

## SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is entered into among the United States of America, acting through the United States Department of Justice and its Drug Enforcement Administration (“DEA”) (collectively, the “United States”); the Commonwealth of Massachusetts, acting through the Medicaid Fraud Division of the Office of Attorney General (the “Commonwealth”); and Hooshang Poor, M.D. (“Dr. Poor”), in connection with Dr. Poor’s assigned DEA registration number AD3251078. The United States, the Commonwealth, and Dr. Poor are together referred to herein as the “Parties.”

### RECITALS

A. Dr. Poor is a geriatric medicine physician who operates a medical practice with an administrative office in his home in Newton, Massachusetts.

B. Each DEA registrant is required to conduct its operations in accordance with the Controlled Substances Act, 21 U.S.C. §§ 801, *et seq.* (the “CSA”), and the regulations promulgated thereunder.

C. The DEA is the Department of Justice component agency primarily responsible for enforcing the CSA and is vested with the responsibility of investigating violations of the CSA.

D. The United States Attorney General, through the United States Attorney’s Office, has primary authority to bring civil actions to enforce the CSA. *See* 21 U.S.C. § 871 and 28 C.F.R. § 0.55(c).

E. The Massachusetts Consumer Protection Act, Mass. Gen. Laws c. 93A, § 2, prohibits unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce.

F. The Massachusetts Attorney General’s Office has promulgated regulations

identifying specific practices that constitute unfair or deceptive acts or practices in violation of the Massachusetts Consumer Protection Act. Under 940 C.M.R. § 3.16(3), an act or practice violates Mass. Gen. Laws. c. 93A if “[i]t fails to comply with existing statutes, rules, regulations or laws, meant for the protection of the public’s health, safety, or welfare promulgated by the Commonwealth or any political subdivision thereof intended to provide the consumers of this Commonwealth protection.”

G. The Massachusetts Attorney General has authority to bring civil actions for violations of the Massachusetts Consumer Protection Act. *See* Mass. Gen. Laws. c. 93A, § 4.

I. Pursuant to statutory authority, the Massachusetts Department of Public Health maintains an electronic system “to monitor the prescribing and dispensing of all [S]chedule II to V, inclusive, controlled substances and certain additional drugs by all professionals licensed to prescribe or dispense such substances.” Mass. Gen. Laws c. 94C, § 24A(a)(1). This system is known as MassPAT or the Prescription and Monitoring Program (“PMP”).

J. Effective October 15, 2016, in Massachusetts, prescribers are required to check MassPAT each time they issue a prescription for a Schedule II or Schedule III drug or a benzodiazepine and the first time they issue a prescription for a Schedule IV or V drug to a patient. Mass. Gen. Laws c. 94C, § 24A(c); 105 C.M.R. 700.012(G).

K. The United States and the Commonwealth contend that they each have certain civil claims against Dr. Poor arising from the following conduct during the period from January 5, 2019 to June 5, 2020, which shall be referred to below as the “Covered Conduct”:

1. From January 5, 2019 to June 5, 2020, Dr. Poor issued fifty-one prescriptions to MassHealth patients residing inpatient at Stonehedge Rehabilitation and Skilled Nursing Center (“Stonehedge”), a long-term care facility located in West Roxbury, Massachusetts. Twenty-eight of those prescriptions were for Schedule II drugs;

the remaining twenty-three prescriptions were either the first prescription Dr. Poor had issued to that patient for Schedule IV or V drugs, or a refill of the first prescription Dr. Poor had issued to that patient for Schedule IV or V drugs.

2. Even though many of the patients for whom he issued a prescription had histories of substance use disorder, Dr. Poor did not review the patient prescription histories in MassPAT on any occasion before he issued those prescriptions.

3. The United States and the Commonwealth contend that by issuing prescriptions for MassHealth patients at Stonehedge without first reviewing the patient's prescription history in MassPAT, Dr. Poor issued prescriptions outside the "usual course of professional practice" in violation of 21 C.F.R. § 1306.04, and thereby in violation of 21 U.S.C. §§ 829(a) and 842(a)(1).

4. The United States and the Commonwealth contend that by issuing prescriptions for MassHealth patients at Stonehedge without first reviewing the patient's prescription history in MassPAT, which is a statutory requirement meant for the protection of the public's health, safety, or welfare, Dr. Poor violated the Massachusetts Consumer Protection Act, Mass. Gen. Laws c. 93A, § 2(a)

L. Dr. Poor admits, acknowledges, and accepts responsibility for the foregoing facts in Recital K(1)-(2).

M. Dr. Poor agrees not to make or permit to be made any public statement denying, directly or indirectly, any of the Covered Conduct or creating the impression that the Covered Conduct is without factual basis. Nothing in this paragraph affects Dr. Poor's: (i) testimonial obligations; or (ii) right to take legal or factual positions in litigation or other legal proceedings in which the United States and/or the Commonwealth is not a party.

