

Conciliation Agreement
Between the
U.S. Department of Labor Office of Federal Contract Compliance Programs
and
Preferred Healthcare Registry, Inc.

I. Preliminary Statement

The Office of Federal Contract Compliance Programs (OFCCP) evaluated the Preferred Healthcare Registry, Inc. establishment located at 4909 Murphy Canyon Rd. Suite 310, San Diego, California 92123 beginning on December 10, 2020. OFCCP found that Preferred Healthcare Registry, Inc. ("PHR") failed to comply with Executive Order 11246, as amended ("E.O. 11246" or the "Executive Order"), Section 503 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 793 ("Section 503"), and the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, 38 U.S.C. § 4212 ("VEVRAA") and their respective implementing regulations at 41 Code of Federal Regulations ("C.F.R.") Chapter 60.

OFCCP notified PHR of the specific violations and the corrective actions required in a Notice of Violation ("NOV") issued on September 27, 2021.

In the interest of resolving the violations without engaging in further legal proceedings and in exchange for sufficient consideration described in this document, OFCCP and PHR enter into this Conciliation Agreement (Agreement), and the parties agree to all the terms therein.

II. General Terms and Conditions

1. In exchange for PHR's fulfillment of all its obligations in this Agreement, OFCCP will not institute administrative or judicial enforcement proceedings under E.O. 11246, Section 503, and VEVRAA based on the violations alleged in the NOV. However, OFCCP retains the right to initiate legal proceedings to enforce this Agreement if PHR violates any provision of this Agreement, as set forth in Paragraph 10, below. Nothing in this Agreement precludes OFCCP from initiating enforcement proceedings based on future compliance evaluations or complaint investigations.
2. OFCCP may review PHR's compliance with this Agreement. As part of this review, OFCCP may require written reports, inspect the premises, interview witnesses, and examine and copy documents. PHR will permit access to its premises during normal business hours for these purposes and will provide OFCCP with all hard copy or electronic reports and documents OFCCP requests, including those specified in this Agreement.
3. Nothing in this Agreement relieves PHR of its obligation to fully comply with the requirements of E.O. 11246, Section 503, VEVRAA, their implementing regulations, or other applicable laws requiring nondiscrimination or equal employment opportunity through affirmative action.

4. PHR agrees that it will not retaliate against any potential or actual beneficiary of this Agreement or against any person who files a complaint, who has provided information or assistance, or who participates in any manner in any proceeding in this matter.
5. The parties understand the terms of this Agreement and enter into it voluntarily.
6. This Agreement constitutes the entire Agreement and represents the complete and final understanding of the parties. This Agreement contains all of the terms binding the parties and it supersedes all prior written and oral negotiations and agreements. Any modifications or amendments to this Agreement must be agreed upon in writing and signed by all parties. If an administrative error is found, OFCCP will work in good faith with all parties to make the corrections.
7. This Agreement becomes effective on the day it is signed by the District Director Sean Ratliff ("Effective Date").
8. If one or more provisions of this Agreement is deemed unlawful or unenforceable, the remaining provisions will remain in full force and effect.
9. This Agreement will expire sixty (60) days after PHR submits its final progress report required in Section IV, below, unless OFCCP notifies PHR in writing before the expiration date that PHR has failed to fulfill all of its obligations under the Agreement. In this instance, the Agreement is automatically extended until the date that OFCCP determines that PHR has met all of its obligations under the Agreement.
10. If PHR violates this Agreement:
 - a. The procedures at 41 C.F.R. 60-1.34, 41 C.F.R. 60-300.63, and 41 C.F.R. 60-741.63 will govern:
 - i. OFCCP will send PHR a written notice stating the alleged violation(s) and summarizing any supporting evidence.
 - ii. PHR shall have fifteen (15) days from receipt of the notice to respond, except in those cases in which such a delay would result in irreparable injury to the employment rights of affected employees or applicants.
 - iii. If PHR is unable to demonstrate that it has not violated the Agreement, or if OFCCP alleges irreparable injury, enforcement proceedings may be initiated immediately without issuing a show cause notice or proceeding through any other requirement.
 - iv. In the event of a breach of this Agreement by the PHR, OFCCP may elect to proceed to a hearing on the entire case and seek full make-whole relief, and not be limited to the terms in the Agreement.

