

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
AT CHARLESTON**

**GARY CRITES and
HUNTER CRITES,**

Plaintiffs,

**Civil Action No. 2:18-cv-00415
Honorable Thomas E. Johnston**

**KANAWHA COUNTY SHERIFF'S
DEPARTMENT, a division of the
Kanawha County Commission;
KANAWHA COUNTY COMMISSION,
a political subdivision of Kanawha
County, West Virginia;
J.M. MARTIN, a deputy sheriff of Kanawha County;
T.J. CUMBERLEDGE, a deputy sheriff of Kanawha County;
B.J. PAULEY, a deputy sheriff of Kanawha County;
JOHN DOE #1, a deputy sheriff or sheriff of Kanawha County;
JOHN DOE #2, a deputy sheriff or sheriff of Kanawha County;
CITY OF DUNBAR, a municipal corporation; and
SCOTT HAYES, a police officer of the City of Dunbar,**

Defendants.

RELEASE IN FULL OF ALL CLAIMS AGREEMENT

THIS RELEASE AND SETTLEMENT AGREEMENT dated on this the 12th day of February, 2020, by and between **Kanawha County Sheriff's Department and Kanawha County Commission** (hereinafter the "Released Parties") and **Gary Crites and Hunter Crites** (hereinafter the "Releasing Parties"); therefore,

KNOW ALL PERSONS BY THESE PRESENTS:

The Releasing Parties do hereby release, acquit, and forever discharge Released Parties and their successors, agents, employees, heirs, personal representatives, and assigns of the said Released Parties, of and from all claims, demands, damages, actions, causes of action, and suits at law or

equity, that the Releasing Parties now or hereafter may have, whether known or unknown, heretofore or hereafter arising in any way out of the subject events described in Civil Action No. 2:18-cv-00415 in the United States District Court for the Southern District of West Virginia at Charleston, wherefrom the Releasing Parties are alleged to have sustained injuries. In exchange for the release and in consideration thereof, the total sum of Two Hundred Seventy Five Thousand Dollars and Zero Cents (\$275,000.00), the receipt and sufficiency of which is hereby fully acknowledged, is provided to the Releasing Parties by and on behalf of the Released Parties, in settlement and compromise of any and all claims. Said Two Hundred Seventy Five Thousand Dollars and Zero Cents (\$275,000.00) is comprised of three checks made payable as follows: 1) Seventy Four Thousand Five Hundred Fifty Dollars and Eight Cents (\$74,550.08) made payable to Gary Crites; 2) Seventy Four Thousand Five Hundred Fifty Dollars and Eight Cents (\$74,550.08) made payable to Hunter Crites and 3) One Hundred Twenty Five Thousand Eight Hundred Ninety Nine Dollars and Eighty Four Cents (\$125,899.84) made payable to Atkinson & Polak, PLLC.

It is expressly understood and agreed that this Release is intended to extend to any and all claims, injuries, and damages sustained by the Releasing Parties, without exception, as well as claims for loss of services, society and consortium, past or future expenses of any kind, medical and hospital costs and expenses, lost wages or other compensation, punitive damages, annoyance and inconvenience, pain and suffering, mental anguish, loss of ability to enjoy life, personal property damage and any and all other forms of recoverable damages, even to the extent that such injuries or damages may not be known or apparent at this time.

It is expressly understood and agreed that the settlement represented by this Release of All Claims Agreement is a compromise of a disputed claim and is not to be construed as an admission of guilt or liability on the part of the Released Parties or any other person, firm, or entity connected

with the Released Parties, and such guilt, liability, or wrongful acts on the part of any such Released Party is hereby expressly denied.

It is expressly understood and agreed that the consideration for this Release includes payment for all attorney's fees and costs, and therefore the Releasing Parties agree to be responsible for and to satisfy any fees or costs due their attorneys arising out of this action. The Plaintiffs in the aforesaid civil action specifically waive any right or claim to attorney's fees which may be recoverable or awardable under any source of law.

