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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.

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

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

25 Pursuant to Federal Rule of Civil Procedure 56 and Local Rules 7 and 56,
26 MultiCare Health System ("MultiCare") submits this Statement of Material Facts
Not In Dispute together with and in support of its Motion for Summary Judgment
on the United States' and the State of Washington's Complaint in Intervention (the
"Complaint," ECF No. 26). Each of the Exhibits cited herein are attached to the
concurrently-filed Declaration of Anne M. Dorshimer:

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.
 12

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

B. Dr. Dreyer applies to join MultiCare at Deaconess

8. In early 2019, MultiCare was recruiting additional neurosurgeons to adequately service the patient volume, including providing on call emergency neurosurgeon coverage, as well as to expand its neurosurgery practice and to establish a neuroscience institute. ECF No. 26 at ¶¶ 88-89. Recruiting was extremely difficult as neurosurgeons are in high demand and typically want to work in larger metropolitan areas. ECF No. 26 at ¶ 89.
9. MultiCare effectively formed a selection and hiring committee for the neurosurgeon position, which included MultiCare’s Medical Director for Surgical Services, Dr. John Demakas, MultiCare’s Regional Administrator, Mark Donaldson, and MultiCare’s President of Deaconess Hospital, Lauren Driscoll. ECF No. 26 at ¶ 89.
10. On March 16, 2019, Dr. Dreyer contacted MultiCare via email regarding potential employment. ECF No. 26 at ¶ 88; Ex. 3 at 1.
11. At the time he presented to MultiCare for employment, Dr. Dreyer had been board-certified by the American Board of Osteopathic Surgery since 2014. Ex. 4 at 3, 5. After time serving in the Army reserves, he earned a master’s

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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.

- 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.

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

- 15 13. On March 28, 2019, Mr. Donaldson emailed Dr. Demakas, stating that he met
 16 with a Globus sales representative, who told Donaldson on March 27, 2019
 17 that “they spoke very highly of Dr. Dreyer and said he has been exonerated of
 18 the issues in Walla Walla.” *See* ECF No. 26 at ¶ 92; Ex. 6 at 1.
 19
 20 14. On April 3, 2019, Mr. Donaldson emailed Ms. Driscoll and Dr. Demakas
 21 regarding, among others, interviews for the neurosurgeon candidates. *See* Ex.
 22 7 at 1. The email states, in part: “There are some red flags on [Dr. Dreyer’s]
 23 practice style and relationships that we need to clarify when he comes for an
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1 interview.” Ex. 7 at 1; ECF No. 26 at ¶ 95.

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

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

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

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

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

15 20. On May 3, 2019, in his responses on the Washington Practitioner Application,
16 Dr. Dreyer answer and verified “No” in response to the question “Have you
17 ever been subject to review, challenges, and/or disciplinary action, formal or
18 informal, by an ethics committee, licensing board, medical disciplinary board,
19 professional association or education/training institution?” Composite Ex. 11
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1 at 14.

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3 21. On May 20, 2019, MultiCare received a peer reference for Dr. Dreyer.
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
11

12 22. Prior to May 31, 2019, MultiCare engaged in its routine hiring and
13 credentialing process with respect to Dr. Dreyer, including but not limited to
14 the following acts that are documented in the hiring and credentialing records
15 in Composite Exhibit 11:
16

- 17 a. verifying Dr. Dreyer’s required education, training, and board
18 certifications, and licensure dates, *see* Comp. Ex. 11 at 34-44, 74, 81,
19 85-107, 111;
20
21 b. verifying Dr. Dreyer’s employment dates and prior healthcare
22 entity/facility affiliations, *see* Comp. Ex. 11 at 63-65, 184;
23
24 c. requesting verification from Providence of Dr. Dreyer’s clinical
25 privileges and receiving in response a written statement from
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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

19
20 e. obtaining completed peer evaluation forms from four peer references
21 who worked with Dr. Dreyer, none of which noted any significant
22 concerns, and each of which rated Dr. Dreyer as “superior” in most
23 categories and “recommend highly without reservation,” *see* Comp. Ex.
24 11 at 45-60;
25
26

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

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

23. On March 4, 2019, a complaint was submitted to the DOH about 11 of Dr. Dreyer's surgeries at Providence. ECF No. 26 at ¶ 75.
24. 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

7
 8 26. Dr. Dreyer was represented in the DOH matter by his own attorney. Ex. 4 at
 9 1, 9.
 10

