

SETTLEMENT AGREEMENT

This Settlement Agreement (or “Agreement”) is entered into among the United States of America, acting through the United States Department of Justice (the “United States”); 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 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”). Relators alleged that NAMS was using unlicensed personnel to provide various respiratory therapy services, in violation of federal and state law.

C. The United States contends that NAMS 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, and the Medicaid Program (“Medicaid”), 42 U.S.C. §§ 1396-1396w-5, for reimbursement for respiratory therapy services provided by unlicensed personnel.

D. The United States 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 Medicare and Medicaid beneficiaries during the period from September 7, 2010, to January 1, 2013, and arising from the related false claims for payments to the Medicare and Medicaid programs. Specifically, the United States 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 United States 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 United States further contends that the unlicensed “liaisons” lacked the training and expertise of licensed respiratory therapists and were compensated by NAMS at lower rates. The conduct alleged in Paragraph D is referred to below as the “Covered Conduct.”

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

F. Relators claim entitlement under 31 U.S.C. § 3730(d) 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. NAMS shall pay to the United States \$623,168 (the "Settlement Amount") no later than 7 days after the Effective Date of this Agreement by electronic funds transfer pursuant to written instructions to be provided by the Civil Division of the United States Department of Justice.

2. Conditioned upon the United States receiving the Settlement Amount from NAMS and as soon as feasible after receipt, the United States shall pay \$112,170 to Relators' counsel of record by electronic funds transfer.

3. NAMS shall also make a payment to Relators' counsel for Relators' expenses and their attorney's fees and costs, in the amount of \$82,514.50 (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.

4. Subject to the exceptions in Paragraph 6 (concerning excluded claims) below, and conditioned upon NAMS' full payment of the Settlement Amount, the United States releases NAMS and its employees and agents 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. Subject to the exceptions in Paragraph 6 below, and conditioned upon NAMS' full payment of the Settlement Amount and the Relators' Costs, Relators, for themselves and for their heirs, successors, attorneys, agents, and assigns, release NAMS from any civil monetary claim Relators have on behalf of the United States for the Covered Conduct under the False Claims Act, 31 U.S.C. §§ 3729-3733.

6. Notwithstanding the releases given in Paragraphs 4 and 5 of this Agreement, or any other term of this Agreement, 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 Agreement, 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 Agreement;
 - f. Any liability for personal injury or property damage or for other consequential damages arising from the Covered Conduct;
- and

g. Any liability of individuals, except as stated in Paragraph 4.

7. 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 31 U.S.C. § 3730(c)(2)(B).

Conditioned upon Relators' receipt of the payment described in Paragraph 2, Relators and their heirs, successors, attorneys, agents, and assigns fully and finally release, waive, and forever discharge the United States, its agencies, officers, agents, employees, and servants, from any claims arising from the filing of the Civil Action or under 31 U.S.C. § 3730, and from any claims to a share of the proceeds of this Agreement and/or the Civil Action.

8. Conditioned upon NAMS' full payment of the Settlement Amount and Relators' Costs, 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 United States in the Civil Action and claims under 31 U.S.C. § 3730(d) for expenses or attorney's fees and costs. Relators do not release their claims under 31 U.S.C. §3730(h), which Relators and NAMS are resolving separate from this agreement.

9. 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, 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 United States concerning the characterization of the Settlement Amount for purposes of the Internal Revenue laws, Title 26 of the United States Code.

10. NAMS fully and finally releases 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 NAMS 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 and the United States' investigation and prosecution thereof.

11. NAMS fully and finally releases 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 future against Relators, related to the claims Relators filed on behalf of the United States and Relators' investigation and prosecution thereof, or under 31 U.S.C. § 3730(d) for expenses or attorney's fees and costs.

12. 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 NAMS agrees 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.

