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9 *MultiCare Health System*

10 UNITED STATES DISTRICT COURT  
11 EASTERN DISTRICT OF WASHINGTON

12 UNITED STATES OF AMERICA;  
13 STATE OF WASHINGTON, ex rel.  
14 DR. DEANETTE L. PALMER, PHD,  
15 and RICHARD PALMER, as  
16 RELATORS,

17 Plaintiffs,

18 v.

19 MULTICARE HEALTH SYSTEM dba  
20 MULTICARE DEACONESS  
21 HOSPITAL and MULTICARE  
22 ROCKWOOD CLINIC  
23 NEUROSURGERY,

24 Defendant.

25 Case No. 2:22-cv-00068-SAB

26 **DEFENDANT'S STATEMENT OF  
MATERIAL FACTS NOT IN  
DISPUTE IN SUPPORT OF  
MOTION FOR SUMMARY  
JUDGMENT PURSUANT TO  
FRCP 56**

18 Pursuant to Federal Rule of Civil Procedure 56 and Local Rules 7 and 56,

19 MultiCare Health System (“MultiCare”) submits this Statement of Material Facts  
20 Not In Dispute together with and in support of its Motion for Summary Judgment  
21 on the United States’ and the State of Washington’s Complaint in Intervention (the  
22 “Complaint,” ECF No. 26). Each of the Exhibits cited herein are attached to the  
23 concurrently-filed Declaration of Anne M. Dorshimer:

24 1. Based in Tacoma, MultiCare Health System is an independently-owned non-  
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1 profit organization, governed by a local board of directors, which cares for  
 2 patients across the Puget Sound and the Inland Northwest. *See* ECF No. 26 at  
 3 ¶ 15.

4

5 2. MultiCare operates Deaconess Medical Center (“Deaconess”) in Spokane,  
 6 Washington. ECF No. 26 at ¶¶ 15, 49.

7

8 3. MultiCare’s operational values include Respect, Integrity, Stewardship,  
 9 Collaboration, Kindness, and Excellence, the latter of which embodies the  
 10 organization’s intent to hold itself accountable to excel in quality of care,  
 11 personal competent, and operational performance. ECF No. 26 at ¶ 50.

13 **I. MultiCare Hires Dr. Dreyer After Completing Its Routine And**  
 14 **Systematic Hiring And Credentialing Process**

15 **A. Dr. Dreyer resigns from Providence**

16 4. In July 2013, Jason A. Dreyer, DO (“Dr. Dreyer”) was hired at Providence St.  
 17 Mary Medical Center (“Providence”), a hospital in Walla Walla, Washington.  
 18 ECF No. 26 at ¶¶ 66-67.

19

20 5. On May 22, 2018, Dr. Dreyer was placed on administrative leave at  
 21 Providence. ECF No. 26 at ¶ 73.

22

23 6. On November 13, 2018, Dr. Dreyer effectively resigned from Providence.  
 24 ECF No. 26 at ¶ 73.

25

26 7. Providence has admitted that, as Dr. Dreyer’s employer, it did not report Dr.

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1 Dreyer to the National Practitioner Data Bank (“NPDB”) or the Washington  
2 State Department of Health (the “DOH”). ECF No. 26 at ¶ 73; Ex. 36 at 3(E).  
3

4 **B. Dr. Dreyer applies to join MultiCare at Deaconess**

5 8. In early 2019, MultiCare was recruiting additional neurosurgeons to  
6 adequately service the patient volume, including providing on call emergency  
7 neurosurgeon coverage, as well as to expand its neurosurgery practice and to  
8 establish a neuroscience institute. ECF No. 26 at ¶¶ 88-89. Recruiting was  
9 extremely difficult as neurosurgeons are in high demand and typically want  
10 to work in larger metropolitan areas. ECF No. 26 at ¶ 89.  
11

13 9. MultiCare effectively formed a selection and hiring committee for the  
14 neurosurgeon position, which included MultiCare’s Medical Director for  
15 Surgical Services, Dr. John Demakas, MultiCare’s Regional Administrator,  
16 Mark Donaldson, and MultiCare’s President of Deaconess Hospital, Laureen  
17 Driscoll. ECF No. 26 at ¶ 89.  
18

20 10. On March 16, 2019, Dr. Dreyer contacted MultiCare via email regarding  
21 potential employment. ECF No. 26 at ¶ 88; Ex. 3 at 1.  
22

23 11. At the time he presented to MultiCare for employment, Dr. Dreyer had been  
24 board-certified by the American Board of Osteopathic Surgery since 2014.  
25 Ex. 4 at 3, 5. After time serving in the Army reserves, he earned a master’s  
26

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1 degree in hospital administration and then his Doctor of Osteopathic Medicine  
 2 degree from Kirksville College of Osteopathic Medicine in Kirksville,  
 3 Missouri in 2007. Ex. 4 at 3. He completed a six-year neurosurgery residency  
 4 at Michigan State University in 2013. Ex. 4 at 3-4. As of February 12, 2013,  
 5 the State of Washington issued Dr. Dreyer a license to practice medicine,  
 6 which had remained active. *See also* Ex. 5 at ¶ 1.1.  
 7

9 12. After March 16, 2019, MultiCare considered Dr. Dreyer for employment as a  
 10 neurosurgeon, which included obtaining information from Dr. Dreyer and his  
 11 former employers, references, and other pertinent sources. *See* ECF No. 26 at  
 12 ¶ 53; *see infra* section C.  
 13

14 **C. Dr. Dreyer is vetted by MultiCare prior to hiring**  
 15

16 13. On March 28, 2019, Mr. Donaldson emailed Dr. Demakas, stating that he met  
 17 with a Globus sales representative, who told Donaldson on March 27, 2019  
 18 that “they spoke very highly of Dr. Dreyer and said he has been exonerated of  
 19 the issues in Walla Walla.” *See* ECF No. 26 at ¶ 92; Ex. 6 at 1.  
 20

21 14. On April 3, 2019, Mr. Donaldson emailed Ms. Driscoll and Dr. Demakas  
 22 regarding, among others, interviews for the neurosurgeon candidates. *See* Ex.  
 23 7 at 1. The email states, in part: “There are some red flags on [Dr. Dreyer’s]  
 24 practice style and relationships that we need to clarify when he comes for an  
 25

