

ORIGINAL

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- X
UNITED STATES OF AMERICA and STATE OF NEW YORK *ex* :
rel. LOIS DORMAN, :

Plaintiffs, :

-against- :

08 Civ. 9716 (DC)

ST. LUKE'S-ROOSEVELT HOSPITAL CENTER, CONTINUUM
HEALTH PARTNERS, INC., SLR PSYCHIATRIC ASSOCIATES,
RICHARD N. ROSENTHAL, M.D., PH.D. and DAVID WYMAN, :

Defendants. :

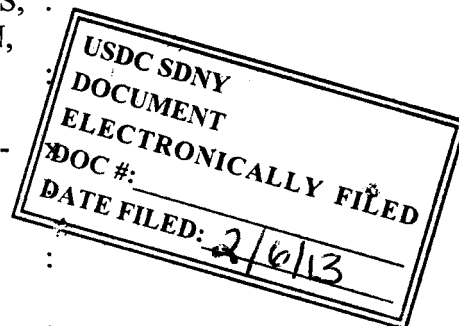
----- X
UNITED STATES OF AMERICA, :

Plaintiff-Intervenor, :

-against- :

ST. LUKE'S-ROOSEVELT HOSPITAL CENTER, CONTINUUM :
HEALTH PARTNERS, INC., and SLR PSYCHIATRIC :
ASSOCIATES, :

Defendants. :



----- X
STIPULATION AND ORDER OF SETTLEMENT AND DISMISSAL

WHEREAS this Stipulation and Order of Settlement and Dismissal (the "Stipulation") is entered into by and among the United States of America, by its attorney Preet Bharara, United States Attorney for the Southern District of New York (the "United States"); defendants St. Luke's Roosevelt Hospital Center, Continuum Health Partners, Inc., and SLR Psychiatric Associates; and Lois Dorman (the "Relator") (hereafter collectively referred to as "the Parties"), through their authorized representatives.

WHEREAS, Continuum Health Partners, Inc. ("CHPI") is a non-profit, corporate hospital network created under the laws of the State of New York. St. Luke's Roosevelt

Hospital Center (the "Hospital") is a member of CHPI. SLR Psychiatric Associates ("Associates") is an unincorporated faculty practice group created by and located within the Hospital.

WHEREAS, CHPI, the Hospital, and Associates submitted or caused to be submitted claims for payment to the Medicare and Medicaid Programs.

WHEREAS, on November 12, 2008, the Relator filed the above-captioned *qui tam* action in the United States District Court for the Southern District of New York pursuant to the *qui tam* provisions of the False Claims Act, 31 U.S.C. §§ 3729-3733 (the "FCA"), and on March 2, 2010, filed a First Amended Complaint (the "Civil Action").

WHEREAS, ~~on January 31, 2013~~^{or} has or will have the United States has or will have intervened in the Civil Action against CHPI, the Hospital and Associates (hereinafter, collectively, the "Defendants") and has or will have filed the United States' Complaint against the Defendants (the "Federal Action").

WHEREAS, the United States contends that it has certain civil claims against Defendants arising from a double-billing scheme whereby (1) full-time Hospital physicians working at one of the Hospital's out-patient mental health clinics provided a psychiatric service which was simultaneously billed to Medicaid by the Hospital as a rate-based service and by Associates on a fee-for-service basis during the period 1998 through 2010; and (2) the Hospital sought and received reimbursement pursuant to Medicare for non-reimbursable costs relating to outpatient psychiatric visits conducted by Associates during the period 1999 to 2002. As a result, Associates received Medicare and Medicaid payments that it would not have received if Defendants had not implemented this scheme. That conduct is referred to below as the "Covered Conduct."

Hospital Center (the "Hospital") is a member of CHPI. SLR Psychiatric Associates ("Associates") is an unincorporated faculty practice group created by and located within the Hospital.

WHEREAS, CHPI, the Hospital, and Associates submitted or caused to be submitted claims for payment to the Medicare and Medicaid Programs.

WHEREAS, on November 12, 2008, the Relator filed the above-captioned *qui tam* action in the United States District Court for the Southern District of New York pursuant to the *qui tam* provisions of the False Claims Act, 31 U.S.C. §§ 3729-3733 (the "FCA"), and on March 2, 2010, filed a First Amended Complaint (the "Civil Action").

WHEREAS, ~~on January 31, 2013~~, the United States ^{has or will have} intervened in the Civil Action against CHPI, the Hospital and Associates (hereinafter, collectively, the "Defendants") and ^{has or will have} filed the United States' Complaint against the Defendants (the "Federal Action").

