

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is entered into among the United States of America, acting through the United States Department of Justice and on behalf of the Office of Inspector General (“OIG-HHS”) of the Department of Health and Human Services (“HHS”) (collectively, the “United States”), and the State of New York acting through the Medicaid Fraud Control Unit of the Office of the Attorney General (“New York State”), on the one hand, and The New York and Presbyterian Hospital (“NYPH”), as successor by merger to NewYork-Presbyterian/Brooklyn Methodist formerly known as The New York Methodist Hospital (“Methodist”) (NYPH and Methodist are hereafter collectively referred to as the “Hospital”), and an affiliated professional corporation of the Hospital, Park Slope Medicine, P.C. (the “P.C.”), on the other hand (the United States, New York State, the Hospital and the P.C. are hereafter collectively referred to as “the Parties”), through their authorized representatives.

RECITALS

A. During the time period relevant to the Covered Conduct as defined in Paragraphs C and D below, Methodist was a not-for-profit, acute care community and teaching hospital that was affiliated with the P.C. The P.C. provided services at, among other places, offices located at 343 4th Avenue, Brooklyn, New York (the “Infusion Center”).

B. The United States and New York State contend that the P.C. and Methodist submitted or caused to be submitted claims for payment to the Medicare Program, Title XVIII of the Social Security Act, 42 U.S.C. §§ 1395-1395lll (“Medicare”), and the Medicaid Program, 42 U.S.C. §§ 1396-1396w-6 (“Medicaid”).

C. The United States and New York State contend that they have certain civil claims against the Hospital and the P.C. arising from the submission of claims to Medicare and Medicaid for reimbursement of items and services during the period from April 6, 2010 through October 31,

2015 (the “Relevant Time Period”) that (a) resulted from orders or referrals by physicians and physician entities that had improper arrangements which directly or indirectly compensated the physicians and physician entities based in whole or in part on the volume or value of, or reimbursement for, chemotherapy, infusion and other items and services that were ordered or referred to, or provided at, the Infusion Center and (b) involved instances in which physicians or qualified non-physician practitioners did not adequately supervise non-physician practitioners or other qualified assistants who provided chemotherapy, infusion and related items and services at the Infusion Center. The conduct described herein applies only with respect to the physicians’ and physician entities’ financial relationships with the P.C. and/or the Hospital that were related to chemotherapy, infusion and other items or services furnished at the Infusion Center. No other conduct is addressed herein.

D. The United States contends that it has certain additional civil claims against the Hospital and the P.C. arising from the submission of claims to the Medicare program during the Relevant Time Period.

1. The Hospital payments, whether made directly or indirectly by or through the P.C. to certain physicians, created a financial relationship between the physicians and Hospital and/or the P.C.; the physicians referred Medicare beneficiaries to the Hospital and/or the P.C. for chemotherapy, infusion and other items or services provided at the Infusion Center; and the Hospital and/or the P.C. furnished chemotherapy, infusion and other items or services that were ordered or referred to, or provided at, the Infusion Center by the physicians and submitted the respective claims to Medicare for those items or services. The financial relationship between the Hospital and/or the P.C. and the physicians did not satisfy any exception to the physician self-referral law, 42 U.S.C. § 1395nn (commonly referred to as the “Stark Law”). The physicians’

referrals to the Hospital and/or the P.C. for designated health services were, therefore, prohibited, and the submission of claims to the Medicare program for the improperly referred services violated the Stark Law.

2. Further, the P.C. payments whether made directly or indirectly to certain physicians created a financial relationship between the physicians and the Hospital and/or the P.C.; the physicians referred Medicare beneficiaries to the Hospital and/or the P.C. for chemotherapy, infusion and other items or services provided at the Infusion Center; and the Hospital and/or the P.C. furnished chemotherapy, infusion and other items or services ordered by the physicians and submitted the respective claims to Medicare for those items or services. The financial relationship between the Hospital and/or the P.C. and the physicians did not satisfy any exception to the Stark law. The physicians' referrals to the Hospital and/or P.C. for designated health services were, therefore, prohibited, and the submission of claims to the Medicare program for the improperly referred services violated the Stark Law. The conduct described herein applies only with respect to the physicians' financial relationships directly or indirectly with the P.C. and/or the Hospital or financial relationships that were related to chemotherapy, infusion and other items or services furnished at the Infusion Center and the Stark Law implications thereof. No other conduct is addressed herein.

E. That conduct in paragraphs C and D of this Agreement is referred to as the "Covered Conduct."

F. The P.C. and Methodist voluntarily self-disclosed the Covered Conduct to OIG-HHS on April 6, 2016.

G. 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 Hospital shall pay to the United States and the State a total of seventeen million, three hundred thousand dollars (\$17,300,000) (the “Total Settlement Amount”).

