

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 of the Department of Health and Human Services (“OIG-HHS”) (collectively, the “United States”), Nevada Advanced Pain Specialists (“NAPS”), and Omni Healthcare, Inc., (“Omni” or “Relator”) (together, “the Parties”), through their authorized representatives.

RECITALS

A. NAPS is a Nevada corporation based in Reno, Nevada. NAPS is a physician practice group consisting of multiple physicians specializing in pain management. NAPS physicians frequently order urine drug testing (“UDT”) from a clinical laboratory (the “Lab”).

B. On or about December 11, 2018, Omni filed a qui tam action in the United States District Court for the District of Massachusetts captioned *United States et al., ex rel. Omni Healthcare, Inc. v. Doe Healthcare Providers 1-100, et al.*, No. 18-cv-12558, pursuant to the qui tam provisions of the False Claims Act, 31 U.S.C. § 3730(b) (the “Civil Action”).

C. Relator alleges, among other things, that the Lab billed Federal health care programs for medically unnecessary laboratory services, including UDT, ordered by various health care providers, including NAPS, in violation of 42 U.S.C. § 1395y(a)(1)(A) and the False Claims Act, 31 U.S.C. §§ 3729-33.

D. The United States contends that NAPS submitted or caused to be submitted claims for payment to the Medicare Program, Title XVIII of the Social Security Act, 42 U.S.C. §§ 1395-1395lll (“Medicare”) for medically unnecessary presumptive UDT.

E. NAPS admits, acknowledges, and accepts responsibility for the following facts. During the period January 1, 2014 continuing through December 31, 2020, NAPS submitted claims for medically unnecessary presumptive UDT to Medicare for payment. NAPS ran

presumptive UDT at its in-house laboratory in Nevada. At the same time, NAPS ordered confirmatory UDT from the Lab. NAPS did not obtain the results from its in-house presumptive UDT before ordering confirmatory UDT from the Lab. NAPS' performance of presumptive UDT played no role in its decision-making concerning whether to order confirmatory UDT from the Lab. The foregoing conduct in Paragraph E is referred to below as the "Covered Conduct."

F. Relator claims entitlement under 31 U.S.C. § 3730(d) to a share of the proceeds of this Settlement Agreement and to Relator's reasonable expenses, attorneys' fees, and costs.

In consideration of the mutual promises and obligations of this Settlement Agreement, the Parties agree and covenant as follows:

TERMS AND CONDITIONS

1. NAPS shall pay to the United States \$1,000,000 plus interest accruing at an annual rate of 1.5% from May 24, 2021, and continuing until and including the day payment is completed (the "Settlement Amount"). Within 10 days of the Effective Date of this Agreement, NAPS shall make an initial payment to the United States of \$100,000 (the "Initial Settlement Payment"). Thereafter, NAPS shall pay the United States the remaining balance, plus accrued interest on the outstanding balance, in 7 annual payments according to the schedule attached hereto as Exhibit A (the "Settlement Payment Schedule"). NAPS shall make all such payments to the United States by electronic funds transfers pursuant to written instructions provided by the United States Attorney's Office for the District of Massachusetts. The entire balance of the Settlement Amount or any portion thereof may be prepaid at any time without penalty. Of the Settlement Amount, \$611,000 is restitution to the United States. If NAPS is sold, merged, or transferred, or all or substantially all of NAPS assets are sold, merged, or transferred into another non-affiliated entity, NAPS shall promptly notify the United States, and all remaining payments

owed pursuant to the Settlement Agreement shall be accelerated and become immediately due and payable upon consummation of such.

2. Conditioned upon the United States receiving each payment pursuant to the Settlement Payment Schedule and as soon as feasible after receipt, the United States shall pay 15% of each such payment to Relator by electronic funds transfer (the “Relator’s Share”).

3. Subject to the exceptions in Paragraph 5 (concerning reserved claims) below, and upon the United States’ receipt of the full Settlement Amount, plus interest due under Paragraph 1, the United States releases NAPS, its predecessors, its current and former parents, divisions, subsidiaries, successors, and assigns (the “NAPS Releasees”), from any and all civil or administrative monetary claims the United States has for the Covered Conduct under the False Claims Act, 31 U.S.C. §§ 3729-33, the Civil Monetary Penalties Law, 42 U.S.C. § 1320a-7a, the Program Fraud Civil Remedies Act, 31 U.S.C. § 3801-12, or the common law theories of payment by mistake, unjust enrichment, and fraud.

