

SETTLEMENT AGREEMENT

The parties to this Settlement Agreement (Agreement) are the Colorado Department of Public Health and Environment (Department), SBH-North Denver, LLC dba Clear View Behavioral Health (Facility, or Clear View), SBH North Denver, LLC (Licensee), Daniel Zarecky (Administrator), Sharon Pendlebury (CEO), James T Shaheen (CEO and President), Edward J. Dobbs (Vice President), William H. Lawson, Jr. (Secretary), Mike A. Orians (Treasurer), Caroline Kirby Dobbs Floyd 2012 Trust (Stockholder), Caroline Kirby Dobbs 1985 Trust (Stockholder), John Hull Dobbs Jr. 1985 Trust (Stockholder), Jackson Dobbs Allen 2012 Trust (Stockholder), Edward Dobbs Grantor Trust (Stockholder), and Edward J. Dobbs 2009 Trust (Stockholder), (collectively Clear View). The parties hereby agree as follows:

WHEREAS, the Department issued to Clear View a Conditional License to Operate a Psychiatric Hospital with an effective date of February 1, 2019, and since that date Clear View has been operating a psychiatric hospital under this license at 4770 Larimer Parkway, Johnstown, Colorado 80534;

WHEREAS, Clear View's Conditional License expires by its own terms on January 24, 2020; and

WHEREAS, on May 29, 2019, the Department completed unannounced state and federal complaint investigations, and cited Clear View for repeat deficiencies, as well as new deficiencies which placed Clear View patients' health, safety, and welfare at risk; and

WHEREAS, on June 24, 2019, the Department notified Clear View of its intention to revoke Clear View's psychiatric hospital health facility license by issuance of a Notice of Charges and Notice of Duty to Answer;

WHEREAS, on July 24, 2019, Clear View provided the Department with its Answer to Notice of Charges and Notice of Duty to Respond and requested the matter be heard in an administrative proceeding by an Administrative Law Judge of the Office of Administrative Courts;

WHEREAS, on September 17, 2019, and over the course of several days, the Department conducted a full state licensure survey and a standard federal certification survey that resulted in the citation of two minor deficiencies in the state licensure survey and two minor deficiencies in the federal certification survey and a finding that Clear View has achieved substantial compliance with the applicable regulatory requirements;

WHEREAS, based upon the result of the foregoing surveys, the on-going monitoring of Clear View by consultants pursuant to the Conditional License, and other information coming to the attention of the Department, Clear View has made substantial and significant progress in its operations since the Department's previous investigations in May 2019;

WHEREAS, in light of Clear View's substantial and significant progress, the Department and Clear View, wishing to avoid the delay, uncertainty, inconvenience, and expense of litigation, desire to settle all issues relating to the Conditional License and to dismiss the administrative case on the terms set forth in this Agreement that reflects the resolution of all claims or disputes that have been made by and between the parties related to the above events;

WHEREAS, the Department believes that the best interests of the State of Colorado and the public interest will be protected by entering into this Agreement with Clear View; and;

NOW, THEREFORE, in consideration of the covenants and conditions in this Agreement, and for good and valuable consideration, the receipt and sufficiency of which the parties hereby acknowledge, the parties agree as follows:

