

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 United States Drug Enforcement Administration (“DEA”) (collectively, the “United States”), and Virtua Health, Inc. (“Virtua”) (hereafter collectively referred to as “the Parties”), through their authorized representatives.

RECITALS

A. The United States contends that it has certain civil claims against Virtua arising from alleged violations of the Controlled Substances Act (“CSA”), 21 U.S.C. §§ 801-904, and the applicable sections of the Code of Federal Regulations (“C.F.R.”), which authorize civil penalties for each violation of the CSA.

B. At all relevant and material times herein, Virtua was a nonprofit healthcare system that owned and operated a network of healthcare entities, including Virtua-West Jersey Health System, Inc., which operated Virtua Voorhees Hospital, located at 100 Bowman Drive, Voorhees, New Jersey, 08043 (“Voorhees Hospital,” collectively “Virtua”). Virtua’s inpatient pharmacy was registered with the DEA, #AW5638424.

C. On July 1, 2016, Virtua filed a Report of Theft or Loss of Controlled Substances with the DEA stating that 400 tablets of Oxycodone 30mg were lost or stolen.

D. The DEA conducted an audit of Virtua's inpatient pharmacy for the period covering October 8, 2015 through November 2, 2016 that the United States contends revealed certain civil violations of the CSA.

E. Specifically, the United States contends that between October 8, 2015 through November 2, 2016, Virtua:

1. Failed to maintain an accurate biennial inventory, in violation of 21 U.S.C. §§ 827(a), 827(b), and 842(a)(5), and 21 CFR §§ 1304.04(a), 1304.11(a), and 1304.21(a).
2. Maintained controlled and non-controlled substances, including Schedule II substances, in the Pharmacist-in-Charge's office, which was not a secure location, in violation of 21 U.S.C. § 823(b)(1), 21 U.S.C. § 827(a), 21 U.S.C. § 842(a)(5), 21 CFR §1304.11(a), 21 CFR § 1304.21(a), 21 CFR § 1307.71(a).
3. Failed to ensure pharmacist supervision of the pharmacy technicians as required by 21 U.S.C. § 823(b)(1) and 21 CFR § 1307.71(a).

F. The conduct described in Paragraph E is referred to below as the "Covered Conduct."

G. This Agreement is made in compromise of disputed claims. This Settlement Agreement is neither an admission of liability by Virtua nor a concession by the United States that its claims are not well founded. Virtua specifically disputes the allegations described in the Covered Conduct.

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. Virtua shall pay to the United States one hundred and fifty thousand dollars (**\$150,000.00**) (“Settlement Amount”), plus interest accrued at a rate of 1.5% per annum on the Settlement Amount from August 2, 2021 through the Effective Date of this Agreement (as defined in Paragraph 17 below). The Settlement Amount is to be paid to the United States within **ten** days of the Effective Date by electronic funds transfer pursuant to written instructions to be provided by the Office of the United States Attorney for the District of New Jersey.

2. Subject to the exceptions in Paragraph 3 (concerning reserved claims) below, and conditioned upon the United States’ receipt of the Settlement Amount plus interest due under Paragraph 1, the United States releases Virtua, together with its current and former parent corporations, direct and indirect subsidiaries, brother or sister corporations, divisions, affiliates, and the corporate successors and assigns of any of them, from any civil or administrative monetary claim the United States has for the Covered Conduct only under the CSA, 21 U.S.C. §§ 801 *et seq.* Nothing in this Paragraph precludes the Department of Justice or DEA from taking action against entities or persons, or for conduct and practices, for which claims have been reserved in Paragraph 3 below.

3. Notwithstanding the release given in Paragraph 2 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 the suspension and debarment rights of any federal agency;
- 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. Except as explicitly stated in this Agreement, any liability of individuals.

4. Virtua waives and shall not assert any defenses Virtua 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.

5. Virtua 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 Virtua 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. Virtua agrees to cooperate fully and truthfully with the United States' investigation of individuals and entities not released in this Agreement. Upon reasonable notice, Virtua 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. Virtua 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.

7. This Agreement is binding on Virtua's successors, transferees, heirs, and assigns.

8. Except as provided in Paragraphs 2, 5 and 7, this Agreement is intended to be for the benefit of the Parties only.

9. This Agreement is not intended by the Parties to be, and shall not be interpreted to constitute a release of any person, any claim, or any entity not identified or released herein.

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

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

12. 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 New Jersey. 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.

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

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


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

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

RACHAEL A. HONIG
Acting United States Attorney

DATED: December 3, 2021 BY: 

KRUTI D. DHARIA
Assistant United States Attorney
United States Attorney's Office
District of New Jersey

BY: 

CARI FAISS
Chief, Opioid Abuse Prevention & Enforcement Unit
United States Attorney's Office
District of New Jersey

VIRTUA HEALTH, INC.

DATED: _____ BY: _____

Sean C. Cenawood
Dentons US LLP
1221 Avenue of the Americas
New York, NY 10020-1089
sean.cenawood@dentons.com

DATED: 30, Nov 2021 BY: 

Paul Minnick
President, Virtua Voorhees & Marlton Hospitals
SVP, Virtua Health, Inc.

VIRTUA HEALTH, INC.

DATED: 12/2/21

BY: Sean C. Cenawood

Sean C. Cenawood
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1221 Avenue of the Americas
New York, NY 10020-1089
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DATED: _____

BY: _____

Paul Minnick
President, Virtua Voorhees & Marlton Hospitals
SVP, Virtua Health, Inc.