

STATE OF WEST VIRGINIA

RANDOLPH COUNTY COMMISSION SS:

At a regular session of the County Commission in and for the aforesaid County and State, at the James F. Cain Court House Annex, on the 16th day of May, 2024 at 1:30 p.m.

Present: Randolph County Commission President Chris Siler, and Commissioners Chris See and David Kesling

Meeting called to order by Commissioner Siler

PUBLIC COMMENT: None

MINUTES:

Commissioner Kesling moved to approve the minutes from the regular meeting that was held on May 2, 2024, as submitted. All yes – Motion passed unanimously

REPORTS:

Sheriff Elbon reported that they just released Deputy Alex Burge off of the FTO program that he has been on for 600 hours after graduating the police academy. He successfully completed that and is now a patrol officer in the County. He said last Friday Deputy Connor Waldron graduated the police academy and he will now start the FTO program for 600 hours.

911/OEM Director Michael Miller gave a handout to each Commissioner of his report. He said they are looking at trying to save money for the County. He said they are going to go with Frontier for the phones which will save about \$250.00 per month. He said the Rich Mountain Tower was checked and it was struck by lightning and he will be turning everything in to the insurance company for that. He said the County IT person, Kyle Fox, has been working on the old computers and trying to update them for backups but they are too old. He said he will need to order two new computers for that. He said Community Corrections sent someone down to help clean up around the outside of the building and pulled weeds. He said Andy Teter is still working on the radio study to see where the best place is to put a tower. He said he met with the Elkins-Randolph County Regional Airport and discussed the tower at the 911 Center and told them he was not prepared to go forward with it at this time and they would have another meeting later. He said he spoke to Lynn Phillips about pre planning for the Mountain State Forest Festival. He said on May 6<sup>th</sup> he had a call with 22<sup>nd</sup> Century Software Solutions about a pilot program for Randolph County West Virginia Public Safety Software.

Kurt Gainer from Randolph County EMS reported that they have 12 ambulances in service, 37 of 39 employees are hired and they have 2 vacancies. He said all 3 stations are staffed 24 hours a day. He had a special guest with him, Senator Bill Hamilton appeared before the Commission. Senator Hamilton said a few months ago they passed out checks to all of the Randolph County Volunteer Fire Departments and he said they have 43 departments in the 11<sup>th</sup> district. He said they have local economic development assistance grants now and Kurt Gainer requested some of those funds and he presented Mr. Gainer with a check for \$6,000.00.

Rhett Dusenberry from Congressman Alex Mooney's Office said the Congressman didn't prevail this time in the Election. He said they will still operate as normal until December. He said congratulations to everyone that prevailed.

Commissioner Kesling reported on the pool. He said the landscaping has been done and the pool has been cleaned and drained and is still scheduled to open on Saturday of the Memorial Day Weekend. He said in the Prosecutor's Office they have the company there today installing the bullet proof glass and accessories needed for that and then the contractor can come out and finish it up. He said the insurance adjustor came yesterday and looked at the damage on the statue and they are waiting to hear back from them whether or not it will be covered under the insurance.

Erin Golden, Director of North Central Community Corrections, appeared before the Commission. She said there are currently 115 participants on the program and the program has saved the County \$1,480,492.51 in regional jail bills, so far this fiscal year.

Commissioner Kesling said they appreciate that because the regional jail bill is \$115,000 to \$120,000 per month that the County has to pay.

Erin Golden said she received an email from Charleston and they have scheduled the grant presentations for Wednesday June 12<sup>th</sup> at 1:45 and she said they can either do it in person or by zoom.

#### CORRESPONDENCE:

Commissioner Kesling said the Commission received a Thank You letter from Anne Beardslee for the support for the ramp festival.

#### ANNOUNCEMENTS:

Commissioner Siler announced that the next regular meeting will be held on June 6, 2024 at 1:30 p.m and the Canvass of Election Results will be held on May 20, 2024 starting at 9:00 a.m.

