

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”), Princeton Pathology Services, P.A. (“PPS”), and Jayant Barai (“Relator,” and, hereafter collectively referred to as “the Parties”), through their authorized representatives.

RECITALS

A. PPS is a privately-owned medical services provider located in Princeton, New Jersey.

B. On July 17, 2018, Relator filed a qui tam action in the United States District Court for the District of New Jersey captioned *United States ex rel. Barai v. Princeton Pathology Services, P.A., et al.*, No. 18-cv-11768 (FLW), pursuant to the qui tam provisions of the False Claims Act, 31 U.S.C. § 3730(b) (the Civil Action). Relator alleged, among other things, that PPS submitted false claims to Government health care payors relating to the administration of Thromboelastogram (“TEG”) tests. PPS has denied the allegations in the Civil Action.

C. The United States contends that PPS 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”).

D. The United States contends that it has certain civil claims against PPS arising from the following: PPS submitted claims to Medicare under Current Procedural Terminology (“CPT”) code 85390-26 during the period from January 1, 2015 through December 31, 2020. Specifically, this code requires written analysis by a pathologist, and PPS submitted claims using

this code without substantiating those claims in available medical records. That conduct 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.

G. This Settlement Agreement is neither an admission of liability by PPS nor a concession by the United States or by the Relator that their claims are not well founded.

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. PPS agrees to pay the United States the sum of two-million four-hundred thousand dollars (\$2,400,000.00) (the “Settlement Amount”), of which \$1,200,000 is restitution, and interest on the Settlement Amount at a rate of 1.325% per annum from October 5, 2021 (“Interest”). On the Effective Date of this Agreement, PPS will make a payment to the United States in the amount of four-hundred thousand dollars (\$400,000) plus Interest.

A. Over a period of 1 year from the Effective Date, PPS will pay the remaining two-million Dollars (\$2,000,000), plus Interest, pursuant to a payment schedule to be provided by the U.S. Attorney’s Office for the District of New Jersey.

B. Collectively the settlement amount and Interest received by the United States shall be referred to as the Settlement Payments.

C. If PPS is sold, merged, or transferred, or a significant portion of the assets of PPS is sold, merged, or transferred into another non-affiliated entity, PPS 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.

D. The Settlement Amount may be prepaid, in whole or in part, without penalty or premium.

E. The Settlement Payments shall be made by electronic funds transfer pursuant to written instructions to be provided by the U.S. Attorney's Office for the District of New Jersey.

2. Conditioned upon the United States receiving the Settlement Payments, the United States agrees that, pursuant to written instructions to be provided by Relator's counsel, it shall pay to Relator by electronic funds transfer 19% percent of each such payment received under the Settlement Agreement (Relator's Share), including 19% of any interest paid by PPS as soon as feasible after receipt of the payment(s).

3. Subject to the exceptions in Paragraph 6 (concerning reserved claims) below, and subject to Paragraph 16 (concerning default) below, and upon the United States' receipt of the full Settlement Amount, plus interest due under Paragraph 1, the United States releases PPS 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 Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801-3812; or the common law theories of payment by mistake, unjust enrichment, and fraud.

4. Subject to the exceptions in Paragraph 6 (concerning reserved claims) below, and subject to Paragraph 16 (concerning default) below, and upon the United States' receipt of the full Settlement Amount, plus interest due under Paragraph 1, Relator, for himself and for his heirs, successors, attorneys, agents, and assigns, releases PPS, its officers, directors, employees, shareholders, and agents from any civil monetary claim the Relator has on behalf of the United States under the False Claims Act, 31 U.S.C. §§ 3729-3733, the New Jersey False Claims Act, N.J.S.A. 2A:32C-1, *et seq.*, related to the Civil Action, and from any and all claims, demands,

obligations, damages, liabilities, causes of action, and rights, in law or in equity, known and unknown, that Relator may have based upon any act, event, or omission occurring at any time before the execution of this Agreement. Notwithstanding the previous sentence, Relator does not release his entitlement to compensable expenses, costs, and attorneys' fees pursuant to 31 U.S.C. § 3730(d).

5. In consideration of the obligations of PPS in this Agreement and the Integrity Agreement ("IA"), entered into between OIG-HHS and PPS, and upon the United States' receipt of full payment of the Settlement Amount plus interest due under Paragraph 1, the OIG-HHS shall release and refrain from instituting, directing, or maintaining any administrative action seeking exclusion from Medicare, Medicaid, and other Federal health care programs (as defined in 42 U.S.C. § 1320a-7b(f)) against PPS under 42 U.S.C. § 1320a-7a (Civil Monetary Penalties Law) or 42 U.S.C. § 1320a-7(b)(7) (permissive exclusion for fraud, kickbacks, and other prohibited activities) for the Covered Conduct, except as reserved in this paragraph and in Paragraph 6 (concerning reserved claims), below. The OIG-HHS expressly reserves all rights to comply with any statutory obligations to exclude PPS from Medicare, Medicaid, and other Federal health care programs under 42 U.S.C. § 1320a-7(a) (mandatory exclusion) based upon the Covered Conduct. Nothing in this paragraph precludes the OIG-HHS from taking action against entities or persons, or for conduct and practices, for which claims have been reserved in Paragraph 6, below.

6. Notwithstanding the releases given in Paragraphs 3 through 5 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 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 of individuals;

7. Relator and his 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 full Relator's Share, Relator and his 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.

