

MAR 21 2018

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At 3:45 P.M.
Velva L. Price, District Clerk

CAUSE NO. D-1-GN-15-005227

THE STATE OF TEXAS,
Plaintiff,

§ IN THE DISTRICT COURT OF

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v.

TRAVIS COUNTY, TEXAS

DSM HEALTHCARE VENTURES, LLC D/B/A
TRITRAX REHABILITATION F/K/A
ADVANCED THERAPY SERVICES OF
ARLINGTON, PROGRESSIVE PEDIATRIC
THERAPY LLC, ADVANCED
NEUROLOGICAL SERVICES, LLC D/B/A
ADVANCED THERAPY SERVICES,
ADVANCED NEUROLOGICAL SERVICES OF
DALLAS, LLC D/B/A ADVANCED THERAPY
SERVICES OF DALLAS, DAVID SCOTT
MITCHELL, DR. ABRAHAM ARMANI A/K/A
ABRAHAM RAOUFPOUR, CYNTHIA L.
KIDD, JOANIE C. POWELL, and SHAHRIAR
RAOUFPOUR A/K/A SHAWN RAOUFPOUR,
Defendants.

419TH JUDICIAL DISTRICT

**AGREED FINAL JUDGMENT AND PERMANENT INJUNCTION
AGAINST CERTAIN DEFENDANTS**

Plaintiff, the State of Texas ("Texas" or "State"), together with Defendants Advanced Neurological Services, LLC d/b/a Advanced Therapy Services ("ATS-Fort Worth"), Advanced Neurological Services of Dallas, LLC d/b/a Advanced Therapy Services of Dallas ("ATS-Dallas"), Cynthia L. Kidd ("Kidd"), and Joanie C. Powell ("Powell") (collectively referred to herein as the "ANS Defendants") hereby announce to the Court that all matters of fact and things in controversy between them have been fully and finally compromised and settled and present to the Court this Agreed Final Judgment and Permanent Injunction ("Agreed Judgment") as to the ANS Defendants only, which the parties named above ("Parties") request be entered by the Court.

I.
STIPULATIONS

1. **Stipulations.** By their duly authorized signatures, the Parties stipulate to the Court the following:

- a. The Parties are fully authorized to sign and enter into this Agreed Judgment.
- b. The Parties have read and understand the terms of this Agreed Judgment.
- c. The Parties have had an opportunity to confer with counsel.
- d. The Parties agree to the terms of this Agreed Judgment.
- e. The Parties have waived all rights of appeal from this Agreed Judgment.
- f. The Parties actively participated in the negotiations leading up to this Agreed Judgment.
- g. The Parties are aware of the duties placed upon them by this Agreed Judgment and are desirous and capable of carrying out those duties in full.
- h. The Parties acknowledge receipt of copies of this Agreed Judgment and have full and actual notice of the terms of this Agreed Judgment.
- i. The Parties acknowledge that the issuance and service of a writ of injunction are waived.
- j. The Parties acknowledge that the terms of this Agreed Judgment are sufficiently detailed and specific to be enforceable by the Court in conformance with Texas Rule of Civil Procedure 683 and TEX. HUM. RES. CODE § 36.051.
- k. The Parties acknowledge that this Agreed Judgment represents a compromise and settlement of all matters arising out of facts and causes of action alleged, or that

could have been alleged, known or unknown, by the State of Texas concerning the Covered Conduct in this cause.

1. The Parties acknowledge and submit to the jurisdiction of the Court and request entry of this Agreed Judgment.

2. **Definitions.**

a. **"Plaintiff"** or the **"State"** is the State of Texas, acting by and through the Attorney General of Texas.

b. **"ATS-Fort Worth"** shall mean Defendant Advanced Neurological Services, LLC d/b/a Advanced Therapy Services.

c. **"ATS-Dallas"** shall mean Defendant Advanced Neurological Services of Dallas, LLC d/b/a Advanced Therapy Services of Dallas.

d. **"Kidd"** shall mean Defendant Cynthia L. Kidd.

e. **"Powell"** shall mean Defendant Joanie C. Powell.

f. **"ANS Defendants"** shall collectively mean Defendants ATS-Fort Worth, ATS-Dallas, Kidd, and Powell.

