

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”) (collectively, the “United States”), White River Diagnostic Clinic, PLC (“WRDC”), Margaret Kuykendall, and Seth Barnes (collectively, the “Defendants”); and Jasjit Walia and Preet Randhawa (collectively, “Relators”) (hereafter collectively referred to as “the Parties”), through their authorized representatives arising from the action filed by Relators captioned, *United States ex rel. Walia v. [SEALED]*, Case No. [SEALED] (the “Civil Action”).

RECITALS

A. WRDC was a healthcare system in Arkansas. It registered with the state as a limited liability company in 1995.

B. Margaret Kuykendall and Seth Barnes are physicians who were previously affiliated with WRDC.

C. On March 5, 2018, Relators filed the Civil Action pursuant to the qui tam provisions of the False Claims Act, 31 U.S.C. § 3730(b).

D. The United States contends that it has certain civil and administrative claims against Defendants arising from the following alleged conduct. The actions, transactions, occurrences, and alleged wrongdoing set forth in this Paragraph are herein collectively referred to as the “Covered Conduct.”

i. 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. §§ 1395-1395lll (“Medicare”).

ii. Specifically, the United States contends that it has certain civil claims against Defendants arising from the overbilling of radiopharmaceuticals used in cardiac stress tests during the period from 2013 through 2017.

iii. In Medicare Jurisdictions H and L (which cover Arkansas, Colorado, Delaware, District of Columbia, Louisiana, Maryland, Mississippi, New Jersey, New Mexico, Oklahoma, Pennsylvania, and Texas), health care providers are required to bill Medicare for diagnostic radiopharmaceuticals, including sestamibi and tetrofosmin, based on their acquisition cost. 42 U.S.C. § 1395kk-1(a)(1), (a)(4)(A); Pub. L. 108-173, title III, § 303(h), Dec. 8, 2003, 117 Stat. 2253.

iv. The United States contends that from January 2013 through August 2017, Defendants submitted or caused to be submitted claims to Medicare that sought reimbursement for radiopharmaceuticals above the actual acquisition cost incurred by Defendants, resulting in excess payments by Medicare.

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. Relators claim entitlement under 31 U.S.C. § 3730(d) to a share of the proceeds of this Settlement Agreement and to Relators' 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 Agreement, the Parties agree and covenant as follows.

TERMS AND CONDITIONS

1. Defendants shall pay to the United States the total sum of two hundred thirty-four thousand four hundred ninety dollars (\$234,490) (the "Settlement Amount"), of which one hundred seventeen thousand two hundred forty-five dollars (\$117,245) is restitution, within thirty

days of the Effective Date of this Agreement. Payment to the United States shall be made by electronic funds transfer pursuant to written instructions to be provided by the Civil Division of the United States Department of Justice.

2. Conditioned upon the United States receiving the Settlement Amount and as soon as feasible after receipt, the United States shall pay forty-one thousand thirty-five dollars and seventy-five cents (\$41,035.75) ("Relators' Share") to Relators by electronic funds transfer pursuant to instructions to be provided by the undersigned Relators' counsel.

3. Within thirty days after the Effective Date of this Agreement, Defendants shall pay to Relators forty thousand dollars (\$40,000) by electronic funds transfer pursuant to wiring instructions to be provided by Relators' counsel as full and complete payment of Relators' attorneys' fees, costs, and expenses pursuant to 31 U.S.C. § 3730(d).

4. Subject to the exceptions in Paragraph 6 (concerning reserved claims) below, and upon the United States' receipt of the Settlement Amount, 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.

5. Subject to the exceptions in Paragraph 6 below, and upon the Relators' receipt of the Relators' Share as described in Paragraph 2, Relators, for themselves and for their heirs, successors, attorneys, agents, and assigns, release Defendants from any civil monetary claim the Relators have on behalf of the United States for the Covered Conduct under the False Claims Act, 31 U.S.C. §§ 3729-3733.

