

## 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”), and Dr. Stephen Worsham (hereafter collectively referred to as “the Parties”), through their authorized representatives.

### RECITALS

A. Dr. Worsham (“Physician”) is a resident of California. Physician is a urologist currently practicing in Monterey County, California.

B. The United States contends that Physician submitted or caused to be submitted claims for payment to the Medicare Program, Title XVIII of the Social Security Act, 42 U.S.C. §§ 1395-1395kkk-1 (“Medicare”).

C. The United States contends that it has certain civil claims against Physician arising from the submission of claims to Medicare for image-guided radiation therapy (“IGRT”) performed at the Advanced Radiation Oncology Center (“AROC”) in Salinas, California, with dates of service from April 1, 2008 through December 31, 2014. The United States contends that Physician and Dr. Aytac Apaydin jointly owned AROC and caused AROC to enter into “lease” arrangements with other urologists or their physician practices in the Salinas and Monterey, California area (“Lessee Urologists”) whereby the Lessee Urologists billed insurers, including Medicare, for IGRT referred by the Lessee Urologists to their own physician practices but furnished to patients at AROC. The United States contends that Physician knew that AROC did not meet the location requirements applicable to the Lessee Urologists’ physician practices under the physician self-referral law, 42 U.S.C. § 1395nn (commonly known as the “Stark Law”), and, therefore, that the claims submitted to Medicare by the Lessee Urologists for the IGRT services

furnished at AROC were not eligible for payment by Medicare. The United States also contends that the remuneration provided to the Lessee Urologists under the arrangements, in the form of potential profits from their referrals, was offered in violation of the Anti-Kickback Statute, 42 U.S.C. § 1320a-7b(b). The United States further contends that Dr. Apaydin and Physician knowingly caused Salinas Valley Urology Associates (“SVUA”), their jointly owned medical practice, to bill Medicare for IGRT furnished to patients at AROC when the financial relationship between AROC and SVUA did not comply with any exception to the Stark Law. The conduct described in this Paragraph is referred to below as the “Covered Conduct.”

D. This Settlement Agreement is neither an admission of liability by Physician nor a concession by the United States that its claims are not well founded. Physician denies the United States’ allegations in Recital C.

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 AND CONDITIONS

1. Physician shall pay to the United States Eight Hundred and Eighty Thousand Dollars (\$880,000) (“Settlement Amount”) no later than ten days after the Effective Date of this Agreement by electronic funds transfer pursuant to written instructions to be provided by the Office of the United States Attorney for the Northern District of California.

2. Subject to the exceptions in Paragraph 3 (concerning excluded claims) below, and conditioned upon Physician’s full payment of the Settlement Amount, the United States releases Physician from any civil or administrative monetary claim the United States 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 civil monetary penalty provisions of the Stark Law, 42 U.S.C. §§

1395nn(g)(3) and (4); the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801-3812; or the common law theories of payment by mistake, unjust enrichment, and fraud.

3. Notwithstanding the release 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;
- f. Any liability for express or implied warranty claims or other claims for defective or deficient products or services, including quality of goods and services;
- g. Any liability for failure to deliver goods or services due; and
- h. Any liability for personal injury or property damage or for other consequential damages arising from the Covered Conduct.

4. Physician waives and shall not assert any defenses he 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. Physician fully and finally releases the United States, its agencies, officers, agents, employees, and servants, from any claims (including attorney's fees, costs, and expenses of every kind and however denominated) that Physician has asserted, could have asserted, or may assert in the future against the United States, and its agencies, officers, agents, employees, and servants related to the Covered Conduct and the United States' investigation and prosecution thereof.

6. 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 Physician 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.

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, except to the extent provided for in Paragraph 8 (waiver for beneficiaries paragraph), below.

8. Physician agrees that he 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.

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

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

11. 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 Northern District of California. 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.

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

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

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


15. This Agreement is binding on Physician's successors, transferees, heirs, and assigns.

16. All 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). Facsimiles and electronic transmissions of signatures shall constitute acceptable, binding signatures for purposes of this Agreement.


THE UNITED STATES OF AMERICA

DATED: 1/8/18

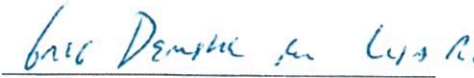
BY:   
Douglas Rosenthal  
Trial Attorney  
Commercial Litigation Branch  
Civil Division  
United States Department of Justice

Brian J. Stretch  
United States Attorney

DATED: 1/5/18

BY:   
Kimberly Friday  
Assistant United States Attorney  
Northern District of California

DATED: 1/5/18

BY:   
Lisa Re  
Assistant Inspector General for Legal Affairs  
Office of Inspector General  
U.S. Department of Health and Human Services

DR. STEPHEN WORSHAM

DATED: \_\_\_\_\_

BY: \_\_\_\_\_  
Stephen Worsham, M.D.

DATED: \_\_\_\_\_

BY: \_\_\_\_\_  
Patric Hooper, Esq.  
W. Bradley Tully, Esq.  
Hooper Lundy, P.C.  
Counsel for Stephen Worsham

THE UNITED STATES OF AMERICA

DATED: \_\_\_\_\_

BY: \_\_\_\_\_

Douglas Rosenthal  
Trial Attorney  
Commercial Litigation Branch  
Civil Division  
United States Department of Justice

Brian J. Stretch  
United States Attorney

DATED: \_\_\_\_\_

BY: \_\_\_\_\_

Kimberly Friday  
Assistant United States Attorney  
Northern District of California


DATED: \_\_\_\_\_

BY: \_\_\_\_\_

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

DR. STEPHEN WORSHAM

DATED: January 4  
2018

BY:   
Stephen Worsham, M.D.

DATED: Jan 5, 2018

BY: 

Patric Hooper, Esq.  
W. Bradley Tully, Esq.  
Hooper Lundy, P.C.  
Counsel for Stephen Worsham