#### ITEMS FOR DISCUSSION/ACTION:

##### CONSIDER APPROVAL OF RESOLUTION FOR WV DIVISION OF ADMINISTRATIVE SERVICES/JUSTICE AND COMMUNITY SERVICES COURT SECURITY FUND GRANT PROGRAM 2025 (See copy attached)

Commissioner Kesling said there are two resolutions that need approved to give the County Commission legal authority to apply for and receive funds for 2025. Commissioner Kesling moved to approve the Resolution for WV Division of Administrative Services/ Justice and Community services Court Security Fund Grant Program 2025, as submitted. All yes – Motion passed unanimously

##### CONSIDER APPROVAL OF MANPOWER RESOLUTION (See copy attached)

Commissioner Kesling moved to approve the Manpower Resolution for the Court Security Grant to enhance security and provide sufficient manpower. All yes – Motion passed unanimously

##### CONSIDER APPROVAL OF EMSRS RESOLUTION

911/OEM Director Mike Miller said he was on the phone with the people from Charleston for a long time yesterday going over the pros and cons of this. He said if the Resolution is passed the new employees would fall under the same retirement as the old employees have at the Emergency Squad. He said we are probably one of the last two or three counties that have not passed it. He said everyone he talked to said it's a good thing for the employees and they will get the retirement in 20 years but they will be paying more into it, 2% more that what they pay now.

Kurt Gainer said this is the Emergency Medical Services Retirement Fund and he said it is based a lot like Trooper A and Trooper B programs of the State Retirement system. He said it was first introduced as a retention for EMS so people weren't working 45 years lifting and tugging and working 24 hour shifts. He said it ends up being 18% retirement and employees can retire at age 50. He said you can freeze it at 20 years or go to 25 years.

Mike Miller said if this is passed it will still have to go out to a vote in January and 75% of everybody throughout the State that wants to go into it has to agree. He said as for what it will cost the County, he was told 1% more would come out of 911 funds into the retirement. Commissioner Kesling said our expense now is 9% and it would go to 9.5%? Mr. Miller said yes. Commissioner Kesling said there will be an initial cost to join but not sure what they will be yet because it will be divided between the Counties that agree to go into it.

Commissioner Kesling moved to approve the EMSRS Resolution, as presented. All yes – Motion passed unanimously



CONSIDER APPROVAL OF FUNDING REQUEST FROM OUR TOWN/MOUNTAIN STATE STREET MACHINES  
(See copy attached)

Priscilla Gay, Treasurer for Our Town, Inc. appeared before the Commission. She said there are a couple changes coming up for the car show. She said historically it has been a Friday thru Sunday show but the Sunday attendance has been dwindling down and was almost non-existent last year. She said the members got together in January and made a decision to change the car show to just Friday and Saturday. She said the second change is that they are going to do more advertising. She said they had a thumb drive with all the names and addresses of the registrants in the past. She said they did 4x6 postcards and mailed out 1100 cards. She said this will reach the people out of State as they haven't gotten a lot of out of state cars coming in. They also had flyers made up and have been passing them around at other car shows. She said the July 4<sup>th</sup> holiday will kick off on Thursday with the 249<sup>th</sup> Army Band and on Friday evening there will be a cruise-in with Motorcycle Driveby performing. The car show continues all day Saturday and Rick K will perform that evening before the fireworks show which will take place in the Railyard. Commissioner Kesling said this is a great event and it does bring a lot of people not only to the City of Elkins but the whole County, it fills up the hotels and we can use the hotel/motel tax for this. Commissioner Kesling moved to approve the funding request from Our Town Inc. in the amount of \$5,000.00 to be taken out of hotel/motel tax funds. All yes – Motion passed unanimously

CONSIDER APPROVAL OF FUNDING REQUEST FOR THE OLD BRICK PLAYHOUSE (See copy attached)

