

SETTLEMENT AND RELEASE AGREEMENT

This Settlement and Release Agreement (“Agreement”) is entered into this 31st day of July 2017 between the State of New Hampshire (the “State”) and Mary Hitchcock Memorial Hospital (“MHMH”), collectively referred to as the “Parties.”

This Agreement relates solely to MHMH’s obligation, from November 1, 2016 to the date of this Agreement, to provide the State with clinical staffing for New Hampshire Hospital (“NHH”) under a contract between the parties dated August 19, 2016 (the “Contract”). The State claims that at times, MHMH did not provide staffing at NHH at the levels required by the Contract. MHMH disputes this claim. This Agreement is intended to resolve these disputes, and these disputes only. This Agreement is not intended to in any way affect or alter the Parties’ rights and responsibilities under the Contract.

RECITALS

WHEREAS, MHMH entered into a Contract with the State, dated August 19, 2016, to provide staffing of certain positions at NHH and other state facilities; and

WHEREAS, the State has alleged that at times MHMH did not provide the staffing of certain positions at the levels required by the Contract;

WHEREAS, the State has notified MHMH that it is out of compliance with those staffing levels and invoked the State’s right to liquidated damages under the Contract should MHMH fail to achieve compliance by June 1, 2017;

WHEREAS, MHMH disputes the State’s allegations that it has breached the Contract in any respect, and disputes that the State is entitled to damages in any measure;

WHEREAS, the State, through its elected officials and other representatives, has made certain statements about MHMH or its related entities that, in MHMH's view, have harmed MHMH's reputation;

WHEREAS, the State disputes MHMH's position as to the effect of those statements;

WHEREAS, the Parties agree that it is in their mutual best interest to compromise and settle, and "buy peace" as to the disputes over staffing at NHH and the State's statements about MHMH; and

NOW THEREFORE, in consideration of the mutual promises contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

AGREEMENT

1. **Contract Credit.** In the next Contract billing cycle following the execution of this Agreement, MHMH shall provide a credit to the State in the amount of \$75,000.00 (USD).

2. **Payment for Quality Care Review.** The State intends to enter into a contract with Joint Commission Resources, Inc. to provide an independent, expert review of the quality of care received by New Hampshire Hospital ("NHH") patients from November 1, 2016 to April 30, 2017 ("JCR Review"). The JCR Review is to be used solely and exclusively for the State's internal purposes related to improving patient safety and quality, and is confidential and privileged pursuant to RSA 126-A:4, IV. MHMH agrees that it will reasonably cooperate with the JCR Review. MHMH further agrees to incur the costs, expenses, and fees associated with the JCR Review, except that the costs incurred by MHMH shall not exceed \$77,500.00 (USD) plus reasonable expenses as contemplated in the JCR Review Contract. The payment for such costs shall be reflected as a credit in the first Contract billing cycle following the State's receipt of a

final invoice from JCR. This obligation shall be separate and distinct from the contract credit obligation set forth in paragraph 1.

3. **Public Statement.** Within 7 days of the Effective Date of this Agreement, or at some other time period mutually agreed upon by the Parties, the Commissioner of the New Hampshire Department of Health and Human Services, on behalf of the State, shall issue an official statement in the form of the attached and incorporated as Exhibit A.

4. **Review of Allocation of Physician Resources.** The parties agree that in light of the impact on mental health and behavioral health services from the Opioid epidemic and hospital emergency room boarding of persons seeking inpatient psychiatric services, as well as the efforts being undertaken to address these issues, including new funding of designated receiving facility and community residential beds, additional mobile crisis resources, and the initiation of the work of the seven Integrated Delivery Networks under the state's Section 1115 Behavioral Health Transformation Waiver, it is appropriate to review the allocation of staffing resources under the Contract over the following 120 days. The purpose of such review is to identify the most efficient allocation of psychiatric and medical resources in order to meet the needs of NHH in the midst of significant change in the community mental health system in the state. The Interim Chief Executive Officer of New Hampshire Hospital will lead that review, in which MHMH will participate, and will report in writing any recommendations on the allocation of psychiatric staffing resources provided under the contract to the Commissioner by December 1 2017.

5. **Collaborative Review of Staffing Levels.** In order to facilitate the review described in paragraph 4, above, the State agrees that it will make best efforts to discuss staffing levels with MHMH prior to issuing a Notice of Liquidated Damages related to insufficient

staffing. The State further agrees that the imposition of any Liquidated Damages noticed during the period of one hundred and twenty (120) days from the Effective Date of this agreement (“Review Period”) which relate to “non-critical” staffing shortages will be suspended until the end of the Review Period. The State may continue to notice and assess Liquidated Damages for “critical” staffing shortages during the Review Period in conformance with the Contract. The determination of what constitutes a “critical staffing shortage” will be made by the CEO of NHH in consultation with the Chief Medical Officer of NHH (as designated by MHMH) based on whether the shortage has the potential to materially impact patient care. The State reserves the right to impose the suspended Liquidated Damages that accrue during the Review Period at the conclusion of that review.