g. **"Parties"** means the Plaintiff and the ANS Defendants, and **"Party"** means Plaintiff or any one of the ANS Defendants as applicable.

h. **"Lawsuit"** means the above-entitled and numbered cause, pertaining to *State of Texas v. DSM Healthcare Ventures, LLC d/b/a Tritrax Rehabilitation f/k/a Advanced Therapy Services of Arlington, et al.*; Cause No. D-1-GN-15-005227 pending in the 419th Judicial District Court of Travis County, Texas, filed on or about November 12, 2015.

i. **"Armani"** means Defendant Dr. Abraham Armani a/k/a Abraham Raoufpour.

j. **“Raoufpour”** means Defendant Shahriar Raoufpour a/k/a Shawn Raoufpour.

k. **“Progressive”** or **“PPT”** mean Defendant Progressive Pediatric Therapy LLC.

l. **“Covered Conduct”** means the State’s contentions in the Lawsuit that the ANS Defendants made or caused to be made false statements and/or misrepresentations to the State and/or Texas Medicaid when the ANS Defendants (i) knowingly made or caused to be made false, fraudulent, and/or misleading statements concerning information (including information regarding ownership/control, chain affiliation, the identity of subcontractors, and prior criminal convictions) in the Provider Enrollment Application (“Application”) submitted by or on behalf of DSM Healthcare Services, LLC d/b/a Tritrax Rehabilitation f/k/a Advanced Therapy Services of Arlington (“ATS-Arlington”); (ii) knowingly made or caused to be made false, fraudulent, and/or misleading statements concerning information (including information regarding ownership/control, chain affiliation, and the identity of subcontractors) in the Application submitted by or on behalf of Defendant PPT; (iii) knowingly made or caused to be made false, fraudulent, and/or misleading statements concerning the amounts due and owing to ATS-Arlington on claims billed to Texas Medicaid by or on behalf of ATS-Arlington; (iv) knowingly made or caused to be made false, fraudulent, and/or misleading statements concerning the amounts due and owing to PPT on claims billed to Texas Medicaid by or on behalf of PPT; (v) knowingly or intentionally entered into an agreement, combination, or conspiracy with PPT, ATS-Arlington, David Scott Mitchell (“Mitchell”), Defendant Armani, Defendant Raoufpour, and/or others to defraud the State by obtaining or aiding PPT and ATS-Arlington in obtaining unauthorized payments or benefits from Texas Medicaid; (vi) knowingly made or caused to be

made false, fraudulent, and/or misleading statements concerning the classification of an investment as an expense for consulting services Mitchell had not provided; (vii) knowingly made or caused to be made false, fraudulent, and/or misleading statements concerning travel expenses of Defendant Kidd; and (viii) knowingly made or caused to be made false, fraudulent, and/or misleading statements concerning Defendant Kidd's relevant experience and/or job duties in order to justify reimbursement for compensation that exceeded normal compensation reported for other, similar facilities. The State contends in the Lawsuit that these false statements and/or misrepresentations, independently or in combination, resulted in payments made to ATS-Arlington, PPT, ATS-Fort Worth, and ATS-Dallas or benefits received by ATS-Arlington, PPT, ATS-Fort Worth, and ATS-Dallas from Texas Medicaid for which ATS-Arlington, PPT, ATS-Fort Worth, and ATS-Dallas were not entitled. The State further contends in the Lawsuit that the ANS Defendants committed unlawful acts under the Texas Medicaid Fraud Prevention Act, as defined by TEX. HUM. RES. CODE § 36.002, in connection with these false statements and/or misrepresentations. The ANS Defendants deny the State's contentions.

II. FINDINGS

3. **Findings.** The Court, upon having read the pleadings, the stipulations of the Parties, and after being fully advised in this matter, finds as follows:

a. The Court finds that all Parties agree to the entry of this Agreed Judgment and have approved its entry by their duly authorized signatures below.

b. The Court has jurisdiction over the Parties and subject matter of this suit and venue is proper.

c. The settlement of this dispute is fair, reasonable, and just.

d. It would be in the best interests of the Parties for the Court to approve the settlement and render the Agreed Judgment accordingly.