Missy McCollam, Executive Director of The Old Brick Playhouse appeared before the Commission. She thanked the Commission for their support in the past. She said they are trying to expand their plan and mission this year. She said the components that are important to their board is to create a better quality of life for people in Randolph County thru entertainment and educational programming. She said they have already done that for 33 years. She said the next focus they have is mental health and wellness in which they are going to include a physical fitness program for the students. She said the next thing is to try to supplement their educational program so they work with D&E and take interns and do education day at the fair and they go to Elkins High School and ERCC and they get credit hours for that. She said they also do Summer Sole with Randolph County Schools and they work with Augusta. She said they employ 7 artists full time and last year they employed 72 artists part time. She said they do team building exercises with D&E Students to get them involved and feel welcome in the community. She said they try to work with anyone that asks. She said she is working on getting the Christmas Train back soon hopefully. She said they are trying to bring more live performances to the rotary stage downtown this summer. She said they have been going to ERCC now for 6 years to provide art therapy sessions to people with Alzheimer's and Dementia and it really helps them. She said they want to train people that are taking care of loved ones at home how to do this therapy. Commissioner Kesling moved to approve the funding request from The Old Brick Playhouse in the amount of \$15,000.00 to be taken out of hotel/motel tax funds. All yes – Motion passed unanimously

CONSIDER APPROVAL OF FUNDING REQUEST FOR ELKS LODGE 1135 JOHN BALLANTYNE JUNIOR GOLF PROGRAM (See copy attached)

Mary Snelson, President of John Ballantyne Junior Golf Program appeared before the Commission. She said this program offers area youth to be introduced to Golf. She said this year they have 37 kids enrolled. They are in age from 6 years old up to kids that are on the Tygart Valley High School golf team. She said it is completely free and shirts and hats have been ordered for them along with 15-20 sets of golf clubs to be used by the kids. She said they have been going to D&E and using the golf simulator and have been using the golf range at Crystal Springs. She said June 24<sup>th</sup> will end the season. She said this program has been going on for 25 years now. Commissioner Kesling moved to approve the funding request in the amount of \$1,500.00 to be taken out of hotel/motel tax funds. All yes – Motion passed unanimously

CONSIDER REAPPOINTMENTS TO THE RANDOLPH COUNTY HOUSING AUTHORITY (See copy attached)

Commissioner Kesling moved to reappoint Kathy Vance, Martha Metheny and Judy Ritchie to the Randolph County Housing Authority board, as submitted. All yes – Motion passed unanimously

CONSIDER REAPPOINTMENT TO THE BOARD OF DIRECTORS FOR MIDLAND PUBLIC SERVICE DISTRICT  
(See copy attached)

Commissioner Kesling moved to reappoint Elaine H. Valentine to the Midland Public Service District Board of Directors for another 6 year term expiring on June 30, 2030. All yes – Motion passed unanimously

CONSIDER REAPPOINTMENT TO THE BOARD OF DIRECTORS FOR HUTTONSVILLE PUBLIC SERVICE DISTRICT

Commissioner Kesling moved to table this item. All yes – Motion passed unanimously

CONSIDER APPROVAL OF SHRED-IT MONTHLY SERVICE

Commissioner Kesling said all the back dated documents that were gathered up from the buildings have all been shredded. He said this contract will provide drop boxes for continued use of shredding. The fee for pick up will be \$202.00 every two months. Commissioner Kesling moved to approve the Shred-It monthly service agreement, as submitted. All yes – Motion passed unanimously

CONSIDER APPROVAL OF REPRESENTATION OF FITZSIMMONS LAW FIRM PLLC ON OPIOID LITIGATION  
(See copy attached)

Commissioner Kesling said this is a contract for the Commission to continue services with Fitzsimmons Law Firm to represent the County in the Opioid Litigation. Commissioner Kesling moved to approve this contract for services, as submitted. All yes – Motion passed unanimously

CONSIDER APPROVAL OF BID ESTIMATE FOR AXON COURTHOUSE EQUIPMENT

Sheriff Elbon said this is for body cam and taser equipment for the Deputies and new Court Security Officers that will be coming in July. He said they are trying to get enough equipment to cover all of them. Commissioner Kesling said this quote is for a 4 pack bundle package. The total is \$18,940.96. Commissioner Kesling moved to approve the bid estimate from AXON in the amount of \$18,940.96 and that is to be taken out of the Courthouse Equipment line. All yes – Motion passed unanimously