1. The Department shall permit Clear View to operate pursuant to the terms of the February 1, 2019, Conditional License, which expires on January 24, 2020. Thereafter, the Department shall permit Clear View to operate pursuant to its regular license, subject to Clear View's adherence to and compliance with all applicable State and Federal rules, regulations, standards and laws, including and without limitation, Chapters 2 and 18 (6 CCR 1011-1) of the Department's regulations, and the provisions of Article 3, Title 25, Colorado Revised Statutes.
2. Clear View acknowledges its ongoing obligation to comply with all applicable Department rules and regulations concerning any amendment to documents or change in other information required for licensure that may have been previously submitted to the Department.
3. In addition to state and federal laws and regulations, Clear View shall comply with the following operational conditions and limitations for one (1) year beginning upon the first day of the month following the Effective Date of this Agreement:
 - a. Log/Incident Reports/Follow-Up Submissions: On a monthly basis, Clear View shall submit to the Department: (1) Incident Logs; (2) Complaints and Grievances Log; (3) All Incident Reports; (4) All writings produced as part of follow-up investigations, trainings, individual counseling, etc., related to each incident/complaint/grievance. Clear View shall ensure submissions are provided to the Department no later than ten (10) days after the end of the month in which the item was created.
 - b. Meeting Minute Submissions: On a monthly basis, Clear View shall submit to the Department meeting minutes for each meeting of the following departments: Nursing, Case Management, Quality, and Operations. Clear View shall ensure submissions are provided to the Department no later than ten (10) days after the end of the month in which the meeting occurs.
4. Outpatient Services Waiver Submission: Prior to the Effective Date of this Settlement Agreement, Clear View shall request a waiver of the Outpatient Services requirement found at 6 CCR 1011-1, Chapter 18, § 19.101. Upon receipt of all necessary documentation, the Department will approve the waiver for one (1) year, to run concurrently with the one-year term of Clear View's license. Clear View shall comply with the Outpatient Services requirement no later than the date of expiration of the waiver.
5. Additional Inspections: Pursuant to § 25-1.5-103(1), C.R.S., in establishing and enforcing standards for the operation of general hospitals, within available appropriations and in addition to the required announced inspections, Clear View agrees that the Department may make additional inspections without prior notice to Clear View for one (1) year from the effective date of this Agreement. Pursuant to 6 CCR 1011-1, Chapter 2, § 2.11.1, Clear View agrees that the Department and any duly authorized representative thereof shall have the right to enter upon and into the premises of any licensee or applicant for a license in order to determine the state of compliance with the law and regulations, and shall initially identify themselves to the person in charge of the health care entity at the time of entry.

6. Delivery: Unless otherwise noted in this Agreement, all reports, contracts, deliverables, documents, etc. that are to be sent to the Department shall be sent to:

Michael Lastoczy, Records Manager
Colorado Department of Public Health and Environment, HFEMD – C1
4300 Cherry Creek Drive South
Denver, Colorado 80246-1530
Facsimile: (303) 753-6214
Email: Michael.Lastoczy@state.co.us

7. In exchange for Clear View's agreement to the above terms, the Department shall agree to dismiss with prejudice the administrative proceeding before the Office of Administrative Courts commenced via a Notice of Charges issued June 24, 2019, to revoke Clear View's license, and the parties shall submit a Joint Motion to Dismiss Appeal No. HE2019-0017, including requesting that the Office of Administrative Courts vacate the license revocation hearing scheduled for May 11 – May 19, 2020.
8. Continued licensure under the terms of this Agreement is dependent upon Facility's and Licensee's compliance with all provisions contained herein. Failure to comply with the requirements of Paragraph 3 may constitute material breach of this Agreement, as determined by the Department. Material breach of this Agreement by Licensee/Facility authorizes the Department to declare that provisions of this Agreement are unmet, and to proceed with Facility closure and Licensee license revocation as set forth in state regulations and law. Material breach of this Agreement by Licensee/Facility also authorizes the Department to take other action against Licensee's license and may provide good cause to the Colorado Department of Health Care Policy and Financing to decertify Licensee/Facility and to terminate Licensee/Facility's Medicaid Provider Agreement. Examples of material breach include, but are not limited to:
- a. Failure to comply with the requirements of Paragraph 3;
 - b. A finding of immediate jeopardy at any time; or
 - c. Failure of Facility and/or Licensee to comply with all applicable state rules, regulations, and standards, including without limitation, Chapter 2 and 18 of the Department's regulations (6 CCR 1011-1), and the provisions of Article 3 of Title 25, C.R.S.
9. The parties have entered into this Agreement to memorialize the resolution of this matter.
10. Nothing in this Agreement is intended or shall be construed to limit the Department's right or obligation to exercise the authority granted to it under the law with respect to the enforcement of statutory and regulatory requirements for licensed psychiatric hospitals. The Department reserves the right to suspend, revoke, or otherwise limit this Agreement if it learns of any new information, including but not limited to, criminal charges or convictions regarding any individuals or entities with ownership interest in Licensee/Facility.
11. The parties have entered into this Agreement to protect the public interest and because doing so is in the best interests of the State of Colorado. By entering into this Agreement, neither party admits liability or wrongdoing of any kind.
12. The parties represent that they have had the opportunity to receive independent legal advice from their respective attorneys with respect to the terms and conditions of this Agreement and are fully informed of its contents.