11 27. The DOH investigation was not disclosed to MultiCare, by Dr. Dreyer or
 12 anyone else, during the hiring or credentialing process at MultiCare. *See supra*
 13 ¶¶ 8-25.
 14

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

16 **A. MultiCare performs standard peer reviews of Dr. Dreyer's** 17 **surgeries**

18 28. On July 23, 2019, Dr. Dreyer was granted clinical privileges at MultiCare
 19 Deaconess Hospital and began seeing patients. ECF No. 26 at ¶ 104; Ex. 13
 20 at 1.
 21

22 29. Dr. Dreyer, like any new physician joining the medical staff at Deaconess,
 23 underwent a focused provider review of his cases, which turned up no issues.
 24 Ex. 11 at 192-94; Ex. 13 at 1; Ex. 14 at ¶¶ 10-11.
 25

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

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
17 32. On September 23, 2019, Mr. Donaldson and Dr. Demakas held a follow-up
18 meeting with Mr. Gilliver and asked him to identify four surgeries for which
19 he had concerns, which they would review, and he did. ECF No. 26 at ¶ 122;
20 Ex. 15 at 47:5-20, 87:5-19, 114:24-117:22. Mr. Gilliver testified both Mr.
21 Donaldson and Dr. Demakas were empathic and took his concerns seriously.
22 Ex. 15 at 118:9-24.
23

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25 33. About two weeks later, in early October 2019, Mr. Gilliver met with numerous
26

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.

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

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

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

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

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

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

17
18
19
20 44. The DOJ’s email explicitly informed MultiCare:

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

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

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

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
7 46. The email advises that:

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

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

21 Ex. 1 at 2 (emphasis added).

22
23 48. The DOJ’s email did not specifically request that MultiCare respond to or
24 contact the DOJ. See Ex. 1 at 2.

25 49. The DOJ’s email did not request or demand that MultiCare take any actions
26

1 with respect to Dr. Dreyer, or report any such actions to the DOJ. *See* Ex. 1 at
2 2.
3

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

8 51. On February 17, 2020, outside counsel confirmed by reply email receipt of
9 the DOJ's February 15 email that she had reached out to Dayle Hosek
10 (MultiCare Director of Risk Management), the "correct contact" for
11 MultiCare. Ex. 1 at 2; *see* ECF No. 26 at ¶ 134.
12

13 52. On Friday, February 21, 2020, AUSA Tornabene replied by email to the
14 outside counsel to "touch base because they had not heard anything" since her
15 February 17 response. Ex. 1 at 1. The email continued:
16

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

23 Ex. 1 at 1 (emphasis added).
24

25 53. That same day, the outside counsel replied that her MultiCare client contact
26 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; Ex. 20.

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

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

4 ECF No. 26 at ¶ 138; Ex. 20.

5 58. The SBAR set forth four recommended actions: (1) to meet with Dr. Dreyer
6 to determine if he adequately disclosed these issues, if known to him, or to
7 make him aware, if unknown; (2) immediately implement a peer review of all
8 planned surgical services, including authority to cancel planned surgeries if
9 the peer reviewer deems it warranted; (3) initiate, “as soon as practical,” “an
10 independent objective review of at least [10] major surgical cases of Dr.
11 Dreyer’s since his employment at [MultiCare]”; and (4) “proceed with further
12 discovery of information if available.” ECF No. 26 at ¶¶ 139-40, 142-43; Ex.
13 20.
14
15
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17 59. On February 26, 2020, Dr. Dreyer met with Dr. Swanson, Dr. Demakas
18 (MultiCare’s Medical Director for Surgical Services), and Mel Hoadley (a
19 MultiCare Human Resources employee) to discuss the DOJ’s investigation
20 into Dr. Dreyer’s conduct while at Providence. ECF No. 26 at ¶ 144; *see* Ex.
21 21 at 2.
22
23

24 60. During that meeting, Dr. Dreyer represented that while he was aware of an
25 inquiry that occurred while he worked at Providence, it was a “board inquiry
26

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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.
6

7
8 61. In response to MultiCare’s specific question whether he had been notified by
9 the Washington Medical Commission of any investigation, Dr. Dreyer
10 responded that he had not. ECF No. 26 at ¶¶ 144-45; Ex. 21 at 2.
11

12 62. MultiCare advised Dr. Dreyer during that meeting that, “as a precautionary
13 measure,” “[Dr. Demakas] would review 100% of elective surgical cases from
14 a prospective perspective and 100% post-surgical reviews of both elective and
15 emergent cases” and would also obtain external review of some surgeries he
16 had performed at MultiCare. Ex. 21 at 2.
17

