

Massachusetts-NAMS Settlement Agreement

SETTLEMENT AGREEMENT

This Settlement Agreement (or “Agreement”) is entered into among the Commonwealth of Massachusetts; North Atlantic Medical Services, Inc., d/b/a/Regional Home Care, Inc., North Atlantic Medical-Tolman Clinical Laboratory, and North Atlantic Medical (“NAMS”); and Konstantinos Gakis and Demetri Papageorgiou (“Relators”) (hereafter collectively referred to as “the Parties”), through their authorized representatives.

RECITALS

A. NAMS is a durable medical equipment (“DME”) company incorporated in Massachusetts. NAMS provides Medicare and Medicaid beneficiaries with respiratory therapy equipment and services, including oxygen therapy equipment and either continuous or bi-level positive airway pressure masks (“CPAP” or “BiPAP”) that are commonly used to treat sleep apnea.

B. On October 24, 2012, Relators filed a qui tam action in the United States District Court for the District of Massachusetts captioned *United States and the Commonwealth of Massachusetts ex rel. John Doe v. Regional Home Care, Inc. d/b/a North Atlantic Medical Services, North Atlantic Medical-Tolman Clinical Laboratory, and North Atlantic Medical*, Docket No. 1:12-cv-11979, pursuant to the qui tam provisions of the federal False Claims Act, 31 U.S.C. § 3730(b) and the Massachusetts False Claims Act, M.G.L. c. 12, §§5A *et seq.* (the “Civil Action”). The Relators alleged that NAMS was using unlicensed personnel to provide various respiratory therapy services, in violation of federal and state law.

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C. The Commonwealth of Massachusetts contends that NAMS submitted or caused to be submitted claims for payment to the Medicaid Program (“Medicaid”), 42 U.S.C. §§ 1396-1396w-5, for reimbursement for respiratory therapy services provided by unlicensed personnel.

D. The Commonwealth of Massachusetts contends that it has certain civil claims against NAMS arising from its use of unlicensed employees to set up and initiate oxygen therapy, as well as CPAP and BiPAP masks, for Medicaid beneficiaries during the period from September 7, 2010, to January 1, 2013, and arising from the related false claims for payments to the Medicaid program. Specifically, the Commonwealth of Massachusetts contends that NAMS used unlicensed “liaisons,” instead of licensed respiratory therapists, to set up sleep therapy equipment, and continued to do so after the Massachusetts Department of Public Health told NAMS this was unlawful. The Commonwealth of Massachusetts also contends that NAMS did not have licensed therapists provide follow-up visits to patients receiving oxygen therapy after the equipment was set up by unlicensed oxygen technicians. The Commonwealth of Massachusetts further contends that the unlicensed “liaisons” lacked the training and expertise of licensed respiratory therapists and were compensated by NAMS at lower rates. The Commonwealth of Massachusetts contends that, as a result of the foregoing conduct, NAMS knowingly caused false and/or fraudulent claims to be submitted to the Massachusetts Medicaid program. The conduct alleged in Paragraph D is referred to hereinafter as the “Covered Conduct.”

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E. This Settlement Agreement is neither an admission of liability by NAMS nor a concession by the Commonwealth of Massachusetts or Relators that their claims are not well founded.

F. Relators claim entitlement under M.G.L. c. 12, § 5F(1) to a share of the proceeds of this Settlement Agreement and to Relators' 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. No later than 7 days after the Effective Date of this Agreement, NAMS shall pay \$187,952.20 to the Commonwealth of Massachusetts and \$41,257.80 to Relators (collectively the "Settlement Amount"), by electronic funds transfer pursuant to written instructions to be provided by the Commonwealth of Massachusetts and Relators' counsel of record, respectively. Such payment to Relators shall constitute their share of the proceeds of the Settlement Amount pursuant to M.G.L. c. 12, § 5F(1).

2. NAMS shall also make a payment to Relators' counsel for Relators' expenses and their attorney's fees and costs, in the amount of \$30,000 (the "Relators' Costs"). This payment shall be no later than 7 days after the Effective Date of this Agreement and be made by electronic funds transfer pursuant to written instructions provided by Relators' counsel.

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3. In consideration of the obligations of NAMS in this Agreement, and conditioned upon NAMS' full payment of the Settlement Amount, the Commonwealth of Massachusetts hereby:

- a. releases NAMS and its employees and agents from any civil or administrative claim the Commonwealth of Massachusetts has or may have under the Massachusetts False Claims Act, M.G.L. c. 12, §§ 5A *et seq.*, M.G.L. c. 118E, §§ 39, 40, and 44, and/or any other statutory and/or common law claims, including but not limited to claims for payment by mistake, unjust enrichment, and fraud, for the Covered Conduct; and
- b. agrees to refrain from instituting, directing, or maintaining any civil or administrative action seeking exclusion and/or suspension of NAMS from the Massachusetts Medicaid program ("MassHealth") for the Covered Conduct. Nothing in this Agreement precludes the Commonwealth of Massachusetts from taking action against NAMS in the event that NAMS is excluded by the federal government, or for conduct and practices other than the Covered Conduct.