6. **Mutual Releases.**

A. Effective upon the receipt of the Contract Credit described in paragraph 1 and the Payment described in paragraph 2 of this Agreement, the State, for itself, its agencies, its executives, officers, officials, employees, attorneys, and other representatives, hereby releases, acquits and forever discharges MHMH from and against any and all past and present losses, liabilities, responsibilities, demands, obligations, actions, causes of action, rights, judgments, damages, set-offs, compensation of any kind, liens, expenses (including attorneys’ fees and costs), and claims whatsoever, in law or in equity, whether based in contract, in tort or otherwise, whether known or unknown, whether discovered or undiscovered, whether fixed or contingent, which it ever had or now has against MHMH and which arise solely out of the staffing at NHH to the levels required by the Contract between November 1, 2016 and the date of this Agreement. This release is not intended to, and does not apply to, any claims that the State may have, now or in the future, against MHMH based on the acts or omissions of any one or more of its employees

during their work at NHH, or based on MHMH's hiring, training, supervision, or retention of any of its employees, or based on any adverse employment action that MHMH takes against any of its employees.

B. Effective upon the issuance of the statement described in paragraph 3 of this Agreement, MHMH, for itself, its parents, subsidiaries, affiliated entities and institutions, and predecessors and successors in interests, and its trustees, executives, officers, employees, attorneys, and other representatives, hereby releases, acquits and forever discharges the State from and against any and all past and present losses, liabilities, responsibilities, demands, obligations, actions, causes of action, rights, judgments, damages, compensation of any kind, liens, expenses (including attorneys' fees and costs), and claims whatsoever, in law or in equity, whether based in contract, in tort or otherwise, whether known or unknown, whether discovered or undiscovered, whether fixed or contingent, which it ever had or now has and which arise solely out of the State's performance or non-performance of its obligations under the Contract between November 1, 2016, and the date of this Agreement, or of statements that the State, or any of its agencies, its executives, officers, officials, employees, attorneys, and other representatives, has made concerning MHMH or any of its related entities from the beginning of time to the date of this Agreement.

7. **Liquidated Damages.** Effective upon the execution of this Agreement on behalf of the Parties, the State's May 2, 2017 notice to MHMH, invoking the State's right to liquidated damages under the Agreement, shall be deemed withdrawn and otherwise void and without effect. Nothing in this provision is intended to waive the State's right to MHMH's compliance with the provisions of the Contract cited in the notice or the State's right to issue further notices invoking the State's entitlement to liquidated damages based on any failure by MHMH to

comply with those provisions from the date of this Agreement forward, consistent with the provisions of Paragraph 5 of this Agreement.

8. **Reaffirmation of Contract.** The Parties agree that there has been no modification of the Contract, or waiver or estoppel of any Parties' rights or obligations thereunder, through any conduct by or on behalf of either of the Parties between the time the Contract was executed and the date of this Agreement. The Parties hereby reaffirm all of their rights and obligations as set forth in the Contract.

9. **No Admission.** No aspect of this Agreement shall be construed as an admission of any wrongdoing or liability on the part of either of the Parties, or by anyone acting for or on behalf of either of the Parties.

10. **Entire Agreement.** The settlement reflected in this Agreement represents the entire settlement of the Parties' dispute over the staffing of the general psychiatrist and geropsychiatrist positions at NHH between November 1, 2016 and the date of this Agreement, and the Parties' dispute over the State's statements about MHMH and its related entities. There are no oral or written representations or promises relating to settlement other than what are contained in this Agreement.

11. **No Oral Modification.** This Agreement may not be modified except by the express written consent of the Parties.

12. **Review and Understanding of Agreement.** The Parties to this Agreement represent that prior to signing this Agreement they read it, understood its terms and conditions, were given an opportunity to consult with counsel and voluntarily signed it after conferring with their counsel.

13. **Governing Law.** This Agreement shall be governed by and interpreted according to the laws of the State of New Hampshire


14. **Construction.** The Parties to this Agreement hereto agree and acknowledge that this Agreement is collaborative in nature, and, therefore, this Agreement shall be construed without regard to any presumption or other rule requiring construction against the party that drafted the Agreement.

15. **Severability.** The Parties agree that each of the covenants contained in this Agreement shall be construed as independent of any other covenant or provision of this Agreement. In the event any provision or a portion of a provision of this Agreement is found to be unenforceable, that portion of the provision shall be stricken and the remaining portion and provisions of this Agreement shall be enforceable.

16. **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original and all of which together shall be deemed to be one of the same agreement.

17. **Effective Date.** This Agreement shall be deemed to be effective as of the date that it is signed by both parties.

Dated: 7/31/17



MARY HITCHCOCK MEMORIAL
HOSPITAL
Duly authorized

Dated: _____

STATE OF NEW HAMPSHIRE
Duly authorized

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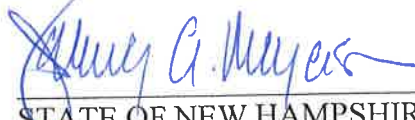
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Dated: _____

Dated: 8/1/17

MARY HITCHCOCK MEMORIAL
HOSPITAL
Duly authorized



STATE OF NEW HAMPSHIRE
Duly authorized

Exhibit A

Statement on Dartmouth-Hitchcock and New Hampshire Hospital

Both the State and Dartmouth-Hitchcock are committed to providing the best possible care for our family members, friends, and neighbors suffering from mental illness and requiring treatment at New Hampshire Hospital. As the State seeks to address the crisis caused by a shortage of acute care beds and community resources, both I and the Governor are grateful that Dartmouth-Hitchcock – the State’s only academic medical center – provides its services across a range of service areas, including at NHH.

The State recognizes and values Dartmouth-Hitchcock’s crucial role in improving the health of our citizens and we look forward to working together to ensure that patients at NHH receive nothing less than the quality care they deserve.