

STATE OF FLORIDA
AGENCY FOR HEALTH CARE ADMINISTRATION

2015 DEC -1 P 12:09

BAY REGIONAL AND INTERNATIONAL
INSTITUTE OF NEUROLOGY, INC. and
DR. RADHAKRISHNA RAO,

Appellants,

v.

AGENCY FOR HEALTH CARE
ADMINISTRATION,

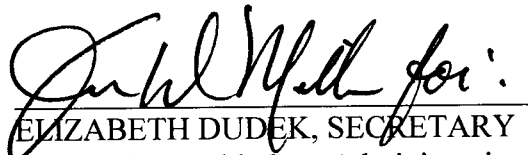
Appellee.

DCA CASE NO: 1D14-3242
DOAH CASE NO: 12-1447MPI
C.I. NO.: 11-1327-400
RENDITION NO.: AHCA-15-0751 -S-MDO

AMENDED FINAL ORDER

THE PARTIES have resolved all disputed issues and executed a Settlement Agreement, attached hereto as Exhibit 1. The parties are directed to comply with the terms of the Settlement Agreement. This Amended Final Order amends and replaces the Final Order entered by the Agency on September 10, 2014. Based on the foregoing, this file is **CLOSED**.

DONE and ORDERED on this the 25th day of November, 2015, in Tallahassee, Florida.



ELIZABETH DUDEK, SECRETARY
Agency for Health Care Administration

PURSUANT TO THE ATTACHED SETTLEMENT AGREEMENT (EX. 1, ¶ 18), THE PETITIONER(S) WAIVED ALL RIGHTS TO A HEARING PURSUANT TO SECTIONS 120.569 AND 120.57, FLORIDA STATUTES, AND TO AN APPEAL, REGARDING THE MAKING OF FINDINGS OF FACT AND CONCLUSIONS OF LAW, AND ALL FURTHER AND OTHER PROCEEDINGS TO WHICH THE PETITIONER(S) MAY BE ENTITLED BY LAW OR RULE REGARDING THE TIME PERIOD AND ISSUES RAISED IN THE ADMINISTRATIVE HEARING, NO. 11F-08218, AS WELL AS ALL ISSUES RAISED HEREIN, OTHER THAN THE ENFORCEMENT OF THE SETTLEMENT AGREEMENT.

Copies furnished to:

Tracy Cooper George, Esq.
Chief Appellate Counsel
Agency for Health Care
Administration
(electronic mail)

Kelly Bennett
Chief of Medicaid Program Integrity
Agency for Health Care
Administration
(electronic mail)

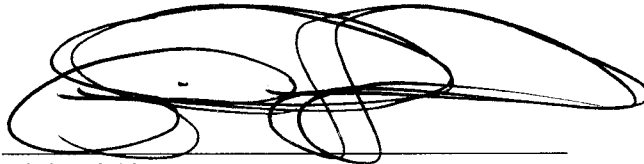
Ken Yon
Assistant Chief of Medicaid Program Integrity
Agency for Health Care
Administration
(electronic mail)

Frank P. Rainer, Esquire
FRainer@broadandcassel.com
John F. Loar, Esquire
JLoar@broadandcassel.com
Sun Trust Bank Building
215 S. Monroe Street, Suite 400
Tallahassee, Florida 32301
(electronic mail)

Finance & Accounting

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to the above named addressees by U.S. Mail, Laserfiche or electronic mail on this the 1st day of March, 2015.



Richard Shoop
Agency Clerk
State of Florida
Agency for Health Care Administration
2727 Mahan Drive, MS #3
Tallahassee, Florida 32308-5403
(850) 412-3689/FAX (850) 921-0158

**STATE OF FLORIDA
AGENCY FOR HEALTH CARE ADMINISTRATION**

**BAY REGIONAL AND INTERNATIONAL
INSTITUTE OF NEUROLOGY, INC. and
DR. RADHAKRISHNA RAO,**

Appellant,

v.

**CASE NO.: 1D14-3242
DOAH NO.: 12-1447MPI
C.I. NO.: 11-1327-400
PROVIDER NO. 3753701-00**

**STATE OF FLORIDA, AGENCY FOR
HEALTH CARE ADMINISTRATION,**

Appellee.