- b. PHR may be subject to the sanctions set forth in Section 209 of the Executive Order, 41 C.F.R. 60-1.27, 41 C.F.R. 60-741.66, or 41 C.F.R. 60-300.66, and other appropriate relief for violating this Agreement.
- 11. PHR does not admit any violation of the Executive Order, Section 503 or VEVRAA, nor has there been an adjudication on the merits regarding any such violation.
- 12. OFCCP may seek enforcement of this Agreement itself and is not required to present proof of any underlying violations resolved by this Agreement.
- 13. The parties understand and agree that nothing in this Agreement is binding on other governmental departments or agencies other than the United States Department of Labor.
- 14. Each party shall bear its own fees and expenses with respect to this matter.
- 15. This Agreement is limited to the facts of this case. Neither this Agreement, nor any part of the negotiations that occurred in connection with this Agreement, shall constitute admissible evidence with respect to any OFCCP policy, practice or position in any lawsuit, legal proceeding, administrative proceeding, compliance evaluation, or audit, except for legal or administrative proceedings concerning the enforcement or interpretation of this specific Agreement.
- 16. All references to "days" in this Agreement are calendar days. If any deadline for an obligation scheduled to be performed under this Agreement falls on a weekend or a Federal holiday, that deadline will be extended to the next business day.

III. Technical Violations and Remedies

- 1. **VIOLATION:** During the period December 10, 2018 through December 9, 2020, PHR failed to immediately list all employment openings with either the state workforce agency job bank or a local employment service delivery system serving the location where the openings occurred in violation of 41 CFR 60-300.5(a)2-6.

REMEDY: PHR will list all employment openings as they occur with an appropriate employment service delivery system (ESDS) (either the state workforce agency job bank or a local ESDS) where the openings occur, in a manner and format that will allow the ESDS to provide priority referrals of protected veterans to PHR, as required by 41 CFR 60-300.5(a)2-6. With its initial listing, and as subsequently needed to update the information, PHR must also advise the employment service delivery system that it is a federal contractor that desires priority referrals of protected veterans for job openings at all locations within the state, and provide the employment service delivery system with the name and address of each of its hiring locations within the state and the contact information for the contractor official responsible for hiring at each location, in accordance with 41 CFR 60-300.5(a)4.

Should any of the information in the disclosures change since it was last reported to the ESDS, PHR shall provide updated information simultaneously with its next job listing.

2. **VIOLATION:** During the period December 10, 2018 through December 9, 2020, PHR failed to undertake appropriate outreach and positive recruitment activities that were reasonably designed to effectively recruit protected veterans, in violation of 41 CFR 60-300.44(f)(1)(i). Specifically, PHR's outreach efforts were limited to posting positions at universities and with trade/professional organizations. None of PHR's efforts were directed specifically at recruiting qualified protected veterans. PHR did not use any of the suggested recruitment sources identified in 41 60-300.44(f)(2). Nor did PHR list its openings with the appropriate ESDS to allow for priority referrals.

REMEDY: PHR will undertake appropriate external outreach and positive recruitment activities that are reasonably designed to effectively recruit protected veterans, such as those described at 41 CFR 60-300.44(f)(2).

3. **VIOLATION:** During the period December 10, 2018 through December 9, 2020, PHR failed to undertake appropriate outreach and positive recruitment activities that were reasonably designed to effectively recruit qualified individuals with disabilities, in violation of 41 CFR 60-741.44(f)(1)(i). Specifically, PHR's outreach efforts were limited to posting positions at universities and with trade/professional organizations. None of PHR's efforts were directed specifically at recruiting qualified individuals with disabilities. PHR did not use any of the suggested recruitment sources identified in 41 60-741.44(f)(2).

REMEDY: PHR will undertake appropriate external outreach and positive recruitment activities that are reasonably designed to effectively recruit qualified individuals with disabilities, such as those described at 41 CFR 60-741.44(f)(2).

4. **VIOLATION:** During the period December 10, 2018 through December 9, 2020, PHR failed to provide applicants with compliant invitations to self-identify as a protected veteran as required by 41 CFR 60-300.42.

REMEDY: PHR shall invite applicants to inform it whether the applicant believes that he or she is a veteran protected by VEVRAA, as required by 41 CFR 60-300.42. More specifically, PHR shall invite applicants for employment, prior to an offer of employment, to voluntarily identify as a protected veteran. Additionally, PHR shall invite applicants for employment, after an offer of employment but before applicants begin their job duties, to voluntarily inform it whether the applicant believes that he

or she is a protected veteran. PHR may invite the applicant to also indicate if he or she belongs to one or more of the specific categories of protected veterans, as defined by 41 CFR 60-300.2(q). All invitations to self-identify as a protected veteran must comply with the requirements of 41 CFR 60-300.42(c). PHR must keep all self-identification information confidential and maintain it in a separate data analysis file, rather than in its personnel or medical files, in accordance with 41 CFR 60-300.42(e).

