UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA ex rel., ELEANOR T. HOBBS, M.D., COMMONWEALTH OF MASSACHUSETTS ex rel. ELEANOR T. HOBBS, M.D., and ELEANOR T. HOBBS, M.D., Plaintiffs, v. EAST BOSTON NEIGHBORHOOD HEALTH CENTER CORPORATION and BOSTON MEDICAL CENTER, Defendants.	CIVIL ACTION NO. _____ ***FILED IN CAMERA and UNDER SEAL***

COMPLAINT

INTRODUCTORY STATEMENT

1. Plaintiff, Eleanor T. Hobbs, M.D., brings this action on behalf of the United States of America under the *qui tam* provisions of the False Claims Act, 31 U.S.C. §§ 3729, *et seq*. ("Federal FCA"), and on behalf of the Commonwealth of Massachusetts under its False Claims Act, Mass. Gen. Laws ch. 12, §§ 5A, *et seq.* ("Massachusetts FCA"), alleging that the Defendants, East Boston Neighborhood Health Center Corporation and Boston Medical Center, have violated these laws by overbilling and causing the overbilling of federal and state government health insurance programs and the Massachusetts Uncompensated Care Pool for medical services. This overbilling arises from the submission of claims for the reimbursement of Urgent Care Department treatment at Emergency Department rates that are significantly higher than outpatient urgent care reimbursement rates, resulting in an illegal and fraudulent profit to the Defendants. Dr. Hobbs also brings this action on her own behalf for damages and other

relief as a result of her retaliatory termination by Defendant East Boston NHC.

JURISDICTION AND VENUE

2. This Court has jurisdiction over this action under the Federal FCA, 31 U.S.C. §§ 3732(a) and 3730(h), and 28 U.S.C. §§ 1331 and 1345, and has pendent jurisdiction over the Massachusetts FCA state law claims pursuant to 28 U.S.C. § 1367. The Defendants can be found in, reside in and transact business in this judicial district and acts proscribed by the Federal and Massachusetts FCAs have been committed by the Defendants in this judicial district.

3. To Plaintiff's knowledge, jurisdiction over this action is not barred by 31 U.S.C. § 3730(e) or Mass. Gen. Laws ch. 12, § 5G: there is no civil suit or administrative proceeding involving the allegations and transactions herein to which the United States or the Commonwealth of Massachusetts is a party; there has been no "public disclosure" of these allegations or transactions; and Plaintiff is the "original source" of the information on which these allegations are based.

4. Venue is appropriate as to the Defendants since the Defendants can be found in, resides in and transact business in this judicial district and acts proscribed by the Federal and the Massachusetts FCAs have been committed by the Defendants in this judicial district. Therefore, within the meaning of 28 U.S.C. §§ 1391(b) and (c) and 31 U.S.C. § 3732(a), venue is proper.

PARTIES

5. Plaintiff Eleanor T. Hobbs., M.D. ("Dr. Hobbs") is an individual with a principal place of residence in Lexington, Massachusetts. She brings this *qui tam* lawsuit as a "Relator" on behalf of the United States of America and the Commonwealth of Massachusetts under their respective FCAs. She further brings this action on her own behalf, for monetary and equitable relief under the anti-retaliation provisions of the federal and state FCAs. Dr. Hobbs is a 1974

graduate of Harvard Medical School and a licensed physician who has practiced medicine in Massachusetts for over 28 years. She is board certified in internal and emergency medicine. In addition to a number of prior clinical appointments, she worked in the Urgent Care Department of the Defendant East Boston Neighborhood Health Center from 1995 until June 2003.

6. East Boston Neighborhood Health Center Corporation ("EBNHC") is a nonprofit medical facility, founded in 1970, providing health care services primarily to the geographical areas of Chelsea, Revere, East Boston and Winthrop in Massachusetts. It is located at 10 Gove Street, East Boston, MA 02128. Its registered principal place of business is 79 Paris Street, East Boston, MA 02128. The facility provides a range of medical services including primary, specialty, preventative and urgent care. It is one of the largest health centers in New England, and employs a staff of over 750.

7. Boston Medical Center ("BMC") is a private, nonprofit, academic medical center located at One Boston Medical Center Place, Boston, MA 02118. The BMC is the primary teaching affiliate for Boston University School of Medicine. The BMC offers pediatric and adult care services from primary to family medicine and advanced specialty care. It also has the largest 24-hour Level 1 trauma center in New England. The BMC has two emergency rooms on its main campus: one located in the Menino Pavilion on Harrison Avenue (formerly known as Boston City Hospital) and one at the East Newton Street campus (the former University Hospital). BMC affiliate hospitals in Quincy and Newton also have emergency rooms.

8. In 1997 BMC founded "Boston HealthNet", an affiliation of medical services providers led by BMC. Boston HealthNet comprises BMC, Boston University School of Medicine and fifteen community health centers, including EBNHC. HealthNet is a tax-exempt organization under § 501(c)(3) of the Internal Revenue Service Code providing coverage to

MassHealth members. Through HealthNet BMC contracts with providers and hospital systems in Massachusetts to deliver care to more than 118,000 members in 216 towns and cities in Massachusetts.

THE MASSACHUSETTS UNCOMPENSATED CARE POOL

9. The Massachusetts Uncompensated Care Pool provides access to health care for low income uninsured and underinsured residents of Massachusetts. Established by statute in 1985, the Pool pays for medically necessary inpatient and outpatient services provided by hospitals and community health centers. Medical services provided to patients who are uninsured or underinsured are commonly referred to as "free care" or "uncompensated care." The Uncompensated Care Pool was conceived to alleviate the burden on medical facilities providing services to the poor and reimburses such free care according to a mathematical formula which weights the payment of these services according to the average costs of like services and the availability of funds.

