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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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:
UNITED STATES OF AMERICA, :
:
Plaintiff, :
:
v. :
:
BETH ISRAEL MEDICAL CENTER, :
:
Defendant. :
-----X

12 Civ. 1510

STIPULATION AND ORDER OF SETTLEMENT AND DISMISSAL

ECF Case

I. PARTIES

This Stipulation and Order of Settlement and Dismissal (“Stipulation and Order”) is entered into by the United States of America (the “United States”), by its attorney, Preet Bharara, the United States Attorney for the Southern District of New York, and Beth Israel Medical Center (“Beth Israel”) (collectively referred to as “the Parties”), through their authorized representatives.

II. PREAMBLE

As a preamble to this Stipulation and Order, the Parties agree to the following:

A. Beth Israel is a New York not-for-profit corporation that operates a teaching hospital and other health care facilities, and provides medical care and related services to persons in New York City. Together with certain other affiliated hospitals, Beth Israel is a component of Continuum Health Partners, Inc. (“Continuum”).

B. Beth Israel submitted or caused to be submitted claims for payment to the Medicare Program (“Medicare”), Title XVIII of the Social Security Act, 42 U.S.C. §§ 1395-1395kkk-1.

C. Beth Israel also submitted annual institutional cost reports to the United States as required by Medicare.

D. The United States contends that, starting on February 21, 2002, and continuing through August 7, 2003, Beth Israel submitted or caused to be submitted false claims to the Government Health Care Programs for inpatient and outpatient outlier payments by increasing its charges for patient care such that, when adjusted to costs pursuant to the outlier statute and regulations, these charges no longer reasonably reflected or approximated Beth Israel's actual costs, resulting in increased inpatient and outpatient outlier payments. Hereinafter, the conduct described in this Paragraph is referred to as the "Covered Conduct."

E. Beth Israel hereby appears and consents to the entry of this Stipulation and Order.

F. Beth Israel admits, acknowledges and accepts responsibility for the following conduct alleged in the Complaint:

- (i) From February 21, 2002, and through August 7, 2003, as reflected in its Medicare cost reports, Beth Israel's Medicare charges increased faster than Beth Israel's Medicare costs increased during those same years.
- (ii) From February 21, 2002, and through August 7, 2003, Beth Israel increased its charges to obtain more outlier payments than it would have otherwise received. Beth Israel did so in part by selectively increasing its charges for services that tended to contribute more to Medicare outlier payments.
- (iii) As a result, Beth Israel received millions of dollars in Medicare outlier payments that it would not have received had it not increased its charges as substantially.

G. The Parties have reached a full and final settlement and compromise of the claims that the United States asserts in the Complaint in this action and agree and covenant as follows:

III. TERMS AND CONDITIONS

NOW, THEREFORE, upon the Parties' agreement, IT IS HEREBY ORDERED that:

1. The Parties hereto consent to this Court's exercise of subject matter jurisdiction over this action and personal jurisdiction over each of them.
2. Beth Israel agrees to the entry of a judgment against it and in favor of the United States (in the form attached as Exhibit A), in full compromise and satisfaction of the allegations against it set forth in the Complaint, for the sum of thirteen million thirty-one thousand three hundred and fifty-five dollars (\$13,031,355) (the "Settlement Amount").
3. The Settlement Amount shall constitute a debt due and owing to the United States upon the Effective Date of this Stipulation and Order and is to be discharged by payment to the United States within ten days of the Effective Date.
4. Subject to the exceptions in Paragraphs 7 and 19 below, and conditioned upon Beth Israel's timely payment in full of the Settlement Amount, the United States releases Beth Israel, its predecessors, successors, current and former officers, trustees, employees, agents and representatives (collectively "the released persons and entities") from any civil or administrative monetary claim the United States has against the released persons and entities 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, and the common law theories of payment by mistake, unjust enrichment and fraud.
5. Beth Israel agrees to release the United States, its agencies, departments, employees, servants and agents from any claims (including attorneys' fees, costs, and expenses

of every kind and however denominated) which Beth Israel has asserted, could have asserted, or may assert in the future against the United States, its agencies, departments, officers, employees, servants, and agents related to the matters covered by the Complaint, and the United States' investigation and prosecution thereof and this Stipulation and Order.