13. NAMS 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. §§ 1395-1395kkk-1 and 1396-1396w-5; and the regulations and official program directives promulgated thereunder) incurred by or on behalf of NAMS, its present or former officers, directors, employees, shareholders, and agents in connection with:

- (1) the matters covered by this Agreement;
- (2) the United States' audit(s) and civil investigation(s) of the matters covered by this Agreement;
- (3) NAMS' investigation, defense, and corrective actions undertaken in response to the United States' audit(s) and civil investigation in connection with the matters covered by this Agreement (including attorney's fees);
- (4) the negotiation and performance of this Agreement;
and
- (5) the payment NAMS makes to the United States pursuant to this Agreement; any payments that NAMS may make to Relators, including costs and attorneys fees; and any payments made to resolve the Massachusetts False Claims Act allegations related to the Covered Conduct;

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

c. Treatment of Unallowable Costs Previously Submitted for Payment: NAMS 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 NAMS 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. NAMS agrees that the United States, at a minimum, shall be entitled to recoup from NAMS 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 NAMS or any of its subsidiaries or affiliates on the effect of inclusion of Unallowable Costs (as defined in this Paragraph) on NAMS 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 to audit, examine, or re-examine NAMS' books and records to determine that no Unallowable Costs have been claimed in accordance with the provisions of this Paragraph.

14. 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 15 (waiver for beneficiaries paragraph), below.

15. 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.

16. Upon receipt of the Settlement Amount and Relators' Costs, the Parties shall promptly sign and file in the Civil Action a Joint Stipulation of Dismissal of claims,

other than Relator's claims under 31 U.S.C. § 3730(h), in the Civil Action, pursuant to Rule 41(a)(1).

17. Except as provided in Paragraph 3, each Party shall bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

18. 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.

19. 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.

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

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

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

23. This Agreement is binding on NAMS' successors, transferees, heirs, and assigns.

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

25. All parties consent to the United States' disclosure of this Agreement, and information about this Agreement, to the public.

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

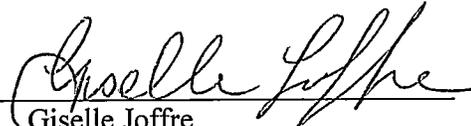
THE UNITED STATES OF AMERICA

DATED: _____

BY: _____

Ben Young
Trial Attorney
Commercial Litigation Branch
Civil Division
United States Department of Justice

DATED: 11/26/2014

BY: 

Giselle Joffre
Assistant United States Attorney
District of Massachusetts

THE UNITED STATES OF AMERICA

DATED: 12/1/2014

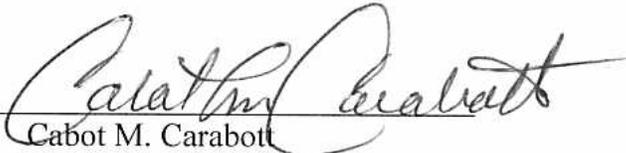
BY: *Ben Young*
Ben Young
Trial Attorney
Commercial Litigation Branch
Civil Division
United States Department of Justice

DATED: _____

BY: _____
Giselle Joffre
Assistant United States Attorney
District of Massachusetts

NAMS – Defendants

DATED: 11/25/14

BY: 
Cabot M. Carabott
President, NAMS

DATED: 11/25/14

BY: 
Michael Angelini
Bowditch & Dewey LLP

Counsel for NAMS

Konstantinos Gakis and Demetri Papageorgiou -- Relators

DATED: 11/21/14

BY: 
Konstantinos Gakis

DATED: _____

BY: _____
Demetri Papageorgiou

DATED: _____

BY: _____
Suzanne Durrell
Whistleblower Law Collaborative
Durrell Law Office
180 Williams Ave.
Milton, MA 02186

Counsel for Relators

DATED: _____

BY: _____
Robert M. Thomas, Jr.
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20 Park Plaza Suite 833
Boston, MA 02116

Counsel for Relators

Konstantinos Gakis and Demetri Papageorgiou -- Relators

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Konstantinos Gakis

DATED: 11-20-14

BY: Demetri Papageorgiou
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