

## SETTLEMENT AGREEMENT

### I. PARTIES

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) (collectively the "United States"); and Dr. Irina Benaur (hereafter referred to as "the Parties"), through their authorized representatives.

### II. PREAMBLE

As a preamble to this Agreement, the Parties agree to the following:

- A. Dr. Benaur is a psychiatrist who previously had a practice located on Bustleton Avenue in Philadelphia, Pennsylvania. She is currently employed at a hospital.
- B. The United States contends that Dr. Benaur submitted or caused to be submitted claims for payment to the Medicare Program (Medicare), Title XVIII of the Social Security Act, 42 U.S.C. § 1395-1395ggg.
- C. The United States contends that it has certain civil claims, as specified in Paragraph 2, below, against Dr. Benaur for engaging in the following conduct during the period from May 2000 to December 2002: Billing Medicare for psychotherapy services provided by an unlicensed person, and maintaining falsified records in patient medical files (hereinafter referred to as the "Covered Conduct").
- D. This Agreement is neither an admission by Dr. Benaur of the contentions of the United States set forth in paragraph C nor a concession by the United States that its claims are not well founded.

E. To avoid the delay, uncertainty, inconvenience, and expense of protracted litigation of the above claims, the Parties reach a full and final settlement pursuant to the Terms and Conditions below.

### III. TERMS AND CONDITIONS

1. Dr. Benaour agrees to pay to the United States \$210,000.00 (the "Settlement Amount"). Dr. Benaour agrees to pay the Settlement Amount by electronic funds transfer pursuant to written instructions to be provided by the United States Attorney's Office. Dr. Benaour agrees to make this electronic funds transfer no later than no later than ten business days after the Effective Date of this Agreement.

2. Subject to the exceptions in Paragraph 4, below, in consideration of the obligations of Dr. Benaour set forth in this Agreement, conditioned upon Dr. Benaour's full payment of the Settlement Amount, the United States (on behalf of itself, its officers, agents, agencies, and departments) agrees to release Dr. Benaour from any civil or administrative monetary claim the United States has or may have 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; and the common law theories of payment by mistake, unjust enrichment, and fraud, for the Covered Conduct.

3. In consideration of the obligations of Dr. Benaour set forth in this Agreement and the Integrity Agreement entered into between OIG-HHS and Dr. Benaour, conditioned upon Dr. Benaour's full payment of the Settlement Amount, the OIG-HHS agrees to release and refrain from instituting, directing, or maintaining any administrative action seeking exclusion from Medicare, Medicaid, and other Federal health care programs (as defined in 42

U.S.C. § 1320a-7b(f)) against Dr. Benaur under 42 U.S.C. § 1320a-7a (Civil Monetary Penalties Law) or 42 U.S.C. § 1320a-7(b)(7) (permissive exclusion for fraud, kickbacks, and other prohibited activities) for the Covered Conduct, except as reserved in Paragraph 4, below, and as reserved in this Paragraph. The OIG-HHS expressly reserves all rights to comply with any statutory obligations to exclude Dr. Benaur from Medicare, Medicaid, or other Federal health care programs under 42 U.S.C. § 1320a-7(a) (mandatory exclusion) based upon the Covered Conduct. Nothing in this Paragraph precludes the OIG-HHS from taking action against entities or persons, or for conduct and practices, for which claims have been reserved in Paragraph 4, below.

4. Notwithstanding any term of this Agreement, specifically reserved and excluded from the scope and terms of this Agreement as to any entity or person (including Dr. Benaur) are the following:
  - a. Any civil, criminal, or administrative 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;
  - e. Any liability based upon such obligations as are created by this Agreement;
  - f. Any liability for express or implied warranty claims or other claims for defective or deficient products or services, including quality of goods and services;

g. Any liability for failure to deliver goods or services due;

5. Dr. Benaour has provided a sworn financial disclosure statement to the United States ("Financial Statement"), and the United States has relied on the accuracy and completeness of that Financial Statement in reaching this Agreement. Dr. Benaour warrants that the Financial Statement is complete, accurate, and current as of the date submitted. In the event the United States learns of asset(s) in which Dr. Benaour had an interest at the time of this Agreement that were not disclosed in the Financial Statement, or in the event the United States learns of any misrepresentation by Dr. Benaour on, or in connection with, the Financial Statement, and in the event such nondisclosure or misrepresentation increases the estimated net worth set forth on the Financial Statements by \$10,000.00 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 Dr. Benaour previously undisclosed. Dr. Benaour agrees not to contest any collection action undertaken by the United States pursuant to this provision.