4. Based upon these findings, and having heard and considered the representations made by the Parties, the Court finds that there is good cause to issue the agreed permanent injunction and grant all other relief as set forth in this Agreed Judgment.

III.
PERMANENT INJUNCTION

5. **IT IS ORDERED, ADJUDGED, AND DECREED** that the ANS Defendants, and their officers, representatives, agents, servants, employees, successors and assigns, and any other person or entity in active concert or participation with them – whether acting directly or through any corporation, company, partnership, trust, entity, subsidiary, division, or other device – who receive actual notice of this Agreed Judgment by personal service or otherwise – are hereby **PERMANENTLY ENJOINED** from engaging in the following conduct **as of the Effective Date of this Agreed Judgment**:

a. Making or causing to be made a false statement or misrepresentation of a material fact to permit a person to receive a benefit or payment under the Medicaid program that is not authorized or that is greater than the benefit or payment that is authorized;

b. Concealing or failing to disclose information that permits a person to receive a benefit or payment under the Medicaid program that is not authorized or that is greater than the benefit or payment that is authorized;

c. Making, causing to be made, inducing, or seeking to induce the making of a false statement or misrepresentation of material fact concerning information required to be provided by a federal or state law, rule, regulation, or provider agreement pertaining to the Medicaid program;

d. Making, using, or causing the making or use of a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the State of Texas under the Medicaid program;

e. Entering into an agreement, combination, or conspiracy to defraud the State of Texas by obtaining or aiding another person in obtaining an unauthorized payment or benefit from the Medicaid program or a fiscal agent;

f. Obstructing an investigation by the Texas Office of Attorney General of any alleged unlawful act under TEX. HUM. RES. CODE § 36.002 *et seq.*;

g. Committing any unlawful act, as defined by the Texas Medicaid Fraud Prevention Act, TEX. HUM. RES. CODE § 36.002 *et seq.*;

h. Directly or indirectly owning, investing, funding, or holding any whole or partial interest of any percentage whatsoever in any Texas Medicaid provider, partner, vendor, or other entity that applies to become a Texas Medicaid provider, partner, or vendor; and

i. Directly or indirectly controlling, managing, administering, or otherwise operating any Texas Medicaid provider, partner, vendor, or other entity that applies to become a Texas Medicaid provider, partner, or vendor.

IV. MONETARY JUDGMENT TERMS

6. **IT IS ORDERED, ADJUDGED, AND DECREED** that Plaintiff, the State of Texas, have judgment against and recover from, jointly and severally, Defendants Kidd, Powell, ATS-Fort Worth, and ATS-Dallas in the amount of FOUR MILLION THREE HUNDRED SIXTY-TWO THOUSAND EIGHT HUNDRED THIRTEEN DOLLARS AND SEVENTEEN CENTS (\$4,362,813.17) for the value of the payment(s) or monetary or in-kind benefit(s) provided under the Medicaid program, directly or indirectly, as a result of the Covered Conduct;

plus the amount of EIGHT MILLION SEVEN HUNDRED TWENTY-FIVE THOUSAND SIX HUNDRED TWENTY-SIX DOLLARS AND THIRTY-FOUR CENTS (\$8,725,626.34) pursuant to TEX. HUM. RES. CODE § 36.052(a)(4) as a fine, penalty, or forfeiture payable to and for the benefit of a governmental unit, and not as compensation for actual pecuniary loss; for a total amount of THIRTEEN MILLION EIGHTY-EIGHT THOUSAND FOUR HUNDRED THIRTY-NINE DOLLARS AND FIFTY-FOUR CENTS (\$13,088,439.54) (the “**Judgment Amount**”).

7. The **Court** hereby finds, and the ANS Defendants expressly acknowledge and agree, that the ANS Defendants are not entitled to direct or influence the manner in which the State allocates the Judgment Amount. The State may allocate and distribute to the United States Government a pro rata share of the Judgment Amount in accordance with state and federal law, if and only to the extent such allocation is required.

8. **Plaintiff**, the State of Texas, shall have all writs of execution and other processes as may be necessary in the enforcement and collection of this final judgment and permanent injunction. The Court orders execution to issue for this judgment.

V.
DEFAULT

9. **Default.** If any of the ANS Defendants violate any provision in Section III of this Agreed Judgment, the violating ANS Defendant will be in default of this Agreed Judgment.

