

SETTLEMENT AGREEMENT

I. PARTIES

This Settlement Agreement (the “Agreement”) is entered into among the United States of America, acting through the U.S. Department of Justice and on behalf of the Office of Inspector General (“OIG-HHS”) of the U.S. Department of Health and Human Services (“HHS”) (collectively the “United States”); the Commonwealth of Massachusetts (“Commonwealth”), acting through the Office of the Attorney General of Massachusetts and on behalf of the Division of Medical Assistance (“DMA”); Tushar C. Patel, M.D. (“Patel”), Fall River Walk-In Emergency Medical Office, P.C. (“FRWI”), and Health Clinic Inc. d/b/a Metromedic (“Metromedic”), and Pedro C. Falla, M.D. and Kathleen F. Sullivan, through their authorized representatives. The United States and the Commonwealth are hereafter collectively referred to as the “Government.” Patel, FRWI, and Metromedic are hereafter collectively referred to as the “Defendants.” Pedro C. Falla, M.D. and Kathleen F. Sullivan are hereafter collectively referred to as the “Relators.” Collectively, all of the above are hereafter referred to as “the Parties.”

II. PREAMBLE

As a preamble to this Agreement, the Parties agree to the following:

- A. Patel owns and operates (1) FRWI, a group medical practice organized as a Massachusetts professional corporation and located at 427 Plymouth Avenue, Fall River, Massachusetts 02721; and (2) Metromedic, a group medical practice organized as a Massachusetts professional corporation and located at 1155 Purchase Street, New Bedford, Massachusetts 02740;

- B. Pedro C. Falla, M.D. is an individual resident of North Dartmouth, Massachusetts. Kathleen F. Sullivan is an individual resident of Fall River, Massachusetts. Pedro C. Falla, M.D. filed a qui tam action, later amended by the First Amended Complaint and joined by Kathleen F. Sullivan, in the United States District Court for the District of Massachusetts (“Court”), captioned United States of America ex rel. Pedro C. Falla, M.D. v. Tushar C. Patel, M.D. et al., Civil Action No. 03-11828-MLW (hereinafter “the Civil Action”).
- C. The Government contends that the Defendants submitted or caused to be submitted claims for payment to the Medicare Program (“Medicare”), Title XVIII of the Social Security Act, 42 U.S.C. §§ 1395-1395ggg, and the Massachusetts Medical Assistance program (“Medicaid”), 42 U.S.C. §§ 1396 -1396v.
- D. The United States contends that it has certain civil claims, as specified in Paragraph 2 below, against the Defendants for engaging in the following conduct during the period from January 1, 2000 to December 31, 2003: submitting or causing to be submitted claims for reimbursement to the Medicare and Medicaid programs for (1) certain physical therapy services, which services were not performed by a physician, licensed physical therapist, or licensed occupational therapist as required by Medicare and Medicaid; (2) certain chiropractic services, which were improperly submitted for payment; (3) certain office visits improperly billed as consultations; and (4) blood and imaging tests that were not medically necessary.

- E. The United States also contends that it has certain administrative claims, as specified in Paragraphs 2 and 5 below, against the Defendants for engaging in the following conduct during the period from January 1, 2000 to December 31, 2003: submitting or causing to be submitted claims for reimbursement to the Medicare and Medicaid programs for (1) certain physical therapy services, which services were not performed by a physician, licensed physical therapist, or licensed occupational therapist as required by Medicare and Medicaid; (2) certain chiropractic services, which were improperly submitted for payment; (3) certain office visits improperly billed as consultations; and (4) blood and imaging tests that were not medically necessary.
- F. The Commonwealth contends that it has certain civil and administrative claims, as specified in Paragraph 3 below, against the Defendants for engaging in the following conduct during the period from January 1, 2000 to December 31, 2003: submitting or causing to be submitted claims for reimbursement to the Medicaid program for (1) certain physical therapy services, which services were not performed by a physician, licensed physical therapist, or licensed occupational therapist as required by Medicaid; (2) certain chiropractic services, which were improperly submitted for payment; (3) certain office visits improperly billed as consultations; and (4) blood and imaging tests that were not medically necessary. The conduct described in Paragraphs D, E, and F is hereinafter referred to as the “Covered Conduct.”
- G. Under a separate criminal plea agreement with the Commonwealth, FRWI is paying \$85,000 (eighty-five thousand dollars) in restitution to the Medicaid program.
- H. To avoid the delay, uncertainty, inconvenience, and expense of protracted litigation of the above claims, the Parties reach a full and final settlement pursuant to the Terms and Conditions below.