6. This Stipulation and Order is intended to be for the benefit of the parties to this Stipulation and Order only, and by this instrument the parties to this Stipulation and Order do not release any claims against any other person or entity, except as expressly provided by this Stipulation and Order.

7. Notwithstanding any term of this Stipulation and Order, including the release provided in Paragraphs 4 above, the following are specifically reserved and excluded from the scope and terms of this Stipulation and Order as to any entity or person:

- (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 and Order, any administrative liability, including permissive and mandatory 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 such obligations as are created by this Stipulation and Order; and
- (f) Any liability to the United States of any entity or person, including but not limited to any joint tortfeasor, that or who is not released by the terms of this Stipulation and Order.
- (g) Any civil or administrative liability of individuals (including current or former directors, officers, employees, agents, or shareholders of Beth Israel) who receive written notification that they are the target of a criminal investigation

(as defined in the United States Attorneys' Manual), are indicted or charged, or who enter into a plea agreement, related to the Covered Conduct.

8. Beth Israel waives and shall not assert any defenses Beth Israel 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 and Order bars a remedy sought in such criminal prosecution or administrative action.

9. Nothing in this Stipulation and Order 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.

10. Beth Israel shall be in default of this Stipulation and Order if it fails to make the payment set forth in Paragraph 2 on or before its due date. If Beth Israel fails to cure the default within ten (10) business days, interest shall accrue at the rate of 12% per annum compounded daily from the date of default on the remaining unpaid principal balance. Beth Israel shall consent to a Consent Judgment in the amount of the unpaid balance, and the United States, at its option, may: (i) rescind this Stipulation and Order and reinstate the Complaint filed in this action; (ii) seek specific performance of the Stipulation and Order; (iii) offset the remaining unpaid balance from any amounts due and owing Beth Israel by any department, agency or agent of the United States at the time of default; or (iv) exercise any other rights granted by law, or under the terms of this Stipulation and Order, or recognizable at common law or in equity. Beth Israel agrees not to contest any offset imposed and not to contest any collection action undertaken by the United States pursuant to this paragraph, either administratively or in any

State or Federal court. In addition, Beth Israel shall pay the United States all reasonable costs of collection and enforcement under this Paragraph, including attorney's fees and expenses.

11. In the event that the United States opts to rescind this Stipulation and Order pursuant to this Paragraph and/or Paragraph 10, Beth Israel expressly agrees not to plead, argue or otherwise raise any defenses under the theories of statute of limitations, laches, estoppel or similar theories, to any civil or administrative claims which relate to the Covered Conduct, except to the extent these defenses were available on the date of entry of this Stipulation and Order and taking into account any tolling agreement entered into by the United States and Beth Israel.

12. The Settlement Amount that Beth Israel must pay pursuant to Paragraph 2 of this Stipulation and Order shall not be decreased as a result of the denial of claims for payment now being withheld by any Medicare or Medicaid carrier or intermediary or any State payer, related to the Covered Conduct; and Beth Israel agrees not to resubmit to any Medicare or Medicaid carrier or intermediary or any State payer any previously denied claims related to the Covered Conduct, and shall not appeal any such denials of claims.

13. Beth Israel agrees that it waives and shall not seek payment for any health care services covered by this Stipulation and Order from any health care beneficiaries or their parents, sponsors or legally responsible individuals, or third party payors based upon the claims defined as Covered Conduct.

