

SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is entered into among the United States of America, acting through the United States Department of Justice and on behalf of the Office of Inspector General (OIG-HHS) of the Department of Health and Human Services (HHS); (collectively, the "United States"), the State of Washington, acting through the Washington Office of the Attorney General and on behalf of the Washington Health Care Authority (HCA) (collectively the "State"); Dr. Ray Smith and A Brief Counseling Center, P.S., d/b/a Healthy Counseling Center (ABCC), (hereafter collectively referred to as "Defendants" where appropriate); and Julie Higdon, Shelley Bakken, and Simplified Practice Solutions, LLC (hereafter "Relators"); through their authorized representatives. The United States and the State are collectively referred to herein as the "Government", and the Government, Defendants, and Relators are collectively referred to herein as the "Parties".

FACTUAL RECITALS

A. Defendants are contracted providers with the Washington State Medicaid Program under Medicaid Provider number(s) 2001041; 2169551; and 2060468. Claims for reimbursement for services are submitted to Washington State Medicaid under National Provider Identifier number(s) 1740268804 and 1417327883. Dr. Ray Smith is, and at all times relevant to this Agreement was, the sole owner and governor of A Brief Counseling Center, P.S., d/b/a Healthy Counseling Center.

B. On November 8, 2019, Relators filed a qui tam action in the United States District Court for the Eastern District of Washington captioned United States ex rel. Higdon et al. v. A Brief Counseling Center, P.S., et al., 2:19-cv-00386-TOR (E.D. Wash.), pursuant to the qui tam provisions of the False Claims Act, 31 U.S.C. § 3730(b) (the Civil Action). Relators alleged that Defendant submitted and caused to be submitted to the United States and the State of

Washington false claims for mental health treatment and therapy services for unqualified and unlicensed personnel. The United States intervened in the Civil Action on February 8, 2022.

C. The Government contends that Defendants submitted or caused to be submitted claims for payment to the Washington State Medicaid Program, 42 U.S.C. §§ 1396-1396w-5, RCW 74.66 *et seq.*, and RCW 74.09.210 (hereafter "Medicaid").

D. The Government contends that it has certain civil claims against Defendants arising from claims for payment submitted to Medicaid, between July 1, 2017, and December 31, 2019, for submitting and causing to be submitted false claims to Medicaid for mental health therapy services. Specifically, the Government contends that Defendants falsely submitted and caused to be submitted false claims to Medicaid for mental health therapy services performed by unlicensed and unqualified mental health professionals for whom Medicaid reimbursement was not appropriate, and falsely represented in billing data that the mental health therapy services had been performed by properly licensed and qualified mental health professionals. The conduct described in this paragraph is hereinafter referred to as the "Covered Conduct."

E. The Government contends that it has certain civil claims against Defendants under the False Claims Act, codified at 31 U.S.C. §§ 3729-3733, the Medicaid Fraud False Claims Act, codified at RCW 74.66, the Fraudulent Practices Act, codified at RCW 74.09.210, and the common law for allegedly engaging in the Covered Conduct.

F. This Settlement Agreement is neither an admission of liability by Defendants nor a concession by the Government that its claims are not well founded.

To avoid the delay, uncertainty, inconvenience, and expense of protracted litigation of the Covered Conduct, and in consideration of the mutual promises and obligations of this Settlement Agreement, the Parties agree, and covenant as follows:

TERMS AND CONDITIONS

1. Defendants shall pay to the Government \$138,984, all of which is restitution. (herein "the Settlement Amount"). Of the Settlement Amount, \$55,593.60 is owed to the United States, which shall be paid within fourteen (14) days of the Effective Date of this Agreement by electronic funds transfer pursuant to written instructions to be provided by the United States Attorney's Office for the Eastern District of Washington. Of the Settlement Amount, \$83,390.40 is owed to the State, which shall be paid within fourteen (14) days of the Effective Date of this Agreement to: "Washington State Attorney General" c/o the Medicaid Fraud Control Division, 2425 Bristol Court, Olympia, WA 98502. On the Effective Date of this Agreement, the Settlement Amount shall constitute a debt due and immediately owing to the Government per the terms of this paragraph.
2. Conditioned upon the Government receiving the Settlement Amount and as soon as feasible after receipt, the United States shall pay \$10,284.82 to Relator by electronic funds transfer, and the State of Washington shall pay \$15,427.22 to Relator by electronic funds transfer. (hereafter the "Relator's Share").
3. Subject to the exceptions in paragraph 5 (concerning reserved claims) below, and conditioned upon Defendants' full payment of the Settlement Amount, the Government releases Defendants' from any civil or administrative monetary claim the Government has for the Covered Conduct under the False Claims Act, 31 U.S.C. §§ 3729-3733; the Civil Monetary Penalties Law, 42 U.S.C. § 1320a-7a; the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801-3812; the Medicaid Fraud False Claims Act, RCW 74.66; the False Practices Act, RCW 74.09.210, or the common law theories of payment by mistake, unjust enrichment, and fraud.
4. Subject to the exceptions in paragraph 5 below, and upon the Governments' receipt of the Settlement Amount, Relators, for themselves and for their heirs, successors,

attorneys, agents, and assigns, release Defendants from any civil monetary claim the Relator has on behalf of the United States for the Covered Conduct under the False Claims Act, 31 U.S.C. §§ 3729-3733 or the Medicaid Fraud False Claims Act, RCW 74.66.

5. Notwithstanding the releases given in paragraphs 3 and 4 of this Agreement, or any other term of this Agreement, the following claims of the Government are specifically reserved and are not released:

- a. Any criminal, civil, or administrative liability arising under Title 26, U.S. Code (Internal Revenue Code) or state revenue codes;
- b. Any criminal liability;
- c. Except as explicitly stated in this Agreement, any administrative liability or enforcement right, including mandatory or permissive exclusion from Federal or State health care programs;
- d. Any liability to the Government (or its agencies) for any conduct other than the Covered Conduct;
- e. Any liability based upon obligations created by this Agreement;
- f. any civil or administrative liability that any person or entity, including Defendants have or may have to the Federal, State, or individual consumers or government program payers under any statute, regulation or rule not expressly covered by the release in this Agreement, including but not limited to, any and all of the following claims: (i) antitrust violations; (ii) claims involving unfair and/or deceptive acts and practices and/or violations of consumer protection laws;
- g. any liability which may be asserted on behalf of any other payers or insurers, including those that are paid by the Government programs on

a capitated basis;

- h. any liability for expressed or implied warranty claims or other claims for defective or deficient products and services provided by Defendants;
- i. any liability for personal injury or property damage or for other consequential damages arising from the Covered Conduct;
- j. any liability based on a failure to deliver goods or services due; and,
- k. Except as expressly stated herein, any liability of individuals.

6. Except as expressly stated herein, this Agreement is not intended to affect the terms of any provider agreement(s), contracts, or other agreements that Defendants have or may have with HCA or any State of Washington agency.

7. Defendants fully and finally release the Government, its agencies, officers, agents, employees, and servants, from any claims (including attorney's fees, costs, and expenses of every kind and however denominated) that Defendants could have asserted, could have asserted, or may assert in the future against the Government and its agencies, officers, agents, employees, and servants related to the Covered Conduct and the Government's investigation and prosecution thereof.

8. The Settlement Amount shall not be decreased as a result of the denial of claims for payment now being withheld from payment by any Medicare or Medicaid contractor (e.g., Medicare Administrative Contractor, fiscal intermediary, carrier) or any state payer, related to the Covered Conduct; and Defendants agree not to resubmit to any Medicare or Medicaid contractor or any state payer any previously denied claims related to the Covered Conduct, agrees not to appeal any such denials of claims, and agrees to withdraw any such pending appeals.

9. Relators and their heirs, successors, attorneys, agents, and assigns shall not object to this Agreement but agree and confirm that this Agreement is fair, adequate, and reasonable under all the circumstances, pursuant to 31 U.S.C. § 3730(c)(2)(B). Conditioned upon Relator's receipt of the Relator's Share, Relators and their heirs, successors, attorneys, agents, and assigns fully and finally release, waive, and forever discharge the United States, its agencies, officers, agents, employees, and servants, from any claims arising from the filing of the Civil Action or under 31 U.S.C. § 3730, and from any claims to a share of the proceeds of this Agreement and/or the Civil Action.

