

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is entered into among the United States of America, acting through the United States Department of Justice and on behalf of the Office of Inspector General (“OIG-HHS”) of the Department of Health and Human Services (“HHS”), the State of North Carolina, acting through the North Carolina Attorney General (collectively, the “Governments” or “Government Plaintiffs”), and George Osei-Bonsu, M.D. (“Dr. Osei-Bonsu”), Palladium Primary Care, P.A., and Premiere Health Care Plus, P.A. (both business entities collectively referred to as “Palladium”) (collectively “Defendants”) (hereafter collectively referred to as “the Parties”), through their authorized representatives.

RECITALS

A. Palladium submitted Medicare and Medicaid claims to the United States and State of North Carolina and received payment from Medicare and Medicaid for the same. Dr. Osei-Bonsu is a medical doctor and at all times relevant was a provider at Palladium. Dr. Osei-Bonsu serves patients in Greensboro, North Carolina and surrounding communities.

B. The Governments contend that the 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. §§ 1395-1395lll (“Medicare”); and the Medicaid Program, 42 U.S.C. §§ 1396-1396w-5 (“Medicaid”).

C. The Governments contend that they have certain civil claims under the North Carolina and Federal False Claims Acts (31 U.S.C. § 3729, *et seq.*; N.C.G.S. § 1-605, *et seq.*) against Defendants arising from their conduct in knowingly submitting or causing to be submitted false or fraudulent claims between January 1, 2015 through May 12, 2020, on behalf of Palladium to both the Medicare Program and North Carolina Medicaid Program for Autonomic Nervous System Testing and Arterial Studies, specifically CPT codes 93922, 95923, 93923, 95943, and

95921, for which such claims had insufficient supporting clinical documentation, were not medically necessary, and/or were otherwise determined to be non-covered under the Medicare and/or North Carolina Medicaid program(s). That conduct is referred to below as the “Covered Conduct”.

D. This Agreement is neither an admission of liability by the Defendants nor a concession by the Governments that their claims are not well founded.

E. The Defendants deny the Governments’ allegations in Paragraph C.

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 Agreement, the Parties agree and covenant as follows:

TERMS AND CONDITIONS

1. The Defendants shall pay to the Governments the amount of three hundred and thirty thousand dollars (\$330,000.00) (“Settlement Amount”), of which one hundred and sixty-five thousand dollars (\$165,000.00) is restitution, plus interest in the amount of 2.75% until paid in full. On the Effective Date of this Agreement, the sum shall constitute a debt due and immediately owing to the Governments. The Settlement Amount shall be paid as followed:

a. No later than thirty (30) days following the Effective Date of this Agreement, Defendants shall pay \$90,000.00 to the Governments towards the Settlement Amount. The balance of the Settlement Amount, \$240,000.00 shall be paid in quarterly installments, with interest at a rate of 2.75%, over a period of one (1) year pursuant to the Installment Payment Schedule attached as Exhibit A.

b. All payments set forth in Paragraph 1(a) shall be made to the Governments by electronic funds transfer pursuant to written instructions to be provided by the United States

Attorney's Office for the Middle District of North Carolina. The entire balance of the Settlement Amount, or any portion thereof, plus any interest accrued on the principal as of the date of any prepayment, may be prepaid without penalty.

c. Defendants shall, upon execution of this Settlement Agreement, each enter into a Consent Judgment which at the Governments' sole discretion can be filed in the United States District Court for the Middle District of North Carolina in the event of default by failing to pay any amount as provided in Paragraph 1 within 10 calendar days of the date on which such payment is due.

2. Subject to the exceptions in Paragraph 4 (concerning excluded claims) below, and conditioned upon the Defendants full compliance with this Agreement, and subject to Paragraph 13 (concerning bankruptcy proceedings commenced within 91 days of the Effective Date of this Agreement or any payment made under this Agreement), the Governments release the Defendants from any civil or administrative monetary claim the Governments have for the Covered Conduct under the False Claims Act, 31 U.S.C. §§ 3729-3733; the Civil Monetary Penalties Law, 42 U.S.C. § 1320a-7a; the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801-3812; the 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. In the event that Defendants default on their payment obligations by failing to pay any amount as provided in Paragraph 1 within 10 calendar days of the date on which such payment is due, OIG-HHS may exclude Defendant from participating in all Federal health care programs until Defendant pays the Settlement Amount and reasonable costs as set forth in Paragraph 1, 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 Defendant wishes to apply for reinstatement, Defendant must submit a written request for reinstatement to OIG-HHS in accordance with the provisions of 42 C.F.R. §§ 1001.3001-.3005. Defendant will not be reinstated unless and until OIG-HHS approves such request for reinstatement.