14. Beth Israel agrees to the following:

a. Unallowable Costs Defined: Unallowable Costs are all costs (as defined in the Federal Acquisition Regulation § 31.205-47, and in Titles XVIII and XIX of the Social Security Act, 42 U.S.C. §§ 1395-1395ggg and 1396-1396v, and the regulations and official

program directives promulgated thereunder) incurred by or on behalf of Beth Israel or its current or former officers, directors, employees, shareholders and agents in connection with:

- (1) the matters covered by this Stipulation and Order;
- (2) the United States' audit(s) and civil investigation(s) of the matters covered by Complaint in this action, and this Stipulation and Order;
- (3) Beth Israel's investigation, audit, defense, and corrective actions undertaken in response to the United States' audit(s) and civil investigations in connection with the matters covered by the Complaint, and this Stipulation and Order (including attorney's fees);
- (4) the negotiation and performance of this Stipulation and Order; and
- (5) the payment of the Settlement Amount by Beth Israel to the United States.

b. Future Treatment of Unallowable Costs: Unallowable Costs shall be separately determined and accounted for by Beth Israel, and Beth Israel will 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 Beth Israel or any of its subsidiaries, or affiliates to the Medicare, Medicaid, TRICARE, the Veterans Administration, or the Federal Employee Health Benefits (FEHBP) Programs.

c. Treatment of Unallowable Costs Previously Submitted for Payment: Beth Israel further agrees that within ninety (90) days of the Effective Date of this Stipulation and

Order, it will identify to applicable Medicare and TRICARE fiscal intermediaries, carriers, and/or contractors, VA and FEHBP fiscal agents, any Unallowable Costs 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 Beth Israel or any of its subsidiaries or affiliates, and will 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. Beth Israel agrees that the United States, at a minimum, will be entitled to recoup from Beth Israel 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 Beth Israel on the effect of inclusion of Unallowable Costs on Beth Israel's or any of its parent's, subsidiaries', or affiliates' cost reports, cost statements, or information reports.

d. Nothing in this Stipulation and Order shall constitute a waiver of the rights of the United States to examine Beth Israel's books and records to determine that no Unallowable Costs have been claimed in accordance with the provisions of this Paragraph.

15. Beth Israel expressly warrants that it has reviewed its financial situation and that it currently is solvent within the meaning of 11 U.S.C. § 547(b)(3) and 548(a)(1)(A) and 548(a)(1)(B)(ii)(I), and will remain solvent following its payment of the Settlement Amount to the United States hereunder. Further, the Parties expressly warrant that, in evaluating whether to execute this Stipulation and Order, they (i) have intended that the mutual promises, covenants,

and obligations set forth in this Stipulation and Order constitute a contemporaneous exchange for new value given to Beth Israel, within the meaning of 11 U.S.C. § 547(c)(1); and (ii) have concluded that these mutual promises, covenants, and obligations do, in fact, constitute such a contemporaneous exchange.

16. In the event that Beth Israel commences, or a third party commences, within 91 days of any payment under this Stipulation and Order, any case, proceeding, or other action (i) under any law relating to bankruptcy, insolvency, reorganization, or relief of debtors, seeking to have any order for relief of Beth Israel's debts, or seeking to adjudicate Beth Israel as bankrupt or insolvent; or (ii) seeking appointment of a receiver, trustee, custodian, or other similar official for Beth Israel or for all or any substantial part of Beth Israel's assets, Beth Israel agrees as follows:

a. Beth Israel's obligations under this Stipulation and Order may not be avoided pursuant to 11 U.S.C. §§ 547 or 548, and Beth Israel will not argue or otherwise take the position in any such case, proceeding, or action that: (i) Beth Israel's obligations under this Stipulation and Order may be avoided under 11 U.S.C. §§ 547 or 548; (ii) Beth Israel was insolvent at the time this Stipulation and Order was entered into, or became insolvent as a result of the payment made to the United States hereunder; or (iii) the mutual promises, covenants, and obligations set forth in this Stipulation and Order do not constitute a contemporaneous exchange for new value given to Beth Israel.