8. PPS waives and shall not assert any defenses PPS 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.

9. PPS 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 PPS 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.

10. PPS and its officers, directors, employees, shareholders, agents, successors, attorneys, and assigns, release Relator and his heirs, successors, attorneys, agents, and assigns from any and all claims, demands, obligations, damages, liabilities, causes of action, and rights, in law or in equity, known and unknown, that PPS and its officers, directors, employees, shareholders, agents, successors, attorneys, and assigns may have based upon any act, event, or omission occurring at any time before the execution of this Agreement including attorneys' fees, costs, and expenses of every kind and however denominated.

11. 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 payor), related to the Covered Conduct; and PPS 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. Nothing in this paragraph shall be construed to increase the Settlement Amount by virtue of any pending payments or previously paid claims.

12. PPS 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 PPS, 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 and any criminal investigation(s) of the matters covered by this Agreement;
- (3) PPS's investigation, defense, and corrective actions undertaken in response to the United States' audit(s) and civil and any criminal investigation(s) in connection with the matters covered by this Agreement (including attorneys' fees);
- (4) the negotiation and performance of this Agreement;
- (5) the payment PPS makes to the United States pursuant to this Agreement and any payments that PPS may make to Relator, including costs and attorneys' fees; and
- (6) the negotiation of, and obligations undertaken pursuant to the IA to: (i) retain an independent review organization to perform reviews as described in the IA; and (ii) prepare and submit reports to the OIG-HHS

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). However, nothing in paragraph 12.a.(6) that may apply to the obligations undertaken pursuant to the IA affects the status of costs that are not allowable based on any other authority applicable to PPS.

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

c. Treatment of Unallowable Costs Previously Submitted for Payment: PPS

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 PPS or any of its subsidiaries, 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. PPS agrees that the United States, at a minimum, shall be entitled to recoup from PPS 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 PPS or any of its subsidiaries on the effect of inclusion of Unallowable Costs (as defined in this paragraph) on PPS or any of its subsidiaries' 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 PPS's books and records to determine that no Unallowable Costs have been claimed in accordance with the provisions of this paragraph.

13. PPS agrees to cooperate fully and truthfully with the United States' investigation of individuals and entities not released in this Agreement, except for any investigation by the United States of any principals of PPS. Upon reasonable notice, PPS 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.

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, or as specifically provided for in this Agreement.

15. PPS 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.

16. In the event that PPS fails to pay the Settlement Amount as provided in the payment schedule set forth in Paragraph 1 above, PPS shall be in default of PPS's payment obligations ("Default").

a. The United States will provide a written Notice of Default, and PPS shall have an opportunity to cure such Default within fourteen (14) 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 PPS, or to such other representative as PPS shall designate in advance in writing. If PPS fails to designate a representative, such notice may be provided to undersigned counsel representing PPS. If PPS fails to cure the Default within fourteen (14) 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, PPS 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 PPS for the claims that would otherwise be covered by the releases provided in Paragraphs 3 through 5 above, with any recovery reduced by the amount of any payments previously made by PPS 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 PPS 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.

c. 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, PPS 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, PPS 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 PPS 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 July 17, 2018. PPS 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.

d. In the event of Uncured Default, OIG-HHS may exclude PPS from participating in all Federal health care programs until PPS pays the Settlement Amount, with interest, as set forth above (Exclusion for Default). OIG-HHS will provide written notice of any such exclusion to PPS. PPS 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, PPS 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. PPS 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.

17. Upon receipt of the Settlement Payments described in Paragraph 1, above, the Parties shall promptly sign and file in the Civil Action a Joint Stipulation of Dismissal of the Civil Action pursuant to Rule 41(a)(1). The Joint Stipulation of Dismissal shall expressly reserve the Court's jurisdiction to: 1) enforce this settlement agreement, and 2) resolve Relator's claim for reasonable attorney's fees, costs, and expenses under 31 U.S.C. § 3730(d)(1).

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. The exclusive venue for any dispute relating to this Agreement is the United States District Court for the

District of New Jersey. PPS agrees that it is subject to personal jurisdiction in the United States District Court for the District of New Jersey with respect any dispute relating to this Agreement. 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 United States, Relator and PPS. 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.

21. The undersigned counsel 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 PPS's successors, transferees, heirs, and assigns.

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

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

26. 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: 12/6/21

BY: 
DANIEL W. MEYLER
Assistant United States Attorney
United States Attorney's Office
District of New Jersey

APPROVED:


LEE M. CORTES, JR.
Chief, Health Care Fraud Unit
United States Attorney's Office
District of New Jersey

APPROVED:


RACHAEL A. HONIG
Acting United States Attorney
District of New Jersey

DATED: _____

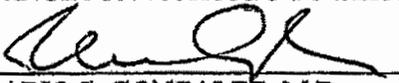
BY: GREGORY DEMSKE
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DEMSKE
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LISA M. RE
Assistant Inspector General for Legal Affairs
Office of Counsel to the Inspector General
Office of Inspector General
United States Department of Health and Human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

PRINCETON PATHOLOGY SERVICES, P.A. - DEFENDANT

DATED: 12/1/21

BY:

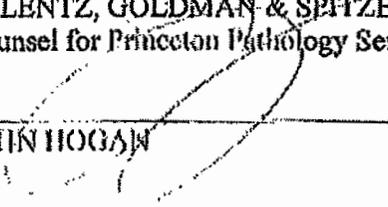
PRINCETON PATHOLOGY SERVICES, P.A.


MARIO S. GONZALEZ, M.D.
President

DATED: 12/1/21

BY:

WILENTZ, GOLDMAN & SPITZER, P.A.
Counsel for Princeton Pathology Services, P.A.


JOHN HOGAN

JAYANT BARAI - RELATOR

DATED: 12/2/21

BY: 
JAYANT BARAI, M.D.
Relator

DATED: 12.2.21

BY: 
DANIEL MILLER
Walden, Macht, Harran
Counsel for Relator