants' obligations under this Agreement may not be avoided pursuant to 11 U.S.C. § 547, and Defendants shall not argue or otherwise take the position in any such case, proceeding, or action that: (i) Defendants' obligations under this Agreement may be avoided under 11 U.S.C. § 547; (ii) Defendants were insolvent at the time this Agreement was entered into, or became insolvent as a result of the payment made to the United States; or (iii) the mutual promises, covenants, and obligations set forth in this Agreement do not constitute a contemporaneous exchange for new value given to Defendants.

b. If Defendants' 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, the United States, at its sole option, may rescind the releases in this

EXECUTION COPY

Agreement and bring any civil and/or administrative claim, action, or proceeding against Defendants for the claims that would otherwise be covered by the releases provided in Paragraphs 3 and 4, above Defendants agrees that (i) any such claims, actions, or proceedings brought by the United States are not subject to an "automatic stay" pursuant to 11 U.S.C. § 362(a) as a result of the action, case, or proceedings described in the first clause of this Paragraph, and Defendants shall not argue or otherwise contend that the United States' claims, actions, or proceedings are subject to an automatic stay; (ii) Defendants 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 claims, actions, or proceeding that are brought by the United States within 120 calendar days of written notification to Defendants that the releases have been rescinded pursuant to this Paragraph, except to the extent such defenses were available on July 16, 2014; and (iii) the United States has a valid claim against Defendants in the amount of \$1,500,000 and the United States may pursue its claim in the case, action, or proceeding referenced in the first clause of this Paragraph, as well as in any other case, action, or proceeding.

c. Defendants acknowledge that its agreements in this Paragraph are provided in exchange for valuable consideration provided in this Agreement.

19. 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).

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

21. Each party and signatory to this Agreement represents that it freely and voluntarily enters in to this Agreement without any degree of duress or compulsion.

EXECUTION COPY

22. 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 North Carolina. 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.

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

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

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

26. This Agreement is binding on Defendants' successors, transferees, heirs, and assigns.

27. This Agreement is binding on Relator's successors, transferees, heirs, and assigns.

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

29. 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.

EXECUTION COPY

THE UNITED STATES OF AMERICA

DATED: 5-2-17

BY:



JONATHAN H. FERRY
Assistant United States Attorney
United States Attorney's Office,
Western District of North Carolina

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

EXECUTION COPY

THE UNITED STATES OF AMERICA

DATED: _____

BY: _____

JONATHAN H. FERRY
Assistant United States Attorney
United States Attorney's Office,
Western District of North Carolina

DATED: 7/28/17

BY: *Lisa M. Re*

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

EXECUTION COPY

PIEDMONT PATHOLOGY ASSOCIATES, INC
PIEDMONT PATHOLOGY, PROFESSIONAL
CORPORATION – DEFENDANT

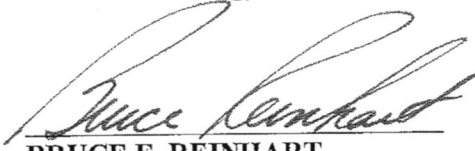
DATED: _____

BY: _____
JOSEPH V. VOGEL, M.D.
President

DATED: _____

BY: _____
MICHAEL P. THOMAS
Counsel for Piedmont Pathology Associates, Inc. and
Piedmont Pathology Professional Corporation

DATED: 4/28/17

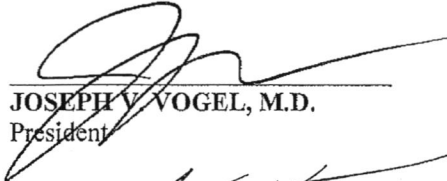
BY: 
BRUCE E. REINHART
Counsel for Piedmont Pathology Associates, Inc. and
Piedmont Pathology Professional Corporation

EXECUTION COPY

PIEDMONT PATHOLOGY ASSOCIATES, INC
PIEDMONT PATHOLOGY, PROFESSIONAL
CORPORATION -- DEFENDANT


DATED: 4-27-17

BY:


JOSEPH V. VOGEL, M.D.
President

DATED: 4/27/17

BY:


