

COMPROMISE AND SETTLEMENT AGREEMENT

In the matter of:

Michelle Fiscus, MD, FAAP v. Lisa Piercey, MD, MBA, FAAP, et al.,
U.S.D.C., M.D. Tenn. Case No. 3:21-cv-00686

This Compromise and Settlement Agreement (“Agreement”) is made by and among Michelle Fiscus, M.D., FAAP (“Plaintiff”) and Lisa Piercey, MD, MBA, FAAP, individual capacity, Commissioner Ralph Alvarado, MD, FACP, official capacity, and Chief Medical Officer Tim Jones, MD, individual and official capacities (“Defendants”), (collectively the “Parties”) as of the date of 10 / 03 / 2023, 2023 (the “Effective Date”). This Agreement is made to compromise and settle the civil action *Michelle Fiscus, MD, FAAP v. Lisa Piercey, MD, MBA, FAAP, individual capacity, Commissioner Ralph Alvarado, MD, FACP, official capacity, and Chief Medical Officer Tim Jones, MD, individual and official capacities*, U.S.D.C., M.D. Tenn. Case No. 3:21-cv-00686 (the “Litigation”).

Based on the Parties’ shared desire to compromise and settle, fully and finally, all matters in dispute that exist by and between them as stated in the Litigation and any other related matters existing as of the Effective Date, the Parties agree to be bound by the promises and conditions stated in this Agreement. Therefore, for and in consideration of the mutual agreements and covenants set forth below, the Parties agree as follows:

1. This Agreement represents a compromise and settlement of disputed claims and, as such, does not constitute an admission of any liability whatsoever on the part of Defendants.
2. The Parties acknowledge that there are filings in this case open to inspection through the United States District Court clerk’s office. As of the Effective Date, the Parties agree to keep

confidential and not subject to disclosure (in any format, including but not limited to news, podcasts, or social media) unless otherwise required by law: the allegations and defenses made within this litigation (including but not limited to the allegations in the Complaint, information arising from or relating to any of the factual bases for the Recommendation Memorandum dated July 9, 2021, defenses asserted, or Plaintiff's expiration of service), the negotiations of settlement that preceded this Agreement, and all of the terms and conditions of this Agreement. If asked for comment on the above, Plaintiff's only response will be "no comment." Plaintiff acknowledges that the State of Tennessee is subject to the Tennessee Open Records Act.

3. Defendants agree that they will not disparage Plaintiff. Plaintiff agrees that she and anyone on her behalf will not disparage Defendants, the Tennessee Department of Health, the Tennessee Governor and Governor's administration, or other State officials or employees, past or present, relating to her expiration of service from the Tennessee Department of Health.

4. Plaintiff, if necessary, may disclose this Agreement to her financial, legal, or tax advisors, provided that such individuals agree to be subject to all the terms and conditions of this Agreement, including but not limited to the confidentiality provisions. If Plaintiff is subpoenaed or otherwise compelled to testify regarding the subject matter of the Litigation or this Agreement, Plaintiff will notify the Office of the Tennessee Attorney General, Education and Employment Division, in writing within five days of receipt of the subpoena.

5. The Tennessee Department of Health agrees to pay Plaintiff the lump sum amount of one-hundred and fifty thousand dollars (\$150,000.00). This payment is inclusive of attorney's fees, made payable—at Plaintiff's request—to Plaintiff's ~~counsel, Christopher Smith~~, to be distributed between Mr. Smith and Plaintiff pursuant to their agreement. This payment does not include an

LAW FIRM, DAVID RANDOLPH SMITH & ASSOCIATES

CWS 10/6/23
[Signature]

Ralph Alvarado
MD, FACP
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Date: 2023.10.09 16:47:12 -05'00'

award of back pay. This Agreement constitutes settlement of all Plaintiff's claims arising out of or related to her employment with and expiration of service from the Tennessee Department of Health, including, but not limited to, all claims based upon state or federal law, claims for reinstatement, continued employment, promotion, compensatory damages, back pay, lost wages, lost earning capacity, front pay, punitive and/or treble damages, and/or attorneys' fees, which were brought or could have been brought in the Litigation, including any claims related to her employment existing as of the Effective Date of this Agreement. The Parties agree that they will pay their own court costs and/or discretionary costs, if any. Defendants agree to pay the cost incurred with the mediator in this Litigation. Plaintiff acknowledges and agrees that she is solely and entirely responsible for the payment and discharge of all federal, state, and local taxes that may be found to be due upon the payments made to her hereunder.

