

**STATE OF NEW MEXICO
ENVIRONMENT DEPARTMENT**

**NEW MEXICO ENVIRONMENT DEPARTMENT
ENVIRONMENTAL PROTECTION DIVISION**

No. RCB 20-__ (CO)

Complainant,

v.

**Taos Comprehensive Health
Corporation, D/B/A ultiMED**

Respondent.

SETTLEMENT AGREEMENT AND STIPULATED FINAL COMPLIANCE ORDER

Complainant the Environmental Protection Division (“Division”) of the New Mexico Environment Department (“Department”) and Respondent Taos Comprehensive Health Corporation, d/b/a ultiMED (“ultiMED”) (collectively, the “Parties”) enter into this Settlement Agreement and Stipulated Final Compliance Order (“Final Order”) to resolve alleged statutory, regulatory, and license violations by ultiMED. The Division alleges violations of the New Mexico Radiation Protection Act, NMSA 1978, Sections 74-3-1 to -16 (“Act”); the New Mexico Radiation Protection Regulations, 20.3.1 to 20.3.20 NMAC (“Regulations”); and the terms and conditions of the New Mexico Registration Number MO 49 0213.

I. BACKGROUND

A. PARTIES

1. The Department is an agency of the executive branch of the State of New Mexico created pursuant to NMSA 1978, Section 9-7A-4 (2005).

2. The Department is charged with the administration and enforcement of the Act and the Regulations. NMSA 1978, § 74-1-7(A)(5) (2000).

3. The Division is an organizational unit of the Department. The Secretary of the Department has delegated to the Director of the Division the authority to seek administrative enforcement of the Act and Regulations, including issuing compliance orders and assessing civil penalties for violations thereof, in accordance with NMSA 1978, Section 74-3-11.1 (2003). The Radiation Control Bureau (“Bureau”) is an organizational unit of the Division.

4. Respondent is a private corporation organized pursuant to the laws of the State of New Mexico doing business in New Mexico as ulTiMED from its facilities at 707 Paseo de Peralta, Santa Fe, New Mexico 87501 (“Facility”). Respondent’s stated purposes are to provide medical services.

B. HISTORY AND ALLEGED VIOLATIONS

5. On March 8, 2016, the Department issued Registration # MO 49 0213 to Respondent (with an expiration date of January 31, 2019), which authorized the operation of x-ray machines at Respondent’s Santa Fe, New Mexico address.

6. On November 9, 2017, the Bureau inspected Respondent’s Facility and found that a nurse practitioner, Peter Maese, was performing x-rays taken at this Facility.

7. This nurse practitioner was not certified by the Bureau to use ionizing radiation on humans nor licensed or certified by an independent board whose certification and examination program had been approved by the Medical Imaging and Radiation Therapy Advisory Council (“MIRTAC”) pursuant to 20.3.20.100(C) NMAC or the recognized credentialing authorities listed in 20.3.20.300 NMAC.

8. On June 22, 2018, the Bureau issued a Notice of Violation to Respondent for failing to use a Certified Radiological Technologist to apply x-rays to humans.
9. The Bureau found Respondent's July 23, 2018 response to the Notice of Violation to be insufficient and issued an Administrative Compliance Order on May 11, 2020 ("ACO").
10. The ACO alleged one violation:

Failure to assure that individuals who operate x-ray equipment are adequately instructed in the safe operating procedures and competent in the safe use of the equipment in violation of 20.3.6.602(A)(1)(b) NMAC.
11. Respondent represents filing a request for hearing and answer to the ACO in which it denied alleged violations and objected to the proposed civil penalties.
12. The Parties engaged in settlement discussions pursuant to 20.1.5.600(b) NMAC to determine if the issues raised in the ACO could be resolved without a hearing.

II. COMPROMISE AND SETTLEMENT

A. GENERAL

13. The Parties have resolved the ACO without further proceedings.
- 14.ultiMED does not admit any of the allegations in the ACO. To avoid further legal proceedings, the Division and ultiMED agree to the terms and conditions in this Final Order to resolve the alleged violations in the ACO.
15. The Parties admit jurisdiction and consent to the relief specified herein.

B. CORRECTIVE ACTION

- 16.ultiMED shall abide by the requirements of the Act, the Regulations, and # MO 49 0213 and only allow Dr. Lisa Fraker or staff certified by the Department to operate its x-ray producing equipment.

17. In addition to its obligations pursuant to the Act, the Regulations, and MO 49 0213,ultiMED shall submit logs for its x-ray machines registered at the Facility to the Bureau on a quarterly basis beginning with the quarter ending September 30, 2020 (“x-ray logs”).

18. These x-ray logs shall contain the information required in 20.3.6.602(A)(3) NMAC:

Each facility shall maintain an x-ray log containing the examinations and the dates those examinations were performed. The log shall include when techniques for procedures vary from those specified in the technique chart required in [20.3.6.602(A)(1)(c) NMAC.