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1 interview.” Ex. 7 at 1; ECF No. 26 at ¶ 95.  
2

3 15. On or around April 10, 2019, MultiCare conducted a full day in-person  
4 interview of Dr. Dreyer. *See* ECF No. 26 at ¶ 97; Ex. 8 at 1.  
5

6 16. On April 12, 2019, MultiCare extended an offer of employment to Dr. Dreyer.  
7 ECF No. 26 at ¶ 98.  
8

9 17. On May 3, 2019, MultiCare’s Spine Center of Excellence (COE) Provider  
10 Team met, and a draft of the meeting minutes that day reflected: “Dr. Dreyer:  
11 Work horse. May need to advise him on what type of surgeries are appropriate  
12 and what is not tolerated.” ECF No. 26 at ¶ 100.  
13

14 18. Later on May 3, 2019, Donaldson edited the meeting minutes “to make sure  
15 we don’t have disparaging remarks that are discoverable by either [Dr. Dreyer  
16 or Dr. Teff] after they arrive.” Ex. 9 at 2; *see* ECF No. 26 at ¶ 100.  
17

18 19. On May 3, 2019, Dr. Dreyer formally signed an employment agreement with  
19 MultiCare. ECF No. 26 at ¶ 100; Ex. 10 at 1.  
20

21 20. On May 3, 2019, in his responses on the Washington Practitioner Application,  
22 Dr. Dreyer answer and verified “No” in response to the question “Have you  
23 ever been subject to review, challenges, and/or disciplinary action, formal or  
24 informal, by an ethics committee, licensing board, medical disciplinary board,  
25 professional association or education/training institution?” Composite Ex. 11  
26

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1 at 14.

2 21. On May 20, 2019, MultiCare received a peer reference for Dr. Dreyer.  
3  
4 Reviewer indicated a “focused review” was conducted in response to another  
5 staff member complaint. ECF No. 26 at ¶ 102; Comp. Ex. 11 at 47. The peer  
6 reference elaborated: “No significant issues were identified by medical staff  
7 and the only recommendation was that all elective neurosurgery patients take  
8 part in a multidisciplinary evaluation preoperatively. This is a common feature  
9 of many of our service lines.” ECF No. 26 at ¶ 102; Comp. Ex. 11 at 47.

10 22. Prior to May 31, 2019, MultiCare engaged in its routine hiring and  
11 credentialing process with respect to Dr. Dreyer, including but not limited to  
12 the following acts that are documented in the hiring and credentialing records  
13 in Composite Exhibit 11:

14 a. verifying Dr. Dreyer’s required education, training, and board  
15 certifications, and licensure dates, *see* Comp. Ex. 11 at 34-44, 74, 81,  
16 85-107, 111;

17 b. verifying Dr. Dreyer’s employment dates and prior healthcare  
18 entity/facility affiliations, *see* Comp. Ex. 11 at 63-65, 184;

19 c. requesting verification from Providence of Dr. Dreyer’s clinical  
20 privileges and receiving in response a written statement from  
21

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1 Providence representing that “no adverse professional review action as  
2 defined in the Health Care Quality Improvement Act has been taken  
3 regarding this practitioner [meaning] that there has been no reduction,  
4 restriction, suspension, revocation, denial, or involuntary  
5 relinquishment of the practitioner’s staff membership or clinical  
6 privileges,” Comp. Ex. 11 at 62;

7

8

9 d. searching the National Practitioner Data Bank (“NPDB”) on May 16,  
10 2019 and May 31, 2019, both of which turned up “no reports” for any  
11 category, which included no Medical Malpractice Payment Reports,  
12 State Licensure actions, Exclusion or Debarment Actions, Government  
13 Administrative Actions, Clinical Privilege Actions, Health Plan  
14 Actions, Professional Society Actions, DEA/Federal Licensure  
15 Actions, Judgment or Conviction Reports, and Peer Review  
16 Organization Actions, *see* Comp. Ex. 11 at 130-132;

17

18 e. obtaining completed peer evaluation forms from four peer references  
19 who worked with Dr. Dreyer, none of which noted any significant  
20 concerns, and each of which rated Dr. Dreyer as “superior” in most  
21 categories and “recommend highly without reservation,” *see* Comp. Ex.  
22 11 at 45-60;

23

24

25

26

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- 1 f. obtaining a separate Washington State Criminal Conviction History
- 2 Report and Washington State Child/Adult Abuse Report, confirming
- 3 no criminal or registry reports, Comp. Ex. 11 at 66-67;
- 4
- 5 g. confirming, though a query of the OIG List of Excluded Individuals and
- 6 Entities List, that Dr. Dreyer was not an excluded individual, Comp.
- 7 Ex. 11 at 116-120;
- 8
- 9 h. collecting a completed copy of Dr. Dreyer's Washington Practitioner
- 10 Application, the standard credentialing application form mandated by
- 11 Washington law, Comp. Ex. 11 at 4-15;
- 12
- 13 i. obtaining a current Certificate of Liability Insurance, including a claims
- 14 history report with no reported claims, Comp. Ex. 11 at 121-129; and
- 15
- 16 j. conducting initial interviews between Dr. Dreyer and various
- 17 MultiCare leaders and fellow MultiCare neurosurgeons. *See, e.g.*, Ex.
- 18 8 at 1.
- 19

20 **D. An existing DOH complaint was not revealed to MultiCare**  
21 **during hiring and credentialing processes**

- 22 23. On March 4, 2019, a complaint was submitted to the DOH about 11 of Dr.
- 24 Dreyer's surgeries at Providence. ECF No. 26 at ¶ 75.
- 25 26. DOH notified Dr. Dreyer of the complaint on May 6, 2019. *See* ECF No. 26 at ¶¶ 77, 148; Ex. 12 at 1.

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1 25. DOH sent its May 6 notice that it had received a complaint to Dr. Dreyer's  
 2 former address at Providence. Ex. 12 at 1. However, additional information  
 3 about the complaint, including the complainant, the patients, the care in  
 4 question, and a copy of the complaint itself, was not provided to Dr. Dreyer  
 5 until months later. *See id.*; Ex. 4 at 1-2.

6 26. Dr. Dreyer was represented in the DOH matter by his own attorney. Ex. 4 at  
 7 1, 9.