_____ /

SETTLEMENT AGREEMENT

The Appellants Bay Regional and International Institute of Neurology, Inc. and Dr. Radhakrishna Rao ("the Provider") and Appellee State of Florida, Agency for Health Care Administration ("the Agency"), pursuant to section 120.57(4), Florida Statutes, enter into this Settlement Agreement ("the Agreement") and agree as follows:

WHEREAS, the Provider is a Medicaid-enrolled provider in the State of Florida, provider number 3753701-00;

WHEREAS, the Agency has the regulatory authority to audit Medicaid-paid claims to identify overpayments, pursuant to sections 409.913(2), (5), and (7)(e), Florida Statutes;

WHEREAS, in its Final Audit Report (C.I. No. 11-1327-400), dated June 1, 2011, the Agency notified the Provider that a review of Medicaid-paid claims performed by the Agency's Office of the Inspector General, Bureau of Medicaid Program Integrity ("MPI"), for the period from July 1, 2007, through June 30, 2009 ("the Audit"), indicated that certain claims, in whole or

in part, were inappropriately paid by Medicaid. The Agency sought repayment in the amount of one hundred fifteen thousand three hundred ninety-three dollars and fourteen cents (\$110,712.09). Additionally, the Agency, in accordance with sections 409.913(15), (16), and (17), Florida Statutes, and Rule 59G-9.070(7)(c), Florida Administrative Code, sought sanctions against the Provider in the amount of twenty-four thousand six hundred forty-two dollars and forty-two cents (\$24,642.42) for violation(s) of Rules 59G-9.070(7)(c) and (7)(e), Florida Administrative Code, and costs in the amount of seven thousand three hundred and thirty-six dollars and twelve cents (\$7,336.12) pursuant to section 409.913(23)(a), Florida Statutes. The total amount due was one hundred forty-two thousand six hundred ninety dollars and sixty-three cents (\$142,690.63).

WHEREAS, in response to the Final Audit Report, the Provider filed a Petition for Formal Administrative Hearing, and the matter was referred to the Division of Administrative Hearings ("DOAH"), DOAH Case No. 12-1447MPI;

WHEREAS, during the proceedings before DOAH, the Provider and the Agency (collectively "the Parties") stipulated to some of the claims at issue;

WHEREAS, the Agency entered an Amended Final Order in DOAH Case No. 12-1447MPI on July 17, 2014, adopting in part and rejecting in part DOAH's Recommended Order, and directing the Provider to repay an overpayment amount of one hundred thousand one hundred thirty-five dollars and forty-eight cents (\$100,135.48), pay a fine of three thousand five hundred dollars and zero cents (\$3,500.00), and pay investigative, legal, and expert witness costs in an amount yet to be determined;

WHEREAS, the Provider appealed the Agency's Amended Final Order in DOAH Case

No. 12-1447MPI to the First District Court of Appeal, and the appeal was assigned DCA No. 1D14-3242;

WHEREAS, while the appeal was pending, the Provider made payments towards the amounts owed under the Amended Final Order in DOAH Case No. 12-1447MPI;

WHEREAS, the Parties have agreed that a fair, efficient, and cost effective resolution of this dispute would avoid the expenditure of substantial sums to further litigate the dispute;

WHEREAS, the Parties mutually agree to a total overpayment amount of one hundred thousand one hundred thirty-five dollars and forty-eight cents (\$100,135.48) for all overpayment claims at issue in the Audit, C.I. No. 11-1327-400, DOAH Case No. 12-1447MPI, and DCA No. 1D14-3242;

WHEREAS, the Parties mutually agree that the Provider will pay the Agency seven thousand three hundred thirty-six dollars and twelve cents (\$7,336.12) in investigative costs;

WHEREAS, the Agency agrees that the Provider will not be assessed fines arising out of the Audit, C.I. No. 11-1327-400, DOAH Case No. 12-1447MPI, and DCA No. 1D14-3242; and

NOW THEREFORE, in consideration of the mutual promises and recitals herein, the Parties intending to be legally bound, agree as follows:

1. All above recitals are true and correct and are expressly incorporated herein;
2. Upon full execution of the Agreement, the Parties agree as follows:
 - a. Upon full execution of the Agreement, the Provider agrees to promptly file a notice of voluntarily dismissal of its appeal in the First District Court of Appeal, DCA No. 1D14-3242.

