

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)(together, the “United States”), the State of Rhode Island and Providence Plantations, and PROFESSIONAL AMBULANCE, LLC, JOSEPH J. BAGINSKI, BRENDA BAGINSKI, MARTIN BAGINSKI and JACQUELYN BAGINSKI (together, “Professional”) (the United States, the State of Rhode Island and Professional are hereafter collectively referred to as “the Parties”), through their authorized representatives.

RECITALS

A. PROFESSIONAL AMBULANCE, LLC, is a domestic limited liability company organized and operating under the laws of the State of Rhode Island and Providence Plantations. At all times relevant to this agreement, Professional provided medical transportation services including basic life support ambulance, advanced life support ambulance, and wheelchair transport. As part of its business, Professional routinely transported patients to and from residences, emergency rooms, hospitals, physician offices, dialysis centers, and nursing homes. Joseph J. Baginski and Brenda Baginski are the owners of Professional and Martin Baginski and Jacquelyn Baginski are the director of operations and director of business development, respectively, of Professional.

B. As part of its business, Professional provided and provides services to patients covered by the Medicare Program (“Medicare”), established by Title XVIII of the Social Security Act, 42 U.S.C. § 1395-1395kkk, and the Medicaid Program, 42 U.S.C. §§ 1396-1396w-5 (“Medicaid”).

C. In accordance with applicable Medicare requirements, to be covered for payment, ambulance services must be medically necessary and reasonable, and medical necessity is established when the patient's condition is such that use of any other method of transportation is contraindicated.

D. The United States and the State of Rhode Island contend that they have certain civil claims against Professional pursuant to the False Claims Act 31 U.S.C. § 3729 *et seq.*, the Rhode Island False Claims Act, R.I.G.L. § 9-1.1-1 *et seq.*, and common law doctrines as specified in paragraphs 2 and 3, below, arising from the following alleged conduct between January 1, 2012 and July 31, 2015, namely that: Professional knowingly, within the meaning of the False Claims Act, submitted or caused to be submitted false claims for payment to Medicare and Medicaid for basic life support ambulance transport that was not medically necessary. This included, but was not limited to, claims for the transportation of dialysis patients whose mobility and or ability to ambulate rendered ambulance transport inappropriate, and/or whose condition and mobility was not accurately documented in ambulance run reports. The conduct set forth in this paragraph is hereinafter referred to as the "Covered Conduct."

E. Professional denies the allegations of the United States and the State of Rhode Island as set forth in Recital Paragraph D. This Settlement Agreement is neither an admission of liability by Professional nor a concession by the United States or the State of Rhode Island 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. Professional shall pay to the United States TWO HUNDRED SEVENTY THREE THOUSAND, SEVEN HUNDRED FIFTEEN DOLLARS (\$273,715.00) (the “Federal Settlement Amount”), and to the State of Rhode Island and Providence Plantations TWENTY SIX THOUSAND, TWO HUNDRED AND EIGHT FIVE DOLLARS (\$26,285.00) (the “State Settlement Amount”), together with interest on the Federal Settlement Amount and the State Settlement Amount, respectively, at a rate of 3% per annum, running from December 31, 2018 to and including the day before payment is made under this agreement. Payment of the Federal Settlement Amount and the State Settlement Amount shall be made by check or electronic funds transfer pursuant to written instructions to be provided by the Office of the United States Attorney for the District of Rhode Island (the Federal Settlement Amount) and the Rhode Island Department of Attorney General (for the State Settlement Amount). The payments called for under this paragraph shall be made within fourteen (14) business days of the Effective Date of this Agreement.

2. Subject to the exceptions in Paragraph 4 (concerning excluded claims) below, and conditioned upon Professional’s full payment of the Federal Settlement Amount, the United States releases Professional, together with its current and former parent corporations; direct and indirect subsidiaries; brother or sister corporations; divisions; current or former corporate owners and officers; 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 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.

3. Conditioned upon Professional's full payment of the State Settlement Amount, the State of Rhode Island releases Professional, together with its current and former parent corporations; direct and indirect subsidiaries; brother or sister corporations; divisions; current or former corporate owners and officers; and the corporate successors and assigns of any of them, from any civil or administrative monetary claim the State of Rhode Island has for the Covered Conduct under the Rhode Island False Claims Act, R.I.G.L. § 9-1.1-1 *et seq.* or the common law theories of payment by mistake, unjust enrichment, and fraud.

4. 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 any Federal health care program;
- 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 except as provided in this Agreement.

5. Professional waives and shall not assert any defenses Professional 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.

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

7. 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 Professional 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.

8. Professional 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 Professional, 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 or criminal investigation(s) of the matters covered by this Agreement;
- (3) Professional'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 attorney's fees);

- (4) the negotiation and performance of this Agreement; and
- (5) the payment Professional 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 Professional, and Professional 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 Professional or any of its subsidiaries or affiliates to the Medicare, Medicaid, TRICARE, or FEHBP Programs.

c. Treatment of Unallowable Costs Previously Submitted for Payment: Professional 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 Professional 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. Professional agrees that the United States, at a minimum, shall be entitled

to recoup from Professional 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 Professional or any of its subsidiaries or affiliates on the effect of inclusion of Unallowable Costs (as defined in this Paragraph) on Professional 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 Professional's books and records to determine that no Unallowable Costs have been claimed in accordance with the provisions of this Paragraph.

