

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); (the “United States”), the State of Connecticut, acting through the Attorney General of the State of Connecticut (the “State of Connecticut”), and Naimetulla Syed, M.D. (“Syed”) (hereafter collectively referred to as “the Parties”), through their authorized representatives.

RECITALS

A. Syed is licensed as a doctor of psychiatry in the State of Connecticut, and the owner of a private medical practice in Newtown, Connecticut. Syed is enrolled as a provider in the Medicare Program and the Connecticut Medical Assistance Program (“CMAP”), which includes the state’s Medicaid program.

B. The United States and the State of Connecticut contend that Syed submitted or caused to be submitted claims for payment to the Medicare Program, Title XVIII of the Social Security Act, 42 U.S.C. §§ 1395-1395kkk-1 (“Medicare”); and the Medicaid Program, 42 U.S.C. §§ 1396-1396w-5 (“Medicaid”).

C. The United States and the State of Connecticut contend that they have certain civil claims against Syed arising from Syed’s billing of psychotherapy services under CPT codes 90807 and 90806 when he should have been billing under CPT code 90804 during the period from July 2009 through December 2013. CPT codes 90807 and 90806 are reimbursed at a higher fee than 90804. Accordingly, Syed received more reimbursement from Medicare and Medicaid than he was entitled to receive. The United States and the State of Connecticut contend that Syed knowingly submitted claims as if he had performed 45 minutes or more of face to face psychotherapy and a medical evaluation and management service when in fact he

had provided 30 minutes or less of therapy and no evaluation and management service, in violation of both the federal and State of Connecticut false claims acts. That conduct is referred to below as the “Covered Conduct.”

D. This Settlement Agreement is neither an admission of liability by Syed nor a concession by the United States or the State of Connecticut 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. The amount owed by Syed to the United States and the State of Connecticut pursuant to this Settlement Agreement is Four Hundred Twenty-Two Thousand, Six Hundred Forty-One Dollars and Seventy Cents (\$422,641.70) (the “Settlement Amount”). Syed agrees that the Settlement Amount will be satisfied as follows:

a. Syed shall pay to the United States and the State of Connecticut Four Hundred One Thousand, Eight Hundred Sixty-Five Dollars and Seventy-One Cents (\$401,865.71), no later than five 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 District of Connecticut.

b. Syed agrees to give up and release all right, title, and interest to all Medicaid and non-Medicaid funds that have been suspended and/or retained by the State of Connecticut, in the amount of Twenty Thousand, Seven Hundred Seventy-Five Dollars and Ninety-Nine Cents (\$20,775.99) (the “Suspended Amounts”), and to release the State of Connecticut from all claims, actions and damages Syed may have arising from Syed’s contracts with the State of Connecticut. Syed agrees that the calculation of the Suspended Amounts is

accurate and that no further monies are due and owing to Syed from the State of Connecticut or from the United States. Syed agrees that the United States and the State of Connecticut shall retain the Suspended Amounts forevermore. Syed expressly relinquishes any and all rights of any kind that it may have with respect to these funds, including, but not limited to, any and all claims or rights to have an overpayment determined, any and all rights to payment of those funds, and any and all rights to appeal, whether formally or informally and whether administratively or judicially, the right of the United States and/or the State of Connecticut to retain those funds, and any other rights Syed may have to challenge the Suspended Amounts in any respect. Syed further agrees to execute any documents necessary to effectuate the release of Syed's right, title, and interest in the Suspended Amounts.

2. Syed agrees to implement a Compliance Program intended to prevent and/or detect fraud, waste and abuse in the CMAP. At a minimum, the Compliance Program shall include the following elements: (i) written policies, procedures, and standards of conduct; (ii) compliance program oversight (including a designated compliance officer); (iii) effective training and education; (iv) establishing a process for communication regarding compliance issues, education, and concerns; (v) auditing, monitoring and identification of compliance risks; (vi) appropriate and consistent disciplinary policies; and (vii) corrective action plans. Within one-hundred twenty (120) days after the Effective Date of this Settlement Agreement, Syed shall submit a copy of the Compliance Program to the Connecticut Attorney General certifying that the Compliance Program has been implemented (the "First Certification"). For a period of three (3) years from the Effective Date of this Settlement Agreement Syed shall provide the Connecticut Attorney General with an annual certification (the "Annual Certification"), certifying that the Compliance Program is in effect and adhered to by Syed. The Annual

Certification shall be received by the Connecticut Attorney General no later than the anniversary date of the due date of the First Certification. The sunset of Syed's obligations to provide the Connecticut Attorney General with the Annual Certification after three (3) years does not relieve Syed of his obligation to maintain a Compliance Program while enrolled as a provider in the CMAP.

3. Subject to the exceptions in Paragraph 7 (concerning excluded claims) below, and conditioned upon Syed's full payment of the Settlement Amount, the United States releases Syed 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 7 (concerning excluded claims) below, and conditioned upon Syed's full payment of the Settlement Amount, the State of Connecticut releases Syed from any civil claims the State of Connecticut has, or could have asserted for the Covered Conduct under Section 4-275 et seq. of the Connecticut General Statutes (Connecticut False Claims Act) and the common law theories of payment by mistake, unjust enrichment, and fraud.

5. The OIG-HHS expressly reserves all rights to institute, direct, or maintain any administrative action seeking exclusion against Syed from Medicare, Medicaid, and other Federal health care programs under 42 U.S.C. § 1320a-7(a) (mandatory exclusion), or 42 U.S.C. §1320a-7a or 42 U.S.C. §1320a-7(b) (permissive exclusion).