10. Specifically excluded and reserved from those claims released under paragraphs 3 and 4 above is any dispute, claim, or defense which may arise between the Relators and Defendants regarding attorneys' fees or claims of the Relators under 31 U.S.C. 3730(d)(1), RCW 74.66.070(1)(c), or for any dispute, claim, or defense which may arise between Relators and Defendants regarding 31 U.S.C. 3730(h)(1), RCW 74.66.090, or any other cause of action between the Relators and Defendants.

11. Defendants agree to the following:

a. Unallowable Costs Defined: All costs (as defined in the Federal Acquisition Regulation, 48 C.F.R. § 31.205-47; and in Titles XVIII and XIX of the Social Security Act, 42 U.S.C. §§ 1395-1395III-1 and 1396-1396w-5; and the regulations and official program directives promulgated thereunder) incurred by or on behalf of Defendants or their Companies, their present or former officers, directors, employees, shareholders, and agents in connection with:

- (1) the matters covered by this Agreement;
- (2) the Government's audit(s) and civil and any criminal investigation(s) of the matters covered by this Agreement;

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

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

b. Future Treatment of Unallowable Costs: Unallowable Costs shall be separately determined and accounted for, and Defendants shall not charge such Unallowable Costs directly or indirectly to any contracts with the United States or any State Medicaid program, or seek payment for such Unallowable Costs through any cost report, cost statement, information statement, or payment request submitted by Defendants, or any of their subsidiaries or affiliates to Medicare, and Medicaid Programs.

c. Treatment of Unallowable Costs Previously Submitted for Payment: Defendants further agree that within 90 days of the Effective Date of this Agreement they shall identify to applicable Medicare fiscal intermediaries, carriers, and/or contractors, and Medicaid fiscal agents, any Unallowable Costs (as defined in this paragraph) included in payments previously sought from the Government, including, but not limited to, payments sought in any cost reports, cost statements, information reports, or payment requests already submitted by Defendants, or any of their subsidiaries or affiliates, and shall request, and agree, that such cost reports, cost statements, information reports, or payment requests, even if already settled, be adjusted to account for the effect of the inclusion of the unallowable costs. Defendants agree that

the Government, at a minimum, shall be entitled to recoup from Defendants, any overpayment plus applicable interest and penalties as a result of the inclusion of such Unallowable Costs on previously-submitted cost reports, information reports, cost statements, or requests for payment.

Any payments due after the adjustments have been made shall be paid to the United States pursuant to the direction of the Department of Justice, Medicaid Fraud Control Unit, and/or the affected agencies. The Government reserves its rights to disagree with any calculations submitted by Defendants, or any of their subsidiaries or affiliates on the effect of inclusion of Unallowable Costs (as defined in this paragraph) on Defendants, or any of their subsidiaries or affiliates' cost reports, cost statements, or information reports.

d. Nothing in this Agreement shall constitute a waiver of the rights of the Government to audit, examine, or re-examine Defendants' books and records to determine that no Unallowable Costs have been claimed in accordance with the provisions of this paragraph.

12. Defendants warrant that they have reviewed their financial situation and that they are currently solvent within the meaning of 11 U.S.C. §§ 547(b)(3) and 548(a)(1)(B)(ii)(I), and shall remain solvent following payment to the United States of the Settlement Amount. Further, the Parties warrant that, in evaluating whether to execute this Agreement, they (a) have intended that the mutual promises, covenants, and obligations set forth constitute a contemporaneous exchange for new value given to Defendants, within the meaning of 11 U.S.C. § 547(c)(1); and (b) conclude that these mutual promises, covenants, and obligations do, in fact, constitute such a contemporaneous exchange. Further, the Parties warrant that the mutual promises, covenants, and obligations set forth herein are intended to and do, in fact, represent a reasonably equivalent exchange of value that is not intended to hinder, delay, or defraud any entity to which Defendants was or became indebted to on or after the date of this transfer, within the meaning of 11 U.S.C. § 548(a)(1).