8 27. The DOH investigation was not disclosed to MultiCare, by Dr. Dreyer or  
 9 anyone else, during the hiring or credentialing process at MultiCare. *See supra*  
 10 ¶¶ 8-25.

11 **II. Dr. Dreyer's Practice At MultiCare**

12 **A. MultiCare performs standard peer reviews of Dr. Dreyer's**  
 13 **surgeries**

14 28. On July 23, 2019, Dr. Dreyer was granted clinical privileges at MultiCare  
 15 Deaconess Hospital and began seeing patients. ECF No. 26 at ¶ 104; Ex. 13  
 16 at 1.

17 29. Dr. Dreyer, like any new physician joining the medical staff at Deaconess,  
 18 underwent a focused provider review of his cases, which turned up no issues.  
 19 Ex. 11 at 192-94; Ex. 13 at 1; Ex. 14 at ¶¶ 10-11.

20 30. On August 28, 2019, Dr. Dreyer operated on Patient M.W., which was M.W.'s

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1 second spinal surgery at MultiCare but Dr. Dreyer's first surgery on M.W.  
 2 ECF No. 26 at ¶¶ 173, 176; Declaration of Joel D. Winer, M.D. (Ex. 2) at ¶  
 3 10. His second surgery on M.W. was February 24, 2020. ECF No. 26 at ¶ 177;  
 4 Ex. 2 at ¶ 10.

5

6 **B. Consideration given to concerns of two physician assistants**

7

8 31. On around September 19, 2019, Leigh Gilliver, a Physician Assistant at  
 9 MultiCare, raised his concern that Dr. Dreyer was performing a higher volume  
 10 of complex surgeries than the neurosurgeons with whom Mr. Gilliver  
 11 previously worked. *See* ECF No. 26 at ¶¶ 114, 117, 119. Mr. Gilliver was not  
 12 involved with Dr. Dreyer's patients preoperatively or with the preoperative or  
 13 interoperative planning of Dr. Dreyer's surgeries. Ex. 15 at 29:22-25, 55:5-  
 14 10, 77:21-78:11, 135:23-25, 136:1-4.

15

16 32. On September 23, 2019, Mr. Donaldson and Dr. Demakas held a follow-up  
 17 meeting with Mr. Gilliver and asked him to identify four surgeries for which  
 18 he had concerns, which they would review, and he did. ECF No. 26 at ¶ 122;  
 19 Ex. 15 at 47:5-20, 87:5-19, 114:24-117:22. Mr. Gilliver testified both Mr.  
 20 Donaldson and Dr. Demakas were empathic and took his concerns seriously.  
 21

22 Ex. 15 at 118:9-24.

23

24 33. About two weeks later, in early October 2019, Mr. Gilliver met with numerous  
 25

26

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1 MultiCare personnel to discuss his concerns, including Dr. Dreyer, Mr.  
 2 Donaldson, Dr. Demakas, and neurosurgeons Dr. Heller and Dr. Morgan,  
 3 among others. ECF No. 26 at ¶ 123; Ex. 15 at 127:11-132:14.

4 34. In late 2019, another Physician Assistant at MultiCare, Josiah Newton, went  
 5 to Dr. Demakas even prior to assisting Dr. Dreyer because of what he had  
 6 heard from Leigh Gilliver, and then based on “what on paper seeing []how  
 7 aggressive Dr. Dreyer was” compared to a few other neurosurgeons with  
 8 whom Mr. Newton had worked. ECF No. 26 at ¶ 124; Ex. 16 at 31:10-34:10.

9 35. Mr. Newton had no pre-operative or post-operative involvement with Dr.  
 10 Dr. Dreyer’s patients. Ex. 16 at 88:4-20, 115:23-116:4.

11 36. Dr. Demakas told Mr. Newton that that MultiCare would take appropriate  
 12 steps to address J.N.’s concern for the safety of Dr. Dreyer’s patients. ECF  
 13 No. 26 at ¶ 128.

14

15 **C. A sealed *qui tam* against Providence is filed and Dr. Dreyer  
 16 responds to the DOH**

17 37. On January 10, 2020, Dr. David Yam, M.D. (“Dr. Yam”) filed a *qui tam* action  
 18 in the Eastern District of Washington, on behalf of the United States and the  
 19 State of Washington, against Providence (alone) alleging Providence  
 20 submitted false claims with respect to Dr. Dreyer’s patients and therefore  
 21 violated the False Claims Act. Ex. 17.

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38. The Yam *qui tam* case was sealed in its entirety, Ex. 18, until September 21, 2021, when it was partially unsealed for the limited purpose of disclosing the existence of the case only to Providence and its counsel, Ex. 19.

39. On February 4, 2020, unbeknownst to MultiCare, Dr. Dreyer provided a response to the DOH's May 6, 2019 notice of a complaint, through his attorney. *See* ECF No. 26 at ¶ 80; *see generally* Ex. 4. His response included support from two highly-qualified physicians (Dr. Patrick Hsieh, the Director of the Neurosurgery Spine Program at the University of Southern California, and Dr. Jerome Barakos, a board certified neuroradiologist at California Pacific Medical Center with nearly 28 years of experience), who both opined Dr. Dreyer's care was reasonable and appropriate at all times. ECF No. 26 at ¶ 80; Ex. 4 at 7.

### **III. The DOJ Notifies MultiCare That They Are Reviewing Dr. Dreyer's Surgeries Performed While At Providence But Does Not Notify MultiCare About The DOH Investigation**

40. On February 15, 2020, the United States Department of Justice, acting through Assistant U.S. Attorneys Tyler Tornabene and Daniel Fruchter (collectively, the “DOJ”), sent an email to an attorney at a private firm who had served as outside counsel for MultiCare. See ECF No. 26 at ¶ 131; Ex. 1 at 2.

41. The email did not copy any employee of MultiCare. Ex. 1 at 2.

1       42. The opening sentences of the February 15 email stated that the DOJ had  
 2       “opened an investigation into Dr. Jason Dreyer,” which was “ongoing,” “and  
 3       in fact [wa]s at a very early stage,” and had given the DOJ “great concern for  
 4       the safety of any current patients of Dr. Dreyer.” Ex. 1 at 2; *see* ECF No. 26  
 5       at ¶ 132.

