

## 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; the State of West Virginia, acting through the State of West Virginia Medicaid Fraud Control Unit (“West Virginia”); the Defense Health Agency (DHA), acting on behalf of the TRICARE program; the United States Department of Veterans Affairs (VA) (collectively, “the United States”); and Grant Memorial Hospital (“GMH”) (hereafter collectively referred to as “the Parties”), through their authorized representatives.

### RECITALS

A. GMH is a public hospital owned by the Grant County Commission in Petersburg, West Virginia.

B. Included in GMH’s patient-base are individuals eligible to receive health benefits under, for example, the Medicare, Medicaid, TRICARE, and VA programs.

C. On February 15, 2019, GMH made a submission pursuant to OIG-HHS’s Self-Disclosure Protocol.

D. The United States contends that GMH 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”); the Medicaid Program, 42 U.S.C. §§ 1396-1396w-5; the TRICARE Program, 10 U.S.C. §§ 1071-1110b (“TRICARE”); the Department of Veterans Affairs, Veterans Health Administration, 38 U.S.C. Chapter 17; and the Railroad Retirement Medicare Program,

administered under the Railroad Retirement Act of 1974, 45 U.S.C. §§ 231-213v, by the United States Railroad Retirement Board (“Railroad Retirement Program”).

E. The United States contends that it has certain civil claims against GMH for knowingly submitting or causing the submission of false claims to the Medicare, Medicaid, TRICARE, VA, and Railroad Retirement Programs during the period from September 22, 2014 through March 31, 2016. Specifically, the United States contends that GMH submitted claims for inpatient and outpatient items and services using the name and National Provider Identifier number of John L. Hahn, M.D., when, in fact, a non-GMH-credentialed physician, Amanda M. Borrer, D.O., actually furnished the items and services for and at GMH. The conduct described in this paragraph is referred to below as the “Covered Conduct.”

F. This Settlement Agreement is neither an admission of liability by GMH nor a concession by the United States that its 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. GMH shall pay \$320,175.71 to the United States (“Settlement Amount”), of which \$213,450.47 is restitution, no later than seven (7) business 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 West Virginia.

2. Subject to the exceptions in Paragraph 5 (concerning reserved claims) below, and

upon the United States' receipt of the Settlement Amount, the United States releases GMH 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. In consideration of the obligations of GMH in this Agreement, and conditioned upon GMH's 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 Medicare, Medicaid, and other Federal health care programs (as defined in 42 U.S.C. § 1320a-7b(f)) against GMH 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 5 (concerning reserved claims), below. The OIG-HHS expressly reserves all rights to comply with any statutory obligations to exclude GMH 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 5, below.

4. Subject to the exceptions in Paragraph 5 (concerning reserved claims) below, and upon West Virginia's receipt of the Settlement Amount, West Virginia (on behalf of itself, its officer, agents, agencies and departments) agrees to release GMH from any civil or administrative monetary claim West Virginia has or may have for the Covered Conduct, including pursuant to

W. Va. Code § 9-7-6; or the common law theories of payment by mistake, unjust enrichment, and fraud.

5. Notwithstanding the releases given in Paragraphs 2, 3, and 4 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. 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; and
- f. Any liability of individuals.

6. GMH waives and shall not assert any defenses it 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.

7. GMH 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 GMH 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.

8. 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), TRICARE, Medicaid, Railroad Retirement Program, or any state payer, related to the Covered Conduct; and GMH agrees not to resubmit to any Medicare contractor, TRICARE, Medicaid, Railroad Retirement Program, 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.

