

SETTLEMENT AGREEMENT

This Settlement Agreement (the "Agreement") is entered into among the United States of America, acting through the United States Department of Justice and its Drug Enforcement Administration ("DEA") (collectively the "United States"), and Jacqueline Thomas, N.D. (herein "Dr. Thomas"), (hereinafter collectively referred to as "the Parties"), through their authorized representatives.

Recitals

A. Dr. Thomas is a licensed naturopathic physician ("N.D.") in the state of Washington who practices in East Wenatchee, Washington. As a licensed naturopathic physician, Dr. Thomas can prescribe certain prescription medications. In Washington, however, the only controlled substances that a naturopathic physician such as Dr. Thomas is authorized to prescribe are testosterone and codeine products. Dr. Thomas' DEA Registration is MT1725590.

B. On February 12, 2008, Dr. Thomas signed an attestation with the Washington State Department of Health in which she certified that she understood that her authority to prescribe controlled substances was limited to testosterone and codeine products.

C. Nonetheless and without seeking or receiving any additional authority from DEA or the State of Washington, between December 2016 and September 2021, Dr. Thomas issued at least 110 prescriptions for controlled substances that she was not authorized to prescribe. These prescriptions included the narcotic tramadol, the sleep aids zolpidem (often sold under the brand name Ambien) and eszopiclone (often sold under the brand name Lunesta); the sedative pregabalin (sometimes sold under the brand name Lyrica); and the diet drug phentermine.

D. When contacted by the DEA in February 2022, Dr. Thomas admitted and took responsibility for prescribing substances that she was not authorized to prescribe.

E. Dr. Thomas acknowledges that the facts set forth above in these recitals are true and accurate and takes responsibility for the fact that she prescribed controlled substances that she was not authorized to prescribe. Dr. Thomas further acknowledges and understands that she had and continues to have, obligation to comply with the

Controlled Substance Act, Chapter 21, United States Code, and the regulations promulgated thereunder. Dr. Thomas represents that she will comply with these obligations from this point forward, and further represents that she has taken additional steps to ensure her compliance with those requirements, and with Washington state law, going forward.

F. The United States contends that it has certain civil and administrative claims under the Controlled Substances Act, Chapter 21, United States Code, and its implementing regulations against Dr. Thomas. Specifically, the United States contends that, between December 6, 2016, and September 30, 2021, Dr. Thomas violated 21 U.S.C. § 842(a)(2), and regulations promulgated thereunder, by issuing prescriptions for controlled substances she was not authorized to prescribe, including tramadol, eszopiclone, zolpidem, pregabalin, and phentermine. The total number of these prescriptions was at least 110. The United States' claims and allegations that Dr. Thomas violated 21 U.S.C. § 842(a)(2), and regulations promulgated thereunder, and that therefore she is liable for an assessment of civil penalties for each violation, pursuant to 21 U.S.C. § 842(c)(1)(A) and 28 C.F.R. § 85.5, are set forth above in this paragraph and in Paragraphs A through E above and shall hereinafter be referred to as the " Covered Conduct."

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

Terms of Agreement

1. Dr. Thomas shall pay the United States \$16,500 (the Settlement Amount). Payment in full shall be made 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 for the Eastern District of Washington.

2. Subject to the exceptions in Paragraph 3 (concerning excluded claims), and conditioned upon Dr. Thomas' full payment of the Settlement Amount under this agreement, the United States releases Dr. Thomas from any civil or administrative monetary claim the United States has for the Covered Conduct under the Controlled

Substances Act, and its implementing regulations.

3. Notwithstanding the releases given in paragraph 2 of this Agreement or any other term of this Agreement, the following claims of the United States are specifically reserved and are not released:

- a. Any liability arising under Title 26, U.S. Code (Internal Revenue Code);
- b. Any criminal liability;
- c. Except as explicitly stated in this Agreement, any administrative liability, including mandatory or permissive exclusion from Federal health care programs;
- d. Any liability to the United States (or its agencies) for any conduct other than the Covered Conduct;
- e. Any liability based upon obligations created by this Agreement; and
- f. Any liability of individuals not a party to this Agreement.