CONSIDER APPROVAL OF RANDOLPH COUNTY SEAL USAGE FOR THE GOLD STAR MEMORIAL

Commissioner Kesling said they were contacted by the President and CEO of the Chamber of Commerce of the Two Virginias which will be helping with the design of the Gold Star Memorial which will be located near the Veteran's Memorial and near where the Rosie the Riveter Statue will be. He said they want permission to use the Randolph County Seal for that memorial. Commissioner Kesling moved to give approval of usage of Randolph County Seal for the Gold Star Memorial. All yes – Motion passed unanimously

CONSIDER THE PURCHASE OF A COUNTY VEHICLE

Commissioner Kesling said they have a vehicle that is reaching the mileage limit but still has some good use in it and instead of trading it off the process servers can use it. He said this would be a county use vehicle and it is not to exceed \$50,000.00. Commissioner Kesling moved to approve the purchase of a county vehicle, not to exceed \$50,000.00, and that is to be paid for from the Courthouse Equipment line. All yes – Motion passed unanimously

FINAL SETTLEMENTS/ANNUAL ACCOUNTINGS:

Commissioner Kesling moved to approve the (3) Final Settlements, as submitted.

Jimmie Lee Floyd

Elsie Joyce Hawse

Lillian Jackson

All yes – Motion passed unanimously

BUDGET REVISIONS: None

Commissioner Kesling announced that all budget revisions have to be in by the June 6, 2024 meeting for this fiscal year.

DIVISION OF PROPERTY/ERRONEOUS ASSESSMENTS:

Commissioner Kesling moved to approve the erroneous assessments/division of property, as submitted. All yes – Motion passed unanimously

DISTRESSED PROPERTIES: None

FIRE FEE ADJUSTMENTS: None

PAYMENT OF BILLS:

Commissioner Kesling moved to pay the bills, as submitted. All yes – Motion passed unanimously

ADJOURN THE MEETING:

Commissioner Kesling moved to adjourn the meeting. All yes – Motion passed unanimously

Attest: \_\_\_\_\_



# Randolph County Commission



## Commissioners

David L. Kesling

Chris See

Christopher Siler

## RESOLUTION

The **Randolph County Commission** (WV), met on May 16, 2024 with a quorum present and passed the following resolution:

Be it resolved that the **Randolph County Commission** hereby certifies that it has legal authority to apply for and administer funds through the **WV Division of Administrative Services / Justice & Community Services COURT SECURITY FUND GRANT PROGRAM 2025**; that a resolution has been duly passed as an official act of the applicant's governing body, authorizing the filing of the application, which does not include a local match, and including all understandings and assurances contained therein, and directly authorizing the **President of the Randolph County Commission**, the official county representative of the applicant, to act in connection with the application and to provide such additional information as may be required.

Brenda Wiseman

Randolph County Clerk

# Randolph County Commission



## Commissioners

David L. Kesling

Chris See

Christopher Siler

## MANPOWER RESOLUTION

### TO AUTHORIZE APPLICATION FOR FUNDING UNDER WEST VIRGINIA

**WHEREAS, Justice and Community Services and the West Virginia Supreme Court of Appeals has requested applications for FY 2025 Court Security Grant Funds; and**

**WHEREAS, the West Virginia Court Security Grant Fund makes State grant funds available to county court facilities for the purposes of enhancing security of the courts; and**

**WHEREAS, the Court Security Board was established to review and approve county court security plans for all court facilities and upon approval of a county's court security plan, award funds to purchase equipment or make other expenditures in accordance with the approved security plan; and**

**NOW, THEREFORE, be it resolved by the County Commission of the County of Randolph, West Virginia that sufficient manpower will be used to operate and manage all equipment and other items requested pursuant to provisions of the Court Security Grant Funds, and that the Commission hereby authorizes the Commission President to act on its behalf to enter into a contractual agreement with the Court Security Fund.**

SIGNED this date, \_\_\_\_\_.