10. If any of the ANS Defendants or the State violates any provision of the separate Rule 11 Agreement dated November 1, 2017, then the violating party will be in default of this Agreed Judgment.

11. **Remedies. IT IS ORDERED** that if any one or more of the ANS Defendants is found, pursuant to paragraph 14 below, to be in default of this Agreed Judgment, as specified in

paragraphs 9 or 10, then the State of Texas may take any action that it deems appropriate in aid of enforcing the permanent injunction including, but not limited to:

a. Suspend or revoke any provider agreement between the Medicaid program and the defaulting ANS Defendant(s);

b. Suspend or revoke a permit, license, or certification granted by a State agency to the defaulting ANS Defendant; and/or

c. Exclude the defaulting ANS Defendant(s) from participating in the Medicaid program such that the defaulting ANS Defendant(s) may not, for a period of ten (10) years, provide or arrange to provide health care services under the Medicaid program or supply or sell, directly or indirectly, a product to or under the Medicaid program.

d. Nothing in this Agreed Judgment is intended to limit or restrict the actions or remedies under state or federal law that the State of Texas may employ for any violation of state or federal law outside the scope of the Covered Conduct.

12. **Notice.** If the State believes that one or more of the ANS Defendants is in default of this Agreed Judgment as specified in paragraphs 9 and 10, the State shall provide all of the ANS Defendants, and their respective counsel of record, written notice of the circumstances of which the State believes constitutes a default. The ANS Defendant(s) will have fifteen (15) days to either provide the State with written documentation that no such default occurred or cure such default and provide the state with written documentation that said default has been cured.

13. **Other Remedies.** In the case of default, the State has a right to enforce this Agreed Judgment as may be provided by law including, but not limited to, contempt proceedings, or any other proceedings the State may initiate to enforce this Agreed Judgment.

14. **Determination.** If the State files a contempt proceeding or other legal proceeding, pursuant to which the Court determines that one or more of the ANS Defendants have violated the terms of this Agreed Judgment, such determination shall constitute a finding that said Defendant is in default of this Agreed Judgment. Upon a determination by the Court that a violation of this Agreed Judgment has occurred, the Court may enter an order compelling the imposition of the remedies set forth in Paragraph 11 of this Agreed Judgment. However, such an order is not required, and if the Court determines a violation of this Agreed Judgment pursuant to paragraph 14, the State may act unilaterally to impose the remedies in Paragraph 11 of this Agreed Judgment in the event of a default that is not cured as provided in Paragraph 12.

15. **IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that if any one or more of the ANS Defendants default, violate, or do not substantially comply with this Agreed Judgment and it becomes necessary for the State to bring an action for enforcement and/or contempt, then the defaulting ANS Defendant(s) shall be liable for any additional civil penalties, attorney fees, and investigative and court costs incurred in bringing such an action.

VI.
GENERAL PROVISIONS

16. **Enforcement.** The State may institute an action or proceeding to enforce the terms and provisions of this Agreed Judgment or to take action based on future conduct by the ANS Defendants. Jurisdiction is retained for the purpose of enabling any party to this Agreed Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction or carrying out of this Agreed Judgment, for the enforcement and compliance herewith, and for the pursuit of the appropriate remedies for violations hereof.

17. **Preservation of Law Enforcement Action.** Nothing herein precludes the State from enforcing the provisions of this Agreed Judgment, or from pursuing any law enforcement action with respect to any unrelated acts or practices of the ANS Defendants not covered by this Agreed Judgment, for any acts or practices unrelated to the Covered Conduct, or for any acts or practices conducted after the Effective Date of this Agreed Judgment.

18. **Agreed Judgment Is Not a Novation.** Nothing herein is intended to constitute a novation of the State's administrative and statutory claims against the ANS Defendants in the Lawsuit arising, *inter alia*, from the ANS Defendants alleged misrepresentations/unlawful acts as described by the Covered Conduct, or to otherwise alter, modify, or amend the character or nature of the State's claims against the ANS Defendants in the Lawsuit and accordingly it is not the intention of the Parties to treat these claims as mere contract claims.