In consideration of the mutual promises and obligations of this Settlement Agreement, the Parties agree and covenant as follows:

TERMS AND CONDITIONS

1. As set forth below, Dr. Poor shall pay to the United States and the Commonwealth the sum of \$100,000.00 (“Settlement Amount”), none of which is restitution, plus interest at a rate of 1.875% per annum from February 3, 2022 and continuing until and including the date of payment (the “Settlement Amount”). Dr. Poor shall pay the United States \$50,000.00 (“United States Settlement Amount”) and the Commonwealth \$50,000.00 (“Commonwealth Settlement Amount”). Dr. Poor shall pay the United States \$15,000.00 and the Commonwealth \$15,000.00 within seven (7) days of the Effective Date of this Agreement. The remaining amount of \$35,000.00 to the United States and \$35,000.00 to the Commonwealth shall be paid within seven (7) months of the Effective Date of this Agreement. Dr. Poor shall pay the United States Settlement Amount and the Commonwealth Settlement Amount by electronic funds transfer pursuant to written instructions provided by the United States Department of Justice and the Medicaid Fraud Division of the Massachusetts Office of the Attorney General. The Commonwealth is designating the Commonwealth Settlement Amount to the Commonwealth’s Opioid Recovery and Remediation Trust Fund (Mass. Gen. Laws c. 10, § 35000).

2. Subject to the exceptions in Paragraph 4 (concerning excluded claims) below and conditioned upon Dr. Poor’s full payment of the Settlement Amount, the United States releases Dr. Poor from any civil or administrative monetary claim the United States has for the Covered Conduct under the CSA, 21 U.S.C. §§ 801.

3. Subject to the exceptions in Paragraph 4 (concerning excluded claims) below and conditioned upon Dr. Poor’s full payment of the Settlement Amount, the Commonwealth

releases Dr. Poor from any civil or administrative monetary claim the Commonwealth has for the Covered Conduct.

4. Notwithstanding the releases given in paragraphs 2 and 3 of this Agreement, or any other term of this Agreement, the following claims of the United States and the Commonwealth 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 the Commonwealth (or their agencies) for any conduct other than the Covered Conduct; and
- e. Any liability based upon obligations created by this Agreement.

5. Dr. Poor fully and finally releases the United States and the Commonwealth, as well as their respective agencies, officers, agents, employees, and servants, from any claims (including for attorney's fees, costs, and expenses of every kind and however denominated) that Dr. Poor has asserted, could have asserted, or may assert in the future against the United States, the Commonwealth, and their respective agencies, officers, agents, employees, and servants related to the Covered Conduct and the United States' and Commonwealth's investigation and prosecution thereof.

6. The United States reserves the right to seek injunctive relief pursuant to 21 U.S.C. § 843(f) and the Commonwealth reserves the right to seek injunctive relief pursuant to Mass. Gen. Laws c. 93A, § 4 if Dr. Poor fails to pay the Settlement Amount.

7. Dr. Poor waives and shall not assert any defenses Dr. Poor 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.

8. 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.

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

10. 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.

11. 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 District of Massachusetts. 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.

12. This Agreement constitutes the complete agreement between the Parties.

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

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

15. This Agreement is binding on Dr. Poor's successors, transferees, heirs, and assigns.

16. This Agreement may be modified only in a writing signed by or on behalf of all Parties to this Agreement.

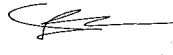
17. All parties consent to the United States' and Commonwealth's disclosure of this Agreement, and information about this Agreement, to the public.

18. 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: \_\_\_\_\_

BY:



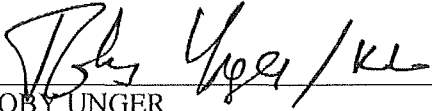
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PANICH  
Date: 2022.05.31  
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EVAN PANICH  
Assistant United States Attorney  
United States Attorney's Office for the  
District of Massachusetts

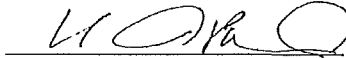



THE COMMONWEALTH OF MASSACHUSETTS

DATED: 5/31/22

  
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TOBY UNGER  
Chief, Medicaid Fraud Division  
Office of the Attorney General  
Commonwealth of Massachusetts

HOOSHANG POOR, M.D.

DATED: 5/23/22 BY:   
HOOSHANG POOR, M.D.

DATED: 5/26/22 BY:   
MARK SMITH  
JESSICA CONKLIN  
Counsel for Hooshang Poor, M.D.