\_\_\_\_\_  
PRESIDENT

\_\_\_\_\_  
COMMISSIONER



April 24, 2024

Randolph County Commission  
4 Randolph Avenue Ste 102  
Elkins, WV 26241

Dear Commissioners:

The annual car show presented by Mountain State Street Machines is once again scheduled during the July 4<sup>th</sup> holiday. The members have been planning the events since January. They have significantly increased advertising of the event. Flyers were printed and members are attending other car shows and passing them out. Additionally, one thousand post cards were printed and mailed to all past car show participants. The members are anticipating a good turnout.

The July 4<sup>th</sup> holiday will kick off on Thursday with the 249<sup>th</sup> Army Band performing at the Rotary Amphitheatre beginning at 6 pm. Friday evening there will be a cruise-in with entertainment by Motorcycle Driveby. The car show continues all day on Saturday. Rick K will perform that evening before the fireworks show which will again take place in the Railyard.

The Commission has been a loyal sponsor of the car show providing \$5,000 to help with costs for the July 4<sup>th</sup> annual event. We are hopeful that you will continue that tradition this year.

Sincerely,

*Priscilla Gay*

Priscilla Gay  
Treasurer



\$15K  
HOTEL / MOTEL



April 27<sup>th</sup>, 2024

Randolph County Commission  
4 Randolph Ave., Suite 102  
Elkins, WV 26241

Dear Commissioners, Kesling, See, and Siler,

Here at The Old Brick Playhouse, we are in the midst of our 33<sup>rd</sup> season of operation. We are immeasurably honored to have been able to participate in the strengthening of our community for over three decades. In the words of Joseph Campbell, "The goal of life is rapture, Art is the way we experience it. Art is the ultimate transforming experience." Remarkably, The Old Brick team has had the good fortune to experience these magical metamorphic changes firsthand on literally hundreds of occasions. We have seen shy students flourish and eventually play leading roles in our shows. We wept as a nonverbal dementia patient belted out the song "bicycle built for two" after years of silence. We have seen people grow and change in efforts to make Randolph County it's finest. We have seen thousands visit our community to ride the Polar Express and experience the attributes of Randolph County in its finest holiday regalia. Unquestionably, The Old Brick Playhouse would not have over 6,500 alumni and a cumulative audience of over 2.5 million children and youth without such a supportive community willing to invest in art.

This year alone, The Old Brick Playhouse has enrolled one hundred and ten Apprentice students, 98 campers, performed nearly 100 art therapy sessions for elder residents with dementia and Alzheimer's disease. The OBP team performed original touring plays to 2,000 Randolph County elementary school students, provided two weeks of programming for summer SOLE in local schools. Two teams collaborated with World Vision International to provide workshops for every after-school student in Barbour County. We collaborated with D&E College by transporting over 3,000 Randolph County school students to D&E to see the OBP musical Elf. We produced 8 mainstage plays and performed two original Murder Mysteries on the New Tygart Flyer to sold out crowds. With the help of the Sisters of St. Joseph's Health and Wellness Foundation, we have created and executed a new fitness program among our students that provides functional exercise and nutrition education.

Sadly, as exhibited every time one visits the grocery store, it is painfully obvious that our economy is complex to maneuver. For the first time in The Old Brick Playhouse's history, we have nearly 75% of our students requesting scholarship support to participate in educational programming. Many families struggle to pay our modest tuition fee. Additionally, even the cost of performing licensing has increased from \$2,000 to nearly \$5000. Navigating the recent ebb and flow of the economy and funding for the arts has been difficult for the past few years.

Though Old Brick Playhouse's impact and scope have reached fruition throughout the years, we have also suffered the economic challenges that so many arts agencies throughout the country have battled. As a result, we are reaching out with a funding request in the amount of \$15,000. These funds would go directly to our educational programs. Please know that we are ever grateful for your past support of our work. Without your kindness, we could not have reached so many people in 2023. Together with our Board of Directors, it is our hope that we can once again partner with The Randolph County Commission to achieve more positive change in our region.