13. If within 91 days of the Effective Date of this Agreement or of any payment made under this Agreement, Defendants commence, or a third party commences, any case, proceeding, or other action under any law relating to bankruptcy, insolvency, reorganization, or relief of debtors (a) seeking to have any order for relief of Defendants' debts, or seeking to adjudicate Defendant as bankrupt or insolvent; or (b) seeking appointment of a receiver, trustee, custodian, or other similar official for Defendant or for all or any substantial part of Defendants' assets, Defendants agree as follows:

a. Defendants' obligations under this Agreement may not be avoided pursuant to 11 U.S.C. § 547, and Defendant shall not argue or otherwise take the position in any such case, proceeding, or action that: (i) Defendants' obligations under this Agreement may be avoided under 11 U.S.C. § 547; (ii) Defendants were insolvent at the time this Agreement was entered into, or became insolvent as a result of the payment made to the United States; or (iii) the mutual promises, covenants, and obligations set forth in this Agreement do not constitute a contemporaneous exchange for new value given to Defendants.

b. If Defendants' obligations under this Agreement are avoided for any reason, including, but not limited to, through the exercise of a trustee's avoidance powers under the Bankruptcy Code, the Government, at its sole option, may rescind the releases in this Agreement and file a complaint against Defendants based on the Covered Conduct. The Parties agree and understand that in that instance the full amount any of damages and/or penalties based on any such complaint against Defendants are non-dischargeable and not subject to any stay in any bankruptcy declared by Defendants. Defendants further agree that any such resulting claims, actions, collection efforts, or proceedings brought by the United States are not subject to an "automatic stay" pursuant

to 11 U.S.C. § 362(a) as a result of the action, case, or proceedings described in the first clause of this paragraph, and Defendants shall not argue or otherwise contend that the United States' claims, actions, or proceedings are subject to an automatic stay.

c. Defendants acknowledge that their agreements in this paragraph are provided in exchange for valuable consideration provided in this Agreement.

14. This Agreement is intended to be for the benefit of the Parties only. The Parties do not release any claims against any other person or entity, except to the extent provided for in paragraph 15 (waiver for beneficiaries' paragraph), below.

15. Defendants agree that they waive and shall not seek payment for any of the health care billings covered by this Agreement from any health care beneficiaries or their parents, sponsors, legally responsible individuals, or third-party payers based upon the claims defined as Covered Conduct.

16. The Defendants have provided sworn financial disclosures and supporting documents (together "Financial Disclosures") to the United States and the United States has relied on the accuracy and completeness of those Financial Disclosures in reaching this Agreement. The Defendants warrant that the Financial Disclosures are complete, accurate, and current as of the Effective Date of this Agreement. If the United States learns of asset(s) in which the Defendants, or either of them, had an interest of any kind as of the Effective Date of this Agreement (including, but not limited to, promises by insurers or other third parties to satisfy the Defendant's obligations under this Agreement) that were not disclosed in the Financial Disclosures, or if the United States learns of any false statement or misrepresentation by the Defendants on, or in connection with, the Financial Disclosures, and if such nondisclosure, false statement, or misrepresentation changes the estimated net worth set forth in the Financial Disclosures by \$25,000 or more, the United States may at its option rescind this

Agreement and reinstate file suit based on the Covered Conduct. In the event that the United States, pursuant to this paragraph rescinds this Agreement, the Defendants waive and agree not to plead, argue, or otherwise raise any defenses under the theories of statute of limitations, laches, estoppel, or similar theories, to any civil or administrative claims that (a) are filed by the United States within 120 calendar days of written notification to the Defendants that this Agreement has been rescinded, and (b) relate to the Covered Conduct, except to the extent these defenses were available on the Effective Date of this Agreement. In the event that the United States, pursuant to this paragraph rescinds this Agreement, the Defendants waive and agree not to plead, argue, or otherwise raise any defense or argument for offset, or repayment to the Defendants, of any amounts already paid by the Defendants to the United States at the time of rescission pursuant to this Agreement. The Defendants further agree that any payment to the United States pursuant to this Agreement shall only entitle the Defendants to a credit in that amount towards the payment of any final judgment amount (single damages after trebling plus penalties under the False Claims Act) imposed against them related the Covered Conduct.