- b. Upon dismissal of the appeal in DCA No. 1D14-3242 by the First District Court of Appeal, the Agency agrees to vacate the Amended Final Order dated July 17, 2015, and render a Second Amended Final Order adopting and approving the Agreement.
- c. The Agency agrees to accept the payment set forth in paragraph 2.d. in settlement of the overpayment issues arising from the Audit, C.I. No. 11-1327-400, DOAH Case No. 12-1447MPI, and DCA No. 1D14-3242.
- d. Within thirty (30) days of the date of rendition of the Second Amended Final Order, the Provider agrees to make payment to the Agency of the following: an overpayment of one hundred thousand one hundred thirty-five dollars and forty-eight cents (\$100,135.48); and investigative costs of seven thousand three hundred thirty-six dollars and twelve cents (\$7,336.12). The total amount due is one hundred seven thousand four hundred seventy-one dollars and sixty cents (\$107,471.60).
- e. The amount due from Provider will be offset by any amount already received by the Agency in this matter.
- f. The Parties agree that the payments, as set forth above, will resolve and settle this case completely and release both Parties from all liability arising from the findings of the Audit, C.I. No. 11-1327-400, DOAH Case No. 12-1447MPI, and DCA No. 1D14-3242.
- g. The Provider agrees that it will not re-bill the Agency and/or the Medicaid program in any manner for claims that were not covered by Medicaid,

which are the subject of the Audit, C.I. No. 11-1327-400, DOAH Case No. 12-1447MPI, and/or DCA No. 1D14-3242.

3. Payment shall be made to:

**AGENCY FOR HEALTH CARE ADMINISTRATION
Medicaid Accounts Receivable
2727 Mahan Drive M.S. #14
Tallahassee, Florida 32317-3749**

4. The Provider's payment shall clearly indicate it is made pursuant to a settlement agreement and shall reference the audit/engagement numbers.

5. The Provider agrees to waive any and all proceedings and appeals related to the overpayment claims, fines, and costs at issue in the Agreement, to which it may otherwise be entitled, including, but not limited to, proceedings pursuant to subsections 120.57(1), (2), Florida Statutes; appeals under section 120.68, Florida Statutes; and any relief in a court or quasi-judicial court of competent jurisdiction. Provided, however, that no agreement herein shall be deemed a waiver by either party of its right to the judicial enforcement of the Agreement.

6. The Provider further agrees that it shall not challenge or contest any Second Amended Final Order entered in this matter which is consistent with the terms of the Agreement in any forum now or in the future available to it, including the right to any administrative proceeding, circuit or federal court action or any appeal.

7. The Agreement shall be construed in accordance with the provisions of the laws of Florida. Venue for any action arising from the Agreement shall be in Florida Circuit Court in Leon County, Florida.

8. Each party shall bear its own attorney's fees and costs for both the administrative proceeding (DOAH Case No. 12-1447MPI) and the appeal to the First District Court of Appeal

(DCA No. 1D14-3242).

9. The Agreement shall become effective on the date upon which it is fully executed by all the Parties.

10. The Agreement does not constitute an admission of wrongdoing or error by either the Provider or the Agency with respect to this case or any other matter.

11. To the extent that any provision of the Agreement is prohibited by law for any reason, such provision shall be effective to the extent not so prohibited, and such prohibition shall not affect any other provision of the Agreement.

12. The Agreement shall inure to the benefit of and be binding on both the Provider's and the Agency's successors, assigns, heirs, administrators, representatives and trustees.

13. The Provider hereby discharges the Agency and its agents, representatives, and attorneys of and from all claims, demands, actions, causes of action, suits, damages, losses and expenses, of any and every nature whatsoever, arising out of or in any way related to this matter, and the Agency's actions, including, but not limited to any claims that were or may be asserted in any federal or state court or administrative forum, including any claims arising out of the Agreement.

14. The undersigned have read and understand the Agreement and have authority to bind their respective principals to the Agreement.