MICHAEL P. THOMAS
Counsel for Piedmont Pathology Associates, Inc. and
Piedmont Pathology Professional Corporation

DATED: _____

BY:

BRUCE E. REINHART
Counsel for Piedmont Pathology Associates, Inc. and
Piedmont Pathology Professional Corporation

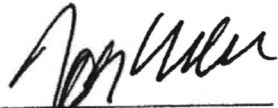
← Back to Message Execution Settlement Agreem... 1 / 1

⬇ ⌂ ✕

EXECUTION COPY

KIM R. GEISINGER -- RELATOR

DATED: 4/21/17 BY: 
KIM R. GEISINGER
Relator

DATED: 4/20/17 BY: 
JONATHAN WALL
Counsel for Relator

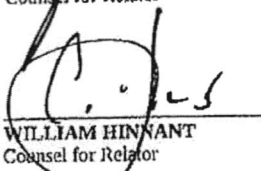
DATED: 4/27/17 BY: 
WILLIAM HINNANT
Counsel for Relator

EXHIBIT A

Pymnt. No	Schedule Date	Schedule Amount	Interest Paid	Principal	Balance Total	Interest Rate
Initial	15 days	\$201,000.00	\$0.00	\$201,000.00	\$400,000.00	0%
2	5/2/2018	\$210,000.00	\$10,000.00	\$200,000.00	\$200,000.00	2.5%
3	5/2/2019	\$205,000.00	\$5,000.00	\$200,000.00	\$0.00	2.5%

SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is entered into among the North Carolina Office of the Attorney General; Rehoboth Consulting Agency; ("Rehoboth"); and Lisa King Hodge ("King"). Each of the above hereafter collectively referred to as "the Parties" through their authorized representatives.

RECITALS

A. Rehoboth provided behavioral health services to clients within the State of North Carolina. Lisa King Hodge was the President/Owner of Rehoboth at all applicable periods of time referenced below.

B. The Government contends that during the dates of January 1, 2011, through December 31, 2011, Rehoboth and King submitted or caused to be submitted claims for payment to the North Carolina Medicaid Program (Medicaid), Title XIX of the Social Security Act, 42 U.S.C. §§ 1396-1396v, in violation of the North Carolina False Claims Act, N.C.G.S. §§ 1-605, *et seq.*, and the Medical Assistance Provider Claims Act, N.C.G.S. §§ 108A-70.10, *et seq.*; and

C. The Government contends that it has certain civil claims against Rehoboth and King arising from the following conduct, during the dates of January 1, 2011 through December 31, 2011 for Rehoboth and King's submission of claims to the North Carolina Medicaid Program for (a) individual, group and family outpatient behavioral health services which were in fact not rendered; (b) individual, group and family outpatient behavioral health services which were rendered by unqualified therapists; and, (c) individual, group and family outpatient behavioral

health services which no supporting clinical documentation exists, all of which the Government contends, were not medically necessary and which were performed in violation of Division of Medical Assistance Clinical Coverage Policy 8C, et seq.

This conduct, as recited above in Paragraph C, is referred to below and throughout this Settlement Agreement as the "Covered Conduct."

D. The government contends that its claim(s) set forth above are well founded. The defendant(s) do not deny the contentions as set forth above as "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. King shall pay to the Government the aggregate principal amount of one hundred twenty five thousand dollars (\$125,000.00) (the "Settlement Amount") pursuant to written instructions to be provided by the North Carolina Department of Justice. No later than 30 days following the Effective Date of this Agreement, King shall pay \$15,000.00 to be credited by the Government towards the Settlement Amount. The remaining principal balance of \$110,000.00 shall be paid by King, due by 5:00 pm U.S. Eastern time on the following dates: (a) no later than May 31, 2019, King shall pay a lump sum payment of \$35,000.00 plus interest to be credited by the Government toward the Settlement Amount; (b) no later than August 31, 2017, King shall commence periodic payments of \$3,750.00 plus interest to be credited by the Government toward the Settlement Amount pursuant to the schedule attached as Exhibit A hereto; (c) Thereafter, King shall make payment of \$3,750.00 plus interest every ninety (90) days for a