4. Upon the United States’ receipt of the full Settlement Amount, plus interest due under Paragraph 1, Relator, for itself and for its heirs, successors, attorneys, agents, and assigns, releases the NAPS Releasees from any and all claims and potential claims, including but not limited to all claims included in the qui tam complaint filed in the Civil Action, any other claims the Relator has on behalf of the United States under the False Claims Act, 31 U.S.C. §§ 3729-3733, and any common law claims.

5. Notwithstanding the releases given in Paragraphs 3 and 4 of this Agreement, or any other term of this Agreement, the following claims and rights 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 or enforcement right, 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.

6. Relator and its 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, Relator and its 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.

7. Relator, for itself, and for its heirs, successors, attorneys, agents, and assigns, releases the NAPS Releasees, and its officers, agents, and employees, from any liability to Relator arising from the filing of the Civil Action, or under 31 U.S.C. § 3730(d) for expenses or attorneys' fees and costs.

8. NAPS has provided sworn financial disclosures and supporting documents (together, the "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. NAPS warrants that the Financial Disclosures are complete, accurate, and current as of April 30, 2021. If the United States learns of asset(s) in which NAPS had an interest of any kind as of

April 30, 2021 (including, but not limited to, promises by insurers or other third parties to satisfy NAPS' 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 NAPS 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 \$100,000 or more, the United States may at its option: (a) rescind this Agreement and reinstate its suit or file suit based on the Covered Conduct or (b) collect the full Settlement Amount in accordance with the Agreement plus one hundred percent (100%) of the net value of NAPS' previously undisclosed assets. NAPS agrees not to contest any collection action undertaken by the United States pursuant to this provision, and agrees that it will immediately pay the United States the greater of (i) a ten-percent (10%) surcharge of the amount collected in the collection action, as allowed by 28 U.S.C. § 3011(a), or (ii) the United States' reasonable attorneys' fees and expenses incurred in such an action. In the event that the United States, pursuant to this paragraph rescinds this Agreement, NAPS waives and agrees 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 NAPS that this Agreement has been rescinded, and (b) relate to the Covered Conduct, except to the extent these defenses were available on December 11, 2018.

9. NAPS waives and shall not assert any defenses NAPS 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.

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

11. NAPS fully and finally releases the Relator from any claims (including attorneys' fees, costs, and expenses of every kind and however denominated) that NAPS has asserted, could have asserted, or may assert in the future against the Relator, related to the Covered Conduct and the Relator's investigation and prosecution thereof.

12. 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 contractor (e.g., Medicare Administrative Contractor, fiscal intermediary, carrier), or any state payer, related to the Covered Conduct; and NAPS agrees not to resubmit to any Medicare 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.

13. NAPS 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. §§ 1395-1395lll and 1396-1396w-5; and the regulations and official program directives promulgated thereunder) incurred by or on behalf of NAPS, its present or former officers, directors, employees, shareholders, and agents in connection with:

(1) the matters covered by this Agreement;

- (2) the United States' audit(s) and civil investigation(s) of the matters covered by this Agreement;
- (3) NAPS' investigation, defense, and corrective actions undertaken in response to the United States' audit(s) and civil investigation(s) in connection with the matters covered by this Agreement (including attorneys' fees);
- (4) the negotiation and performance of this Agreement; and
- (5) the payment NAPS makes to the United States pursuant to this Agreement and any payments that NAPS may make to Relator, including costs and attorneys' fees;

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 NAPS, and NAPS 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 NAPS or any of its subsidiaries or affiliates to the Medicare, Medicaid, TRICARE, or FEHBP Programs.

c. Treatment of Unallowable Costs Previously Submitted for Payment: NAPS further agrees that within 90 days of the Effective Date of this Agreement it 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 NAPS or any of its 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. NAPS agrees that the United States, at a minimum, shall be entitled to recoup from NAPS 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 NAPS or any of its subsidiaries or affiliates on the effect of inclusion of Unallowable Costs (as defined in this paragraph) on NAPS or any of its subsidiaries or affiliates' cost reports, cost statements, or information reports.