6       43. The email described the scope of the DOJ’s investigation: “Dr. Dreyer is a  
 7       target of our ongoing investigation for actions ***he took during his previous***  
 8       ***employment with Providence Health in Walla Walla***, which we understand  
 9       ended in 2018.” Ex. 1 at 2 (emphasis added); *see* ECF No. 26 at ¶ 131. Their  
 10       concerns were based on Dr. Dreyer’s conduct “for approximately five years  
 11       prior to his employment or association with [MultiCare] Deaconess.” Ex. 1 at  
 12       2.; *see* ECF No. 26 at ¶¶ 131, 133. Specifically, the concerns were of medical  
 13       misconduct, which they said involved unnecessary surgeries that “apparently”  
 14       or “potentially” resulted in severe harm. Ex. 1 at 2.

15       44. The DOJ’s email explicitly informed MultiCare:

16           Currently, based solely on the evidence we have to date,  
 17           [MultiCare] Deaconess ***it is not a target of our investigation and***  
 18           ***we currently have no direct evidence, one way or the other, of***  
 19           ***Dr. Dreyer’s actions while working at Deaconess.***

20           Ex. 1 at 2 (emphasis added); *see* ECF No. 26 at ¶¶ 131-32.

21       45. The email further stated that “the credible evidence of unnecessary surgeries,

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1 the resulting patient harm, and evidence of Dr. Dreyer creating false and  
 2 fraudulent medical records" caused the DOJ to provide MultiCare with this  
 3 information, but added that "***our ongoing investigation has not reached any***  
 4 ***final conclusions.***" Ex. 1 at 2 (emphasis added); *see* ECF No. 26 at ¶ 132.

5  
 6 46. The email advises that:

7 Further, ***the attached materials are not our conclusions, nor are***  
 8 ***they the sum total of all information we possess,*** but these  
 9 materials are being provided to you as they do contain summaries  
 10 of ***some of the most concerning evidence and allegations*** that  
 11 appear credible and which we are vigorously investigating.

12 Ex. 1 at 2 (emphasis added).

13 47. The email stated that MultiCare may "share with the appropriate persons at  
 14 Deaconess" on a "need to know" basis:

15 Further, we request that [MultiCare] Deaconess not distribute  
 16 this information, in any manner whatsoever, beyond Deaconess  
 17 and beyond those persons at Deaconess or within your firm who  
 18 need to have some or all of this information to ensure patient  
 19 safety. ***Any disclosure beyond those who need to know at***  
***Deaconess or within your firm could seriously prejudice our***  
***ongoing investigation.***

20 Ex. 1 at 2 (emphasis added).

21 48. The DOJ's email did not specifically request that MultiCare respond to or  
 22 contact the DOJ. *See* Ex. 1 at 2.

23 49. The DOJ's email did not request or demand that MultiCare take any actions

24  
 25  
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1 with respect to Dr. Dreyer, or report any such actions to the DOJ. *See* Ex. 1 at  
 2

3 2.

4 50. All of the materials attached to that email concerned Dr. Dreyer's actions  
 5 during his previous employment with Providence in Walla Walla. *See* Ex. 1  
 6 at 2; *see* ECF No. 26 at ¶ 133.

7 51. On February 17, 2020, outside counsel confirmed by reply email receipt of  
 8 the DOJ's February 15 email that she had reached out to Dayle Hosek  
 9 (MultiCare Director of Risk Management), the "correct contact" for  
 10 MultiCare. Ex. 1 at 2; *see* ECF No. 26 at ¶ 134.

11 52. On Friday, February 21, 2020, AUSA Tornabene replied by email to the  
 12 outside counsel to "touch base because they had not heard anything" since her  
 13 February 17 response. Ex. 1 at 1. The email continued:

14 ***While Deaconess is under no obligation whatsoever to discuss  
 15 anything with us, we thought it would be best to reach out  
 16 regarding the current status of Dr. Dreyer at Deaconess and his  
 17 current ability through Deaconess to perform surgeries. Again,  
 18 Deaconess is under no obligation to provide us any information  
 19 at this time, however as we assess other/additional avenues to  
 20 address any immediate patient safety concerns we thought it  
 21 best to reach out.***

22  
 23 Ex. 1 at 1 (emphasis added).

24 53. That same day, the outside counsel replied that her MultiCare client contact  
 25 said "[i]t is being discussed with exec on Monday" (which was February 24,

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2020) and “assured [her] they are taking it very seriously.” Ex. 1 at 1.

#### **IV. MultiCare Voluntarily Initiates An Investigation, Including Instituting A SBAR And Additional Reviews Of Dr. Dreyer's Surgeries**

54. On Monday, February 24, 2020, MultiCare executives met to discuss the information in the DOJ's February 15 email. ECF No. 26 at ¶ 134.

55. On February 25, 2020, within one day of the executives' meeting, MultiCare's Chief Medical Officer, Dr. Geoff Swanson, created a confidential Situation, Background, Assessment, and Recommendation analysis ("SBAR"), describing the situation as concerning "quality and billing issues involving the previous practice of neurosurgeon Jason Dreyer, DO." ECF No. 26 at ¶ 135;

56. The SBAR summarizes the background as follows:

On February 24, RWC and MultiCare Inland Northwest (INW) leadership was presented information received by the INW general counsel alleging Dr. Dreyer, at a previous practice site; 1) exhibited questionable surgical decision-making, 2) excessively utilized surgical repair and instrumentation and 3) was involved in fraudulent billing practices. The quality of this evidence was not substantiated, nor was the information sourced.

ECF No. 26 at ¶¶ 136-37; Ex. 20.

57. The SBAR further states, as part of the assessment:

It is unclear at this time if the information presented or the implied investigations are valid or will be vetted. However, in this period, the obligation of patient safety takes precedence over

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other considerations until this matter is fully investigated and an objective analysis is completed by regulatory agencies and MultiCare Health System.

ECF No. 26 at ¶ 138; Ex. 20.

58. The SBAR set forth four recommended actions: (1) to meet with Dr. Dreyer to determine if he adequately disclosed these issues, if known to him, or to make him aware, if unknown; (2) immediately implement a peer review of all planned surgical services, including authority to cancel planned surgeries if the peer reviewer deems it warranted; (3) initiate, “as soon as practical,” “an independent objective review of at least [10] major surgical cases of Dr. Dreyer’s since his employment at [MultiCare]”; and (4) “proceed with further discovery of information if available.” ECF No. 26 at ¶¶ 139-40, 142-43; Ex.