5. **VIOLATION:** During the period December 10, 2018 through December 9, 2020, PHR failed to invite its employees and applicants for employment to voluntarily self-identify as an individual with a disability, using the OMB-approved form for this purpose, in violation of 41 CFR 60-741.42.

REMEDY: PHR shall invite both its applicants for employment, and its employees, to voluntarily self-identify as an individual with a disability, in accordance with 41 CFR 60-741.42. All invitations to self-identify must be made using the OMB-approved form for this purpose (available on the OFCCP website). More specifically, PHR shall invite each of its applicants for employment, prior to an offer of employment, to voluntarily inform it whether the applicant believes that he or she is an individual with a disability, as that term is defined in 41 CFR 60-741.2(g)(1)(i) or (ii). PHR shall also invite each of its applicants for employment, after an offer of employment has been made and before the applicant begins work, to voluntarily inform it whether the applicant believes that he or she is an individual with a disability. In addition, during the first year it is subject to this requirement, PHR shall invite each of its employees to voluntarily self-identify as an individual with a disability, and then extend this invitation again at five year intervals, thereafter. At least once during each interval, PHR shall remind its employees that they may voluntarily update their disability-related self-identification information at any time. PHR must keep all self-identification information confidential and maintain it in a separate data analysis file, rather than in its personnel or medical files, in accordance with 41 CFR 60-741.42(e).

6. **VIOLATION:** During the period December 10, 2018 through December 9, 2020, PHR failed to perform in-depth analyses of its total employment process to determine whether and where impediments to equal employment opportunity exists, as required by 41 CFR 60-2.17(b). Specifically, PHR failed to review its applicant tracking procedures in order to identify reasons for the relatively low number of responses to its offer to self identify race/gender. PHR also presented personnel data in a fashion that implies that it did not conduct necessary impact analyses.

REMEDY: PHR will perform in-depth analyses of its total employment process to

determine whether and where impediments to equal employment opportunity exists, as required by 41 CFR 60-2.17(b). As part of these analyses, PHR must evaluate its personnel activity: applicant flow, hires, termination, promotions, and other personnel actions to determine whether there are selection disparities. PHR must also be evaluating the number of applicants who fail or refuse to provide race, gender, protected veteran and/or disability status. If PHR finds that there is a relatively high percentage of unknowns, as was the case here, it will take steps to determine potential reasons and take appropriate actions. In all instances where PHR identifies a problem area, PHR shall develop and execute action-oriented programs designed to correct the problem area, in accordance with 41 CFR 60-2.17(c).

7. **VIOLATION:** During the period December 10, 2018 through December 9, 2020, PHR failed to develop and implement an internal audit and reporting system that periodically measures the effectiveness of its total affirmative action program, as required by 41 CFR 60-2.17(d). Specifically, PHR failed to monitor records of personnel activity in a way that ensured nondiscriminatory policies are carried out and that its affirmative action program is successful.

REMEDY: PHR will develop and implement an internal audit and reporting system that periodically measures the effectiveness of its total affirmative action program, as required by 41 CFR 60-2.17(d). Specifically, PHR will perform internal reporting on a scheduled basis, review report results with all levels of management and advise top management of program effectiveness and submit recommendations to improve unsatisfactory performance.

IV. OFCCP Monitoring Period

1. **Recordkeeping.** PHR agrees to retain all records relevant to the violation(s) cited in Section III above and the reports submitted in compliance with Paragraph 2, below. These records include underlying data and information such as Human Resources Information System (HRIS) and payroll data, job applications and personnel records, and any other records or data used to generate the required reports. PHR will retain the records until this Agreement expires or for the time period consistent with regulatory requirements, whichever is later.
2. **PHR Reports.**

PHR agrees to furnish OFCCP with the following reports during the Monitoring Period. Each report will contain the documentation specified according to the dates scheduled:

