

## **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 United States); and Defendants Jackson & Coker LocumTenens, LLC (“JCLT”) and Edward William Salko, D.O. (Dr. Salko) (collectively referred to hereinafter as Defendants), through their authorized representatives. The United States and Defendants are hereinafter referred to as the Parties.

### **FACTUAL RECITALS**

A. Medicare is a federal health care benefit program that provides health insurance to elderly and disabled citizens in the United States. Medicare provides health insurance coverage for eligible health care services, including hospital services, outpatient medical services, medical equipment, prescription drug costs, and certain types of diagnostic laboratory testing.

B. Between August 2020 and September 2021, (hereafter the “relevant time period,”) Defendant Dr. Salko was a board-certified physician of osteopathic medicine, licensed to practice in Washington, Arizona, California, Nevada, and Utah, and a participant in the Medicare program. To enroll and participate in the Medicare program, Dr. Salko was required to submit a Medicare Enrollment Application and must certify and re-certify that he would meet all requirements of the Medicare program. In order to participate in the Medicare program, Defendant Dr. Salko certified and re-certified that he understood that he was required to comply, and would comply, with Medicare laws, regulations, and program instructions, including the Anti-Kickback Statute, which prohibits a physician from soliciting or receiving payment or remuneration in return for referring a product or service. Defendant Dr. Salko

further certified that he would “not knowingly present or cause to be presented a false or fraudulent claim for payment by Medicare.”

C. Medicare covers only durable medical equipment (DME) that is reasonable and necessary for the treatment of illness or injury or to improve the functioning of a beneficiary’s malformed body member. To be considered reasonable and necessary, DME must be ordered by a physician or other licensed provider and must be expected to make a meaningful contribution to the treatment of the patient’s illness or injury or to the improvement of the patient’s malformed body member. Orthotic braces – such as ankle, shoulder, and back braces – are a form of DME.

D. The Centers for Medicare and Medicaid Services (CMS), which administers the Medicare program, and its Medicare Administrative Contractors, which are responsible for processing claims and promulgating coverage determinations in their designated geographic areas, have promulgated additional coverage requirements concerning braces, including, in some cases, requiring that the provider have a face-to-face visit with the patient before Medicare will reimburse for an orthotic brace ordered by the provider. During the relevant time period, CMS required a face-to-face visit and physical examination by the provider in order for knee and lumbar brace prescriptions to be reimbursable by Medicare.

E. Similarly, Medicare covers diagnostic laboratory testing only if such test is reasonable and necessary for the diagnosis or treatment of illness or injury. To be considered reasonable and medically necessary, and therefore eligible for Medicare reimbursement, clinical laboratory tests must be ordered by a physician who is treating the beneficiary for a specific medical problem, and the test results must be promptly used by the treating physician in the course of that treatment. Tests not ordered by the physician who is treating the beneficiary are explicitly excluded from reimbursement under Medicare.

F. JCLT is and, during the relevant time period, was a healthcare staffing company that sourced physicians and other medical professionals for medical providers based on client specifications. Physicians and other medical professionals that JCLT sources for clients are independent contractors and not employees of JCLT and are contractually responsible for complying with applicable laws, rules and regulations and exercising medical judgement in accordance with applicable standards of care. JCLT does not submit or directly facilitate the submission of any bills to Medicare.

G. In or around April 2021, JCLT contacted Dr. Salko about a new telemedicine opportunity wherein Dr. Salko would be asked to prescribe DME medical supplies. JCLT indicated that the opportunity would require Dr. Salko to authorize and prescribe requested DME items after electronically reviewing a patient's medical chart. The opportunity presented by JCLT further advised that while Dr. Salko would be responsible for authorizing and prescribing medical supplies, the patient's "medical history and qualification" would already be completed "prior to the consultation with the patient", and that Dr. Salko only needed to have a video call or phone call with the patient if he deemed it necessary. JCLT noted that the engagement required the physician to be an enrolled Medicare provider. JCLT indicated that Dr. Salko was expected to complete each order within 12-24 hours of receiving it electronically, and that for each order completed, JCLT would pay Dr. Salko \$15 per consult. The following day, JCLT offered Dr. Salko an additional opportunity with a different client. JCLT noted that this additional opportunity was "similar to the DME opportunity in the fact that [Dr. Salko] would not need to see the patients or speak to them, just review the chart and approve it," and that "consults are again about 3 minutes each." While the April 14, 2021 opportunity did not come to fruition, Dr. Salko accepted the DME opportunity offered by JCLT on April 13, 2021, and thereafter began