4. Notwithstanding the release given in paragraphs 2 of this Agreement, or any other term of this Agreement, the following claims of the Governments are specifically reserved and are not released:

- a. Any liability arising under Title 26, U.S. Code (Internal Revenue Code) or State revenue codes;
- 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 Governments (or their agencies) for any conduct other than the Covered Conduct;
- e. Any liability based upon obligations created by this Agreement;
- f. Any liability of individuals (other than individual Defendants as set forth herein).

5. 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.

6. Defendants fully and finally release the United States and the State of North Carolina, their 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 Governments, and their agencies, officers, agents, employees, and servants related to the Covered Conduct and the Governments' investigation and prosecution thereof.

7. The Settlement Amount shall not be decreased as a result of the denial of claims for payment now being withheld from payment by any Medicare contractor (e.g., Medicare Administrative Contractor, fiscal intermediary, carrier) or any state payer (e.g. Medicaid contractors), 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 existing as of the date of this Settlement Agreement.

8. 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. §§ 1395-1395lll-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 Governments' 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 Governments' 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 Governments pursuant to this Agreement,

are unallowable costs for government contracting purposes and under the Medicare Program, Medicaid Program, TRICARE Program, and Federal Employees Health Benefits Program (FEHBP) (hereinafter referred to as Unallowable Costs).

b. Future Treatment of Unallowable Costs: Unallowable Costs shall be separately determined and accounted for by 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 agrees that within 90 days of the Effective Date of this Agreement it shall identify to applicable Medicare and TRICARE fiscal intermediaries, carriers, and/or contractors, 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 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 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.

9. This Agreement is intended to be for the benefit of the Parties only. The Parties do not release any claims against any other person or entity, except to the extent provided for in Paragraph 10 (waiver for beneficiaries' paragraph), below.

10. 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.

11. The 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 for at least 91 days following any payment to the Governments of any portion 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 the 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 the Defendants were or became indebted to on or after the date of this transfer, within the meaning of 11 U.S.C. § 548(a)(1).

12. If within 91 days of the Effective Date of this Agreement or of any payment made under this Agreement, any of the 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 the 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 the 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 the 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 Governments; or (iii) the mutual promises, covenants, and obligations set forth in this Agreement do not constitute a contemporaneous exchange for new value given to the 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 Governments, at their sole option, may rescind the releases in this Agreement and bring any civil and/or administrative claim, action, or proceeding against the Defendants for the claims that would otherwise be covered by the releases provided in Paragraph 2 above. The Defendants agree that (i) any such claims, actions, or proceedings brought by the Governments 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 Governments' 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 statutes of limitations, laches, estoppel, or similar theories, to any such civil or administrative claims, actions, or proceeding that are brought by the Governments within 90 calendar days of written notification to the Defendants that the releases have been rescinded pursuant to this Paragraph, except to the extent such defenses were available on the Effective Date of this Agreement; and (iii) the Governments have a valid claim against the Defendants in an amount no less than \$61,450,860.20 and the Governments 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.

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 it 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 Middle 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.

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 represents 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 Defendants' successors, transferees, heirs, and assigns.

20. All parties consent to the Governments' 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

DATED: 6/17/21

BY: Rebecca A. Mayer
REBECCA MAYER
Assistant United States Attorney
Middle District of North Carolina

DATED: 06/17/21

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

STATE OF NORTH CAROLINA

JOSHUA H. STEIN
NC Attorney General

DATED: _____

BY: _____
F. EDWARD KIRBY, JR.
Director, Medicaid Investigations Division
North Carolina Department of Justice

DR. GEORGE OSEI-BONSU, PALLADIUM PRIMARY CARE, P.A., PREMIERE HEALTH
CARE PLUS, P.A. - DEFENDANTS

DATED: _____

BY: _____
DR. GEORGE OSEI-BONSU
Individually and as Owner of Palladium

THE UNITED STATES OF AMERICA

DATED: _____

BY: _____

REBECCA MAYER

Assistant United States Attorney
Middle 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

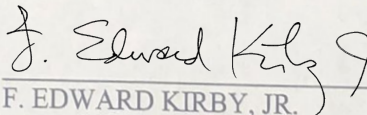
STATE OF NORTH CAROLINA

JOSHUA H. STEIN

NC Attorney General

DATED: 6/7/2021

BY: _____

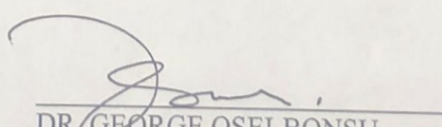


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Director, Medicaid Investigations Division
North Carolina Department of Justice

DR. GEORGE OSEI-BONSU, PALLADIUM PRIMARY CARE, P.A., PREMIERE HEALTH
CARE PLUS, P.A. - DEFENDANTS

DATED: 06/04/2021 BY: _____


DR. GEORGE OSEI-BONSU

Individually and as Owner of Palladium