19. **Compliance With and Application of State Law.** Nothing in this Agreed Judgment shall be construed to limit the authority of the Attorney General to protect the interests of the State or the people of the State. Accordingly, nothing herein relieves the ANS Defendants of their continuing duty to comply with applicable laws of the State or constitutes authorization by the State for the ANS Defendants to engage in acts and practices prohibited by such laws. This Agreed Judgment shall be governed by the laws of the State of Texas.

20. **Third Parties and Other Defendants.** This Agreed Judgment is not intended to grant or limit any legal rights or remedies of any nature of any third party or other, non-settling Defendant in the Lawsuit. This Agreed Judgment may not be relied upon by third parties to assert or defend any rights or remedies they might have or pursue. This Agreed Judgment shall not affect the rights of the ANS Defendants to retain or renew any existing licenses, or to apply for or be granted new licenses. This Agreed Judgment is not intended to resolve any claims by

Texas against any other parties besides the ANS Defendants, and may not be relied upon by Defendants Armani, Raoufpour, or PPT in any way to assert or defend any rights, remedies, or defenses they might have or pursue.

21. **Non-Admission.** This Agreed Judgment shall not be construed as, or deemed to be evidence of, an admission or concession on the part of the ANS Defendants of any liability or wrongdoing, all such alleged liability and wrongdoing being expressly denied. The Parties enter this Agreed Judgment and Permanent Injunction for the sole purpose of avoiding the burden of litigation.

22. **Past and Future Practices.** Nothing herein constitutes approval or acquiescence by the State of the ANS Defendants' past practices, current efforts to reform their practices, or any future practices which ANS Defendants may adopt or consider adopting. The State's decision to settle this matter or to otherwise unilaterally limit current or future enforcement action does not constitute approval or imply authorization for any past, present, or future business practice.

23. **No Change to Substantive Rights.** Nothing herein shall be construed to waive, modify, or change any substantive rights of other persons or entities against the ANS Defendants or of the ANS Defendants against other persons or entities with respect to the acts and practices covered by this Agreed Judgment for the Covered Conduct.

24. **Assessment of Court Costs.** The Parties shall bear their own costs, except as otherwise provided in Paragraphs 6-8 *supra*.

25. **Notice.** All notifications and communications made pursuant to this Agreed Judgment shall be sent by certified or registered mail, return receipt requested, postage prepaid, fax, or by hand delivery to the persons or entities below:

a. The STATE of Texas, for all purposes:

Office of the Attorney General of Texas
Raymond C. Winter
Chief, Civil Medicaid Fraud Division
P.O. Box 12548
Austin, Texas 78711-2548
Phone: (512) 936-1709
Facsimile: (512) 499-0712
Email: Raymond.Winter@oag.texas.gov

b. The ANS DEFENDANTS, for all purposes:

Joanie C. Powell
1317 Waterwood Dr.
Mansfield, TX 76063
Phone: (817) 905-4220

Cindi Kidd
1417 Merion Dr.
Mansfield, TX 76063
Phone: (972) 841-1906

26. **Effective Date.** The date this Agreed Judgment is signed by the Court.

27. **Finality.** This Agreed Judgment and Permanent Injunction fully and finally resolves all disputes between Plaintiff Texas and the ANS Defendants concerning the Covered Conduct in this Lawsuit through the Effective Date of this Agreed Judgment and Permanent Injunction. After signing by the Court, this Agreed Judgment constitutes a final judgment and is not appealable. All relief not expressly granted herein is denied.

SIGNED and ENTERED on this 21st day of MARCH, 2018



JUDGE PRESIDING
AMY CLARK MEACHUM

AGREED AS TO FORM AND SUBSTANCE AND ENTRY REQUESTED:

KEN PAXTON
Attorney General of Texas

JEFFREY C. MATEER
First Assistant Attorney General

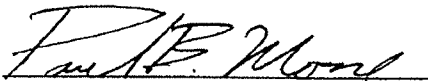
BRANTLEY D. STARR
Deputy First Assistant Attorney General

JAMES E. DAVIS
Deputy Attorney General for Civil
Litigation

RAYMOND C. WINTER
Chief, Civil Medicaid Fraud Division

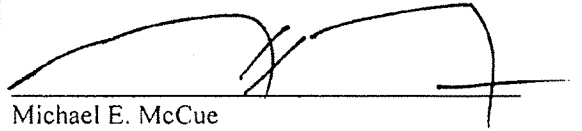
CYNTHIA O'KEEFFE
Deputy Chief, Civil Medicaid Fraud
Division