working, through JCLT, on behalf of Conclave Media LLC/Nationwide Health Advocates (collectively Nationwide) as a contracted telemedicine provider.

H. Nationwide used telemarketing companies to contact and obtain beneficiary information from Medicare beneficiaries, and to generate fraudulent genetic testing and DME orders and false and fraudulent purported supporting medical documentation for those beneficiaries. Nationwide then provided the orders and documentation electronically to Dr. Salko via email. Each email from Nationwide provided a link to a prepopulated medical chart for a genetic test and/or a piece of DME, as well as pre-populated medical information including purported medical history, personal information, symptoms, and exam notes. Dr. Salko would review these prepopulated medical charts via software called “Zoho,” which did not have a platform for patient contact or virtual consultation. Dr. Salko then electronically approved the orders, causing his signature to be electronically added to the documentation. These exam notes and other medical documentation were false and fraudulent in that they documented physical exams that Dr. Salko did not conduct, medical assessments that Dr. Salko did not make, and treatment plans that Dr. Salko did not devise or carry out.

I. Despite the fact that Dr. Salko had no prior relationship with the beneficiary and was not examining or treating the beneficiary, and never spoke to the beneficiary, Dr. Salko electronically approved nearly every order based on approval criteria provided by Nationwide. Dr. Salko approved each order within a few minutes of accessing the order information, without speaking to any of the beneficiaries or attempting to obtain any additional information.

J. After Dr. Salko approved the orders, Nationwide sold them to a genetic testing or DME company that then used the approved order to bill Medicare, with Dr. Salko as the “referring provider” that had requested and ordered the test or DME. JCLT charged Nationwide a daily \$45 administrative service fee plus \$35 for each order reviewed and approved by Dr.

Salko, and JCLT paid Dr. Salko \$15 for each order reviewed and approved by Dr. Salko.

Because Nationwide stopped making payments to JCLT, JCLT did not receive payment from Nationwide for a substantial amount of the accounts receivable that was due under its contract with Nationwide.

K. The genetic tests and DME billed to Medicare were billed at significant expense to the Medicare program, often for thousands or tens of thousands of dollars per patient. The tests and DME were not ordered or used as part of the course of treatment for Dr. Salko or any other physician for medical illness or injury. Data maintained by the Medicare program reflect that Medicare paid more than \$750,000 for genetic tests and DME orders approved by Dr. Salko between April and September 2021, including for numerous Medicare beneficiaries in the Eastern District of Washington.

L. In September 2023, David Santana, the former owner and president of Nationwide, agreed to plead guilty to a one-count Information charging him with Conspiracy to Commit Health Care Fraud, in violation of 18 U.S.C. § 1349, in connection with Santana and Nationwide's participation in a health care fraud scheme and conspiracy to fraudulently bill Medicare for DME and genetic testing services. As indicated in Mr. Santana's Plea Agreement, he and Nationwide "caused Medicare beneficiary identifying and medical information . . . to be transformed into medical records containing the Medicare beneficiary information collected by the telemarketers that purportedly reflected a visit between the beneficiary and medical practitioners (such as doctors and nurse practitioners) that had yet to occur, and generally never occurred." Mr. Santana and Nationwide "also caused the creation of medical orders using the Medicare beneficiary information for the items and services specified by the telemarketers, not by the medical practitioner." Thereafter, Mr. Santana and Nationwide "sold the doctor's orders to telemarketers and telemarketing companies who . . . sold them to DME suppliers, pharmacies,

and laboratories.” In turn, “the DME suppliers, pharmacies, and laboratories used the doctor’s orders to submit claims to Medicare.”