6. Plaintiff acknowledges that consideration for this Agreement specifically includes confidentiality, non-disclosure, and non-disparagement provisions in paragraphs 2 and 3. If Plaintiff discloses any information precluded by these provisions, then the State of Tennessee shall be entitled to seek, in addition to other available remedies, an award for liquidated damages in an amount equal to \$150,000.00. The parties acknowledge and agree that the harm caused by Plaintiff's breach would be impossible or difficult to accurately estimate at the time of the breach and that the liquidated damages are a reasonable estimate of the anticipated or actual harm that might arise from a breach. Any legal remedy sought as a result of Plaintiff's breach may be undertaken without waiving the releases provided in this Agreement. If Plaintiff breaches the confidentiality, non-disclosure, and non-disparagement provisions in paragraphs 2 and 3, she will

be responsible for payment of all reasonable attorneys' fees and costs that the State of Tennessee incurs in the course of enforcing the terms of this Agreement.

7. Plaintiff agrees to completely release and discharge the Tennessee Department of Health, the State of Tennessee, and all of its officials, employees, representatives, or agents, past and present and in their official and individual capacities, from all damages, injuries, claims, liability, and causes of action known or unknown arising from, related to, or in any way connected to the facts underlying the Litigation, her employment, and expiration of her service, except claims that by law cannot be waived by signing this Agreement. The terms set forth herein are, and are intended to be, the full and complete settlement of all matters referenced herein. No additional compensation or other relief of any kind whatsoever, whether in law or equity, is to be paid or implemented regarding damages, injuries to persons or property, interest, expenses, costs, attorneys' fees, or experts' fees. Plaintiff hereby agrees to indemnify and hold harmless the Tennessee Department of Health from any losses or expenses of any type or character whatsoever, arising out of any attempt hereafter made by Plaintiff or any of her successors, heirs, assigns, servants, agents, attorneys, representatives, or other third parties, including but not limited to any third party healthcare provider or health insurance provider, to sue or collect on any claims that are being released and discharged by this Agreement. Subsequent to the dismissal of this Litigation, other than to enforce this Agreement, Plaintiff agrees not to file or maintain any action or complaints against the Tennessee Department of Health, the State of Tennessee, or any of its officials, employees, representatives, or agents with respect to the matters described in the Litigation. Plaintiff agrees to file a notice of dismissal with prejudice in her case, *Michelle Fiscus, M.D., FAAP v. Lisa Piercey, MD, MBA, FAAP, et al.*, U.S.D.C., M.D. Tenn. Case No. 3:21-cv-

00686, within ten days after receipt of the settlement funds. Plaintiff further acknowledges that the payment and promises described in paragraphs 1-6 constitute the entire consideration for the complete release provided for herein.

8. The Parties acknowledge that they are executing this Agreement entirely upon their own volition, individual judgment, belief, and knowledge with consultation of counsel; that this Agreement is made without reliance upon any statement or representation of any party or any person not herein expressed; that no promise, inducement, or agreement, not herein expressed, has been made to them; that the Agreement contains, and is, the entire agreement and understanding between the Parties herein; and that the terms of this Agreement are contractual and not mere recitals. The undersigned further declare that these terms have been agreed to voluntarily, without any undue influence, coercion, or improper motive.

9. Plaintiff agrees that, regardless of whether she hereafter discovers facts different from, or in addition to, those now known or believed to be true with respect to any aspect of her claims or damages sustained, that this Agreement shall, nevertheless, be and remain in full force and effect in all respects.

10. Should any provision of this Agreement be declared by any court of a competent jurisdiction to be illegal or invalid, the validity of the remaining parts, terms, or provisions will not be affected thereby, and said illegal or invalid part, term or provision will be deemed not to be a part of this Agreement.

11. This Agreement shall be governed by and construed in accordance with the laws of the State of Tennessee. The parties agree that they will be subject to the exclusive jurisdiction of the courts of the State of Tennessee in actions that may arise out of this Agreement.

12. This Agreement is subject to the approval of the Attorney General and Reporter, Comptroller, and Governor pursuant to Tenn. Code Ann. § 20-13-103. The Parties agree and acknowledge that there is no guaranteed timeframe as to approval by the required State officials or the issuance of checks.



Michelle Fiscus, MD, FAAP
Plaintiff

10/03/23

Date



Christopher Smith
Attorney for Plaintiff

10/3/2023

Date

Ralph Alvarado MD,
FACP

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Alvarado MD, FACP
Date: 2023.09.30 15:12:02 -05'00'

09.30.2023


Date

Commissioner Ralph Alvarado, MD, FACP
Tennessee Department of Health
Defendant

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