6. The State of Connecticut Department of Social Services expressly reserves all rights to institute, direct, or maintain any administrative action seeking suspension or other sanction against Syed from Medicaid, ConnPACE and all other Connecticut Medical Assistance

Programs under Connecticut General Statutes § 17b-99(a)-(c) and Regulations of Connecticut State Agencies § 17-83k-1 through § 17-83k-7, inclusive.

7. Notwithstanding the release given in paragraphs 3 and 4 of this Agreement, or any other term of this Agreement, the following claims of the United States and the State of Connecticut are specifically reserved and are not released:

- a. Any liability arising under Title 26, U.S. Code (Internal Revenue Code);
- b. Any liability arising under the laws and regulations that are administered and enforced by the State of Connecticut Department of Revenue Services.
- c. Any criminal liability;
- d. Except as explicitly stated in this Agreement, any administrative liability to the United States, including mandatory exclusion from Federal health care programs;
- e. Except as explicitly stated in this Agreement, any administrative liability to the State of Connecticut Department of Social Services, including suspension from CMAP;
- f. Any liability to the United States or the State of Connecticut (or their agencies) for any conduct other than the Covered Conduct;
- g. Any liability based upon obligations created by this Agreement;

8. Syed waives and shall not assert any defenses Syed 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 United States concerning the characterization of the Settlement Amount for purposes of the Internal Revenue laws, Title 26 of the United States Code. Nothing in this paragraph or any other provision of this Agreement constitutes an agreement by the State of Connecticut concerning the characterization of the Settlement Amount for the purposes of the laws and regulations administered and enforced by the Connecticut Department of Revenue Services.

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

10. 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 Syed 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.

11. Syed 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 Syed, its present or

former officers, directors, employees, shareholders, and agents in connection with:

- (1) the matters covered by this Agreement;
- (2) the United States' and the State of Connecticut's audit(s) and civil investigation(s) of the matters covered by this Agreement;
- (3) Syed's investigation, defense, and corrective actions undertaken in response to the United States' and the State of Connecticut's audit(s) and civil investigation(s) in connection with the matters covered by this Agreement (including attorney's fees); and
- (4) the negotiation and performance of this Agreement;
- (5) the payment Syed makes to the United States and the State of Connecticut 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 Syed, and Syed 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 Syed or any of its subsidiaries or affiliates to the Medicare, Medicaid, TRICARE, or FEHBP Programs.

c. Treatment of Unallowable Costs Previously Submitted for Payment: Syed further agrees that within 90 days of the Effective Date of this Agreement he 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 Syed, 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. Syed agrees that the United States and the State of Connecticut, at a minimum, shall be entitled to recoup from Syed 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 and the State of Connecticut pursuant to the direction of the Department of Justice and/or the affected agencies. The United States and the State of Connecticut reserve their rights to disagree with any calculations submitted by Syed on the effect of inclusion of Unallowable Costs (as defined in this Paragraph) on Syed's cost reports, cost statements, or information reports.

d. Nothing in this Agreement shall constitute a waiver of the rights of the United States or the State of Connecticut to audit, examine, or re-examine Syed's 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 (waiver for beneficiaries paragraph), below.

13. Syed agrees that he 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.

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

15. 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.

16. 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 Connecticut, except that a dispute only between the State of Connecticut and Syed will be resolved in the Superior Court for the Judicial District of Hartford, Connecticut. 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.

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

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

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

20. This Agreement is binding on Syed's successors, transferees, heirs, and assigns.

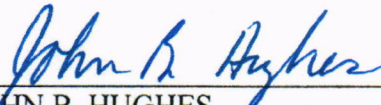
21. All parties consent to the United States' and the State of Connecticut's disclosure of this Agreement, and information about this Agreement, to the public.

22. 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.

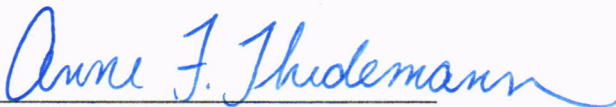
[SIGNATURE BLOCKS ON FOLLOWING PAGES]

THE UNITED STATES OF AMERICA

DATED: 5-9-16

BY: 
JOHN B. HUGHES
Assistant United States Attorney
Chief, Civil Division
District of Connecticut

DATED: 5/13/16

By: 
ANNE F. THIDEMANN
Assistant United States Attorney
District of Connecticut

DATED: _____

BY: _____
ROBERT K. DECONTI
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

THE UNITED STATES OF AMERICA

DATED: _____

BY: _____
JOHN B. HUGHES
Assistant United States Attorney
Chief, Civil Division
District of Connecticut

DATED: _____

By: _____
ANNE F. THIDEMANN
Assistant United States Attorney
District of Connecticut

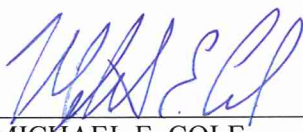
DATED: 5/6/16

BY: Robert K. DeConti
ROBERT K. DECONTI
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

THE STATE OF CONNECTICUT

GEORGE JEPSEN
ATTORNEY GENERAL

DATED: 4/27/16

BY: 

MICHAEL E. COLE
Assistant Attorney General
Chief, Antitrust & Government Program Fraud Department

DATED: 4/27/16

BY: 

GREGORY K. O'CONNELL
Assistant Attorney General

NAIMETULLA SYED, M.D.

DATED: 4-18-2016 BY: Naimetulla Syed
Naimetulla Syed, M.D. *MS*

DATED: 4-27-16 BY: Alan J. Sobol
Alan J. Sobol, Esq.
Pullman & Comley LLC
Counsel for Syed