9. GMH 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 GMH, 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 investigation(s) of the matters covered by this Agreement;
3. GMH's investigation, defense, and corrective actions undertaken in response to the United States' audit(s) and civil investigation(s) in connection with the matters covered by this Agreement (including

- attorneys' fees);
4. the negotiation and performance of this Agreement; and
  5. the payment GMH 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, Railroad Retirement 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 GMH, and GMH 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 GMH to the Medicare, Medicaid, TRICARE, Railroad Retirement, or FEHBP Programs.

c. Treatment of Unallowable Costs Previously Submitted for Payment: GMH further agrees that within 90 days of the Effective Date of this Agreement it shall identify to applicable Medicare, Railroad Retirement Program, 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 GMH 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. GMH agrees that the United States, at a minimum, shall be entitled to recoup from it 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 GMH or any of its subsidiaries or affiliates on the effect of inclusion of Unallowable Costs (as defined in this paragraph) on GMH 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 GMH's books and records to determine that no Unallowable Costs have been claimed in accordance with the provisions of this paragraph.

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

11. 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 12 (waiver for beneficiaries paragraph), below.

12. GMH 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 payers based upon the claims defined as Covered Conduct.

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

14. 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.

15. 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 the Northern District of West Virginia. 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.

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

17. The undersigned counsel represent and warrant that they are fully authorized to



execute this Agreement on behalf of the persons and entities indicated below.

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

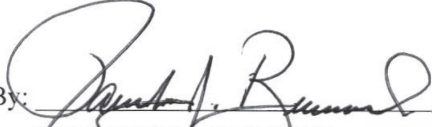
19. This Agreement is binding on GMH's successors, transferees, heirs, and assigns.

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


21. This Agreement is effective on the date of the 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.

**[SIGNATURES APPEAR ON THE FOLLOWING PAGES]**

THE UNITED STATES OF AMERICA

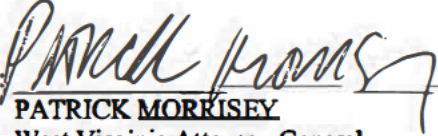
By:   
RANDOLPH J. BERNARD  
First Assistant United States Attorney  
U.S. Attorney's Office  
Northern District of West Virginia

Date: 1/21/2021

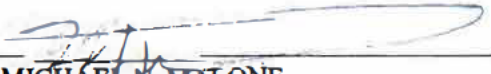
By:   
LISA M. RE  
Assistant Inspector General for Legal Affairs  
Office of Counsel to the Inspector General  
Office of Inspector General  
U.S. Department of Health and Human Services

Date: 02/01/2021

THE STATE OF WEST VIRGINIA

By:   
**PATRICK MORRISSEY**  
West Virginia Attorney General

Date: 25-JAN-21

By:   
**MICHAEL N. MALONE**  
Director  
West Virginia Medicaid Fraud Control Unit

Date: 7-JAN-2021


By: **Cynthia Beane**  
**MSW, LCSW**  
CYNTHIA BEANE  
Commissioner  
West Virginia Bureau for Medical Services

Digitally signed by: Cynthia Beane, MSW,  
LCSW  
DN: CN = Cynthia Beane, MSW, LCSW, email  
= Cynthia.e.beane@wv.gov C = US O =  
Medical Services OU = WV DHHR  
Date: 2021.01.08 12:31:42 -0500

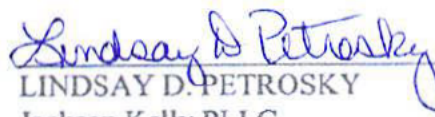
Date: January 8, 2021

GRANT MEMORIAL HOSPITAL

GRANT MEMORIAL HOSPITAL

By:   
\_\_\_\_\_  
Robert W. M. Lvet Sr.  
ITS: CEO  
\_\_\_\_\_

Date: 1-4-2021

By:   
\_\_\_\_\_  
LINDSAY D. PETROSKY  
Jackson Kelly PLLC  
Counsel for Grant Memorial Hospital

Date: 1-4-2021

**DEFENSE HEALTH AGENCY**  
**acting on behalf of the TRICARE program**

By: BLEY.PAUL.NICHOLA Digitally signed by  
S.1099873821 BLEY.PAUL.NICHOLAS.1099873821  
Date: 2020.12.29 10:25:10 -05'00'

Date: 12/29/2020

for SALVATORE M. MAIDA  
General Counsel  
Defense Health Agency  
United States Department of Defense