period of time no more than five (5) years or until all remaining outstanding settlement monies are paid in full, transfer to be credited by the Government toward the Settlement Amount (or if on a weekend or holiday, the next United States business day) (each such day, a "Payment Date") pursuant to the schedule referenced above until the remaining Settlement Amount is paid in full, (unless the number of payments, final payment date or final payment amount is reduced or the final payment date accelerated by the provisions of this Paragraph 1); (d) to provide security as to the entire \$125,000.00 payment, King shall sign a Confession of Judgment (Pursuant to North Carolina Rules Civil Procedure, Rule 68) for the amount of \$125,000.00 plus interest which may be docketed upon her failure to timely pay the agreed upon payment amounts is reflected herein and her failure to cure such non-payment within 30 days;. Interest payable to the Government shall accrue at an annual rate of 2.75%, and on each Payment Date all interest, computed as 90 days (or, if the first payment, since the Effective Date)/365 (or, 366 during a calendar "leap" year) times 110,000.00 times .0275, shall be deemed immediately due and payable. Prepayment of any portion of the Settlement Amount is allowed. Interest, as computed by the provisions of Paragraph 1, shall also be due and payable on the date of any pre-payment. Upon any default by King of the terms contained in Paragraph 1 or any other terms of this Agreement, the Government shall have the unconditioned right to accelerate payment and require that the full Settlement Amount then-outstanding be immediately due and payable.

2. Subject to the exceptions in Paragraph 4 (concerning excluded claims), and conditioned upon King's full payment of the Settlement Amount, the State of North Carolina releases Lisa King Hodge and Rehoboth Consulting Agency from any civil or administrative monetary claim the State of North Carolina has for the Covered Conduct that is described above

under the North Carolina Medical Assistance Provider Fraud Claims Act, N.C.G.S. '108A-70.10, et seq.; the North Carolina False Claims Act, N.C.G.S. § 1-605, et seq.; or the common law theories of payment by mistake, unjust enrichment, and fraud.

3. Default. In the event that King, either personally or through Rehoboth Consulting Agency, fails to pay any amount as provided in Paragraph 1, above, within five (5) business days of the date upon which such payment is due, King shall be in Default of its payment obligations ("Default"). The State of North Carolina will provide written notice of the Default, and King shall have an opportunity to cure such Default within five (5) business days from the date of the receipt of the notice. Notice of Default will be delivered to King, or to such representative as King shall designate in advance in writing. If King fails to cure the Default within five (5) business days of receiving the Notice of Default, the remaining unpaid balance of the Settlement Amount shall become immediately due and payable, and interest shall accrue at the rate of 12% per annum compounded daily from the date of Default on the remaining unpaid total (principal, balance and interest due). King hereby consents to a Consent Judgment, in the event of such Default in the amount of the unpaid balance, and the State of North Carolina, at its sole option, may: (a) offset the remaining unpaid balance from any amounts due and owing to King by any department, agency, or agent of the State of North Carolina at the time of the Default; or (b) exercise any other rights granted by law or in equity, including the option of referring such matters for private collection. King agrees not to contest any offset imposed and not to contest any collection action undertaken by the State of North Carolina pursuant to this Paragraph, either administratively or in any state or federal court. King shall pay the State of North Carolina all

reasonable costs of collection and enforcement under this Paragraph, including attorney's fees and expenses.

4. Notwithstanding the releases given in paragraph 2 of this Agreement, or any other term of this Agreement, the following claims of the Government 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, including 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;

5. King has provided sworn financial disclosure statements ("Financial Statements") to the Government and the Government has relied on the accuracy and completeness of those Financial Statements in reaching this Agreement. King warrants that the Financial Statements were complete and accurate at the time they were provided to the Government. If the Government learns of asset(s) in which King had an interest at the time the Financial Statements were provided to the Government that were not disclosed in the Financial Statements, or if the Government learns of any misrepresentation by King 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 \$50,000 or more, the Government 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 King previously undisclosed. King agrees not to contest any collection action undertaken by the Government pursuant to this provision, and immediately to pay the Government all reasonable costs incurred in such an action, including attorney's fees and expenses.