J. Kopy
J.P.

A. Kopy
J.P.

WHEREAS, the United States contends that it has certain civil claims against Defendants arising from a double-billing scheme whereby (1) full-time Hospital physicians working at one of the Hospital's out-patient mental health clinics provided a psychiatric service which was simultaneously billed to Medicaid by the Hospital as a rate-based service and by Associates on a fee-for-service basis during the period 1998 through 2010; and (2) the Hospital sought and received reimbursement pursuant to Medicare for non-reimbursable costs relating to outpatient psychiatric visits conducted by Associates during the period 1999 to 2002. As a result, Associates received Medicare and Medicaid payments that it would not have received if Defendants had not implemented this scheme. That conduct is referred to below as the "Covered Conduct."

duplicate page 2
except for initials

2-6-13 DC

Hospital Center (the "Hospital") is a member of CHPI. SLR Psychiatric Associates ("Associates") is an unincorporated faculty practice group created by and located within the Hospital.

WHEREAS, CHPI, the Hospital, and Associates submitted or caused to be submitted claims for payment to the Medicare and Medicaid Programs.

WHEREAS, on November 12, 2008, the Relator filed the above-captioned *qui tam* action in the United States District Court for the Southern District of New York pursuant to the *qui tam* provisions of the False Claims Act, 31 U.S.C. §§ 3729-3733 (the "FCA"), and on March 2, 2010, filed a First Amended Complaint (the "Civil Action").

WHEREAS, ^{ESIC} on ~~January 31, 2013~~, the United States ^{has or will have} ~~intervened~~ ^{ESIC} in the Civil Action against CHPI, the Hospital and Associates (hereinafter, collectively, the "Defendants") and ^{has or will have} ~~filed~~ ^{ESIC} the United States' Complaint against the Defendants (the "Federal Action").

WHEREAS, the United States contends that it has certain civil claims against Defendants arising from a double-billing scheme whereby (1) full-time Hospital physicians working at one of the Hospital's out-patient mental health clinics provided a psychiatric service which was simultaneously billed to Medicaid by the Hospital as a rate-based service and by Associates on a fee-for-service basis during the period 1998 through 2010; and (2) the Hospital sought and received reimbursement pursuant to Medicare for non-reimbursable costs relating to outpatient psychiatric visits conducted by Associates during the period 1999 to 2002. As a result, Associates received Medicare and Medicaid payments that it would not have received if Defendants had not implemented this scheme. That conduct is referred to below as the "Covered Conduct."

duplicate page 2
except for initials

DC 2-6-13

WHEREAS, except as set forth in Section 2 below, Defendants expressly deny the allegations set forth in the Federal Action and the Civil Action.

WHEREAS, the Parties and the State of New York have negotiated a settlement in the amount of \$2,325,000.00 to resolve both the Federal and Civil Actions (the “Settlement Amount”),

WHEREAS, New York State, through the Medicaid Fraud Control Unit of the New York State Attorney General’s Office, is entering into a separate settlement agreement (the “State Settlement Agreement”) with Defendants to provide a release from the State with respect to the conduct described in paragraph 2 below.

WHEREAS, Relator claims entitlement under 31 U.S.C. § 3730(d) to a share of the proceeds of this Stipulation and to Relator’s reasonable expenses, attorneys’ fees and costs.

To avoid the delay, uncertainty, inconvenience, and expense of protracted litigation of the above claims, and in consideration of the mutual promises and obligations of this Settlement Agreement, the Parties agree and covenant as follows:

TERMS AND CONDITIONS

1. The Parties consent to this Court’s exercise of subject matter jurisdiction over this action and personal jurisdiction over each of them.
2. The Defendants admit, acknowledge, and accept responsibility for the following conduct:
 - a. During the period 1999 to 2002, the Hospital sought and received reimbursement pursuant to Medicare for non-reimbursable costs relating to outpatient psychiatric visits conducted by Associates.

- b. During the period from on or about February 1998 through 2002, the Hospital and Associates overbilled the United States and New York State in connection with claims for reimbursement under Medicaid relating to outpatient psychiatric visits conducted by Associates; specifically, Associates submitted claims and received reimbursement under Medicaid for costs that were already included in, and reimbursed to the Hospital pursuant to, separate claims submitted by the Hospital.
- c. From 2003 through 2010, the Hospital submitted claims and received reimbursement under Medicaid relating to services furnished by physicians in the Hospital's outpatient mental health clinic. Department of Social Services regulations provide that “[t]he costs of routine physicians’ services are included in facilities’ rate or fee and shall not be billed separately.” The Hospital billed for such physician services separately, although the Hospital had removed the physician costs from its institutional cost report.