M. JCLT has cooperated fully with the United States’ investigation, and such cooperation has been significant in facilitating the investigation. Additionally, since the relevant time period and up to the present, JCLT has taken significant remedial actions designed to improve its legal and compliance efforts and internal controls related to placing providers with telemedicine clients. JCLT’s significant cooperation and remedial action has been taken into account in reaching this Settlement Agreement.

N. The United States contends that it has certain civil claims against Dr. Salko and JCLT arising from allegedly false claims for payment caused to be submitted to Medicare between August 2020 and September 2021 related to Dr. Salko and JCLT’s engagement with Nationwide and patient orders for DME and genetic tests billed to Medicare placed by Dr. Salko and other physicians pursuant to JCLT’s engagement with Nationwide. The conduct described in this paragraph, together with the agreed-upon facts and conduct set forth above in Recitals A through M is hereinafter referred to as the “Covered Conduct.”

O. The United States contends that it has certain civil claims against Dr. Salko and JCLT under the False Claims Act, codified at 31 U.S.C. §§ 3729-3733 and the common law for allegedly engaging in the Covered Conduct.

P. Defendants agree to and admit the factual recitations in Paragraphs A through M above as relevant to their respective conduct, awareness, knowledge, and involvement in the Covered Conduct. Defendants do not concede that liability arises from those facts, under the False Claims Act or any other cause of action. As such, this Settlement Agreement is not an admission of liability or fault by Defendants.

To avoid the delay, uncertainty, inconvenience, and expense of protracted litigation, 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 shall pay to the United States \$700,000, of which \$250,000 is restitution (herein “the Settlement Amount”). The Settlement Amount shall be paid within fourteen (14) days of the Effective Date of this Agreement by electronic funds transfer pursuant to written instructions to be provided by the United States Attorney’s Office for the Eastern District of Washington.

2. Subject to the exceptions in Paragraph 3 (concerning reserved claims) below, and conditioned upon Defendants’ full payment of the Settlement Amount, the United States releases JCLT, together with its predecessors and successors in liability, parent companies, subsidiaries, affiliates, departments, divisions, and Dr. Salko, together with his heirs, successors, and assigns, 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, negligent misrepresentation, and fraud.

3. Notwithstanding the releases given in Paragraphs 2 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 criminal, civil, or administrative 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 or enforcement right, including mandatory or permissive exclusion from Federal or State 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 civil or administrative liability that any person or entity, including Defendants, have or may have to the Federal, State or individual consumers or government program payers under any statute, regulation or rule not expressly covered by the release in this Agreement, including but not limited to, any and all of the following claims: (i) antitrust violations; (ii) claims involving unfair and/or deceptive acts and practices and/or violations of consumer protection laws;
- g. Any liability which may be asserted on behalf of any other payers or insurers, including those that are paid by the Government programs on a capitated basis;
- h. Any liability for expressed or implied warranty claims or other claims for defective or deficient products and services provided by Defendants; and
- i. Any liability for personal injury or property damage or for other consequential damages arising from the Covered Conduct.

4. 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 and its agencies, officers, agents, employees, and servants related to the Covered Conduct and the United States' investigations and prosecutions thereof.

5. Defendant Dr. Salko fully and finally releases Defendant JCLT (together with its predecessors and successors in liability, parent companies, subsidiaries, affiliates, departments, divisions, agents, employees and representatives) and Defendant JCLT fully and finally releases Defendant Dr. Salko (together with his heirs, successors, and assigns) 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 other Defendant related to the Covered Conduct or any other matter arising out of the Contractor Agreement entered into between Defendants on April 22-23, 2021.

6. 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 or Medicaid 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 or Medicaid 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.

