

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 of the Department of Health and Human Services (collectively, the “United States”); the Commonwealth of Massachusetts (the “Commonwealth”), acting through the Medicaid Fraud Division of the Office of Attorney General and on behalf of the Executive Office of Health and Human Services, limited to its role as the single state agency for Medicaid; and Dr. Tony Tannoury (“Dr. Tannoury”) (hereafter collectively referred to as “the Parties”), through their authorized representatives.

RECITALS

A. Dr. Tannoury is a resident of the Commonwealth of Massachusetts. Dr. Tannoury is an orthopedic surgeon who performs spine surgeries.

B. The United States contends that Dr. Tannoury caused the submission of false 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-5 (“Medicaid”).

C. The Commonwealth contends that Dr. Tannoury caused the submission of false claims for payment to Medicaid.

D. The United States and the Commonwealth contend that they have certain civil claims against Dr. Tannoury for causing the submission of false claims that resulted from violations of the Anti-Kickback Statute, 42 U.S.C. § 1320a-7b(b), and the Massachusetts Medicaid Anti-Kickback Statute, Mass. Gen. Laws c. 118E § 41. More specifically, the United States and the Commonwealth contend that, from at least July 2016 through February 2018 (the “Relevant Period”), Dr. Tannoury knowingly and willfully solicited and received free products,

worth over \$100,000, from DePuy Synthes, Inc. and DePuy Synthes Sales, Inc. (collectively “DePuy”), in return for his ordering, arranging for, and recommending the use of DePuy medical devices for his use in spine surgeries that he performed on Medicare and Medicaid patients in Massachusetts or to reward his usage of DePuy products in such surgeries in violation of the Anti-Kickback Statute, 42 U.S.C. § 1320a-7b(b) and the Massachusetts Medicaid Anti-Kickback Statute, Mass. Gen. Laws c. 118E § 41.

E. Dr. Tannoury admits, acknowledges, and accepts his responsibility for the following facts:

- (a) During the Relevant Period, Dr. Tannoury received products from DePuy for use in overseas surgeries. The products consisted of DePuy implants and instruments, including cages, rods, screws, plates, and a modular access and retraction system (the “Products”).
- (b) Dr. Tannoury used some of the Products in conducting spinal surgeries in the Middle East, including in the Kingdom of Saudi Arabia, Lebanon, and Qatar, for certain patients who were not Medicare or Medicaid beneficiaries.
- (c) In the countries where Dr. Tannoury operated overseas, hospitals and third-party sales distributors often did not have available the DePuy products Dr. Tannoury required for surgery. In those instances, Dr. Tannoury typically traveled to his destination with the Products that he received from DePuy in the United States.
- (d) During the Relevant Period, Dr. Tannoury performed at least five surgeries over the course of multiple trips to countries overseas, including the Kingdom of Saudi Arabia, Lebanon, and Qatar. Dr. Tannoury requested specific products, worth thousands of dollars, from DePuy for these overseas surgeries.

- (e) Dr. Tannoury has never personally paid DePuy for the Products that he received from DePuy in the United States for use in certain surgeries overseas. DePuy did not request payment from Dr. Tannoury.
- (f) During the Relevant Period, Dr. Tannoury used DePuy products in his spinal surgeries in Boston, Massachusetts, including in surgeries for Medicare and Medicaid beneficiaries for which Medicare and Medicaid paid claims.

The foregoing conduct in paragraphs D and E are hereinafter referred to as the “Covered Conduct.”

In consideration of the mutual promises and obligations of this Settlement Agreement, the Parties agree and covenant as follows:

TERMS AND CONDITIONS

1. Dr. Tannoury shall pay to the United States and the Commonwealth \$200,000.00, plus interest at a rate of 4.125% per annum from February 12, 2024, and continuing through the date of payment (“Settlement Amount”), no later than 15 days after the Effective Date of this Agreement. Of the Settlement Amount, \$100,000.00 is restitution. Dr. Tannoury will pay the Settlement Amount as follows:

- (a) Dr. Tannoury will pay the United States \$148,389.78 plus interest (“Federal Settlement Amount”), of which \$74,194.89 is restitution, by electronic funds transfer pursuant to written instructions to be provided by the United States Attorney’s Office.
- (b) Dr. Tannoury will pay the Commonwealth \$51,610.22 plus interest (“Commonwealth Settlement Amount”), of which \$25,805.11 is restitution, by electronic funds transfer pursuant to written instructions to be provided by the Massachusetts Attorney General’s Office.

2. Subject to the exceptions in Paragraph 4 (concerning reserved claims) below, and upon the United States' receipt of the Federal Settlement Amount, the United States releases Dr. Tannoury 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.

3. Subject to the exceptions in Paragraph 4 (concerning reserved claims), and conditioned upon the Commonwealth's receipt of the Commonwealth Settlement Amount, the Commonwealth releases Dr. Tannoury from any civil or administrative monetary claim the Commonwealth has for the Covered Conduct under the Massachusetts False Claims Act, M.G.L. c. 12, § 5A, *et seq.*; M.G.L. c. 118E, §§ 40, 41, and 44; the overpayment provisions of 130 C.M.R. §§ 450.237, 450.260(A), 450.260(I); or the common law theory of unjust enrichment.