3. Conditioned upon the execution of the State Settlement Agreement, Defendants shall pay to the United States ONE MILLION TWO HUNDRED FIFTY-EIGHT THOUSAND ONE HUNDRED FIFTEEN DOLLARS AND SEVENTEEN CENTS (\$1,258,115.17) (the “U.S. Settlement Amount”) by electronic funds transfer pursuant to written instructions to be provided by United States Attorney’s Office for the Southern District of New York within 10 days of the Effective Date of this Stipulation.

4. Subject to the exceptions in Paragraph 6 (concerning excluded claims) below, and conditioned upon Defendants' full payment of the U.S. Settlement Amount, the United States releases Defendants and all of their predecessors, successors, and members together with their current and former officers, directors, trustees, agents, servants, and employees, affiliates, and assigns, and the successors and assigns of any of them (the "Defendant Releasees"), from any civil or administrative monetary claim the United States has for the Covered Conduct under the False Claims Act, 31 U.S.C. §§ 3729-3733; the Civil Monetary Penalties Law, 42 U.S.C. § 1320a-7a; the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801-3812; or the common law theories of payment by mistake, unjust enrichment, and fraud.

5. In consideration of the obligations of Defendants in this Stipulation and conditioned upon Defendants' full payment of the Settlement Amount, Relator for herself and for her heirs, successors, attorneys, agents, and assigns, and their respective heirs, successors, attorneys, agents, and assigns, fully and finally releases, waives, and forever discharges the Defendant Releasees from any civil monetary claims, liabilities, demands, actions or causes of action whatsoever, related to or arising in any way out of the Civil Action and the Federal Action, or any allegations contained therein, except for claims for expenses, attorneys' fees, or costs either already incurred or that may be incurred in the future in connection with the Federal Action and the Civil Action (including without limitation, pursuant to NYS Labor Law §§ 740 and 741, NYS Finance Law § 191, and 31 U.S.C. 3130(h)), which are the subject of a separate agreement between, among others, the Relator and Defendants. Relator does not release any rights she has to receive any earned wages or benefits to which Relator is entitled in accordance with the terms of the

Defendants' employee benefit plans. Relator's employment status is not to be affected by the terms of this paragraph. Relator and her Counsel represent and warrant they have not assigned, subrogated or transferred any claims or any interest in any claims falling within the scope of this paragraph.

6. Notwithstanding the releases given in paragraphs 4 and 5 of this Stipulation, or any other term of this Stipulation, the following claims of the United States are specifically reserved and are not released:

- a. Any liability arising under Title 26, U.S. Code (Internal Revenue Code);
- b. Any criminal liability;
- c. Except as explicitly stated in this Stipulation, any administrative liability, including mandatory or permissive exclusion from Federal health care programs;
- d. Any liability to the United States (or its agencies) for any conduct other than the Covered Conduct;
- e. Any liability based upon obligations created by this Stipulation;

7. Relator and her heirs, successors, attorneys, agents, and assigns shall not object to this Stipulation but agree and confirm that this Stipulation is fair, adequate, and reasonable under all the circumstances, pursuant to 31 U.S.C. § 3730(c)(2)(B). In connection with this Stipulation and this Civil Action, Relator and her heirs, successors, attorneys, agents, and assigns agree that neither this Stipulation, any intervention by the United States in the Civil Action in order to dismiss the Civil Action, nor any dismissal of the Civil Action, shall waive or otherwise affect the ability of the United States to contend

that provisions in the False Claims Act, including 31 U.S.C. §§ 3730(d)(3) and 3730(e), bar Relator from sharing in the proceeds of this Stipulation. Moreover, the United States and Relator and her heirs, successors, attorneys, agents, and assigns agree that they each retain all of their rights pursuant to the False Claims Act on the issue of the share percentage, if any, that Relator should receive of any proceeds of the settlement of her claims.

8. Defendants waive and shall not assert any defenses Defendants may have to any criminal prosecution or administrative action relating to the Covered Conduct that may be based in whole or in part on a contention that, under the Double Jeopardy Clause in the Fifth Amendment of the Constitution, or under the Excessive Fines Clause in the Eighth Amendment of the Constitution, this Stipulation bars a remedy sought in such criminal prosecution or administrative action. Nothing in this paragraph or any other provision of this Stipulation constitutes an agreement by the United States concerning the characterization of the Settlement Amount for purposes of the Internal Revenue laws, Title 26 of the United States Code.