4. Dr. Thomas waives and shall not assert any defenses Dr. Thomas may have to any criminal prosecution or administrative action relating to the Covered Conduct that may be based in whole or in part on a contention that, under the Double Jeopardy Clause in the Fifth Amendment of the Constitution, or under the Excessive Fines Clause in the Eighth Amendment of the Constitution, this Agreement bars a remedy sought in such criminal prosecution or administrative action. Nothing in this paragraph or any other provision of this Agreement constitutes an agreement by the United States concerning the characterization of the Settlement Amount for purposes of the Internal Revenue laws, Title 26 of the United States Code.

5. Dr. Thomas releases the United States and its agencies, officers, agents, employees, and servants, from any claims (including for attorneys' fees, costs, and expenses of any kind and however denominated) that Dr. Thomas has asserted, could have asserted, or may assert in the future against the United States or its agencies, officers, agents, employees, or servants, related to the Covered Conduct and the United States' investigation and prosecution thereof.

6. Dr. Thomas agrees to the following:

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

- (1) the matters covered by this Agreement;
- (2) the United States' audit(s) and investigation(s) of the matters covered by this Agreement;
- (3) Dr. Thomas's investigation, defense, and corrective actions undertaken in response to the United States' audit(s) and investigation(s) in connection with the matters covered by this Agreement (including attorney's fees);
- (4) the negotiation and performance of this Agreement; and
- (5) the payments Dr. Thomas makes to the United States pursuant to this Agreement,

are unallowable costs for government contracting purposes and under the Medicare Program, Medicaid Program, TRICARE Program, and Federal Employees Health Benefits Program (FEHBP) (hereinafter referred to as Unallowable Costs).

b. Future Treatment of Unallowable Costs: Unallowable Costs shall be separately determined and accounted for by Dr. Thomas, and Dr. Thomas 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 Dr. Thomas to the Medicare, Medicaid, TRICARE, or FEHBP Programs.

c. Treatment of Unallowable Costs Previously Submitted for Payment: Dr. Thomas further agrees that within 90 days of the Effective Date of this Agreement she shall identify to applicable Medicare and TRICARE fiscal intermediaries, carriers, and/or contractors, and Medicaid and FEHBP fiscal agents, any Unallowable Costs (as defined in this Paragraph) included in payments previously

sought from the United States, or any State Medicaid program, including, but not limited to, payments sought in any cost reports, cost statements, information reports, or payment requests already submitted by Dr. Thomas 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. Dr. Thomas agrees that the United States, at a minimum, shall be entitled to recoup from Dr. Thomas any overpayment plus applicable interest and penalties as a result of the inclusion of such Unallowable Costs on previously-submitted cost reports, information reports, cost statements, or requests for payment.

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

7. 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.

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

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

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

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

12. The undersigned counsel represent and warrant that they are fully

authorized to execute this Agreement on behalf of the persons and entities indicated below.

13. This Agreement shall become final and binding only upon signing by all parties hereto.

14. This Agreement may be executed in one or more counterparts, each of which shall constitute an original and all of which shall together constitute one and the same agreement, and for purposes of this agreement, facsimile signatures shall be treated as equivalent to originals.

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

16. The Parties consent to the United States' disclosure of this Agreement, and information about this Agreement, to the public.

17. This Agreement is effective on the date of signature of the last signatory to the Agreement ("Effective Date" of this Agreement). Electronic transmissions of signatures shall constitute acceptable, binding signatures for purposes of this Agreement.

THE UNITED STATES OF AMERICA

DATED: 4/1/2022

BY:



Dan Fruchter
Assistant United States Attorney
Eastern District of Washington

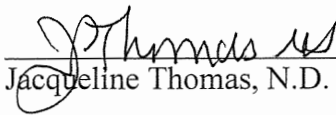
DATED: 4/1/2022




Tyler Tornabene
Assistant United States Attorneys
Eastern District of Washington

JACQUELINE THOMAS, N.D.

DATED: 3-31-22

BY: 
Jacqueline Thomas, N.D.

DATED: 03/31/2022

BY: 
Sally White Harmeling
Jeffers, Danielson, Sonn, & Aylward, P.S.
Counsel for Dr. Thomas