- I. This Agreement is neither an admission of liability by the Defendants nor a concession by the Government that its claims are not well-founded.
- J. The Relators claim entitlement under 31 U.S.C. § 3730(d) and M.G.L. c. 12 § 5F to a share of the proceeds of this Settlement Agreement.

III. TERMS AND CONDITIONS

1. The Defendants agree to pay to the Government \$315,000.00 (three hundred and fifteen thousand dollars) (the "Settlement Amount") and this sum shall constitute a debt immediately due and owing to the Government on the execution of this Agreement. The Defendants agree to pay \$232,500 (two hundred and thirty two thousand and five hundred dollars) of the Settlement Amount to the United States by electronic funds transfer pursuant to written instructions to be provided by the United States. The Defendants agree to pay the Commonwealth \$82,500 (eighty two thousand five hundred dollars) of the Settlement Amount by electronic funds transfer pursuant to the written instructions to be provided by the Commonwealth. The Defendants agree to make these electronic funds transfers no later than the effective date of this Agreement. Contingent upon the Government receiving the Settlement Amount from the Defendants and as soon as feasible after receipt, the United States agrees to pay Relators \$75,000 (seventy-five thousand dollars) by electronic funds transfer. Defendants further agree to pay the Relators \$35,000 in settlement of their claims under 31 U.S.C. sec. 3730 (d) and 12 M.G.L. sec. 5A *et seq.* for attorneys' fees, costs and expenses. Such payment shall be made pursuant to written instructions to be provided by Relators' counsel and shall be made no later than the effective date of this Agreement.

2. Subject to the exceptions in Paragraph 6 below, in consideration of the obligations of the Defendants set forth in this Agreement, and conditioned upon the Defendants' full payment of the Settlement Amount, the United States (on behalf of itself, its officers, agents, agencies, and departments) agrees to release the Defendants from any civil or administrative monetary claim the United States has or may have 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, breach of contract, and fraud, for the Covered Conduct.

3. Subject to the exceptions in Paragraph 6 below, in consideration of the obligations of the Defendants as set forth in this Agreement, and conditioned upon the Defendants' full payment of the Settlement Amount, the Commonwealth (on behalf of itself, its officers, agents, agencies, and departments) agrees to release the Defendants from any civil or administrative monetary claim the Commonwealth has or may have under the Massachusetts Medicaid False Claims Act, M.G.L. c. 118E, §§ 40 and 44; the False Claims Act, M.G.L. c. 12 § 5A *et seq.*; 130 CMR 450.000 *et seq.*; or the common law theories of payment by mistake, unjust enrichment, breach of contract, and fraud, for the Covered Conduct.

4. (a) Subject to the exceptions in Paragraph 6 below, in consideration of the obligations of Defendants in this Agreement, and conditioned upon the Defendants' full payment of the Settlement Amount and of Relators' attorneys' fees, costs and expenses as agreed herein, the Relators, for themselves and their heirs, successors, attorneys, agents, and assigns, agree to release the Defendants from any civil monetary claim the United States has or may have for the Covered Conduct under the False Claims Act, 31 U.S.C. §§ 3729-3733, and any civil monetary claim of the Commonwealth has or may have for the Covered Conduct under the False Claims Act, M.G.L. c. 12 § 5A *et seq.* This Agreement does not resolve or in any manner affect any

claims the United States has or may have against the Relators arising under either Title 26, U.S. Code (Internal Revenue Code), or this Agreement.

(b) Within seven business days after the payment of the Settlement Amount to the Government pursuant to Paragraph 1 of this Agreement, the Relators will file a stipulation of dismissal with prejudice in the Civil Action for all claims. The Government and the Relators will notify the Court that all pertinent Parties have stipulated, and that the Government consents, to dismissal of the Civil Action pending in the District of Massachusetts.

(c) Conditioned upon receipt of the payment described in Paragraph 1, the Relators, for themselves and for their heirs, successors, attorneys, agents, and assigns, agree to release the Government, its officers, agents, and employees, from any claims arising from or relating to 31 U.S.C. § 3730 in connection with this Civil Action, or arising from the filing of the Civil Action, including 31 U.S.C. §§ 3730(b), (c), (c)(5), (d), and (d)(1) in connection with this Civil Action. The Relators and their heirs, successors, attorneys, agents, and assigns agree not to object to this Agreement and 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).

(d) In consideration of the obligations of the Relators set forth in this Agreement, Defendants, for themselves and for their heirs, successors, attorneys, agents, and assigns, fully and finally release, waive, and discharge the Relators and their respective heirs, successors, assigns, attorneys and agents from any claims Defendants have asserted, could have asserted or may assert in the future against the Relators or either of them arising from the filing of the Civil Action, and the Government's investigation and prosecution of the Civil Action, the criminal plea agreement, and the Covered Conduct.