9. Defendants fully and finally release the United States, its agencies, officers, agents, employees, and servants, from any claims (including attorney's fees, costs, and expenses of every kind and however denominated) that Defendants have asserted, could have asserted, or may assert in the future against the United States, its agencies, officers, agents, employees, and servants, related to the Covered Conduct and the United States' investigation and prosecution thereof.

10. In consideration of the obligations of Relator in this Stipulation, Defendants fully and finally release, waive, and forever discharge the Relator, her heirs, attorneys, agents, successors and assigns, from any and all claims, liabilities, demands,

actions or causes of action whatsoever related to the investigation and prosecution of the Civil Action by Relator, the United States and the State of New York. Defendants warrant and represent that they have not assigned or transferred any of their claims to any person, entity, or thing.

11. The Settlement Amount shall not be decreased as a result of the denial of claims for payment now being withheld from payment by or any Medicare contractor (*e.g.*, Medicare Administrative Contractor, fiscal intermediary, carrier) or any state payer, related to the Covered Conduct; and Defendants agree not to resubmit to any Medicare contractor or any state payer any previously denied claims related to the Covered Conduct, and agrees not to appeal any such denials of claims.

12. Defendants agree to the following:

a. Unallowable Costs Defined: All costs (as defined in the Federal Acquisition Regulation, 48 C.F.R. § 31.205-47; and in Titles XVIII and XIX of the Social Security Act, 42 U.S.C. §§ 1395-1395kkk and 1396-1396w-5; and the regulations and official program directives promulgated thereunder) incurred by or on behalf of Defendants in connection with:

- (1) the matters covered by this Stipulation;
- (2) the United States' audit(s) and civil investigation(s) of the matters covered by this Stipulation;
- (3) Defendants' investigation, defense, and corrective actions undertaken in response to the United States' audit(s) and civil investigation(s) in connection with the matters covered by this Stipulation (including attorney's fees);

- (4) the negotiation and performance of this Stipulation; and
- (5) the payment Defendants make to the United States pursuant to this Stipulation and any payments that Defendants may make to Relator, including costs and attorney's fees,

are unallowable costs for government contracting purposes and under the Medicare Program, Medicaid Program, TRICARE Program, and Federal Employees Health Benefits Program (FEHBP) (hereinafter referred to as Unallowable Costs).

b. Future Treatment of Unallowable Costs: Unallowable Costs shall be separately determined and accounted for in nonreimbursable cost centers by Defendants, and Defendants shall not charge such Unallowable Costs directly or indirectly to any contracts with the United States or any State Medicaid program, or seek payment for such Unallowable Costs through any cost report, cost statement, information statement, or payment request submitted by Defendants or any of their subsidiaries or affiliates to the Medicare, Medicaid, TRICARE, or FEHBP Programs.

c. Treatment of Unallowable Costs Previously Submitted for Payment: Defendants further agree that within 90 days of the Effective Date of this Stipulation they shall identify to applicable Medicare and TRICARE fiscal intermediaries, carriers, and/or contractors, and Medicaid and FEHBP fiscal agents, any Unallowable Costs (as defined in this Paragraph) included in payments previously sought from the United States, or any State Medicaid program, including, but not limited to, payments sought in any cost reports, cost statements, information reports, or payment requests already submitted by Defendants or any of their subsidiaries or affiliates, and shall request, and agree, that such cost reports, cost statements, information reports, or payment requests,

even if already settled, be adjusted to account for the effect of the inclusion of the Unallowable Costs. Defendants agree that the United States, at a minimum, shall be entitled to recoup from Defendants any overpayment plus applicable interest and penalties as a result of the inclusion of such Unallowable Costs on previously-submitted cost reports, information reports, cost statements, or requests for payment.

Any payments due after the adjustments have been made shall be paid to the United States pursuant to the direction of the Department of Justice and/or the affected agencies. The United States reserves its rights to disagree with any calculations submitted by Defendants or any of their subsidiaries or affiliates on the effect of inclusion of Unallowable Costs (as defined in this Paragraph) on Defendants or any of their subsidiaries or affiliates' cost reports, cost statements, or information reports.

d. Nothing in this Stipulation shall constitute a waiver of the rights of the United States to audit, examine, or re-examine the books and records of Defendants to determine that no Unallowable Costs have been claimed in accordance with the provisions of this Paragraph.

13. This Stipulation is intended to be for the benefit of the parties to the Civil Action and the Federal Action only. The Parties do not release any claims against any other person or entity, except to the extent provided for in Paragraph 14 (waiver for beneficiaries paragraph), below.