6. In the event that the Government, pursuant to Paragraph 5 (concerning disclosure of assets) above, opts to rescind this Agreement, King agrees not to plead, argue, or otherwise raise any defenses under the theories of statute of limitations, laches, estoppel, or similar theories, to any civil or administrative claims that (a) are filed by the Government within 60 calendar days of written notification to King that this Agreement has been rescinded, and (b) relate to the Covered Conduct, except to the extent these defenses were available on the date of execution of this Agreement.

7. King waives and shall not assert any defenses King may have to any criminal prosecution or administrative action relating to the Covered Conduct that are specifically limited to 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 Government concerning the characterization of the Settlement Amount for purposes of the Internal Revenue laws, Title 26 of the United States Code.

8. King fully and finally releases the State of North Carolina, its agencies, officers, agents, employees, and servants, from any claims (including attorney's fees, costs, and expenses of every kind and however denominated) that King has asserted, could have asserted, or may assert in the future against the State of North Carolina, and its agencies, employees, servants, and

agents, related to the Covered Conduct and the State of North Carolina's investigation and prosecution thereof.

9. The Settlement Amount shall not be decreased as a result of the denial of claims for payment now being withheld from payment by any Medicaid carrier or intermediary or any state payor, related to the Covered Conduct; and King agrees not to resubmit to any Medicaid carrier or intermediary or any state payor any previously denied claims related to the Covered Conduct, and agrees not to appeal any such denials of claims.

10. King 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 King, its present or former officers, directors, employees, shareholders, and agents in connection with:

- (1) the matters covered by this Agreement;
- (2) the Government's audit(s) and civil investigation(s) of the matters covered by this Agreement;
- (3) King's investigation, defense, and corrective actions undertaken in response to the Government's 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;

(5) the payment King makes to the Government pursuant to this Agreement, including any costs and attorney's fees; and

b. Future Treatment of Unallowable Costs: Unallowable Costs shall be separately determined and accounted for by King, and King shall not charge such Unallowable Costs directly or indirectly to any contracts with the State of North Carolina 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 King or any of its subsidiaries or affiliates to the Medicare, Medicaid, TRICARE, or FEHBP Programs.

c. Treatment of Unallowable Costs Previously Submitted for Payment: Within 90 days of the Effective Date of this Agreement, and to the extent necessary, King agrees to 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 King 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. King agrees that the Government, at a minimum, shall be entitled to recoup from King 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 Government pursuant to the direction of the North Carolina Department of Justice and/or the affected agencies. The Government reserves its rights to disagree with any calculations submitted by King or any of its subsidiaries or affiliates on the effect of inclusion of Unallowable Costs (as defined in this Paragraph) on King 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 Government to audit, examine, or re-examine King's books and records to determine that no Unallowable Costs have been claimed in accordance with the provisions of this Paragraph.

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.

12. King 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.

13. King warrants that she has reviewed her financial situation and that she currently is solvent within the meaning of 11 U.S.C. §§ 547(b)(3) and 548(a)(1)(B)(ii)(I), and shall, to the fullest extent possible, remain solvent during payment to the Government of the Settlement Amount. Further, the Parties warrant that, in evaluating whether to execute this Agreement, they (a) have intended that the mutual promises, covenants, and obligations set forth constitute a

contemporaneous exchange for new value given to King, within the meaning of 11 U.S.C. § 547(c)(1), and (b) conclude that these mutual promises, covenants, and obligations due, in fact, constitute such a contemporaneous exchange. Further, the Parties warrant that the mutual promises, covenants, and obligations set forth herein are intended to and do, in fact, represent a reasonably equivalent exchange of value that is not intended to hinder, delay, or defraud any entity to which King was or became indebted to on or after the date of this transfer, within the meaning of 11 U.S.C. § 548(a)(1).