5. In consideration of the obligations of the Defendants set forth in this Agreement and the Integrity Agreement (“IA”) incorporated herein by reference and conditioned upon the Defendants’ full payment of the Settlement Amount, the OIG-HHS agrees to release and refrain from instituting, directing, or maintaining any administrative action seeking exclusion from the Medicare, Medicaid, or other Federal health care programs (as defined in 42 U.S.C. § 1320a-7b(f)) against the Defendants 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 Paragraph 6 below, and as reserved in this Paragraph. The OIG-HHS expressly reserves all rights to comply with any statutory obligations to exclude the Defendants from the Medicare, Medicaid, or other Federal health care program 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 any term of this Agreement, specifically reserved and excluded from the scope and terms of this Agreement as to any entity or person (including the Defendants) are the following:

- a. Any civil, criminal, or administrative 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 exclusion from Federal health care programs;
- d. Any liability to the Government (or its agencies) for any conduct other than the Covered Conduct;

- e. Any liability based upon such obligations as are 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; and
- g. Except as explicitly stated in this Agreement as to the Defendants, any liability of non-party individuals, including officers and employees.

7. Patel and Metromedic have entered into an IA with OIG-HHS, attached as Exhibit A, which is incorporated into this Agreement by reference. Patel and Metromedic shall immediately upon execution of this Agreement implement their obligations under the IA.

8. The Defendants waive and will not assert any defenses they 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 Government concerning the characterization of the Settlement Amount for purposes of the Internal Revenue laws, Title 26 of the United States Code, or the Massachusetts Taxation laws, Massachusetts General Laws Title IX.

9. The Defendants fully and finally release the Government, its agencies, employees, servants, and agents from any claims (including attorney's fees, costs, and expenses of every kind and however denominated) which they have asserted, could have asserted, or may assert in the future against the Government, its agencies, employees, servants, and agents, related to the Covered Conduct and the Government's investigation and prosecution thereof.

10. The Settlement Amount will not be decreased as a result of the denial of claims for payment now being withheld from payment by any Medicare carrier or intermediary or other federal or state payer, related to the Covered Conduct; and the Defendants shall not resubmit to any Medicare carrier or intermediary or other federal or state payer any previously denied claims related to the Covered Conduct, and shall not appeal any such denials of claims.

11. The Defendants agree to the following:

a. Unallowable Costs Defined: that 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. §§ 1395-1395ggg and 1396-1396v, and the regulations and official program directives promulgated thereunder) incurred by or on behalf of the Defendants, their present or former officers, directors, employees, shareholders, and agents in connection with the following shall be "unallowable costs" on government contracts and under the Medicare Program, Medicaid Program, TRICARE Program, and Federal Employees Health Benefits Program (FEHBP):

(1) the matters covered by this Agreement and any related plea agreement,
(2) the Government's audit(s) and civil and any criminal investigation(s)
of the matters covered by this Agreement,

(3) the Defendants' investigation, defense, and corrective actions
undertaken in response to the Government's 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 any plea
agreement,

(5) the payment the Defendants make to the United States pursuant to this

Agreement and any payments that the Defendants may make to Relators, 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 annual reviews as described in Section III of the CIA; and

(ii) prepare and submit reports to the OIG-HHS.

However, nothing in this Paragraph 11.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 the Defendants. (All costs described or set forth in this Paragraph 11.a. are hereafter, "unallowable costs").

b. Future Treatment of Unallowable Costs: These unallowable costs shall be separately determined and accounted for by the Defendants, and the Defendants 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 the Defendants or any of their subsidiaries or affiliates to the Medicare, Medicaid, TRICARE, or FEHBP Programs.

c. Treatment of Unallowable Costs Previously Submitted for Payment: The Defendants further agree that within 90 days of the Effective Date of this Agreement they shall identify to applicable Medicare and TRICARE fiscal intermediaries, carriers, and/or contractors, and Medicaid, VA 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 the Defendants or any of their 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. The Defendants agree that the Government, at a minimum, shall be entitled to recoup from the Defendants 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 Government pursuant to the direction of the Department of Justice, and/or the affected agencies. The Government reserves its rights to disagree with any calculations submitted by the Defendants or any of their subsidiaries or affiliates on the effect of inclusion of unallowable costs (as defined in this Paragraph) on the Defendants or any of their subsidiaries or affiliates' cost reports, cost statements, or information reports.

d. Nothing in this Agreement shall constitute a waiver of the rights of the Government to audit, examine, or re-examine the Defendants' books and records to determine that no unallowable costs have been claimed in accordance with the provisions of this Paragraph.

12. 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 13 below.