59. On February 26, 2020, Dr. Dreyer met with Dr. Swanson, Dr. Demakas (MultiCare’s Medical Director for Surgical Services), and Mel Hoadley (a MultiCare Human Resources employee) to discuss the DOJ’s investigation into Dr. Dreyer’s conduct while at Providence. ECF No. 26 at ¶ 144; *see* Ex. 21 at 2.

60. During that meeting, Dr. Dreyer represented that while he was aware of an inquiry that occurred while he worked at Providence, it was a "board inquiry

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1 that Providence initiated concerning neurological services across their  
 2 system,” that after an “external review … no material findings were disclosed”  
 3 to him, and that he “considered the matter closed and had received no notice  
 4 from the State of Washington,” which Dr. Dreyer verified with his attorney.  
 5 ECF No. 26 at ¶¶ 144-45; Ex. 21 at 2.

61. In response to MultiCare’s specific question whether he had been notified by  
 6 the Washington Medical Commission of any investigation, Dr. Dreyer  
 7 responded that he had not. ECF No. 26 at ¶¶ 144-45; Ex. 21 at 2.

62. MultiCare advised Dr. Dreyer during that meeting that, “as a precautionary  
 7 measure,” “[Dr. Demakas] would review 100% of elective surgical cases from  
 8 a prospective perspective and 100% post-surgical reviews of both elective and  
 9 emergent cases” and would also obtain external review of some surgeries he  
 10 had performed at MultiCare. Ex. 21 at 2.

63. Dr. Swanson then met with Dr. Demakas to discuss the concerns and the plan  
 7 for peer oversight of Dr. Dreyer’s surgeries, though he did not disclose to Dr.  
 8 Demakas a copy of the DOJ’s “notice email.” *See* ECF No. 26 at ¶ 140.

64. Immediately following the meeting with Dr. Swanson, Dr. Demakas, who at  
 7 the time was a licensed neurosurgeon, a Fellow of the American Association  
 8 of Neurological Surgeons, and the Medical Director for Surgical Services at  
 9

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1 MultiCare Rockwood Clinic, began peer reviewing all pre-surgical elective  
2 cases and all post-surgical cases, both elective and urgent procedures, planned  
3 or performed by Dr. Dreyer. *See* ECF No. 26 at ¶¶ 140-41; Ex. 14 at ¶¶ 11-  
4 12.

5 65. On March 2, 2020, Dr. Swanson, with input from Dr. Demakas and MultiCare  
6 leadership, formalized a “Jason Dreyer, DO Clinical Review Form” for the  
7 pre-and post-operative review of elective cases, which he shared via email  
8 with Dr. Demakas, Dr. Dreyer, and others. *See* Ex. 22.

9 66. The “Jason Dreyer, DO Clinical Review Form” includes a section titled  
10 “Imaging Summary” for the peer reviewer’s review of and summary of the  
11 patient’s imaging. Ex. 22 at 3.

12 67. Dr. Swanson, in the March 2 email, explains that the Form is “only applicable  
13 to elective cases as we obviously would not want to inappropriately slow  
14 emergent cases,” but “I think we should complete the post-surgical review for  
15 emergent cases as well.” Ex. 22 at 1.

16 68. Dr. Demakas used the “Jason Dreyer, DO Clinical Review Form” for his pre-  
17 and post-operative reviews of Dr. Dreyer’s elective surgeries. *See, e.g.*, Comp.  
18 Ex. 23.

19 69. On March 5, 2020, Dr. Swanson emailed Dr. Dreyer to document their  
20

21 DEFENDANT’S STATEMENT OF MATERIAL FACTS NOT IN DISPUTE - 19  
22

1 discussions during their February 26, 2020 meeting. Ex. 21 at 2.

2 70. In response, Dr. Dreyer emailed Dr. Swanson “[j]ust to clarify” that the  
 3 Providence review was not the result of any “event relative to my employment  
 4 there” and that he voluntarily resigned, which he “discussed with Dr.  
 5 Demakas prior to [] getting hired at MultiCare.” Ex. 21 at 1. He further stated,  
 6

7 There was a ‘query’ by the osteopathic medical board regarding  
 8 a complaint made by Dr. Fewel [another Providence  
 9 neurosurgeon] .... He would see some second opinions of mine  
 10 when a patient was not doing well and I wanted another  
 11 experienced neurosurgical opinion. .... After I was hired here, but  
 12 before I actually started, Providence received a complaint about  
 13 me .... *The osteopathic medical board sent a letter to  
 Providence and I did not find out about it until after I started  
 here. Providence hired an attorney to help me review the cases  
 and respond to the “query.” He assured me that there was no  
 investigation.* .... [H]e engaged an outside neurosurgeon and  
 14 neuroradiologist from academic centers in California. .... Both  
 15 physicians said that my care fit with the standard of care they  
 16 would expect to see at their institutions. The report was  
 17 submitted 2/4/20 and I have yet to hear back.

18 *Id.* (emphasis added); ECF No. 26 at ¶ 147.

19 71. Dr. Dreyer’s email to Dr. Swanson added, “I certainly have not heard anything  
 20 about the US attorney’s office. My lawyer from Providence has not either.”  
 21 Ex. 21 at 1.

22 72. Dr. Swanson, via email on the evening of March 5, thanked Dr. Dreyer for his  
 23 response. Ex. 21 at 1. Having been copied on this email, Dr. Demakas received  
 24

25 DEFENDANT’S STATEMENT OF MATERIAL FACTS NOT IN DISPUTE - 20  
 26

1 a complete copy of Dr. Swanson and Dr. Dreyer's March 5 email chain. Ex.  
 2 21 at 1.  
 3

4 73. From March 18, 2020 to May 18, 2020, a statewide shutdown of all elective  
 5 procedures took effect, including Dr. Dreyer's elective surgeries, due to the  
 6 COVID-19 pandemic. *See Comp. Ex. 24.*  
 7

8 **V. Dr. Dreyer Continues To Operate At MultiCare With Oversight**

9 74. After February 27, 2020, Dr. Demakas reviewed dozens of Dr. Dreyer's  
 10 surgeries. *See Comp. Ex. 23; see also Ex. 14 at ¶¶ 11-12.*  
 11

12 75. On August 2 and 3, 2020, Dr. Dreyer made diagnoses and performed urgent  
 13 surgery on Patient T.K. ECF No. 26 at ¶¶ 198-99; Ex. 2 at ¶ 8.  
 14

15 76. On September 16, 2020, Dr. Dreyer performed surgery on Patient D.P. ECF  
 16 No. 26 at ¶ 189; Ex. 2 at ¶ 11.  
 17

18 77. On October 28, 2020, Dr. Dreyer performed surgery on Patient I.L. ECF No.  
 19 26 at ¶ 184; Ex. 2 at ¶ 9.  
 20

21 78. On January 9, 2021, Dr. Dreyer completed his provider attestation for re-  
 22 credentialing, in which he denied that there were any professional sanctions  
 23 against his medical license or that he has been the subject of a review,  
 24 challenges, or disciplinary action. Ex. 25.  
 25

26 79. On March 10, 2021, Dr. Dreyer performed what would be his final surgery at

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1 MultiCare.