4. Subject to the exceptions in Paragraph 5 below, and conditioned upon NAMS' full payment of the Settlement Amount, payments due pursuant to Paragraph 2 above, and full payment of the Settlement Amount in the separate agreement among the United States, the Relators, and NAMS, Relators, for themselves and for their heirs, successors, attorneys, agents, and assigns, release NAMS from any civil monetary claim

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Relators have on behalf of the Commonwealth of Massachusetts for the Covered Conduct under the Massachusetts False Claims Act, M.G.L. c. 12, §§ 5A *et seq.*

5. Notwithstanding the releases given in Paragraphs 3 and 4 of this Agreement, or any other term of this Agreement, the following claims of the Commonwealth of Massachusetts are specifically reserved and are not released:

- a. Any liability arising under the Massachusetts revenue codes;
- b. Any criminal liability;
- c. Except as explicitly stated in this Agreement, any administrative liability, including mandatory or permissive exclusion from Federal health care programs;
- d. Any liability to the Commonwealth of Massachusetts (or its agencies) for any conduct other than the Covered Conduct;
- e. Any liability based upon obligations created by this Agreement;
- f. Any liability for personal injury or property damage or for other consequential damages arising from the Covered Conduct;
- g. Any civil or administrative liability that any person or entity, including NAMS, has or may have to the Commonwealth of Massachusetts or to individual consumers or state program payors under any statute, regulation or rule not expressly covered by the release in Paragraph 3 above, including but not limited to, any and all of the following claims: (i) State or federal antitrust violations; (ii) Claims involving unfair and/or deceptive acts and practices and/or violations of consumer protection laws;

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- h. Any liability which may be asserted on behalf of any other payors or insurers, including those claims by other payors or insurers that are paid by the Massachusetts Medicaid Program on a capitated basis;
- i. Any liability for express or implied warranty claims or other claims for defective or deficient products and services provided by NAMS;
- j. Any liability of individuals, except as stated in Paragraph 3.

6. Relators and their heirs, successors, attorneys, agents, and assigns shall not object to this Agreement but agree and confirm that this Agreement is fair, adequate, and reasonable under all the circumstances, pursuant to M.G.L. c. 12, § 5(D)(3). Conditioned upon Relators' receipt of the payment described in Paragraph 1, Relators and their heirs, successors, attorneys, agents, and assigns fully and finally release, waive, and forever discharge the Commonwealth of Massachusetts, its agencies, officers, agents, employees, and servants, from any claims based upon the filing of the Civil Action or under M.G.L. c. 12, §§ 5A *et seq.*, and from any claims to a share of the proceeds of this Agreement and/or the Civil Action.

7. Conditioned upon NAMS' full payment of the Settlement Amount, amounts due pursuant to Paragraph 2 above, and full payment of the Settlement Amount in the separate agreement among the United States, the Relators, and NAMS, Relators, for themselves and for their heirs, successors, attorneys, agents, and assigns, release NAMS, and its officers, agents, and employees, from any liability to Relators arising from the filing of claims on behalf of the Commonwealth of Massachusetts in the Civil Action, including claims under M.G.L. c. 12, §§ 5A *et seq.* for expenses or attorney's

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fees and costs. Relators do not release their claims under 31 U.S.C. §3730(h), which Relators and NAMS are resolving separately from this agreement.

8. NAMS waives and shall not assert any defenses NAMS 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, or under the Massachusetts analog to either, this Agreement bars a remedy sought in such criminal prosecution or administrative action. Nothing in this paragraph or any other provision of this Agreement constitutes an agreement by the Commonwealth of Massachusetts concerning the characterization of the Settlement Amount for purposes of the Internal Revenue laws, Title 26 of the United States Code, or Massachusetts revenue codes.

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

10. NAMS fully and finally releases the Relators and their attorneys and agents from any claims (including attorney's fees, costs, and expenses of every kind and however denominated) that NAMS has asserted, could have asserted, or may assert in the

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future against Relators, related to the Covered Conduct and Relators' investigation and prosecution thereof.

11. 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 payor, related to the Covered Conduct; and NAMS agrees not to resubmit to any Medicare contractor or any state payor any previously denied claims related to the Covered Conduct, and agrees not to appeal any such denials of claims.

12. 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 not covered by this Agreement, except to the extent provided for in Paragraph 13 (waiver for beneficiaries paragraph), below.