2. Of the Total Settlement Amount, the Hospital shall pay the United States sixteen million four hundred ten thousand dollars (\$16,410,000) (the “Federal Settlement Amount”). The Federal Settlement Amount shall be payable no later than forty-five (45) days after the Effective Date of this Agreement. The foregoing payment shall be by electronic funds transfer pursuant to written instructions to be provided by the Office of the United States Attorney for the Eastern District of New York. Of the Federal Settlement Amount, \$11,020,000 constitutes restitution.

3. The Hospital shall pay to New York State eight hundred and ninety thousand dollars (\$890,000) (“State Settlement Amount”). The State Settlement Amount shall be payable no later than forty-five (45) days after the Effective Date of this Agreement. The foregoing payment shall be pursuant to written instructions to be provided by the State of New York. Of the State Settlement Amount, \$580,000 constitutes restitution.

4. Subject to the exceptions in Paragraph 7 (concerning reserved claims) below, and upon the United States’ receipt of the Federal Settlement Amount, the United States releases the Hospital and the P.C. from any civil or administrative monetary claim the United States has for paragraphs C and D of 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; the civil monetary provisions of the Stark Law at 42 U.S.C. §§

1395nn(g)(3) and (g)(4); or the common law theories of payment by mistake, unjust enrichment, and fraud.

5. Subject to the exceptions in Paragraph 7 (concerning reserved claims) below, and upon New York State's receipt of the State Settlement Amount, New York State releases the Hospital and the P.C. from any civil monetary claim New York State has for paragraph C of the Covered Conduct under the New York False Claims Act, N.Y. State Fin. Law §§ 187-194; Social Services Law § 145-b; Executive Law § 63(12); Executive Law §63-c; Public Health Law §§ 238 and 238-a et seq.; or the common law theories of payment by mistake, unjust enrichment, and fraud.

6. Upon the United States' and New York State's receipt of full payment of the Federal and State Settlement Amounts, the OIG-HHS shall release and refrain from instituting, directing, or maintaining, any administrative action seeking exclusion from Medicare, Medicaid, and other Federal health care programs (as defined in 42 U.S.C. § 1320a-7b(f)) against the Hospital and/or the P.C. under 42 U.S.C. § 1320a-7a (Civil Monetary Penalties Law), the civil monetary penalty provisions of the Stark Statute, 42 U.S.C. §§ 1395nn(g)(3) and (4), or 42 U.S.C. § 1320a-7(b)(7) (permissive exclusion for fraud, kickbacks, and other prohibited activities) for the Covered Conduct, except as reserved in this paragraph and in Paragraph 7 (concerning reserved claims), below. Nothing in this paragraph precludes the OIG-HHS from taking action against entities or persons, or for conduct and practices, for which claims have been reserved in Paragraph 7, below.

7. Notwithstanding the releases given in Paragraphs 4, 5 and 6 of this Agreement, or any other term of this Agreement, the following claims and rights of the United States and the State of New York are specifically reserved and are not released:

- a. Any liability arising under Title 26, U.S. Code (Internal Revenue Code);

- b. Any liability arising under New York State tax revenue codes;
- c. Any criminal liability;
- d. Except as explicitly stated in this Agreement, any administrative liability or enforcement right, including mandatory exclusion from Federal health care programs and mandatory or permissive exclusion from the State's Medicaid Program;
- e. Any liability to the United States or New York State (or their agencies) for any conduct other than the Covered Conduct;
- f. Any liability for personal injury, patient abuse, or neglect, arising from the Covered Conduct;
- g. Any liability based upon obligations created by this Agreement; and
- h. Any liability of individuals.

8. The Hospital and the P.C. waive and shall not assert any defenses they 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 Agreement bars a remedy sought in such criminal prosecution.

9. The Hospital and the P.C. 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 the Hospital and the P.C. have asserted, could have asserted, or may assert in the future against the United States, and its agencies, officers, agents, employees, and servants related to the Covered Conduct and the United States' investigation and prosecution thereof.

10. The Hospital and the P.C. fully and finally release New York State, its agencies, officers, agents, employees, and servants, from any claims (including attorney's fees, costs, and expenses of every kind and however denominated) that the Hospital and the P.C. have asserted, could have asserted, or may assert in the future against New York State, and its agencies, officers, agents, employees, and servants related to the Covered Conduct and New York State's investigation and prosecution thereof.

11. The Federal and State Settlement Amounts shall not be decreased as a result of the denial of claims for payment now being withheld from payment by any Medicare contractor (e.g., Medicare Administrative Contractor, fiscal intermediary, carrier), the New York State Medicaid Program or any other state payer, related to the Covered Conduct; and the Hospital and the P.C. agree not to resubmit to any Medicare contractor or any state payer any previously denied claims related to the Covered Conduct, agree not to appeal any such denials of claims, and agree to withdraw any such pending appeals.