2

3 **VI. In March 2021, DOH Suspends Dr. Dreyer, At Which Time MultiCare**

4 **Learns For The First Time Of DOH Investigation**

5 80. On March 5, 2021, the DOH filed a Statement of Charges against Dr. Dreyer,

6 which provided Dr. Dreyer an opportunity to respond to the charges. ECF No.

7 26 at ¶ 82; Ex. 5.

8 81. One week later after filing its Statement of Charges and before Dr. Dreyer

9 submitted any response thereto, on Friday, March 12, 2021, the DOH made

10 *ex parte* findings, based on Dr. Dreyer’s conduct at Providence between

11 August 2014 and January 2016, that Dr. Dreyer posed a present threat to

12 public health and safety and thus “summarily restricted” Dr. Dreyer “from

13 performing spine surgeries” pending further proceedings. Ex. 26 at 2, 3.; *see*

14 ECF No. 26 at ¶ 83.

15 82. On Monday, March 15, 2021, MultiCare learned for the first time that the

16 DOH had summarily restricted Dr. Dreyer’s license. *See* Ex. 27.

17 83. That same day, Dr. Swanson contacted Dr. Dreyer to inform Dr. Dreyer that

18 MultiCare was placing him on administrative leave. *See* Ex. 27.

19 84. The following day, March 16, 2021, MultiCare confirmed to Dr. Dreyer by

20 letter that MultiCare was placing him on administrative leave effective

21 immediately, and until further notice that he could not provide patient care ***in***

22

23

24

25

26

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1       **any manner.** Ex. 27.

2       85. On March 22, 2021, the DOH issued a Corrected Statement of Charges against

3                   Dr. Dreyer. *See* Ex. 28 at 3, ¶ 1.1.

4       86. On March 25, 2021, Dr. Dreyer responded to the original Statement of

5                   Charges. *See* ECF No. 26 at ¶ 84.

6       87. On March 25, 2021, Dr. Demakas signed a declaration attesting: “In the

7                   retrospective and prospective reviews of Dr. Dreyer’s cases that I have

8                   personally performed, I did not observe concerning or substandard care based

9                   upon the information that was available to me at the time.” Ex. 14 at ¶ 14; *see*

10                   ECF No. 26 at ¶ 84.

11       88. Dr. Demakas’ Declaration further explained the scope of his personal review:

12                   In addition to undergoing a focused provide review, beginning in  
 13                   February 2020 and over a period of several months thereafter, I  
 14                   engaged in a concurrent review and surgical oversight of  
 15                   planning surgical cases performed by Dr. Dreyer for the purpose  
 16                   of reviewing surgical options and planning surgical services ....  
 17                   I reviewed cases that Dr. Dreyer had performed on an emergent  
 18                   basis retrospectively. I continued to periodically perform  
 19                   prospective reviews of Dr. Dreyer’s planned surgical procedures  
 20                   until his recent suspension. In the past year Dr. Dreyer’s cases  
 21                   have also been subject to multi-specialty reviews where the other  
 22                   specialists who also participated in the care of a particular patient  
 23                   (such as physiatry and neuro-radiological services) is also  
 24                   considered.

25                   Ex. 14 at ¶¶ 11-14.

26                   DEFENDANT’S STATEMENT OF MATERIAL FACTS NOT IN DISPUTE - 23

1 89. On April 2, 2021, Dr. Dreyer filed with the DOH his Answer to DOH's March  
 2 22, 2021, Corrected Statement of Charges. *See* Ex. 28 at 4, ¶ 1.2.  
 3

4 90. Dr. Demakas' declaration was submitted to the DOH on April 5, 2021. *See*  
 5 Ex. 14 at 4.  
 6

7 91. On April 16, 2021, the DOH held a hearing regarding the allegations against  
 8 Dr. Dreyer. Ex. 28 at 1.  
 9

10 92. On April 26, 2021, the DOH found that less restrictive prohibitions could  
 11 prevent or avoid the danger to public safety and thus reinstated Dr. Dreyer's  
 12 license, as suspended modified with restrictions, allowing him to conduct  
 13 surgeries only if approved by two board-certified neurosurgeons actively  
 14 licensed in Washington, "and at least one must work outside of [Dr. Dreyer's]  
 15 place of employment and have no financial interest in the institution." Ex. 28  
 16 at 5-6; *see* ECF No. 26 at ¶¶ 85-86.  
 17

18 **VII. Dr. Dreyer's Past Surgeries Pass An External Peer Review, And He**  
**Resigns From MultiCare**

19 93. In November 2020, Dr. Swanson contacted The Greeley Company, LLC  
 20 ("Greeley"), an independent healthcare consulting company that provides  
 21 external peer reviews. *See* Ex. 29.  
 22

23 94. In early 2021, MultiCare engaged Greeley to perform a retrospective external  
 24 peer review based on individual patient medical records and imaging for 20  
 25

26 DEFENDANT'S STATEMENT OF MATERIAL FACTS NOT IN DISPUTE - 24

1 of Dr. Dreyer's surgeries performed at MultiCare. *See* Ex. 30 at 2, ¶ 5; *see*  
 2 Ex. 31 at 3; *see* ECF No. 26 at ¶ 142.  
 3

4 95. On November 8, 2021, after its review of Greeley issued its External Peer  
 5 Review Final Report, which concluded that the overall physician care is  
 6 appropriate and none of the cases fell outside the spectrum of safe and  
 7 appropriate care. *See* Ex. 31 at 1, 4-6.  
 8