18
19 63. Dr. Swanson then met with Dr. Demakas to discuss the concerns and the plan
20 for peer oversight of Dr. Dreyer’s surgeries, though he did not disclose to Dr.
21 Demakas a copy of the DOJ’s “notice email.” *See* ECF No. 26 at ¶ 140.
22

23 64. Immediately following the meeting with Dr. Swanson, Dr. Demakas, who at
24 the time was a licensed neurosurgeon, a Fellow of the American Association
25 of Neurological Surgeons, and the Medical Director for Surgical Services at
26

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

6
7 65. On March 2, 2020, Dr. Swanson, with input from Dr. Demakas and MultiCare
8 leadership, formalized a “Jason Dreyer, DO Clinical Review Form” for the
9 pre-and post-operative review of elective cases, which he shared via email
10 with Dr. Demakas, Dr. Dreyer, and others. *See* Ex. 22.
11

12 66. The “Jason Dreyer, DO Clinical Review Form” includes a section titled
13 “Imaging Summary” for the peer reviewer’s review of and summary of the
14 patient’s imaging. Ex. 22 at 3.
15

16 67. Dr. Swanson, in the March 2 email, explains that the Form is “only applicable
17 to elective cases as we obviously would not want to inappropriately slow
18 emergent cases,” but “I think we should complete the post-surgical review for
19 emergent cases as well.” Ex. 22 at 1.
20

21 68. Dr. Demakas used the “Jason Dreyer, DO Clinical Review Form” for his pre-
22 and post-operative reviews of Dr. Dreyer’s elective surgeries. *See, e.g.,* Comp.
23 Ex. 23.
24

25 69. On March 5, 2020, Dr. Swanson emailed Dr. Dreyer to document their
26

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

2
3 70. In response, Dr. Dreyer emailed Dr. Swanson “[j]ust to clarify” that the
4 Providence review was not the result of any “event relative to my employment
5 there” and that he voluntarily resigned, which he “discussed with Dr.
6 Demakas prior to [] getting hired at MultiCare.” Ex. 21 at 1. He further stated,
7

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

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

24 71. Dr. Dreyer’s email to Dr. Swanson added, “I certainly have not heard anything
25 about the US attorney’s office. My lawyer from Providence has not either.”

26 Ex. 21 at 1.

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

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

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
9 81. One week later after filing its Statement of Charges and before Dr. Dreyer
10 submitted any response thereto, on Friday, March 12, 2021, the DOH made
11 *ex parte* findings, based on Dr. Dreyer's conduct at Providence between
12 August 2014 and January 2016, that Dr. Dreyer posed a present threat to
13 public health and safety and thus "summarily restricted" Dr. Dreyer "from
14 performing spine surgeries" pending further proceedings. Ex. 26 at 2, 3.; *see*
15 ECF No. 26 at ¶ 83.

16
17
18 82. On Monday, March 15, 2021, MultiCare learned for the first time that the
19 DOH had summarily restricted Dr. Dreyer's license. *See* Ex. 27.

20
21 83. That same day, Dr. Swanson contacted Dr. Dreyer to inform Dr. Dreyer that
22 MultiCare was placing him on administrative leave. *See* Ex. 27.

23
24 84. The following day, March 16, 2021, MultiCare confirmed to Dr. Dreyer by
25 letter that MultiCare was placing him on administrative leave effective
26 immediately, and until further notice that he could not provide patient care *in*

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

1 *any manner*. Ex. 27.

2
3 85. On March 22, 2021, the DOH issued a Corrected Statement of Charges against
4 Dr. Dreyer. *See* Ex. 28 at 3, ¶ 1.1.

5 86. On March 25, 2021, Dr. Dreyer responded to the original Statement of
6 Charges. *See* ECF No. 26 at ¶ 84.

7
8 87. On March 25, 2021, Dr. Demakas signed a declaration attesting: “In the
9 retrospective and prospective reviews of Dr. Dreyer’s cases that I have
10 personally performed, I did not observe concerning or substandard care based
11 upon the information that was available to me at the time.” Ex. 14 at ¶ 14; *see*
12 ECF No. 26 at ¶ 84.

13
14 88. Dr. Demakas’ Declaration further explained the scope of his personal review:
15

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

Ex. 14 at ¶¶ 11-14.