4. Notwithstanding the releases given in Paragraphs 2 and 3 of this Agreement, or any other term of this Agreement, the following claims and rights of the United States and/or the Commonwealth 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 Agreement, any administrative liability or enforcement right, 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; and
- e. Any liability based upon obligations created by this Agreement.

5. Dr. Tannoury waives and shall not assert any defenses Dr. Tannoury 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 United States Constitution, or under the Excessive Fines Clause in the Eighth Amendment of the United States Constitution, this Agreement bars a remedy sought in such criminal prosecution or administrative action.

6. Dr. Tannoury fully and finally releases the United States, its agencies, officers, agents, employees, and servants, from any claims (including attorneys' fees, costs, and expenses of every kind and however denominated) that Dr. Tannoury has 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 or the United States' investigation or prosecution thereof.

7. Dr. Tannoury fully and finally releases the Commonwealth, its agencies, officers, agents, employees, and servants, from any claims (including attorneys' fees, costs, and expenses of every kind and however denominated) that Dr. Tannoury has asserted, could have asserted, or may assert in the future against the Commonwealth, its agencies, officers, agents, employees, and servants, related to the Covered Conduct or the investigation or prosecution thereof.

8. The Settlement Amount 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) or any state payer, related to the Covered Conduct; and Dr. Tannoury agrees not to resubmit to any Medicare or any state payer any previously denied claims related to the Covered Conduct, agrees not to appeal any such denials of claims, and agrees to withdraw any such pending appeals.

9. Dr. Tannoury 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 Dr. Tannoury in connection with:

- (1) the matters covered by this Agreement;
- (2) the United States' audit(s), civil investigation, and criminal investigation of the matters covered by this Agreement;
- (3) Dr. Tannoury's investigation, defense, and corrective actions undertaken in response to the United States' audit(s), civil investigation, and criminal investigation in connection with the matters covered by this Agreement (including attorneys' fees);
- (4) the negotiation and performance of this Agreement; and
- (5) the payment Dr. Tannoury makes 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 Dr. Tannoury, and Dr. Tannoury 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 Dr. Tannoury to the Medicare, Medicaid, TRICARE, or FEHBP Programs.

c. Treatment of Unallowable Costs Previously Submitted for Payment: Dr.

Tannoury further agrees that within 90 days of the Effective Date of this Agreement he 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 Dr. Tannoury, 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. Dr. Tannoury agrees that the United States, at a minimum, shall be entitled to recoup from Dr. Tannoury 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 Dr. Tannoury on the effect of inclusion of Unallowable Costs (as defined in this paragraph) on Dr. Tannoury's cost reports, cost statements, or information reports.

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

10. 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 11 (waiver for beneficiaries paragraph), below.

11. Dr. Tannoury agrees that he waives 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.

12. Each Party shall bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

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

14. This Agreement is governed by the laws of the United States. The exclusive jurisdiction and venue for any dispute relating to this Agreement is the United States District Court for the District of Massachusetts. 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.

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

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

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

18. This Agreement is binding on Dr. Tannoury's successors, transferees, heirs, and assigns.

19. All Parties consent to the United States' and Commonwealth's disclosure of this Agreement, and information about this Agreement, to the public.

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

THE UNITED STATES OF AMERICA

DATED: _____ BY: JESSICA WEBER
Digitally signed by JESSICA WEBER
Date: 2024.05.30 15:30:55 -04'00'

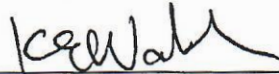
JESSICA J. WEBER
ANDREW A. CAFFREY, III
Assistant United States Attorneys
United States Attorney's Office
District of Massachusetts

DATED: 05/14/24 BY: SUSAN GILLIN
Digitally signed by SUSAN GILLIN
Date: 2024.05.14 11:25:00 -04'00'

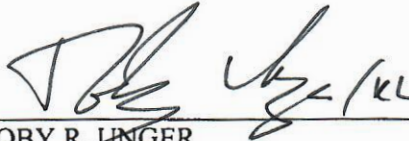
SUSAN GILLIN
Assistant Inspector General for Legal Affairs
Office of Counsel to the Inspector General
Office of Inspector General
United States Department of Health and Human Services

THE COMMONWEALTH OF MASSACHUSETTS

DATED: 5/29/24

BY: 
KATE WALSH
Secretary
Executive Office of Health and Human Services

DATED: 5/29/24

BY: 
TOBY R. UNGER
Chief, Medicaid Fraud Division
Health Care and Fair Competition Bureau
Office of the Attorney General
Commonwealth of Massachusetts

DR. TONY TANNOURY

DATED: 5/28/2024


BY:



DR. TONY TANNOURY

DATED: 5/28/24

BY:



THOMAS J. BUTTERS
Partner
Butters Brazilian LLP
Counsel for Dr. Tannoury