b. If Beth Israel's obligations hereunder are avoided for any reason, including, but not limited to, through the exercise of a trustee's avoidance powers under the Bankruptcy Code, the United States, at its sole option, may rescind its agreement to this Stipulation and Order, and bring any civil and/or administrative claim, action, or proceeding

against Beth Israel for the claims that would otherwise be covered by the releases provided in Paragraphs 4, above. If the United States chooses to do so, Beth Israel agrees that (i) it will not contend that any such claims, actions or proceedings brought by the United States (including any proceedings to exclude Beth Israel from participation in Medicare, Medicaid, or other Federal health care programs) are subject to an automatic stay pursuant to 11 U.S.C. § 362(a) as a result of the action, case, or proceeding described in the first clause of this Paragraph; (ii) it will not plead, argue or otherwise raise any defenses under the theories of statute of limitations, laches, estoppel, or similar theories, to any such civil or administrative claims, actions, or proceedings which are brought by the United States within thirty (30) calendar days of written notification to Beth Israel that the releases herein have been rescinded pursuant to this Paragraph, except to the extent such defenses were available on the date of entry of this Stipulation and Order and taking into account any tolling agreement entered into by the United States and Beth Israel; and (iii) the United States has a valid claim against Beth Israel and may pursue its claim, inter alia, in the case, action, or proceeding referenced in the first clause of this Paragraph, as well as in any other case, action, or proceeding.

c. Beth Israel acknowledges that its agreements as set forth in this Paragraph are provided in exchange for valuable consideration provided in this Stipulation and Order.

17. Each Party to this Stipulation and Order shall bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Stipulation and Order.

18. This Stipulation and Order is governed by the laws of the United States. The Parties agree that the exclusive jurisdiction and venue for any dispute arising between and among the Parties under this Stipulation and Order as it relates to this action shall be the United States

District Court for the Southern District of New York. For purposes of construing this Stipulation, the 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 and Order constitutes the complete agreement between the Parties. This Stipulation and Order may not be amended except by written consent of the Parties.

20. Subject to the exceptions in Paragraph 7, in consideration of the obligations of Beth Israel in this Stipulation and Order, conditioned upon Beth Israel's timely full payment of the Settlement Amount, this action shall be dismissed with prejudice as to Beth Israel. Provided, however, that the Court shall retain jurisdiction over this Stipulation and Order and each party to the extent the obligations herein remain unsatisfied by that party.

21. The individuals signing this Stipulation and Order on behalf of Beth Israel represent and warrant that they are authorized by Beth Israel to execute this Stipulation and Order. The undersigned United States signatories represent that they are signing this Stipulation and Order in their official capacities.

22. This Stipulation and Order may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same Stipulation and Order. Facsimiles of signatures shall constitute acceptable, binding signatures for purposes of this Stipulation and Order

23. Each party and signatory to this stipulation represents that it freely and voluntarily enters into this Stipulation and Order without any degree of duress or compulsion.

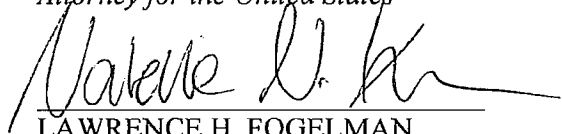
24. This Agreement is binding on the successors, transferees, heirs, and assigns of Beth Israel.

25. The "Effective Date" of this Stipulation and Order is the date on which this Stipulation and Order is entered by this Court.

Dated: New York, New York
February 28, 2012

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

By:



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Dated: Washington, D.C.
February __, 2012

PROSKAUER ROSE LLP
Attorneys for Beth Israel Medical Center

By:

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Proskauer Rose LLP
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New York, NY 10036-8299

25. The "Effective Date" of this Stipulation and Order is the date on which this Stipulation and Order is entered by this Court.

Dated: New York, New York
February __, 2012

PREET BHARARA
United States Attorney for the
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Dated: Washington, D.C.
February 29, 2012

PROSKAUER ROSE LLP
Attorneys for Beth Israel Medical Center

By:

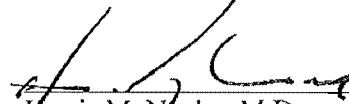
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Dated: New York, New York
February 28, 2012

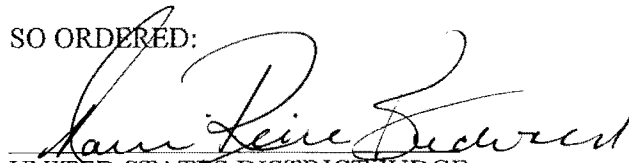
Beth Israel Medical Center

By:



Harris M. Nagler, M.D.
President

SO ORDERED:



UNITED STATES DISTRICT JUDGE