9 96. On November 18, 2021, Dr. Dreyer resigned from MultiCare. *See* ECF No.  
 10 26 at ¶ 160.  
 11

12 **VIII. wRVU Compensation Model**

13 97. On or before September 11, 2019, Dr. Dreyer proposed he move from a  
 14 guaranteed flat salary to a production-based model of compensation, which  
 15 was an alternative, pre-existing compensation model at MultiCare. Ex. 32; Ex.  
 16 33; ECF No. 26 at ¶¶ 54, 104, 110-11.  
 17

18 98. On October 1, 2019, MultiCare changed Dr. Dreyer's compensation method  
 19 from a guaranteed flat salary to a production-based model known as the  
 20 "Work RVU [Relative Value Units] Production Method as outlined in the  
 21 MultiCare Rockwood Clinic Provider Compensation Manual." ECF No. 26 at  
 22 ¶¶ 104, 112; Ex. 33.  
 23

24 99. Work Relative Value Units ("wRVUs") are a standard unit of measurement  
 25

26 DEFENDANT'S STATEMENT OF MATERIAL FACTS NOT IN DISPUTE - 25

1 set by Medicare to establish value for health care procedures. ECF No. 26 at  
2 ¶ 55.  
3

4 100. wRVUs for particular services and procedures are calculated based on a value  
5 assigned under the Medicare Physician Fee Schedule. ECF No. 26 at ¶ 55.

6 101. The number of wRVUs increases as the complexity of the procedure  
7 increases. ECF No. 26 at ¶ 55.

8 102. Like most wRVU-based compensation models, under MultiCare's production  
9 model, neurosurgeons were paid a set amount for each wRVU generated for  
10 a procedure or service they personally performed. ECF No. 26 at ¶ 55.

11 103. The wRVU compensation model is promulgated by CMS. ECF No. 26 at ¶  
12 55; 42 C.F.R. § 414.22. Since the implementation of the wRVU compensation  
13 model, CMS has proposed numerous amendments to the governing  
14 regulations that indicate the wRVU compensation metric is proper and  
15 permissible. *See, e.g.*, 83 Fed. Reg. 226 (Nov. 23, 2018).

16 104. CMS regulations explicitly permit using wRVUs as a method for calculating  
17 productivity compensation. 42 C.F.R. § 411.352(i)(2)(ii) ("A productivity  
18 bonus must be calculated in a reasonable and verifiable manner. A  
19 productivity bonus will be deemed not to relate directly to the volume or value  
20 of referrals if one of the following conditions is met: (A) The productivity  
21

22 DEFENDANT'S STATEMENT OF MATERIAL FACTS NOT IN DISPUTE - 26

1        bonus is based on the physician's total patient encounters or the relative value  
2        units (RVUs) personally performed by the physician.”).

3  
4        105. CMS recognizes that wRVUs generally represent fair market value because  
5        CMS determines the values of the three components of wRVUs—physician's  
6        work, practice expense, and malpractice insurance—based on current market  
7        conditions. *See, e.g.*, Revisions to Payment Policies Under the Physician Fee  
8        Schedule, 81 Fed. Reg. 80,170, at 80,172 (Nov. 15, 2016).

9  
10      106. Recent healthcare industry publications state that the wRVU compensation  
11      model is both the standard practice and commonplace throughout the  
12      healthcare industry. *See generally, e.g.*, Rob Stone & Valerie Rock, E/M  
13      Changes Are Here—What Health Lawyers Need to Know about the  
14      Compliance and Reimbursement Impacts, AHLA (Oct. 19, 2020) (noting  
15      wRVU methods are explicitly permitted under both the Anti-Kickback Statute  
16      and Physician Self-Referral Law (aka the Stark Law)), attached as Ex. 34;  
17      Michelle Frazier *et al.*, Physician Compensation—The Enforcement Trend  
18      That Never Seems To Go Out Of Style, AHLA Seminar Papers (Sept. 28,  
19      2022) (“Compensation plans based solely on [wRVU] production have  
20      commonly been utilized in physician employment agreements for the past  
21      decade... The simplicity of administering wRVU-based plans, combined with  
22      23  
24      25  
26

## DEFENDANT'S STATEMENT OF MATERIAL FACTS NOT IN DISPUTE - 27

1 the objectivity of the wRVU as a measure of work, allowed such  
 2 compensation plans to become the preferred physician compensation model  
 3 by 2020.”), attached as Ex. 35.

5 **IX. Providence's and Dr. Dreyer's Settlements**

6 107. On March 15, 2022, Providence settled the *qui tam* action brought by Dr. Yam  
 7 on behalf of the Government regarding Dr. Dreyer. ECF No. 26 at ¶ 74; Ex.  
 8 36.

9 108. In its settlement agreement with the Government and Relators, Providence  
 10 admitted that its staff neurosurgeons, including Dr. Dreyer, “were paid  
 11 compensation for each wRVU that they generated, with no cap on the wRVU-  
 12 based compensation that could be earned,” but makes no admission that such  
 13 compensation was unlawful or improper and, in fact, the settlement agreement  
 14 expressly states that “Providence does not concede that liability arises, under  
 15 the False Claims Act or any other cause of action, from those facts.” Ex. 36 at  
 16 2 (C) and 5(J); *see* ECF No. 26 at ¶¶ 71-72, 74.

17 109. On April 14, 2023, Dr. Dreyer, in settling the Government’s allegations he  
 18 violated the federal False Claims Act and Washington State False Claims Act,  
 19 agreed to pay the Government \$1,174,849 and agreed to be excluded from  
 20 Medicare, Medicaid, and all other federal health care programs for nine years.  
 21

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 23

1 ECF No. 26 at ¶¶ 157, 161. Ex. 37 at 3-4.

2 110. In his settlement agreement with the Government, Dr. Dreyer admitted that  
 3 he “was paid compensation for each wRVU that he generated, with no cap on  
 4 the wRVU-based compensation that could be earned,” but makes no  
 5 admission that such compensation was unlawful or improper and, in fact,  
 6 expressly agreed that “this Settlement Agreement is not an admission of  
 7 liability or fault.” Ex. 36 at 2 (B) and 3(F); *see* ECF No. 26 at ¶ 159.