19. These x-ray logs shall be submitted no later than the 10th of the month immediately following the preceding quarter, e.g. for the quarter ending September 30, 2020, ultiMED shall submit these logs to the Bureau by May 31, 2021.

20. These x-ray logs shall be submitted to the following addressee at the Bureau:

Michael Ortiz
Radiation Control Bureau
New Mexico Environment Department
P.O. Box 5469
Santa Fe, NM 87502-5469

21. Any written responses pursuant to this ACO must include appropriate evidence and a certification from a responsible official designated to act on behalf of ultiMED. The certification of the responsible official shall state: “I certify under penalty of law that this information in this letter and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering such information, the information submitted is, to the best of my knowledge and belief, true, accurate and complete. I am aware that there

are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”

C. CIVIL PENALTY

22. In compromise and settlement of the alleged violations set forth in the ACO, and upon consideration of the seriousness of the alleged violations andultiMED’s good faith effort to comply, the Parties agree that ultiMED shall pay a civil penalty of \$13,500.00 to the State of New Mexico.

23. ultiMED shall pay the civil penalty of \$13,500.00 in 12 installments of \$1,125.00 beginning June 1, 2021, and continuing on the last day of each month thereafter until the entire amount of \$13,500.00 is paid.

24. Payments shall be made to the “State of New Mexico General Fund” by certified or corporate check and sent to the following address:

New Mexico Environment Department
Radiation Control Bureau
Attention Santiago Rodriguez, Bureau Chief
P.O. Box 5469
Santa Fe, New Mexico 87502-5469

25. If ultiMED fails to make timely and complete payment of the civil penalty or fails to timely submit the required x-ray logs, ultiMED shall pay a stipulated penalty of \$250.00 per day for each day a payment or submittal is not timely or complete. ultiMED shall not contest or dispute in any way the stipulated penalty of \$250.00 per day in the event that the Department brings an action against ultiMED for the failure to make timely or complete payment.

III. OTHER TERMS AND CONDITIONS

A. RESERVATIONS OF RIGHTS AND DEFENSES

26. This Final Order shall not be construed to prohibit or limit in any way the Department from requiring ulTiMED to comply with any applicable state or federal requirement not resolved herein. This Final Order shall not be construed to prohibit or limit in any way the Department from seeking any relief authorized by the Act for violation any state or federal requirement applicable to ulTiMED not resolved herein This Final Order shall not be construed to prohibit or limit in any way ulTiMED from raising any defense to a Department action seeking such relief.

B. MUTUAL RELEASE

27. The Parties mutually release each other from all claims that each party raised or could have raised against the other regarding the facts and violations alleged in the ACO. Such release applies only to civil liability.

C. WAIVER OF STATE LIABILITY

28. ulTiMED shall assume all costs and liabilities incurred in performing all obligations under this Final Order. The Department, on its own behalf and on behalf of the State of New Mexico, does not assume liability for ulTiMED's performance of any obligation pursuant to this Final Order.

D. EFFECTIVE DATE AND TERMINATION DATES

29. This Final Order shall become effective on the date it has been signed by the Department Secretary.

30. Except as otherwise provided in this Paragraph, the terms of this Final Order shall terminate when ulTiMED has fulfilled the requirements of this Final Order. The reservations of rights and defenses and the mutual release in Paragraphs 26 and 27 shall survive the execution

and performance of this Final Order and shall remain in full force and effect as an agreement between the Parties.

E. INTEGRATION

31. This Final Order merges all prior written and oral communications between the Parties concerning the subject matter of this Final Order, contains the entire agreement between the Parties, and shall not be modified without the express written agreement of the Parties.

F. BINDING EFFECT

32. This Final Order shall be binding on the Parties and their officers, directors, employees, agents, subsidiaries, successors, assigns, trustees, or receivers.

G. AUTHORITY OF SIGNATORIES

33. The persons executing this Final Order on behalf ofultiMED and the Division, respectively, represent that they have the authority to execute this Final Order on behalf ofultiMED and the Division.

H. SIGNATURE AND COUNTERPARTS


34. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same agreement.

Environmental Protection Division
New Mexico Environment Department

By: _____
Sandra Ely
Environmental Protection Division Director

Date: _____

ultiMED

By:  _____
william kotsch

Date: 4/29/2021

**APPROVAL OF SETTLEMENT AGREEMENT AND
STIPULATED FINAL COMPLIANCE ORDER**

Pursuant to 20.1.5.600(B)(2) NMAC, this Settlement Agreement and Stipulated Final Compliance Order, agreed to by the Division andultiMED, is incorporated herein and APPROVED as a FINAL COMPLIANCE ORDER.

By: _____
James C. Kenney, Secretary
New Mexico Environment Department

Date: _____

Approved as to Form:

Christopher N. Atencio
Assistant General Counsel
New Mexico Environment Department



William Kotsch
Chief Executive Officer, ultiMED