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

16
17
18 **VII. Dr. Dreyer's Past Surgeries Pass An External Peer Review, And He**
19 **Resigns From MultiCare**

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

23
24 94. In early 2021, MultiCare engaged Greeley to perform a retrospective external
25 peer review based on individual patient medical records and imaging for 20
26

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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

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

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

9 102. Like most wRVU-based compensation models, under MultiCare's production
10 model, neurosurgeons were paid a set amount for each wRVU generated for
11 a procedure or service they personally performed. ECF No. 26 at ¶ 55.
12

13 103. The wRVU compensation model is promulgated by CMS. ECF No. 26 at ¶
14 55; 42 C.F.R. § 414.22. Since the implementation of the wRVU compensation
15 model, CMS has proposed numerous amendments to the governing
16 regulations that indicate the wRVU compensation metric is proper and
17 permissible. *See, e.g.*, 83 Fed. Reg. 226 (Nov. 23, 2018).
18
19

20 104. CMS regulations explicitly permit using wRVUs as a method for calculating
21 productivity compensation. 42 C.F.R. § 411.352(i)(2)(ii) ("A productivity
22 bonus must be calculated in a reasonable and verifiable manner. A
23 productivity bonus will be deemed not to relate directly to the volume or value
24 of referrals if one of the following conditions is met: (A) The productivity
25
26

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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
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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.
4

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

10 108. In its settlement agreement with the Government and Relators, Providence
11 admitted that its staff neurosurgeons, including Dr. Dreyer, “were paid
12 compensation for each wRVU that they generated, with no cap on the wRVU-
13 based compensation that could be earned,” but makes no admission that such
14 compensation was unlawful or improper and, in fact, the settlement agreement
15 expressly states that “Providence does not concede that liability arises, under
16 the False Claims Act or any other cause of action, from those facts.” Ex. 36 at
17 2 (C) and 5(J); *see* ECF No. 26 at ¶¶ 71-72, 74.
18
19

20 109. On April 14, 2023, Dr. Dreyer, in settling the Government’s allegations he
21 violated the federal False Claims Act and Washington State False Claims Act,
22 agreed to pay the Government \$1,174,849 and agreed to be excluded from
23 Medicare, Medicaid, and all other federal health care programs for nine years.
24
25
26

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.
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.
15

16 112. On three separate occasions, the United States sought extensions of time to
17 investigate and consider intervening in this case, each time stating that “the
18 United States has been diligently investigating the relators’ allegations.” ECF
19 No. 3 at 2; ECF No. 6 at 2; ECF No. 9 at 2.
20

21 113. On August 4, 2023, the United States elected to intervene. ECF No. 12; ECF
22 No. 26 at ¶ 16.
23

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

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

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

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

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

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

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

120. On March 17, 2020, the DOJ issued a subpoena duces tecum to MultiCare seeking production of all diagnostic, surgical, or other medical records from Dr. Dreyer, including, but not limited to, any calculations of any 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.
4

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
18
19

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

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

8 124. Under 42 C.F.R. § 1001.701, HHS OIG has the authority to exclude an
9 individual that has “(2) Furnished, or caused to be furnished, to patients
10 (whether or not covered by Medicare or any of the State health care programs)
11 any items or services substantially in excess of the patient’s needs, or of a
12 quality that fails to meet professionally recognized standards of health care,”
13 which determination OIG may make based on, *inter alia*, state or local
14 licensing authorities or any other sources deemed appropriate by the OIG. 42
15 C.F.R. §§ 1001.701(a)-(b).
16
17
18

19 125. Under 42 C.F.R. § 1001.901(a), HHS OIG may exclude any individual that it
20 determines has committed an act described in [42 U.S.C. § 1320a-7a], which
21 provides for Civil Monetary Penalties for claims for items or services not
22 provided as claimed, false or fraudulent claims, claims for services not
23 medically necessary, among other things. 42 C.F.R. §§ 1001.901(a); 42
24 U.S.C. § 1320a-7a.
25
26

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1 126. Under the Washington Revised Code, RCW 18.130.050(8) provides that the
 2 disciplining authority “has the following authority:” ... “(8) To take
 3 emergency action ordering summary suspension of a license, or restriction or
 4 limitation of the license holder’s practice pending proceedings by the
 5 disciplining authority.,” which summary suspension remains in effect until
 6 proceedings by the disciplining authority have been completed. RCW
 7 18.130.050(8).
 8
 9

10 DATED: October 14, 2024.
 11

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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

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