6. In the event that the United States, pursuant to Paragraph 5, above, opts to rescind this Agreement, Dr. Benaour 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 United States within 30 calendar days of written notification to Dr. Benaour that this Agreement has been rescinded, and (b) relate to the Covered Conduct, except to the extent these defenses were available on May 18, 2006.

7. Dr. Benaour waives and shall not assert any defenses Dr. Benaour may have to any criminal prosecution or administrative action relating to the Covered Conduct, which defenses may be based in whole or in part on a contention that, under the Double Jeopardy

Code.

8. Dr. Benaur fully and finally releases the United States, its agencies, employees, servants, and agents from any claims (including attorney's fees, costs, and expenses of every kind and however denominated) that Dr. Benaur has asserted, could have asserted, or may assert in the future against the United States, its agencies, employees, servants, and agents, related to the Covered Conduct and the United States' 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 Medicare carrier or intermediary or any state payer, related to the Covered Conduct; and Dr. Benaur agrees not to resubmit to any Medicare carrier or intermediary or any state payer any previously denied claims related to the Covered Conduct, and agrees not to appeal any such denials of claims.

10. Dr. Benaur agrees to the following:

a. Unallowable Costs Defined: that all costs (as defined in the Federal Acquisition Regulation, 48 C.F.R. § 3 1.205-47; and in Titles XVIII and XIX of the Social Security Act, 42 U.S.C. § 1395-1395ggg and 1396-1396v; and the regulations and official program directives promulgated thereunder) incurred by or on behalf of Dr. Benaur, in connection with the following shall be "unallowable costs" on government contracts and under

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

the Medicare Program, Medicaid Program, TRICARE Program, and Federal Employees Health Benefits Program (FEHBP):

- (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) Dr. Benaur's investigation, defense, and corrective actions undertaken in response to the United States' audit(s) and civil and any criminal investigation(s) in connection with the matters covered by this Agreement (including attorneys fees);
- (4) the negotiation and performance of this Agreement;
- (5) the payment Dr. Benaur makes to the United States pursuant to this Agreement, including any costs and attorneys fees; and
- (6) the negotiation of, and obligations undertaken pursuant to the Integrity Agreement to:
  - (i) retain an independent review organization to perform annual reviews as described in Section III of the Integrity Agreement; and
  - (ii) prepare and submit reports to the OIG-HHS.

However, nothing in this Paragraph 10 that may apply to the obligations undertaken pursuant to the Integrity Agreement affects the status of costs that are not allowable based on any other authority applicable to Dr. Benaur. (All costs described or set forth in this Paragraph 10 are hereafter "unallowable costs.")

b. Future Treatment of Unallowable Costs: These unallowable costs shall be separately determined and accounted for by Dr. Benaur, and Dr. Benaur shall not charge such unallowable costs directly or indirectly to any contracts with the United States or any State

Medicaid program, or seek payment for such unallowable costs through any cost report, cost statement, information statement, or payment request submitted by Dr. Benaur to the Medicare, Medicaid, TRICARE, or FEHBP Programs.

c. Treatment of Unallowable Costs Previously Submitted for

Payment: Dr. Benaur further agrees that within 90 days of the Effective Date of this Agreement she shall identify to applicable Medicare and TRICARE fiscal intermediaries, carriers, and/or contractors, and Medicaid and FEHBP fiscal agents, any unallowable costs (as defined in this Paragraph) included in payments previously sought from the United States, or any State Medicaid program, including, but not limited to, payments sought in any cost reports, cost statements, information reports, or payment requests already submitted by Dr. Benaur, and shall request, and agree, that such cost reports, cost statements, information reports, or payment requests, even if already settled, be adjusted to account for the effect of the inclusion of the unallowable costs. Dr. Benaur agrees that the United States, at a minimum, shall be entitled to recoup from Dr. Benaur 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 Dr. Benaur on the effect of inclusion of unallowable costs (as defined in this Paragraph) on Dr. Benaur's cost reports, cost statements, or information reports. Nothing in this Agreement shall constitute a waiver of the rights of the United States to examine or reexamine the unallowable costs described in this Paragraph.