13. The Defendants agree that they waive and will 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.

14. The Defendants warrant that they have reviewed their financial situation and that they currently are solvent within the meaning of 11 U.S.C. §§ 547(b)(3) and 548(a)(1)(B)(ii)(I), and will remain solvent following their payment to the United States of the Settlement Amount.

Further, the Parties warrant that, in evaluating whether to execute this Agreement, they (a) have intended that the mutual promises, covenants, and obligations set forth herein constitute a contemporaneous exchange for new value given to the Defendants, within the meaning of 11 U.S.C. § 547(c)(1); and (b) conclude that these mutual promises, covenants, and obligations do, in fact, constitute such a contemporaneous exchange. Further, the Parties warrant that the mutual promises, covenants, and obligations set forth herein are intended and do, in fact, represent a reasonably equivalent exchange of value which is not intended to hinder, delay, or defraud any entity to which the Defendants was or became indebted, on or after the date of this transfer, all within the meaning of 11 U.S.C. § 548(a)(1).

15. Except as otherwise expressly stated herein, each Party to this Agreement will bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

16. The Defendants represent that this Agreement is freely and voluntarily entered into without any degree of duress or compulsion whatsoever.

17. This Agreement is governed by the laws of the United States. The Parties agree that the exclusive jurisdiction and venue for any dispute arising between and among the Parties under this Agreement will be the United States District Court for the District of Massachusetts, except that disputes arising under the IA shall be resolved exclusively under the dispute resolution provisions in the IA.

18. This Agreement and the IA which is incorporated herein by reference constitute the complete agreement between the Parties. This Agreement may not be amended except by written consent of the Parties, except that only Patel, Metromedic, and OIG-HHS must agree in writing to modification of the IA.

19. The individuals signing this Agreement on behalf of the Defendants represent

and warrant that they are authorized to execute this Agreement. The individuals signing this Agreement on behalf of the Relators represent and warrant that they are authorized by the Relators to execute this Agreement. The Government signatories represent that they are signing this Agreement in their official capacities and that they are authorized to execute this Agreement.

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

21. This Agreement is binding on the Defendants' successors, transferees, heirs, and assigns.

22. This Agreement is binding on the Relators' successors, transferees, heirs, and assigns.

23. All Parties consent to the Commonwealth's and the United States' disclosure of this Agreement and the facts of this investigation to the public.

24. This Agreement is effective on the date of signature of the last signatory to the Agreement. Facsimiles of signatures shall constitute acceptable, binding signatures for purposes of this Agreement.

THE UNITED STATES OF AMERICA

DATED: _____

BY: _____

Eugenia M. Carris
Assistant United States Attorney
District of Massachusetts

DATED: _____

BY: _____

Lewis Morris
Chief Counsel to the Inspector General
Office of Counsel to the Inspector General
Office of Inspector General
United States Department of Health and Human Services

THE COMMONWEALTH OF MASSACHUSETTS

DATED: _____

BY: _____

Peter Clark, BBO 085360
Assistant Attorney General
Medicaid Fraud Control Unit
One Ashburton Place
Boston, Massachusetts 02108

DATED: _____

BY: _____

Barbara Wexler
BBO No.
Deputy MassHealth Counsel
Division of Medical Assistance
One Ashburton Place
Boston, Massachusetts 02108

TUSHAR C. PATEL, M.D.

DATED: _____

BY: _____
Tushar C. Patel, M.D.

DATED: _____

BY: _____
Counsel for Tushar C. Patel, M.D.
Paul R. Cirel
Joseph E. Haviland
DWYER & COLLORA, LLP
600 Atlantic Avenue
Boston, MA 02210

FALL RIVER WALK-IN EMERGENCY MEDICAL OFFICE, P.C.

DATED: _____

BY: _____
Tushar C. Patel, M.D., President

DATED: _____

BY: _____
Counsel for Fall River Walk-In Emergency Medical Office, P.C.
Paul R. Cirel
Joseph E. Haviland
DWYER & COLLORA, LLP
600 Atlantic Avenue
Boston, MA 02210

HEALTH CLINIC INC. d/b/a METROMEDIC

DATED: _____

BY: _____

Tushar C. Patel, M.D., President

DATED: _____

BY: _____

Counsel for Health Clinic Inc., d/b/a Metromedic
Paul R. Cirel
Joseph E. Haviland
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600 Atlantic Avenue
Boston, MA 02210

PEDRO C. FALLA, M.D.

DATED: _____

BY: _____

Pedro C. Falla, M.D.

DATED: _____

BY: _____

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KATHLEEN F. SULLIVAN

DATED: _____

BY: _____
Kathleen F. Sullivan

DATED: _____

BY: _____
Counsel for Kathleen F. Sullivan

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