- a. Progress Report 1: Due within 60 calendar days of the Effective Date of this Agreement.
 - i. PHR will provide evidence that it revised and is now using appropriate self-identification forms, including use of the OMB-approved form for self-identifying as an individual with a disability.
 - ii. PHR will provide evidence that it contacted the state workforce agency (EDD CalJobs), created an employer account, identified itself as a federal contractor seeking priority veteran referrals, and posted any current openings as required by 41 CFR 60-300.5(a)2-4
- b. Progress Report 2: Due on January 15, 2023 covering the period of December 1, 2021 to November 30, 2022.
 - i. PHR will provide those portions of its current E.O. 11246 AAP addressing its obligations under 41 CFR 60-2.17(b)-(d). PHR will include evidence that it conducted appropriate self-audits and analyses meant to identify problem areas, including impact ratio analyses of personnel activity occurring during the prior year (December 1, 2021 to November 30, 2022). PHR will provide an account of the number of applicants who failed to self-identify and are therefore "unknowns" in the dataset. If these percentage of unknowns exceeds 20%, PHR will provide its assessment of likely reasons and its plan to address the issue.
 - ii. PHR will provide those portions of its current VEVRAA and Section 503 AAPs dealing with outreach and recruitment to protected veterans and individuals with disabilities. PHR will include a list of all outreach events conducted during the prior year (December 1, 2021 to November 30, 2022) specifically directed toward protected veterans and individuals with disabilities, as well as its assessments of these outreach and recruitment efforts.
 - iii. PHR will provide evidence that, since its First Progress Report, it has continued to list jobs with EDD CalJobs.
- c. Progress Report 3: Due on January 15, 2024 covering the period December 1, 2022 to November 30, 2023.
 - i. PHR will provide those portions of its current E.O. 11246 AAP addressing its obligations under 41 CFR 60-2.17(b)-(d). PHR will include evidence that it conducted appropriate self-audits and analyses meant to identify problem areas, including impact ratio analyses of personnel activity occurring during the prior year (December 1, 2022 to November 30, 2023). PHR will provide an account of the number of applicants who failed to self-identify and are therefore "unknowns" in the dataset. If these percentage of unknowns exceeds 20%, PHR will

provide its assessment of likely reasons and its plan to address the issue.

- ii. PHR will provide those portions of its current VEVRAA and Section 503 AAPs dealing with outreach and recruitment to protected veterans and individuals with disabilities. PHR will include a list of all outreach events conducted during the prior year (December 1, 2022 to November 30, 2023) specifically directed toward protected veterans and individuals with disabilities, as well as its assessments of these outreach and recruitment efforts.
- iii. PHR will provide evidence that, since its Second Progress Report, it has continued to list jobs with EDD CalJobs.

PHR will submit all three (3) reports to OFCCP District Director Sean Ratliff by email at (b) (6), (b) (7)(C) @dol.gov with a courtesy copy to (b) (7)(C), (b) (7)(E) @dol.gov. PHR and OFCCP have a common interest in the information being provided in the reports pursuant to this Agreement. To the extent any of the reports PHR provides in accordance with this Agreement are trade secrets, commercial, and/or financial in nature, and customarily kept private or closely-held, and PHR believes should remain confidential under Exemption 4 of the Freedom of Information Act (FOIA) in the event of a FOIA request, PHR will provide such reports to OFCCP marked as "Confidential". In the event of a FOIA request, OFCCP will promptly notify PHR of the FOIA request and provide PHR an opportunity to object to disclosure. OFCCP will withhold disclosure of such reports to the maximum extent allowable by law.

3. **Close of Monitoring Period and Termination of Agreement.** This Agreement shall remain in effect until the monitoring period is completed. The monitoring period will close once OFCCP accepts PHR's final progress report as set forth in Section II, Paragraph 9 above. If OFCCP fails to notify PHR in writing within sixty (60) days of the date of the final progress report that PHR has not fulfilled all of its obligations under the Agreement, OFCCP will be deemed to have accepted the final report and the Monitoring Period and this Agreement will terminate. If OFCCP notifies PHR within the allotted time that it has not fulfilled all of its obligations, this Agreement is automatically extended until the date that OFCCP determines PHR has met all of its obligations under the Agreement.

V. SIGNATURES

The person signing this Agreement on behalf of PHR personally warrants that he or she is fully authorized to do so, that PHR has entered into this Agreement voluntarily and with full knowledge of its effect, and that execution of this Agreement is fully binding on PHR.

This Agreement is hereby executed by and between the Office of Federal Contract Compliance Programs and Preferred Healthcare Registry, Inc., 4909 Murphy Canyon Rd. Suite 310, San Diego, California.

(b) (6), (b) (7)(C)

Robyn Burlingame
Chief Operating Officer
Preferred Healthcare Registry, Inc.
San Diego, CA 92123

DATE: 10/09/2021

(b) (6), (b) (7)(C)

Sean Ratliff
District Director
Office of Federal Contract Compliance Programs
San Diego District Office
Pacific Region

DATE: 10/12/2021