It is further expressly understood and agreed that, in exchange for the consideration previously described herein, the Releasing Parties agree to indemnify, defend, and forever hold harmless Released Parties of and from any and all demands, damages, actions, causes of action, suits at law or equity, liens, claims and cross-claims, including but not limited to any derivative and/or subrogation claims, of whatever kind and nature, made or brought by any person, firm, corporation, governmental agency, insurer, health care provider, or other individual or entity, including but not limited to any of the Releasing Parties' health care providers, against the Released Parties, on account of or in any way connected with any of the Releasing Parties' damages and injuries arising out of the incident described above, or the provision of any medical or other professional services to the Releasing Parties as a result of said incident.

It is also expressly understood that, in reaching this settlement, the parties to this Release in Full of All Claims stipulate that they have sought to protect the interest of Medicare and Medicaid. The parties agree that this settlement is intended, among other things, to provide the aforementioned Releasing Parties payment to resolve a dispute between the parties and which will foreclose the Released Parties' responsibility for past, present, and future payments of all injury related medical expenses to the Releasing Parties, Medicare, and/or Medicaid.

The parties agree that it is not the purpose of this Release in Full of All claims to shift to Medicare or Medicaid the responsibility for payment of medical care or expenses for the treatment of the Releasing Parties' alleged injuries, or any related conditions.

Accordingly, the Releasing Parties agree that they are responsible for and will indemnify, defend, cooperate with, and hold harmless the Released Parties, and/or their carriers/administrators, if any, for any pre-settlement Medicare or Medicaid Payments or future Medicare or Medicaid reimbursement which may be identified and reimbursement demanded by said entities due to injuries allegedly sustained as a result of the incident.

In further consideration of the payment of said sum, the Releasing Parties do hereby agree to INDEMNIFY and HOLD HARMLESS the Released Parties, their heirs, assigns, parent corporations, subsidiaries, officers, directors, agents, employees, insurers, employees, former employees, members, servants, attorneys, officers, directors, shareholders, representatives, affiliates, companies, related companies, entities, predecessors, parents, administrators, executors, and all successors against any and all subrogation claims made or to be made by any other party to recover for payments made for medical bills, lost wages, property damage, legal expenses, legal fees, child support obligations or any other subrogation claims arising out of the aforementioned incident, including, but not limited to, those for workers' compensation benefits or such benefits to be obtained, and for any and all attorneys' liens or other claims for attorneys' fees and/or costs and for any and all Medicare and Medicaid liens.

The Releasing Parties further agree to INDEMNIFY and HOLD HARMLESS the Released Parties herein from any and all adverse consequences to them in the event this settlement results in the loss of any rights to Social Security, Medicaid, and/or Medicare benefits to the extent the claimant would have been entitled to any such benefits before or after entering into this settlement

agreement whether related to this incident or not. The Releasing Parties further waive any private cause of action they may have against the Released Parties herein under the said Medicare/Medicaid statutes and regulations and Medicare Secondary Payer Act (MSP).

The Releasing Parties waive any claims for damages, including a private cause of action provided in the MSP, 42 U.S.C. Section 1395y(b)(3)(A), should Medicare deny coverage for any reason, including the failure to establish a set aside allocation to protect Medicare's interest.

The Releasing Parties acknowledge that any decision regarding entitlement to Medicare and/or Medicaid benefits, including the amount and duration of payments and offset reimbursement for prior payments, is exclusively within the jurisdiction of the Social Security Administration, the United States Government, United States Department of Health and Human Services, the State of West Virginia, the West Virginia Department of Health and Human Resources, the United States Federal courts and West Virginia State courts and is determined by federal and state law and regulations. As such, the United States Government and the State of West Virginia are not bound by any of the terms of this Settlement Agreement. The Released Parties specifically rely upon the representations of the Releasing Parties that any and all liens of any type for payment of bills, related to claims for bodily injury or medical expenses, past or future, will be reimbursed with the settlement proceeds.