14. Defendants agree that they waive and shall not seek payment for any of the health care billings covered by this Stipulation from any health care beneficiaries or their parents, sponsors, legally responsible individuals, or third party payors based upon the claims defined as Covered Conduct.

15. After receipt of the payment described in Paragraph 2, above, the United States shall promptly file the appropriate papers to dismiss with prejudice the Federal Action.

16. Each Party shall bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Stipulation, except for Relator's claim for attorney's fees under 31 U.S.C. § 3730(d) and New York State Finance Law §§ 190(7) and 191(1).

17. Each party and signatory to this Stipulation represents that it freely and voluntarily enters in to this Stipulation without any degree of duress or compulsion.

18. This Stipulation is governed by the laws of the United States. The exclusive jurisdiction and venue for any dispute relating to this Stipulation is the United States District Court for the Southern District of New York. For purposes of construing this Stipulation, this Stipulation shall be deemed to have been drafted by all Parties to this Stipulation and shall not, therefore, be construed against any Party for that reason in any subsequent dispute.

19. This Stipulation constitutes the complete agreement between the Parties. This Stipulation may not be amended except by written consent of the Parties.

20. The undersigned counsel represent and warrant that they are fully authorized to execute this Stipulation on behalf of the persons and entities indicated below.

21. This Stipulation may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same Stipulation.


22. This Stipulation is binding on Defendants' successors, transferees, heirs, and assigns.

23. This Stipulation is binding on Relator's successors, transferees, heirs, and assigns.


24. The effective date of this Stipulation is the date upon which this Stipulation is entered by the Court (the "Effective Date").

Dated: New York, New York
~~January~~, 2013
February 4

PREET BHARARA
United States Attorney for the
Southern District of New York
Attorney for the United States of America

By: 
JOSEPH A. PANTOJA
Assistant United States Attorney
86 Chambers Street
New York, New York 10007
Tel.: 212.637.2785
Fax: 212.637.2750
joseph.pantoja@usdoj.gov

Dated: New York, New York
January __, 2013

By: 
PROSKAUER ROSE LLP
Edward S. Kornreich
Roger A. Cohen
Eleven Times Square
New York, NY 10036-8299
Tel.: 212.969.3395
Fax: 212.969.2900
Attorneys for Continuum Health Partners,
Inc., St. Luke's Roosevelt Hospital Center,
and SLR Psychiatric Associates

Dated: New York, New York
January __, 2013

Continuum Health Partners, Inc.

By: Stanley Breyell
Title: CEO

Dated: New York, New York
January __, 2013

St. Luke's Roosevelt Hospital Center

By: Stanley Breyell
Title: CEO

Dated: New York, New York
January __, 2013

SLR Psychiatric Associates

By: Stanley Breyell
Title:

Dated: New York, New York
January __, 2013

MENZ BONNER KOMAR
& KOENIGSBERG LLP
Attorneys for Lois Dorman

By: _____
DAVID A. KOENIGSBERG, ESQ.
444 Madison Avenue, 39th Floor
New York, NY 10022
Tel.: 212.223.2100
Fax: 212.223.2185
dkoenigsberg@mbkklaw.com

Dated: New York, New York
January __, 2013

Continuum Health Partners, Inc.

By: _____
Title:

Dated: New York, New York
January __, 2013

St. Luke's Roosevelt Hospital Center

By: _____
Title:


Dated: New York, New York
January __, 2013

SLR Psychiatric Associates

By: _____
Title:

Dated: New York, New York
January 31, 2013

MENZ BONNER KOMAR
& KOENIGSBERG LLP
Attorneys for Lois Dorman

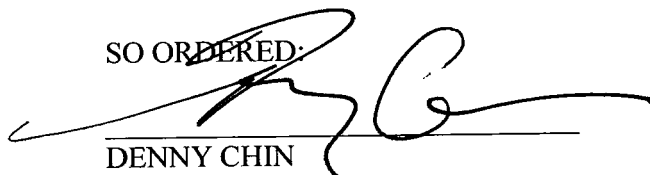
By: 

DAVID A. KOENIGSBERG, ESQ.
444 Madison Avenue, 39th Floor
New York, NY 10022
Tel.: 212.223.2100
Fax: 212.223.2185
dkoenigsberg@mbkklaw.com

Dated: New York, New York
January 31, 2013


LOIS DORMAN

SO ORDERED:



DENNY CHIN
UNITED STATES CIRCUIT JUDGE
(sitting by designation)

2-6-2013