13. NAMS agrees that it 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.

14. Upon receipt of the payments described in Paragraph 1, above, other payments pursuant to Paragraph 2 above, and receipt of the payments recited in the separate agreement among the United States, NAMS, and the Relators ("Federal Agreement"), the Parties shall promptly sign and file in the Civil Action a Joint Stipulation of Dismissal of the Civil Action pursuant to Rule 41(a)(1) consistent with the terms and conditions of this Agreement and the Federal Agreement.

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15. Except as provided in Paragraph 2 above, 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 in to this Agreement without any degree of duress or compulsion.

17. 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.

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 NAMS' successors, transferees, heirs, and assigns.

22. This Agreement is binding on Relators' successors, transferees, heirs, and assigns.

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23. All parties consent to the disclosure of this Agreement, and information about this Agreement, to the public.

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

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THE COMMONWEALTH OF MASSACHUSETTS

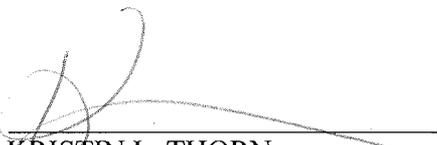
DATE: 11/10/14

BY: 
GEORGE ZACHOS
Assistant Attorney General
Chief, Medicaid Fraud Division
Business and Labor Bureau
One Ashburton Place, Room 1813
Boston, MA 02108-1518

For the Commonwealth of Massachusetts Medicaid Program:

EXECUTIVE OFFICE OF HEALTH AND
HUMAN SERVICES, OFFICE OF MEDICAID

DATED: 10/30/14

BY: 
KRISTIN L. THORN
Medicaid Director
Executive Office of Health and
Human Services
One Ashburton Place, 11th Floor
Boston, MA 02108

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North Atlantic Medical Services, Inc. – Defendant

DATED: 11/17/14

BY: Robert M. Carabott, PRESIDENT
NAMS SIGNATORY
ROBERT M. CARABOTT

DATED: 11/17/14

BY: Michael Angelini
Michael Angelini
Bowditch & Dewey LLP

Counsel for North Atlantic Medical Services, Inc.

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Konstantinos Gakis and Demetri Papageorgiou -- Relators

DATED: 11/24/14

BY: 
Konstantinos Gakis

DATED: _____

BY: _____
Demetri Papageorgiou

DATED: _____

BY: _____
SUZANNE E. DURRELL
Whistleblower Law Collaborative
Durrell Law Office
180 Williams Ave.
Milton, MA 02186
Counsel for the Relators

DATED: _____

BY: _____
ROBERT M. THOMAS, JR.
Whistleblower Law Collaborative
Thomas & Associates
20 Park Plaza Suite 833
Boston, MA 02116
Counsel for the Relators

Massachusetts-NAMS Settlement Agreement

Konstantinos Gakis and Demetri Papageorgiou -- Relators

DATED: _____

BY: _____
Konstantinos Gakis

DATED: 11-20-14

BY: Demetri Papageorgiou
Demetri Papageorgiou

DATED: _____

BY: _____
SUZANNE E. DURRELL
Whistleblower Law Collaborative
Durrell Law Office
180 Williams Ave.
Milton, MA 02186
Counsel for the Relators

DATED: _____

BY: _____
ROBERT M. THOMAS, JR.
Whistleblower Law Collaborative
Thomas & Associates
20 Park Plaza Suite 833
Boston, MA 02116
Counsel for the Relators

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Konstantinos Gakis and Demetri Papageorgiou -- Relators

DATED: _____ BY: _____
Konstantinos Gakis

DATED: _____ BY: _____
Demetri Papageorgiou

DATED: 11/20/14 BY: *Suzanne E. Durrell*
SUZANNE E. DURRELL
Whistleblower Law Collaborative
Durrell Law Office
180 Williams Ave.
Milton, MA 02186
Counsel for the Relators

DATED: _____ BY: _____
ROBERT M. THOMAS, JR.
Whistleblower Law Collaborative
Thomas & Associates
20 Park Plaza Suite 833
Boston, MA 02116
Counsel for the Relators

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Konstantinos Gakis and Demetri Papageorgiou -- Relators

DATED: _____

BY: _____
Konstantinos Gakis

DATED: _____

BY: _____
Demetri Papageorgiou

DATED: _____

BY: _____
SUZANNE E. DURRELL
Whistleblower Law Collaborative
Durrell Law Office
180 Williams Ave.
Milton, MA 02186
Counsel for the Relators

DATED: 11/21/14

BY: 
ROBERT M. THOMAS, JR.
Whistleblower Law Collaborative
Thomas & Associates
20 Park Plaza Suite 833
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Counsel for the Relators