15. The Agreement, including any documents attached hereto, constitutes the full and entire understanding and agreement between the Parties concerning the subject matter of the Agreement. The Agreement supersedes all prior agreements and negotiations, oral or written, concerning the subject matter, all of which are merged into the Agreement. Nothing in the

Agreement, express or implied, is intended to confer upon any party, other than the Parties hereto, and their respective successors and assigns, any rights, remedies, obligations or liabilities under or by reason of the Agreement. The Parties acknowledge and represent to each other that they have not relied on any statements or representations apart from those contained within the Agreement. The Parties' decision to enter into the Agreement is based strictly on the specific terms of the Agreement, and not on any representations, verbal promises, acts, omissions, or advertisements by the other, alleged agents, employees or any other person. Any representations or communications not contained within the Agreement are agreed to be immaterial and do not survive the execution of the Agreement. The Agreement may not be amended except in a writing signed by all the Parties. Any attempted assignment of the Agreement shall be void.

16. All parties agree that an electronic signature suffices for an original signature and that an electronic or facsimile copy suffices for an original document. By electronically signing the Agreement, the signing party acknowledges that its information processing system is capable of printing and storing the electronic agreement and agrees that the act of inserting its electronic signature herein is the manifestation of its intent to sign and authenticate its acceptance of the Agreement. Each party acknowledges its agreement to the sufficiency of an electronic signature as it relates to the Agreement. Each party acknowledges that the Agreement has not been altered unilaterally by said party without review and notification to the other party to the Agreement. The Agency agrees that the type, manner, and format of the electronic signatures contained herein are sufficient. Each party acknowledges that a complete copy of the Agreement has been delivered electronically for signature below. It is further acknowledged by each party that the Agreement may be executed in counterparts.


17. The Provider and the Agency agree that the Agreement resolves and settles this matter and releases both parties from any further administrative or civil liabilities for any overpayments, fines, sanctions, costs, and other items arising from the Audit.

18. The Agreement is an Agreement of Settlement and Compromise, made in recognition that the Parties may have different or incorrect understandings, information and contentions as to facts and law, and with each party compromising and settling any potential correctness or incorrectness of its understandings, information and contentions as to facts and law, so that no misunderstanding or misinformation shall be a ground for rescission hereof.

19. The Agreement is and shall be deemed jointly drafted and written by all Parties to it and shall not be construed or interpreted against the party originating or preparing it.


The following representatives acknowledge that they are duly authorized to enter into the Agreement.

**BAY REGIONAL AND INTERNATIONAL INSTITUTION OF NEUROLOGY, INC.
AND DR. RADHAKRISHNA RAO**



Dr. Radhakrishna Rao
Provider Representative

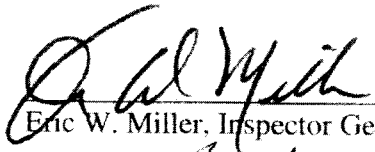
Dated: 9-30, 2015




Frank P. Rainer, Esq.
Counsel for Provider

Dated: 10-9, 2015

**STATE OF FLORIDA, AGENCY FOR
HEALTH CARE ADMINISTRATION**
2727 Mahan Dr., MS #3
Tallahassee, Florida 32308-5403


Eric W. Miller, Inspector General

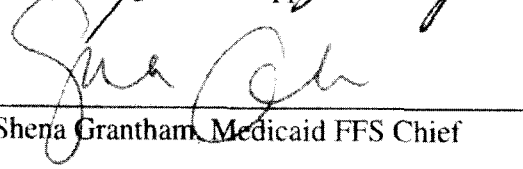
Dated: 10/23/15, 2015


Stuart F. Williams, General Counsel

Dated: 10/20, 2015


Tracy George, Chief Appellate Counsel

Dated: Oct. 12, 2015


Shera Grantham, Medicaid FFS Chief

Dated: 10/19, 2015

DISTRICT COURT OF APPEAL, FIRST DISTRICT
2000 Drayton Drive
Tallahassee, Florida 32399-0950
Telephone No. (850)488-6151

November 09, 2015

CASE NO.: 1D14-3242
L.T. No.: 12-001447-MPI
AHCA-14-0566-FOF-MDO

Bay Regional and International etc. v.
et al

Agency For Health Care
Administration

Appellant / Petitioner(s),

Appellee / Respondent(s)

BY ORDER OF THE COURT:

Appeal dismissed pursuant to Florida Rule of Appellate Procedure 9.350(b).

I HEREBY CERTIFY that the foregoing is (a true copy of) the original court order.

Served:

Frank P. Rainer
John F. Loar

Tracy Cooper George, C. G. C.
Robert A. Milne

Cynthia L. Hain
Richard J. Shoop, Clerk

am


JOY S. WHEELER, CLERK