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

14. NAPS agrees to cooperate fully and truthfully with the United States' investigation of individuals and entities not released in this Agreement. Upon reasonable notice, NAPS shall encourage, and agrees not to impair, the cooperation of its directors, officers, and employees, and shall use its best efforts to make available, and encourage, the cooperation of former directors, officers, and employees for interviews and testimony, consistent with the rights and privileges of such individuals. NAPS further agrees to furnish to the United States, upon request, complete and unredacted copies of all non-privileged documents, reports, memoranda of

interviews, and records in its possession, custody, or control concerning any investigation of the Covered Conduct that it has undertaken, or that has been performed by another on its behalf.

15. 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 16 (waiver for beneficiaries paragraph), below.

16. NAPS agrees that it waives 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 payors based upon the claims defined as Covered Conduct.

17. The Settlement Amount represents the amount the United States is willing to accept in compromise of its civil claims arising from the Covered Conduct due solely to NAPS' financial condition as reflected in the Financial Disclosures referenced in Paragraph 8.

a. In the event that NAPS fails to pay the Settlement Amount as provided in the payment schedule set forth in Paragraph 1 above, NAPS shall be in Default of NAPS' payment obligations ("Default"). The United States will provide a written Notice of Default, and NAPS shall have an opportunity to cure such Default within seven (7) calendar days from the date of receipt of the Notice of Default by making the payment due under the payment schedule and paying any additional interest accruing under the Settlement Agreement up to the date of payment. Notice of Default will be delivered to NAPS, or to such other representative as NAPS shall designate in advance in writing. If NAPS fails to cure the Default within seven (7) calendar days of receiving the Notice of Default and in the absence of an agreement with the United States to a modified payment schedule ("Uncured Default"), the remaining unpaid balance of the Settlement Amount shall become immediately due and payable, and interest on the remaining

unpaid balance shall thereafter accrue at the rate of 12% per annum, compounded daily from the date of Default, on the remaining unpaid total (principal and interest balance).

b. In the event of Uncured Default, NAPS agrees that the United States, at its sole discretion, may (i) retain any payments previously made, rescind this Agreement and pursue the Civil Action or bring any civil and/or administrative claim, action, or proceeding against NAPS for the claims that would otherwise be covered by the releases provided in Paragraph 3 and 4 above with any recovery reduced by the amount of any payments previously made by NAPS to the United States under this Agreement; (ii) take any action to enforce this Agreement in a new action or by reinstating the Civil Action; (iii) offset the remaining unpaid balance from any amounts due and owing to NAPS and/or affiliated companies by any department, agency, or agent of the United States at the time of Default or subsequently; and/or (iv) exercise any other right granted by law, or under the terms of this Agreement, or recognizable at common law or in equity. The United States shall be entitled to any other rights granted by law or in equity by reason of Default, including referral of this matter for private collection. In the event the United States pursues a collection action, NAPS agrees immediately to pay the United States the greater of (i) a ten-percent (10%) surcharge of the amount collected, as allowed by 28 U.S.C. § 3011(a), or (ii) the United States' reasonable attorneys' fees and expenses incurred in such an action. In the event that the United States opts to rescind this Agreement pursuant to this paragraph, NAPS waives and agrees not to plead, argue, or otherwise raise any defenses of statute of limitations, laches, estoppel or similar theories, to any civil or administrative claims that are (i) filed by the United States against NAPS within 120 days of written notification that this Agreement has been rescinded, and (ii) relate to the Covered Conduct, except to the extent these defenses were available on December 11, 2018. NAPS agrees not to contest any offset, recoupment, and /or collection action undertaken by the United States pursuant to this paragraph, either

administratively or in any state or federal court, except on the grounds of actual payment to the United States.

c. In the event of Uncured Default, OIG-HHS may exclude NAPS from participating in all Federal health care programs until NAPS pays the Settlement Amount, with interest, as set forth above (“Exclusion for Default”). OIG-HHS will provide written notice of any such exclusion to NAPS. NAPS waives any further notice of the exclusion under 42 U.S.C. § 1320a-7(b)(7), and agrees not to contest such exclusion either administratively or in any state or federal court. Reinstatement to program participation is not automatic. If at the end of the period of exclusion, NAPS wishes to apply for reinstatement, it must submit a written request for reinstatement to OIG-HHS in accordance with the provisions of 42 C.F.R. §§ 1001.3001-.3005. NAPS will not be reinstated unless and until OIG-HHS approves such request for reinstatement. The option for Exclusion for Default is in addition to, and not in lieu of, the options identified in this Agreement or otherwise available.