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

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

19. This Agreement is governed by the laws of the United States and the State of Washington. The exclusive jurisdiction and venue for any dispute relating to this Agreement is the United States District Court for the Eastern District of Washington. For purposes of construing this Agreement, this Agreement shall be deemed to have been drafted by all Parties to

this Agreement and shall not, therefore, be construed against any Party for that reason in any subsequent dispute.

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

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

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

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


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

25. This Agreement is effective on the date of signature of the last signatory to the Agreement (Effective Date of this Agreement). Facsimiles and electronic transmissions of signatures shall constitute acceptable, binding signatures for purposes of this Agreement.

THE UNITED STATES OF AMERICA

DATED: 2/14/2022


BY:




Dan Fruchter
Assistant United States Attorney
Eastern District of Washington

DATED: 2-15-22

BY:



Tyler H.L. Tornabene
Assistant United States Attorney
Eastern District of Washington

DATED: 02/14/2022 BY: 
Lisa M. Re
Assistant Inspector General for Legal Affairs
Office of Counsel to the Inspector General
Office of Inspector General
U.S. Department of Health and Human Services

THE STATE OF WASHINGTON

DATED: _____ BY: _____
Larissa Payne , Director
Senior Assistant Attorney General
Medicaid Fraud Control Unit
Washington Office of the Attorney General

DATED: _____ BY: _____
Dr. Charissa Fotinos
Medicaid Director
Washington Health Care Authority

DATED: _____

BY: _____

Lisa M. Re
Assistant Inspector General for Legal Affairs
Office of Counsel to the Inspector General
Office of Inspector General
U.S. Department of Health and Human Services

THE STATE OF WASHINGTON

DATED: 2/14/2022

BY: Larissa Payne

Larissa Payne , Director
Senior Assistant Attorney General
Medicaid Fraud Control Unit
Washington Office of the Attorney General

DATED: 2/14/2022

BY: Charissa Fotinos MD, MSc

Dr. Charissa Fotinos
Medicaid Director
Washington Health Care Authority

DEFENDANTS

A Brief Counseling Center, P.S., d/b/a Healthy Counseling Center

DATED: 2/9/22

BY:

Ray Wm. Smith
Dr. Ray Smith
Owner, ABCC

DATED: 2/15/22

BY:

Richard T. Mount
Richard T. Mount
Counsel for ABCC

DR. RAY SMITH

DATED: 2/9/22

BY:

Ray Wm. Smith
Dr. Ray Smith

DATED: 2/15/22

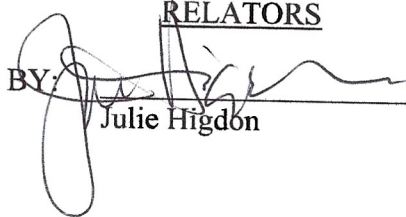
BY:

Richard T. Mount
Richard T. Mount
Counsel for Dr. Ray Smith

RELATORS

DATED: 2/17/22

BY:


Julie Higdon

DATED: _____

BY: _____

Ryan Best
Counsel for Julie Higdon

DATED: _____

BY: _____

Shelley Bakken

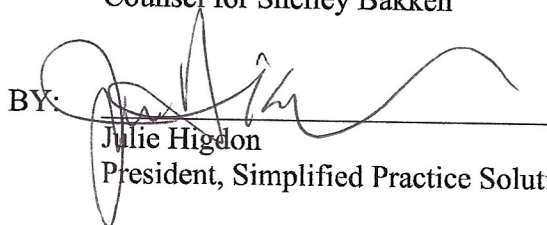
DATED: _____

BY: _____

Ryan Best
Counsel for Shelley Bakken

DATED: 2/17/22

BY:


Julie Higdon
President, Simplified Practice Solutions

DATED: _____

BY: _____

Ryan Best
Counsel for Simplified Practice Solutions

RELATORS

DATED: _____ BY: _____
Julie Higdon

DATED: 2/17/2022 BY: [Signature]
Ryan Best
Counsel for Julie Higdon

DATED: 2/17/2022 BY: [Signature]
Shelley Bakken

DATED: 2/17/2022 BY: [Signature]
Ryan Best
Counsel for Shelley Bakken

DATED: _____ BY: _____
Julie Higdon
President, Simplified Practice Solutions

DATED: 2/17/2022 BY: [Signature]
Ryan Best
Counsel for Simplified Practice Solutions