11. Dr. Benaour agrees to cooperate fully and truthfully with the United States' investigation of individuals and entities not released in this Agreement for the Covered Conduct and shall furnish to the United States, upon reasonable request, all nonprivileged documents and records in her possession, custody, or control relating to the Covered Conduct.

12. 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 13, below.

13. Dr. Benaour 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.

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

15. Dr. Benaour represents that this Agreement is freely and voluntarily entered into without any degree of duress or compulsion whatsoever.

16. This Agreement is governed by the laws of the United States. The Parties agree that the exclusive jurisdiction and venue for any dispute arising between and among the Parties under this Agreement is the United States District Court for the Eastern District of Pennsylvania, except that disputes arising under the Integrity Agreement shall be resolved exclusively under the dispute resolution provisions in the Integrity Agreement.

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

18. The United States signatories represent that they are signing this Agreement in their official capacities and that they are authorized to execute this Agreement.

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

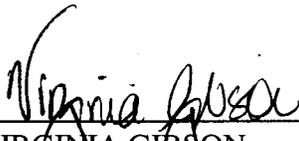
20. This Agreement is binding on Dr. Benaur's successors, transferees, heirs, and assigns.

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

22. This Agreement is effective on the date of signature of the last signatory to the Agreement (Effective Date of this Agreement). Facsimiles of signatures shall constitute acceptable, binding signatures for purposes of this Agreement.

THE UNITED STATES OF AMERICA

DATED: 1/24/07

BY:   
VIRGINIA GIBSON  
Assistant United States Attorney  
Chief, Civil Division  
U.S. Attorney's Office  
Eastern District of Pennsylvania  
615 Chestnut Street  
Suite 1250  
Philadelphia, PA 19106

DATED: 1/24/07

BY:   
MARILYN S. MAY  
Assistant United States Attorney  
Chief, Civil Division  
U.S. Attorney's Office  
Eastern District of Pennsylvania  
615 Chestnut Street  
Suite 1250  
Philadelphia, PA 19106

DATED: \_\_\_\_\_

BY: \_\_\_\_\_  
GREGORY E. DEMSKE  
Assistant Inspector General for  
Legal Affairs  
Office of Counsel to the  
Inspector General  
Office of Inspector General  
United States Department of  
Health and Human Services

THE UNITED STATES OF AMERICA

DATED: \_\_\_\_\_

BY: \_\_\_\_\_

VIRGINIA GIBSON  
Assistant United States Attorney  
Chief, Civil Division  
U.S. Attorney's Office  
Eastern District of Pennsylvania  
615 Chestnut Street  
Suite 1250  
Philadelphia, PA 19106

DATED: \_\_\_\_\_

BY: \_\_\_\_\_

MARILYN S. MAY  
Assistant United States Attorney  
Chief, Civil Division  
U.S. Attorney's Office  
Eastern District of Pennsylvania  
615 Chestnut Street  
Suite 1250  
Philadelphia, PA 19106

DATED: 1/11/07

BY: 

GREGORY E. DEMSKE  
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

DR. BENAUR - DEFENDANT

DATED: 1-05-07

BY: *Irina V. Bena*  
DR. IRINA BENAUR

DATED: \_\_\_\_\_

BY: \_\_\_\_\_  
ERIC SITARCHUK  
Counsel for Dr. Bena

DR. BENAUR - DEFENDANT

DATED: \_\_\_\_\_

BY: \_\_\_\_\_  
DR. IRINA BENAUR

DATED: 1/5/07

BY:   
ERIC SITARCHUK  
Counsel for Dr. Benaur