Sincerely,

A handwritten signature in cursive script, reading "Missy A. McCollam".

Missy Armentrout McCollam  
Executive Director  
The Old Brick Playhouse  
PO 2716  
Elkins, WV 26241  
304.704.6557  
[missy@theoldbrick.org](mailto:missy@theoldbrick.org)

March 26, 2024

Dear Randolph County Commissioners,

On behalf of the Elks Lodge 1135 John Ballantyne Junior Golf Program, I hereby request funding in the amount of \$1500 for the 2024 Golf Season.

I will be happy to answer questions regarding our program following my presentation at an upcoming Commission meeting.

Thank you.

Sincerely,

Mary Snelson

President, John Ballantyne Junior Golf Program



RANDOLPH COUNTY



**HOUSING AUTHORITY**

*Building Strong Communities Since 1979*

March 29, 2024

Randolph County Commission  
4 Randolph Avenue, Ste 102  
Elkins, WV 26241

Dear Commissioners,

As the Chairman of the Board of Commissioners of the Randolph County Housing Authority, I am writing to request the reappointment of 3 board members whose current terms expire June 30, 2024. Kathy Vance, Martha Metheny, and Judy Ritchie have each expressed a desire to continue serving on the RCHA board of commissioners for a second term. Given the recent change in leadership with the resignation of our Executive Director Graham Godwin due to health concerns, I believe consistency on the board is paramount during this transition. Therefore, I respectfully request that the commissioners consider this request for reappointment.

Sincerely,

A handwritten signature in cursive script that reads "Michael Bell".

Michael Bell, Chair  
RCHA Board of Commissioners

## Midland Public Service District

P. O. Box 544  
Elkins, WV 26241  
Phone (304) 636-1431  
Fax (304) 636-8941  
[midlandpsd@cebridge.net](mailto:midlandpsd@cebridge.net)  
MidlandPSD.com

May 1, 2024

President Cris Siler  
Randolph County Commission  
4 Randolph Avenue  
Elkins, WV 26241

Dear President Siler,

The 6 year term of service on the Board of Directors for the Midland Public Service District, currently filled by Elaine H. Valentine, expires on June 30, 2024

At the next meeting of the Randolph County Commission, please re-appoint Elaine H. Valentine to another 6 year term on the Board of Directors for the Midland Public Service District. This term will expire June 30, 2030.

Thank you for your continued support of the Midland Public Service District.

Sincerely,

Ronald Vance, Manager  
Midland PSD



This Institution is an Equal Opportunity Provider.

CLAYTON J. FITZSIMMONS  
1609 Warwood Avenue  
Wheeling, West Virginia 26003  
FitzsimmonsFirm.com



Tel: (304) 277-1700  
(740) 695-1702  
(866) 206-7077  
Fax: (304) 277-1705

**FITZSIMMONS**  
LAW FIRM

**CONFIDENTIAL ATTORNEY CLIENT COMMUNICATION**  
**AND ATTORNEY WORK PRODUCT**

May 7, 2024

VIA ELECTRONIC MAIL

Randolph County Commission  
c/o Brooke Hinzman, Administrator  
Email: [bhinzman@randolphwv.org](mailto:bhinzman@randolphwv.org)

Re: Opioid Litigation – Pharmacy Benefit Managers

Dear Randolph County Commission:

We have been investigating the role that pharmacy benefit managers (PBMs) played in contributing to the opioid epidemic and potential claims against these PBMs.

PBMs administered prescription drug plans for various health insurers, self-insured employers, and governments, and also reviewed drug utilization data. Recent evidence suggests that these PBMs colluded with the Opioid Manufacturers to make sure prescription opioids were more available than they should have been. The evidence also suggests that the PBMs were in a critical position to prevent the opioid epidemic because they had unique access to drug utilization data and had to approve each individual's opioid prescription filled at every pharmacy in their networks. However, instead of properly using this data to ensure opioids were being properly prescribed, the PBM's ignored this information to increase their profits from their pharmacy networks which resulted in the dispensing of billions of opioid pills into communities across the country. These actions by the PBM Defendants allowed the market to be flooded with prescription opioids and facilitated the opioid epidemic.