14. If within 91 days of the Effective Date of this Agreement or of any payment made under this Agreement, King commences, or a third party commences, any case, proceeding, or other action under any law relating to bankruptcy, insolvency, reorganization, or relief of debtors (a) seeking to have any order for relief of King's debts, or seeking to adjudicate King as bankrupt or insolvent; or (b) seeking appointment of a receiver, trustee, custodian, or other similar official for King or for all or any substantial part of King's assets, King agrees as follows:¹

a. King's obligations under this Agreement may not be avoided pursuant to 11 U.S.C. § 547, and King shall not argue or otherwise take the position in any such case, proceeding, or action that: (i) King's obligations under this Agreement may be avoided under 11 U.S.C. § 547; (ii) King was insolvent at the time this Agreement was entered into, or became insolvent as a result of the payment made to the United States; or (iii) the mutual promises,

¹ This clause should only be used if you have a reasonable basis to believe that bankruptcy or similar proceedings are likely. In the event there is reason to believe that any of the events described in this paragraph might take place, consult the Commercial Litigation Branch memorandum entitled "Bankruptcy Law with Special Emphasis on Chapter 11 and Civil Fraud." This memorandum is available on the "Bankruptcy" page of the False Claims Research Site maintained by the Civil Division.

covenants, and obligations set forth in this Agreement do not constitute a contemporaneous exchange for new value given to King.

b. If King'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, the State of North Carolina, at its sole option, may rescind the releases in this Agreement and bring any civil and/or administrative claim, action, or proceeding against King for the claims that would otherwise be covered by the releases provided in Paragraph 2 above. King agrees that (i) any such claims, actions, or proceedings brought by the State of North Carolina are not subject to an "automatic stay" pursuant to 11 U.S.C. § 362(a) as a result of the action, case, or proceedings described in the first clause of this Paragraph, and King shall not argue or otherwise contend that the State of North Carolina's claims, actions, or proceedings are subject to an automatic stay; (ii) King 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 claims, actions, or proceeding that are brought by the United States within 90 calendar days of written notification to King that the releases have been rescinded pursuant to this Paragraph, except to the extent such defenses were available on May 1, 2017²; and (iii) the State of North Carolina has a valid claim against King in an amount no less than \$11,032,908.48, and the State of North Carolina may pursue its claim in the case, action, or proceeding referenced in the first clause of this Paragraph, as well as in any other case, action, or proceeding.

c. King acknowledges that its agreements in this Paragraph are provided in exchange for valuable consideration provided in this Agreement.

² E.g., as noted above, use the Effective Date of the Agreement, the date any underlying action was filed, or the first day covered by any tolling agreement protecting the State of North Carolina's claims, whichever provides the fullest protection for the State of North Carolina.

15. As provided in 31 U.S.C. § 3730(d)(1) or (2), 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 in to this Agreement without any degree of duress or compulsion.

17. 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 Superior Court for the County of Wake, State of North Carolina. 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.

19. The undersigned 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 the Parties' successors, transferees, heirs, and assigns.

22. All parties consent to the Government'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 (the "Effective Date" of this Agreement). Facsimiles of signatures shall constitute acceptable, binding signatures for purposes of this Agreement.

[Settlement Agreement *B Remainder of Page Intentionally Blank*]

THE STATE OF NORTH CAROLINA

DATED: 5/31/2017

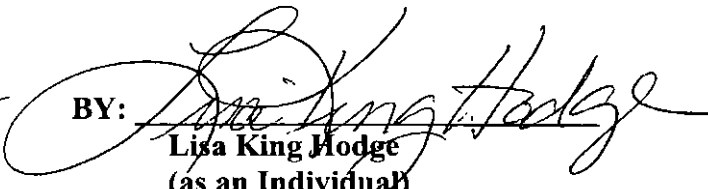
BY: Charles H. Hobgood

Charles H. Hobgood
Special Deputy Attorney General
Director, North Carolina Medicaid Investigations
Division

REHOBOTH CONSULTING AGENCY

DATED: 5/25/17 BY: 
Lisa King Hodge
(as Owner)

LISA KING HODGE

DATED: 5/25/17 BY: 
Lisa King Hodge
(as an Individual)