9. 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 2 (United States release paragraph), Paragraph 3 (Rhode Island release paragraph), above, and Paragraph 10 (waiver for beneficiaries paragraph), below.

10. Professional 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.

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

12. 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.

13. 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 District of Rhode Island. 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.

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

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

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

17. This Agreement is binding on Professional's successors, transferees, heirs, and assigns.

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

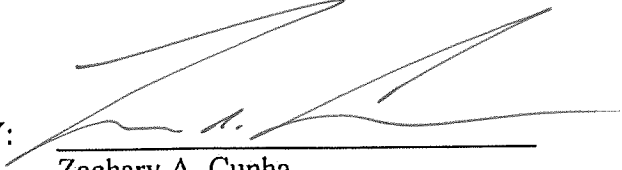
19. This Agreement is effective on the date of signature of the last signatory to the Agreement (Effective Date of this Agreement). Facsimiles and electronic transmissions of signatures shall constitute acceptable, binding signatures for purposes of this Agreement.

FOR THE UNITED STATES OF AMERICA

STEPHEN G. DAMBRUCH
United States Attorney
District of Rhode Island

DATED: 12/21/2018

BY:



Zachary A. Cunha
Assistant U.S. Attorney
District of Rhode Island

DATED: 12/20/19

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

FOR THE STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

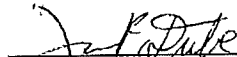
PETER F. KILMARTIN

Attorney General

State of Rhode Island and Providence Plantations

DATED: 12/20/18

BY:



James F. Dube, Esq.

Assistant Attorney General

Director, Medicaid Fraud Control and Patient Abuse Unit

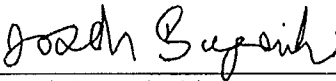
150 South Main Street

Providence, RI 02903

(401) 274-4400

FOR PROFESSIONAL AMBULANCE

DATED: 12/20/18



Joseph J. Baginski,
*Individually and in his capacity as an owner, officer, or
director on behalf of Professional Ambulance, LLC*

DATED: _____

Brenda Baginski,
*Individually and in her capacity as an owner, officer, or
director on behalf of Professional Ambulance, LLC*

DATED: 12/20/18



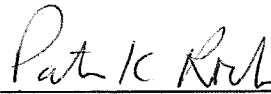
Martin Baginski
*Individually and in his capacity as an owner, officer, or
director on behalf of Professional Ambulance, LLC*

DATED: _____

Jacquelyn Baginski,
*Individually and in her capacity as an owner, officer, or
director on behalf of Professional Ambulance, LLC*

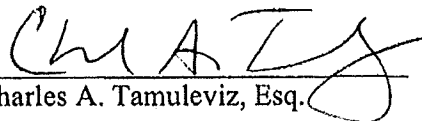
DATED: 12/21/18

By:



John A. Tarantino, Esq.
Patricia K. Rocha, Esq.
Adler, Pollock & Sheehan, P.C.
One Citizens Plaza, 8th Floor
Providence, Rhode Island 02903
Counsel to Professional Ambulance LLC.

DATED: 12-21-2018



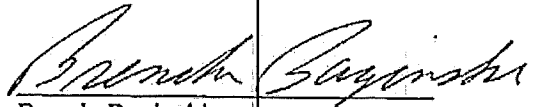
Charles A. Tamuleviz, Esq.
Nixon Peabody LLP
One Citizens Plaza, Suite 500
Providence, RI 02903-1345
*Counsel to Joseph Baginski, Brenda Baginski,
Martin Baginski and Jacquelyn Baginski*

FOR PROFESSIONAL AMBULANCE

DATED: _____

Joseph J. Baginski,
*Individually and in his capacity as an owner, officer, or
director on behalf of Professional Ambulance, LLC*

DATED: 12/20/18

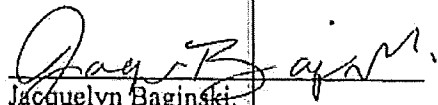


Brenda Baginski,
*Individually and in her capacity as an owner, officer, or
director on behalf of Professional Ambulance, LLC*

DATED: _____

Martin Baginski
*Individually and in his capacity as an owner, officer, or
director on behalf of Professional Ambulance, LLC*

DATED: 12/20/18



Jacquelyn Baginski,
*Individually and in her capacity as an owner, officer, or
director on behalf of Professional Ambulance, LLC*

DATED: _____

By:

John A. Tarantino, Esq.
Patricia K. Rocha, Esq.
Adler, Pollock & Sheehan, P.C.
One Citizens Plaza, 8th Floor
Providence, Rhode Island 02903
Counsel to Professional Ambulance LLC.

DATED: _____

Charles A. Tamulevici, Esq.
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One Citizens Plaza, Suite 500
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*Counsel to Joseph Baginski, Brenda Baginski,
Martin Baginski and Jacquelyn Baginski*