The PBM Defendants in this case would be Express Scripts<sup>1</sup> and OptumRx,<sup>2</sup> two of the three PBMs with the largest market share in the United States.<sup>3</sup> We intend to assert claims of public nuisance against these PBM Defendants, similar to what we asserted against the prescription opioid distributors, manufacturers, and retail pharmacies. We are planning to file a separate lawsuit against these PBM Defendants on behalf of numerous cities and counties across West Virginia, and we anticipate filing this case in the immediate future in federal court in Wheeling.

We strongly recommend you join these efforts and sign up for us to again represent you in this new related opioid litigation. To that end, we are enclosing a new proposed attorney contract for your review and consideration. To ensure your inclusion in the anticipated lawsuit that we will soon be filed, we ask that you sign and return this attorney contract to us **no later than May 21, 2024** if you want to be included in these claims.

As always, if you have any questions or would like to discuss these matters further, please let us know. We are more than happy to meet with you or schedule a Zoom.

Respectfully,

FITZSIMMONS LAW FIRM PLLC



Clayton Fitzsimmons

CJF/cs

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<sup>1</sup> The relevant Express Scripts entities are: Express Scripts, Inc.; Express Scripts Administrators, LLC; Medco Health Solutions, Inc.; ESI Mail Order Processing, Inc.; ESI Mail Pharmacy Service, Inc.; Express Scripts Pharmacy, Inc.; Evornorth Health, Inc. (formerly Express Scripts Holding Company); and Express Scripts Specialty Distribution Services, Inc.

<sup>2</sup> The relevant OptumRx entities are: UnitedHealth Group, Inc., Optum, Inc., OptumInsight, Inc., OptumInsight Life Sciences, Inc., OptumRx, Inc., OptumRx Discount Card Services, LLC; Optum Perks, LLC; OptumHealth Care Solutions, LLC; OptumHealth Holdings, LLC; and Optum Health Networks, Inc.

<sup>3</sup> The other major PBMs in the country, CVS Caremark/Caremark Rx, is a subsidiary of CVS Health. Caremark was included in the CVS settlement.



# FITZSIMMONS

LAW FIRM

## CONTINGENT FEE CONTRACT

**Representation:** The undersigned, on behalf of Randolph County Commission, hereinafter referred to as "Client," employs Fitzsimmons Law Firm PLLC (hereinafter "Attorneys"), to act as its attorneys in connection with the investigation and prosecution of claims against Express Scripts and OptumRx and their affiliated companies (collectively the PBM Defendants) concerning their role in the opioid epidemic (the "Claims").

**Contingent Fee:** In consideration of Attorneys' services, Client agrees to pay Attorneys a fee of twenty-five percent (25%) of all gross amounts recovered in connection with the Claims. The "gross amounts recovered" is intended to cover broadly anything of value, including but not limited to, all money, funds, product, or structured or future payments. The 25% Fee shall be calculated on the gross recovery before deducting any expenses. **In the event there is no recovery, Client shall owe nothing as a fee or cost.** Attorneys may retain other counsel to serve as co-counsel or local counsel in connection with Client's Claims; provided, all fees paid to any such co-counsel or local counsel shall be paid out of Attorneys' 25% fee.

**Expenses:** Client agrees to pay out of the gross amount of any recovery, all reasonable and necessary costs, fees, and expenses (collectively referred to as "costs") paid and/or incurred by Attorneys in connection with Client's Claims. Advanced fees, expenses, and costs include, but are not limited to, those incurred in connection with expert witnesses, investigations, court filings, copying, mail, document management, trial preparation and exhibits, mock jury and focus groups, airfare, travel and travel related expenses, meals, telephone and fax expenses, depositions and court reporter fees, negotiation of governmental lien and governmental benefit preservation, mediation; and legal research. Costs may also include any Multi-District Litigation ("MDL") Assessment for costs imposed by any MDL Court if not otherwise ordered by the Court.