12. The Hospital agrees 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. §§ 1395-1395lll and 1396-1396w-5; and the regulations and official program directives promulgated thereunder) incurred by or on behalf of Methodist, its present or former officers, directors, employees, shareholders, and agents in connection with:
 - i. the matters covered by this Agreement;
 - ii. the United States' audit(s) and civil investigation(s) of the matters covered by this Agreement;

- iii. New York State's audit(s) and civil investigation(s) of the matters covered by this Agreement;
 - iv. NYPH's 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 Agreement (including attorneys' fees);
 - v. NYPH's investigation, defense, and corrective actions undertaken in response to the New York State's audit(s) and civil investigation(s) in connection with the matters covered by this Agreement (including attorneys' fees);
 - vi. the negotiation and performance of this Agreement; and
 - vii. the payment made to the United States pursuant to this Agreement;
- 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 by the Hospital, and the Hospital 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 the

Hospital or any of its subsidiaries or affiliates to the Medicare, Medicaid, TRICARE, or FEHBP Programs.

- c. Treatment of Unallowable Costs Previously Submitted for Payment: the Hospital further agrees that within 90 days of the Effective Date of this Agreement it 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 Methodist or any of its 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. The Hospital agrees that the United States and New York State, at a minimum, shall be entitled to recoup from the Hospital 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 and New York State reserve their rights to disagree with any calculations submitted by the Hospital or any of its subsidiaries or affiliates on the effect

of inclusion of Unallowable Costs (as defined in this paragraph) on Methodist's or any of its subsidiaries or affiliates' cost reports, cost statements, or information reports.

- d. Nothing in this Agreement shall constitute a waiver of the rights of the United States or the State of New York to audit, examine, or re-examine the Hospital's books and records to determine that no Unallowable Costs have been claimed in accordance with the provisions of this paragraph.

13. This Agreement is intended to be for the benefit of the Parties 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. The Hospital and the P.C. agree that they waive and shall not seek payment for any of the health care billings covered by this Agreement 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. Each Party shall bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

16. Each Party and signatory to this Agreement represents that it freely and voluntarily enters into this Agreement without any degree of duress or compulsion.

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

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

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

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

21. This Agreement is binding on the Hospital's and the P.C's. successors, transferees, heirs, and assigns.

22. All Parties consent to the United States and New York State's disclosure of this Agreement, and information about this Agreement, to the public.

23. This Agreement is effective on the date of signature of the last signatory to the Agreement (Effective Date of this Agreement). Facsimiles and electronic transmissions of signatures shall constitute acceptable, binding signatures for purposes of this Agreement.

[SIGNATURE PAGE TO FOLLOW]

THE UNITED STATES OF AMERICA

BREON PEACE
United States Attorney

DATED: 3/6/24

BY: 

MICHAEL S. BLUME
Assistant United States Attorney
Eastern District of New York

DATED: _____

BY: SUSAN GILLIN

Digitally signed by SUSAN
GILLIN
Date: 2024.03.06 11:29:08
-05'00'

SUSAN E. GILLIN
Assistant Inspector General for Legal Affairs
Office of Counsel to the Inspector General
Office of Inspector General
United States Department of Health and Human Services

THE STATE OF NEW YORK

LETITIA JAMES
Attorney General for the State of New York

DATED: _____

BY: _____

KONRAD F. PAYNE
Deputy Chief, Civil Enforcement Division
Office of the New York Attorney General

THE UNITED STATES OF AMERICA

BREON PEACE
United States Attorney

DATED: _____ BY: _____
MICHAEL S. BLUME
Assistant United States Attorney
Eastern District of New York

DATED: _____ BY: _____
SUSAN E. GILLIN
Assistant Inspector General for Legal Affairs
Office of Counsel to the Inspector General
Office of Inspector General
United States Department of Health and Human Services

THE STATE OF NEW YORK


LETITIA JAMES
Attorney General for the State of New York

DATED: 3/6/24 BY: _____
KONRAD F. PAYNE
Deputy Chief, Civil Enforcement Division
Office of the New York Attorney General

THE NEW YORK AND PRESBYTERIAN HOSPITAL


DATED: February 29, 2024

BY:



Steven J. Corwin, M.D.
President and Chief Executive Officer
The New York and Presbyterian Hospital

DATED: February 29, 2024

BY:


EPSTEIN BECKER & GREEN
875 Third Avenue
New York, NY 10022
Melissa L. Jampol, Esq.
Counsel for The New York and Presbyterian Hospital

DATED: February 29, 2024


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1227 25th St., N.W.
Washington, DC 20037
Carrie Valiant, Esq.
Counsel for The New York and Presbyterian Hospital

PARK SLOPE MEDICINE, P.C.

DATED: 2/26/24 BY: [REDACTED]
Stephen Peterson, M.D.
President
Park Slope Medicine, P.C.

DATED: February 29, 2024 BY: [REDACTED]
EPSTEIN BECKER & GREEN
875 Third Avenue
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Counsel for Park Slope Medicine, P.C.

DATED: February 29, 2024 BY: [REDACTED]
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