8  
 9  
 10 **X. Relators File The Instant *Qui Tam***

11 111. On April 13, 2022, Relators, Deanette Palmer, PhD and Richard Palmer, filed  
 12 this case as a *qui tam* on behalf of the United States and the State of  
 13 Washington. ECF No. 1; ECF No. 26 at ¶ 16.

14 112. On three separate occasions, the United States sought extensions of time to  
 15 investigate and consider intervening in this case, each time stating that “the  
 16 United States has been diligently investigating the relators’ allegations.” ECF  
 17 No. 3 at 2; ECF No. 6 at 2; ECF No. 9 at 2.

18 113. On August 4, 2023, the United States elected to intervene. ECF No. 12; ECF  
 19 No. 26 at ¶ 16.

20 114. On January 26, 2024, the United States and State of Washington jointly filed  
 21 the Complaint in Intervention (“Complaint”). ECF No. 26.

22  
 23  
 24 DEFENDANT’S STATEMENT OF MATERIAL FACTS NOT IN DISPUTE - 29  
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 26

1       **XI. Federal Or State Investigators Do Not Suspend Dr. Dreyer's Privileges**  
 2       **In Any Way Until March 12, 2021**

3       115. The DOH first received a complaint alleging Dr. Dreyer engaged at  
 4       Providence in medically unnecessary surgeries and fraudulent billing  
 5       practices in March 2019, but, based on the information in that complaint, it  
 6       did not take emergency action. *See* ECF No. 26 at ¶¶ 75, 82-83; Ex. 5.

7  
 8       116. The DOH did not bring charges until March 5, 2021. ECF No. 26 at ¶ 82; Ex.  
 9  
 10       5.

11       117. The DOH did not take emergency summary action until March 12, 2021. ECF  
 12  
 13       No. 26 at ¶ 83; Ex. 26.

14       118. The United States and State of Washington investigated for two years before  
 15       they sought to intervene and settle in the Yam FCA case on January 13, 2022.  
 16  
 17       *See* Ex. 17; Ex. 38.

18       119. The United States and State of Washington investigated this case for more  
 19       than a year and a half before they filed their Complaint against MultiCare. *See*  
 20  
 21       ECF Nos. 1, 3, 6, 9, 26.

22       120. On March 17, 2020, the DOJ issued a subpoena duces tecum to MultiCare  
 23       seeking production of all diagnostic, surgical, or other medical records from  
 24       Dr. Dreyer, including, but not limited to, any calculations of any  
 25       compensation based on any wRVUs. Ex. 39.

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1 121. Between April 17, 2020 and August 15, 2022, MultiCare produced documents  
2 in response to the DOJ Subpoena and responded in writing to specific  
3 questions from the DOJ. *See, e.g.*, Ex. 30.

5 122. Prior to filing the Complaint, the DOJ's investigation of this matter included  
6 review of documents produced by MultiCare; review of documents produced  
7 by Providence and others; review of allegations and materials provided by Dr.  
8 Yam in connection with their qui tam against Providence based on Dr.  
9 Dreyer's conduct; review of allegations and materials provided by Relators in  
10 this case, the Palmers, in connection with their qui tam against MultiCare  
11 based on Dr. Dreyer's conduct; interviews of current and former MultiCare  
12 and Providence employees; expert reviews of Dr. Dreyer's surgeries; review  
13 of Washington DOH materials and investigation into Dr. Dreyer; patient  
14 complaints at MultiCare and Providence; and analysis of MultiCare's billings  
15 to federal healthcare programs for Dr. Dreyer's services.  
16

17 123. Under 42 C.F.R. § 405.371(a), Medicare payments to providers may be:  
18  
19 (1) Suspended, in whole or in part, by CMS or a Medicare contractor if CMS  
20 or the Medicare contractor possesses reliable information that an overpayment  
21 exists or that the payments to be made may not be correct, although additional  
22 information may be needed for a determination"; or "(2) In cases of suspected  
23  
24  
25  
26

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1       fraud, suspended, in whole or in part, by CMS or a Medicare contractor if  
2       CMS or the Medicare contractor has consulted with the OIG, and, as  
3       appropriate, the Department of Justice, and determined that a credible  
4       allegation of fraud exists against a provider or supplier, unless there is good  
5       cause not to suspend payments.”  
6

7       124. Under 42 C.F.R. § 1001.701, HHS OIG has the authority to exclude an  
8       individual that has “(2) Furnished, or caused to be furnished, to patients  
9       (whether or not covered by Medicare or any of the State health care programs)  
10       any items or services substantially in excess of the patient’s needs, or of a  
11       quality that fails to meet professionally recognized standards of health care,”  
12       which determination OIG may make based on, *inter alia*, state or local  
13       licensing authorities or any other sources deemed appropriate by the OIG. 42  
14       C.F.R. §§ 1001.701(a)-(b).  
15

16       125. Under 42 C.F.R. § 1001.901(a), HHS OIG may exclude any individual that it  
17       determines has committed an act described in [42 U.S.C. § 1320a-7a], which  
18       provides for Civil Monetary Penalties for claims for items or services not  
19       provided as claimed, false or fraudulent claims, claims for services not  
20       medically necessary, among other things. 42 C.F.R. §§ 1001.901(a); 42  
21       U.S.C. § 1320a-7a.  
22

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126. Under the Washington Revised Code, RCW 18.130.050(8) provides that the  
 1 disciplining authority “has the following authority:” ... “(8) To take  
 2 emergency action ordering summary suspension of a license, or restriction or  
 3 limitation of the license holder’s practice pending proceedings by the  
 4 disciplining authority. ....,” which summary suspension remains in effect until  
 5 proceedings by the disciplining authority have been completed. RCW  
 6 18.130.050(8).

7  
 8 DATED: October 14, 2024.  
 9  
 10

11  
 12 STOEL RIVES LLP  
 13  
 14

15 */s/Anne Dorshimer*  
 16

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## CERTIFICATE OF SERVICE

I hereby certify that on October 14, 2024, I caused the foregoing to be electronically filed with the Clerk of Court using the CM/ECF system, which in turn automatically generated a Notice of Electronic Filing (NEF) to all parties in the case who are registered users of the CM/ECF system. The NEF for the foregoing specifically identifies recipients of electronic service.

DATED: October 14, 2024.

STOEL RIVES, LLP

/s/Anne M. Dorshimer  
ANNE M. DORSHIMER, WSBA No. 50363

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