**Common Expenses:** In the event Attorneys also represent similarly situated clients, Client agrees to pay a pro rata share of common case expenses. Client understands and acknowledges that common case expenses are those incurred in the prosecution of Client's Claims and other similarly situated clients of Attorneys in connection with their Claims. Client acknowledges and understand that they benefit from the ability to share these expenses with a larger group rather than incurring these expenses individually.

**Common Benefit Fee and/or Cost Assessment:** In the event there is a court ordered assessment or agreement for fees and costs to be paid to any current or future state or Federal proceeding such as a federal Multi District Litigation ("MDL"), state coordinated proceeding such as the West Virginia Mass Litigation Panel, a class action, a bankruptcy, or any other coordinated/consolidated proceeding, this amount will be deducted pursuant to the Court's Order.

**West Virginia First Memorandum of Understanding:** In the event the Court orders that fees and costs shall be paid pursuant to Court Order or Order/Recommendation from the Special Master



under the West Virginia First Memorandum of Understanding, the Court's Order shall control over the fees and costs provisions in this contract.

**Joint Representation and Waiver of Conflicts of Interests:** Client understands, acknowledges, and agrees that Attorneys may represent other clients who have similar claims. The benefits of Attorneys representing multiple clients for similar claims include the cost of litigation which can be spread out among multiple clients, the facts supporting similar claims can be supportive of each other, and greater number of represented clients may increase the overall recovery. Negative effects of representing multiple clients having similar claims can result when one client will not consent to the disclosure of information to other clients, when multiple clients disagree on litigation strategy, or when multiple clients cannot agree on the amount or allocation of settlement amounts. An alternative to multiple representation is that each client procures separate representation. Client acknowledges and agrees that it has been explained both the potential benefits and risks of Attorneys representing multiple clients in this matter, and Client has had the opportunity to ask all questions concerning these issues and to seek separate representation for their potential claims, and Client is satisfied that Client has been fully informed of the risks and benefits of multiple representation by Attorneys. After considering the same, Client agrees to Attorneys representing multiple clients who have similar claims, and Client hereby waives any potential conflicts of interests that may arise due to Attorneys' simultaneous representation of multiple clients with similar claims. Client further agrees that Attorneys may pursue, file, negotiate and resolve Client's claim and other similarly situated claims on an aggregate basis.

**No Guarantee of Outcome:** Client acknowledges and agrees that Attorneys makes no express or implied representations or guarantees as to the final outcome of Client's Claims.

**Termination and Client's Cooperation:** Attorneys may withdraw from representation of Client at any time for any reason upon reasonable notice to Client. Should the Client terminate Attorneys, and Client secures a future recovery after said termination, Attorneys shall be entitled to *quantum meruit* together with reimbursement of all monies advanced by Attorneys from Client's recovery.

**Venue and Choice of Law:** Any and all disputes, controversies, claims, or demands arising out of or relating to this Contract shall be brought and prosecuted in the Circuit Court of Ohio County, West Virginia and shall be resolved in accordance with the then-prevailing law of the State of West Virginia, including the West Virginia Rules of Professional Conduct.

**Counterparts:** It is understood and agreed that this Agreement may be executed in a number of identical counterparts, each of which shall be deemed an original for all purposes, but all of which shall constitute one and the same Agreement. Faxed or emailed signature pages to this Agreement constitute acceptable evidence of a Party's agreement to the terms hereunder.

**Integration and Representations:** This Contract constitutes the sole and only agreement of the parties hereto and supersedes all prior understandings or written or oral agreement between the parties. Client certifies and acknowledges that it is fully aware of the terms and conditions contained in this Agreement and enters into this Contract voluntarily.



SIGNED AND ACCEPTED ON THIS \_\_\_\_\_ day of \_\_\_\_\_, 2024.

CLIENT NAME: Randolph County Commission

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
Fitzsimmons Law Firm PLLC

By Its: \_\_\_\_\_