6. Notwithstanding the releases given in Paragraphs 4 and 5 of this Agreement, or any other term of this Agreement, the following claims and rights 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 or enforcement right, 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;
- g. Any liability for express or implied warranty claims or other claims for defective or deficient products or services, including quality of goods and services;
- h. Any liability for failure to deliver goods or services due; and
- i. Any liability for personal injury or property damage or for other consequential damages arising from the Covered Conduct.

7. Relators and their 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 Relators' receipt of the Relators' Share, Relators and their 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.

8. Conditioned on Relators' receipt of the payments described in Paragraphs 2 and 3 above, Relators, for themselves, and for their heirs, successors, attorneys, agents, and assigns, release Defendants, and any officers, agents, and employees, from any liability to Relators arising from the filing of the Civil Action, or under 31 U.S.C. § 3730(d) for expenses or attorneys' fees and costs.

9. Defendants waive and shall not assert any defenses they 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.

10. Defendants fully and finally release the United States, its agencies, officers, agents, employees, and servants, 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 United States, its agencies, officers, agents, employees, and servants, related to the Covered Conduct or the United States' investigation or prosecution thereof.

11. Defendants fully and finally release Relators, their attorneys, and their respective heirs, successors, assigns and agents, for all time and to the fullest extent allowed by law, 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 Relators related to the Covered Conduct or the investigation and prosecution of the Civil 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, agree not to appeal any such denials of claims, and agree 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. §§ 1395-1395lll 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;
- (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 attorneys' 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 Relators, including costs and attorneys' 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 in nonreimbursable cost centers 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 ninety days of the Effective Date of this Agreement it shall identify to applicable Medicare and TRICARE fiscal intermediaries, carriers, and 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 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. No Waiver: 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. 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 15 (waiver for beneficiaries paragraph) below.

15. 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.

16. Upon receipt of the payments described in Paragraphs 1 and 3 above, Relators and the United States shall promptly sign and file in the Civil Action a Joint Stipulation of Dismissal of the claims against Defendants pursuant to Rule 41(a)(1).

17. Except as set forth in Paragraph 3, each Party shall bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

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

19. This Agreement is governed by the laws of the United States.

20. The exclusive jurisdiction and venue for any dispute relating to this Agreement is the United States District Court for the District of Columbia. 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.

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

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

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

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


24. This Agreement is binding on Relators' successors, transferees, heirs, and assigns.

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

26. 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.

<REMAINDER OF PAGE LEFT BLANK; SIGNATURE PAGES TO FOLLOW>

UNITED STATES OF AMERICA

DATED: 07/16/2024 BY: 
James Nealon
Trial Attorney, Commercial Litigation Branch
Department of Justice

DATED: _____ BY: _____
STEPHEN DEGENARO Digitally signed by STEPHEN DEGENARO
Date: 2024.07.16 09:11:01 -04'00'
Stephen DeGenaro
John C. Truong
Assistant United States Attorneys
U.S. Attorney's Office for the District of Columbia

DATED: _____ BY: _____
SUSAN GILLIN Digitally signed by SUSAN GILLIN
Date: 2024.07.16 08:52:09 -04'00'
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

DEFENDANTS

DATED: 7/8/2024

BY: DocuSigned by:
Margaret Kuykendall
32A0927204054C0

White River Diagnostic Clinic, PLC

DATED: 7/8/2024

BY: DocuSigned by:
Margaret Kuykendall
32A0927204054C0

Margaret Kuykendall

DATED: 7/2/2024

BY: DocuSigned by:
Dr. Seth Barnes
4A2F7C49EA74D8

Seth Barnes

DATED: 07.01.2024

BY: Conner Eldridge

Conner Eldridge
Counsel for White River Diagnostic Clinic, PLC, Margaret Kuykendall, and Seth Barnes

RELATORS

DATED: 07/01/2024

BY: Jasjit Walia

DATED: 7/1/2024

BY: Preet Randhawa

Preet Randhawa

DATED: _____

BY: **Henry F. Furst**
Henry F. Furst
Daniel R. Miller
Jonathan Z. DeSantis
W. Scott Simmer

Digitally signed by Henry F. Furst
DN: cn=Henry F. Furst, o, ou,
email=hf1111@aol.com, c=US
Date: 2024.07.01 11:42:17 -04'00'

Attorneys for Relators