7. 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 or their present or former officers, directors, employees, shareholders, and agents in connection with:

- (1) the matters covered by this Agreement;
- (2) the United States' audits and civil and criminal investigations of the matters covered by this Agreement;
- (3) Defendants' investigation, defense, and corrective actions undertaken in response to the United States' audits and civil and any criminal investigations in connection with the matters covered by this Agreement (including attorney's fees);
- (4) the negotiation and performance of this Agreement;
- (5) the payment Defendants make to the United States pursuant to this Agreement;

are unallowable costs for government contracting purposes and under the Medicare Program, and Medicaid Program (hereinafter referred to as Unallowable Costs).

b. Future Treatment of Unallowable Costs: Unallowable Costs shall be separately determined and accounted for, 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 their subsidiaries or affiliates to Medicare, and Medicaid Programs.

c. Treatment of Unallowable Costs Previously Submitted for Payment: Defendants further agree that within 90 days of the Effective Date of this Agreement they shall identify to applicable Medicare fiscal intermediaries, carriers, and/or contractors, and Medicaid fiscal agents, any Unallowable Costs (as defined in this Paragraph) included in payments previously sought from the United States, 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 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. 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.

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, except to the extent provided for in Paragraph 9 (waiver for beneficiaries paragraph), below.

9. 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 his parents, sponsors, legally responsible individuals, or third party payers based upon the claims defined as Covered Conduct.

10. Except as otherwise expressly provided in this Agreement, each Party shall bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

11. Defendants represent that they freely and voluntarily enter into this Agreement without any degree of duress or compulsion.

12. This Agreement is governed by the laws of the United States and the State of Washington. The exclusive jurisdiction and venue for any dispute relating to this Agreement is the United States District Court for the Eastern District of Washington. 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.

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

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

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


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

17. All parties consent to the United States' 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: 3/14/2024

BY:   
\_\_\_\_\_  
Dan Fruchter  
Assistant United States Attorney  
Eastern District of Washington

DATED: 3/14/2024

BY:  for  
\_\_\_\_\_  
Tyler H.L. Tornabene  
Assistant United States Attorney  
Eastern District of Washington

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

BY: **SUSAN GILLIN**   
\_\_\_\_\_  
Susan Gillin  
Assistant Inspector General for Legal Affairs  
Office of Counsel to the Inspector General  
Office of Inspector General  
U.S. Department of Health and Human Services

Digitally signed by SUSAN GILLIN  
Date: 2024.03.14 18:59:47 -04'00'

JCLT

DATED: 3/8/24

BY: Timothy Fischer  
Timothy Fischer  
JCLT, President

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

BY: \_\_\_\_\_  
Scott Marrah  
Hillary Rightler  
Kilpatrick Townsend & Stockton LLP  
Counsel for JCLT

DR. EDWARD W. SALKO, D.O.

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

BY: \_\_\_\_\_  
Edward W. Salko, D.O.

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

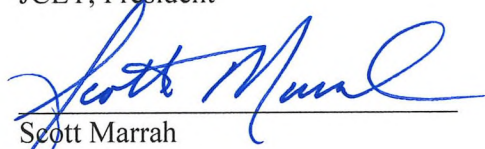
BY: \_\_\_\_\_  
Carl Oreskovich  
Andrew M. Wagley  
Etter, McMahon, Lamberson, Van Wert & Oreskovich  
Counsel for Dr. Salko

JCLT

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

BY: \_\_\_\_\_  
Timothy Fischer  
JCLT, President

DATED: 3/8/24

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Scott Marrah  
Hillary Rightler  
Kilpatrick Townsend & Stockton LLP  
Counsel for JCLT

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JCLT

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JCLT, President

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

BY: \_\_\_\_\_  
Scott Marrah  
Hillary Rightler  
Kilpatrick Townsend & Stockton LLP  
Counsel for JCLT

DR. EDWARD W. SALKO, D.O.

DATED: 3/4/2024

BY: Edward W. Salko D.O.  
Edward W. Salko, D.O.

DATED: 3/7/24

BY: Carl Oreskovich  
Carl Oreskovich  
Andrew M. Wagley  
Etter, McMahon, Lamberson, Van Wert & Oreskovich  
Counsel for Dr. Salko