The Releasing Parties have been apprised of their right to seek assistance from legal counsel of their choosing or directly from the Social Security Administration or other governmental agency or agencies regarding the impact this Settlement Agreement may have on their current or future entitlement to Social Security, Medicaid, Medicare, or other governmental benefit(s), if any.

The Releasing Parties understand that the receipt of these settlement funds may affect their rights to other governmental benefits, including but not limited to, Medicare and/or Medicaid

coverage, insurance benefits, disability benefits, or pension benefits. Despite this possibility, the Releasing Parties desire to enter into this agreement to settle this claim in accordance with the terms set forth herein.

It is expressly understood and agreed that this Release is executed with full knowledge and appreciation of the uncertain nature of the injuries sustained, potential recovery therefrom, and future expenses which may arise as a result of the injuries sustained. The Releasing Parties rely upon their own judgment in accepting this settlement and have not relied upon or been induced to act by the statements or representations of the Released Parties, including their agents, employees, and attorneys of the Released Parties.

It is expressly understood and agreed that the consideration recited above is the only consideration to accompany this Release, that this Release contains the entire agreement between the parties hereto and contains all of the terms and conditions of the settlement, and that all such terms and conditions are contractual and not a mere recital.

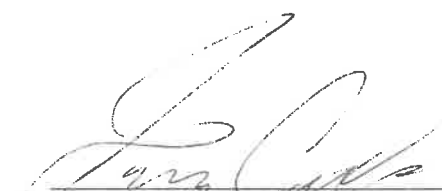
This Release in Full of All Claims Agreement is further intended by the parties to fully resolve the pending litigation, as well as any future or derivative claims which have been or could later be made against the Released Parties by the Releasing Parties, as a result of the allegations, transactions, events, circumstances, or occurrences which formed the factual basis for the Releasing Parties' claims in this civil action.

It is expressly understood and agreed that in exchange for the consideration aforesaid, the Releasing Parties agree to dismiss with prejudice Civil Action No. 2:18-cv-00415 in the United States District Court for the Southern District of West Virginia at Charleston.

WHEREFORE, the undersigned acknowledges and affirms that the entirety of this Release has been read prior to execution, that the undersigned is knowledgeable of and understands the

contents and legal effect of this Release, and freely and voluntarily signs the same with said knowledge and understanding.

IN WITNESS WHEREOF, Gary Crites has hereunto set his hand and seal on this the 12th day of February, 2020.

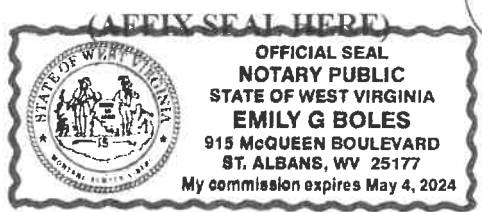



GARY CRITES

STATE OF WEST VIRGINIA,
COUNTY OF Kanawha, to-wit:

The foregoing instrument was acknowledged before me on this the 12th day of February, 2020, by the said **GARY CRITES**.

My commission expires: May 4, 2024.





NOTARY PUBLIC

IN WITNESS WHEREOF, Hunter Crites has hereunto set her hand and seal on this the 12th day of February, 2020.

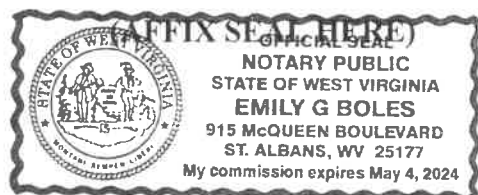

HUNTER CRITES


STATE OF WEST VIRGINIA,

COUNTY OF Kanawha, to-wit:

The foregoing instrument was acknowledged before me on this the 12th day of February, 2020, by the said HUNTER CRITES.

My commission expires: May 4, 2024.




NOTARY PUBLIC