REYNOLDS B. BRISSENDEN IV
Managing Attorney, Civil Medicaid Fraud
Division


PAUL B. MOORE
Assistant Attorney General, Lead Attorney
State Bar No. 24032755

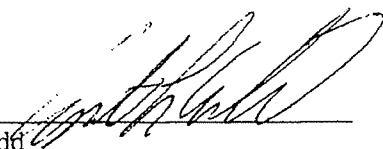
Office of the Attorney General
Civil Medicaid Fraud Division
P. O. Box 25481 MC 056-1
Austin, Texas 78711-2548
(512) 936-1406
(512) 499-0712 fax

COUNSEL FOR PLAINTIFF
THE STATE OF TEXAS



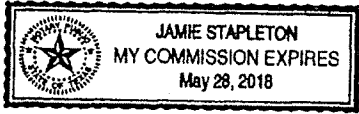
Michael E. McCue
State Bar No. 13494150
MEADOWS, COLLIER, REED, COUSINS, CROUCH &
UNGERMAN, LLP
901 Main Street, Suite 3700
Dallas, Texas 75202
(214) 744-3700
(214) 747-3732 – Facsimile

COUNSEL FOR DEFENDANTS ADVANCED
NEUROLOGICAL SERVICES, LLC;
ADVANCED NEUROLOGICAL SERVICES OF
DALLAS, LLC; CYNTHIA L. KIDD; AND
JOANIE C. POWELL


Cynthia L. Kidd

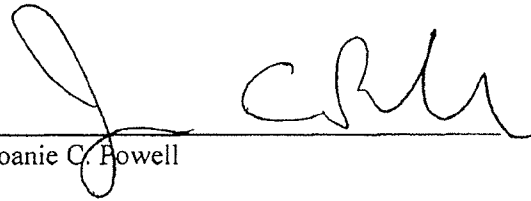
SWORN AND SUBSCRIBED BEFORE ME, the undersigned notary, on this the 4th day of ~~November~~, 2017, to certify which witness my hand and official seal.

December



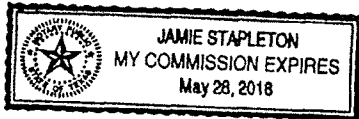

Notary Public, State of Texas

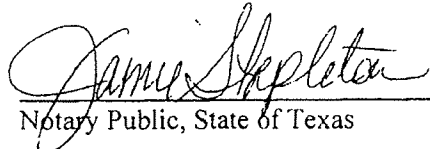
My Commission Expires: *5/28/18*


Joanie C. Powell

SWORN AND SUBSCRIBED BEFORE ME, the undersigned notary, on this the 4th day of ~~November~~, 2017, to certify which witness my hand and official seal.

December



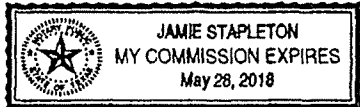

Notary Public, State of Texas

My Commission Expires: *5/28/18*

[Signature]
Advanced Neurological Services, LLC
d/b/a Advanced Therapy Services

By: Juanie Powell (Printed Name)
Member (Title)

SWORN AND SUBSCRIBED BEFORE ME, the undersigned notary, on this the 4th day of ~~November~~, 2017, to certify which witness my hand and official seal.
December

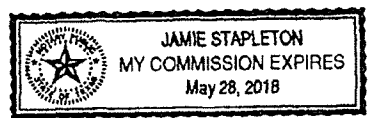


Jamie Stapleton
Notary Public, State of Texas
My Commission Expires: 5/28/18

[Signature]
Advanced Neurological Services of Dallas, LLC
d/b/a Advanced Therapy Services of Dallas

By: Juanie Powell (Printed Name)
Member (Title)

SWORN AND SUBSCRIBED BEFORE ME, the undersigned notary, on this the 4th day of ~~November~~, 2017, to certify which witness my hand and official seal.
December



Jamie Stapleton
Notary Public, State of Texas
My Commission Expires: 5/28/18