13. The parties further acknowledge that each of them is entering into this Agreement willingly and of their own informed and free will, fully cognizant of the effect and implications hereof, and not acting under coercion or duress.
14. Clear View expressly acknowledges that by executing and entering into this Settlement Agreement, it waives its right to a hearing under C.R.S. § 24-4-104, now and in the future, regarding five (5) surveys completed on May 29, 2019 (Event IDs 8RQW11, Q47411, BEXX12, LK8612, OEEC14), and three (3) surveys completed on February 1, 2019 (Event IDs BEXX11, LK8611, OEEC13).
15. This Agreement constitutes the full and complete integration of the parties' agreement with respect to resolution of the disputes and matters described herein, and all statements, negotiations, and prior agreements or understandings with respect to these matters are merged herein. This Agreement may be modified only by a written instrument signed by all parties hereto.
16. This Agreement is entered into in Colorado, and shall be governed by the laws of the State of Colorado. If there is a need to judicially enforce this Agreement, an independent legal proceeding shall be commenced. The parties expressly agree that any such proceeding shall be filed only in the District Court for the City and County of Denver.
17. This Agreement may be signed in counterparts and this Agreement and all documents to be executed hereunder may be executed by facsimile and/or by a scanned and emailed signature. Such signature shall be deemed to be as valid as an original signature, and facsimile, electronic, and photocopies may be treated as original documents.
18. Each person signing this Agreement represents that he or she has the authority to bind the party on behalf of whom or which he or she signs to the terms of this Agreement.
19. Each party shall bear its own attorneys' fees and costs arising from this Agreement and/or from the Department's imposition of the Conditional License and the health facility license revocation action and appeal.
20. Clear View understands and agrees that upon a valid request pursuant to the applicable public disclosure laws, including, but not limited to, the provisions of C.R.S. § 24-72-201, *et seq.*, the Department is obligated to provide the requesting person a copy of this Agreement.
21. Effective Date: This Agreement is effective on the date of signature of the last signatory to the Agreement.
22. The provisions of this Agreement which by their terms call for performance by Clear View shall be in effect for one year, commencing upon the Effective Date and shall thereafter terminate, unless sooner modified or terminated by agreement of the parties.

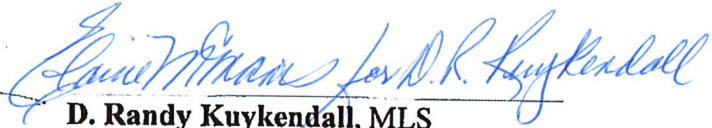
[Signature Page to Follow]

On Behalf of CLEAR VIEW

On Behalf of the COLORADO
DEPARTMENT OF PUBLIC HEALTH
AND ENVIRONMENT



Sharon Pendlebury
Chief Executive Officer
SBH-North Denver, LLC dba Clear View
4770 Larimer Parkway
Johnstown, Colorado 80534



D. Randy Kuykendall, MLS
Health Facilities and Emergency Medical
Services Division Director
Colorado Department of Public Health and
Environment
4300 Cherry Creek Drive South
Denver, Colorado 80246-1530

Dated: 01-11-2020

Dated: 1-13-2020

APPROVED AS TO FORM
FOR CLEAR VIEW:

APPROVED AS TO FORM
FOR THE DEPARTMENT:

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Dated: 01/10/2020

Dated: 1-13-2020