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

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

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

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

United States from pursuing any remedy or relief available to it under this Agreement shall not constitute a waiver of rights under this Agreement.

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

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

24. This Agreement is binding on NAPS' successors, transferees, heirs, and assigns.


25. This Agreement is binding on Relator's successors, transferees, heirs, and assigns.

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

27. 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: _____

BY: **ABRAHAM
GEORGE**  Digitally signed by ABRAHAM
GEORGE
Date: 2021.08.18 13:05:07
-04'00'

ABRAHAM R. GEORGE
CHARLES B. WEINOGRA
Assistant United States Attorneys
United States Attorney's Office
District of Massachusetts

DATED: 8/16/2021

BY:  _____
LISA M. RE
Assistant Inspector General for Legal Affairs
Office of Counsel to the Inspector General
Office of Inspector General
United States Department of Health and Human Services

NEVADA ADVANCED PAIN SPECIALISTS

DATED:

8/5/2021

BY:

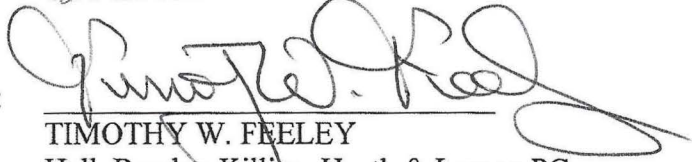


DENIS G. PATTERSON, DO
CEO for NAPS

DATED:

8/5/2021

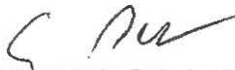
BY:



TIMOTHY W. FEELEY
Hall, Render, Killian, Heath & Lyman PC
Counsel for NAPS

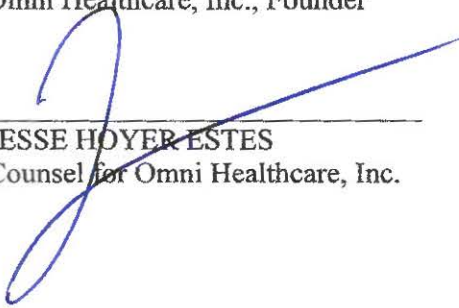
OMNI HEALTHCARE, INC. - RELATOR

DATED: 9/26/2021

BY: 

DR. CRAIG DELIGDISH
Omni Healthcare, Inc., Founder

DATED: 7/26/21

BY: 

JESSE HOYER ESTES
Counsel for Omni Healthcare, Inc.

Exhibit A: Settlement payment schedule

Description	Date	Payment	Interest	Principal	Balance
Settlement	05/24/2021				\$ 1,000,000.00
Upon signing	08/18/2021	\$ 100,000.00	\$ 3,534.25	\$ 96,465.75	\$ 903,534.25
1	08/18/2022	\$ 136,936.18	\$ 13,553.01	\$ 123,383.17	\$ 780,151.08
2	08/18/2023	\$ 136,936.18	\$ 11,702.27	\$ 125,233.91	\$ 654,917.17
3	08/18/2024	\$ 136,936.18	\$ 9,823.76	\$ 127,112.42	\$ 527,804.75
4	08/18/2025	\$ 136,936.18	\$ 7,917.07	\$ 129,019.11	\$ 398,785.64
5	08/18/2026	\$ 136,936.18	\$ 5,981.78	\$ 130,954.40	\$ 267,831.24
6	08/18/2027	\$ 136,936.18	\$ 4,017.47	\$ 132,918.71	\$ 134,912.53
7	08/18/2028	\$ 136,936.18	\$ 2,023.65	\$ 134,912.53	\$ -
		<u>\$ 1,058,553.26</u>	<u>\$ 58,553.26</u>	<u>\$ 1,000,000.00</u>	