10. Patients with family incomes under 200% of the Federal Poverty Guidelines are eligible for full free care, and those with family incomes between 200% and 400% are eligible for partial free care. Patients at any income level may also be eligible if medical costs deplete the family's income and resources so that the patient is unable to pay for necessary medical care.

11. The Uncompensated Care Pool is administered by the Massachusetts Division of Health Care Finance and Policy ("DHCFP"), an agency of the Commonwealth of Massachusetts within the Executive Office of Health and Human Services. DHCFP oversees the reimbursement of Hospitals and Community Health Centers from the Uncompensated Care Pool. Community Health Centers ("CHC's"), such as the EBNHC, are reimbursed through the Uncompensated Care Pool by a per-visit rate for "free care" medical services they provide to individuals. The

EBNHC provides approximately 250,000 patient visits per year, the majority on a free care basis, tapping the Uncompensated Care Pool and federal funds for reimbursement for these visits.

12. The Uncompensated Care Pool is primarily funded from three sources: Massachusetts hospitals; private health insurers; and the State and Federal governments. In the Fiscal Year 2002, these contributions were as follows: $170 million private sector hospitals; $100 million from private health insurers; $30 million from the Commonwealth of Massachusetts. In addition, the federal government awarded $70 million directly to the Commonwealth of Massachusetts Division of Medical Assistance to help fund uncompensated care expenses.

13. The $70 million in federal funds awarded to the Division of Medical Assistance in Fiscal Year 2002 was paid to two entities: Defendant Boston Medical Center, which received $52 million; and Cambridge Health Alliance, which received $18.2 million. Free care provided by these two hospitals is funded first by the federal funds via inter-governmental transfer, and the balance is then paid for by the Uncompensated Care Pool. In Fiscal Year 2002, Defendant Boston Medical Center received $96.9 million from the Uncompensated Care Pool in addition to the $52 million paid directly from Federal funds, a total of $148.9 million.

14. On information and belief EBNHC bills through and is reimbursed by Boston Medical Center for its provision of uncompensated care.

FEDERAL AND STATE HEALTH INSURANCE PROGRAMS

15. The Medicare Program, Title XVIII of the Social Security Act, 42 U.S.C. §§ 1395 *et seq*. ("Medicare"), is a Health Insurance Program administered by the Government of the United States that is funded by taxpayer revenue. The program is overseen by the United States Department of Health and Human Services (“HHS”) through the Centers for Medicare and

Medicaid Services ("CMS"). Medicare was designed to be a health insurance program and to provide for, among other things, the payment of hospital services, medical services and certain medications for persons over sixty-five (65) years of age and others who qualify under the terms and conditions of the Medicare Program. Payments made under the Medicare Program include payment for services which are reasonable and medically necessary for the diagnosis or treatment of an illness or injury.

16. The Medicaid Program, Title XIX of the Social Security Act, 42 U.S.C. §§ 1396-1396v ("Medicaid"), is a Health Insurance Program administered by the Government of the United States and the various individual States and is funded by State and Federal taxpayer revenue. Medicaid was designed to assist participating states in providing, among other things, hospital and medical services and prescription drugs to financially needy individuals who qualify for Medicaid.

17. The Civilian Health and Medical Program of the Uniformed Services ("CHAMPUS") (now known as "TRICARE"), 10 U.S.C. §§ 1071-1106, and the Civilian Health and Medical Program of the Veterans Administration ("CHAMPUS VA"), 38 U.S.C. section 613, provide benefits for health care services furnished by civilian providers, physicians, and suppliers to members of the Uniformed Services and to spouses and children of active duty, retired and deceased members. The program is administered by the Department of Defense and funded by the Federal Government. CHAMPUS pays for, among other items and services, tests and procedures and prescription drugs for its beneficiaries.

18. The Federal Employees Health Benefits Program ("FEHBP") provides health care benefits for qualified federal employees and their dependents. It pays for, among other items and services, tests and procedures and prescription drugs for its beneficiaries. (Together these

programs described in paragraphs 15 to 18 shall be referred to as "Government Health Care Programs.")

FEDERAL AND STATE LAWS

19. The Federal and Massachusetts False Claims Acts ("FCAs"), 31 U.S.C. § 3729(a)(1), and Mass. Gen. Laws ch. 12, § 5B(1), respectively, make "knowingly" presenting or causing to be presented to the United States or Massachusetts, respectively, any false or fraudulent claim for payment, a violation of law for which the affected government party may recover three times the amount of the damages the government sustains and a civil monetary penalty of between $5,000 and $10,000 per claim ($5,500 and $11,000 for claims made on or after September 29, 1999 under the Federal FCA).

20. The Federal and Massachusetts FCAs, 31 U.S.C. § 3729(a)(2), and Mass. Gen. Laws ch. 12, § 5B(2), respectively, make "knowingly" making, using, or causing to be used or made a false record or statement to get a false or fraudulent claim paid or approved by the United States or Massachusetts, respectively, a violation of law for which the affected government party may recover three times the amount of the damages the government sustains and a civil monetary penalty of between $5,000 and $10,000 per claim ($5,500 and $11,000 for claims made on or after September 29, 1999 under the Federal FCA).

21. The Federal and Massachusetts FCAs, 31 U.S.C. § 3729(a)(3), and Mass. Gen. Laws ch. 12, § 5B(3), respectively, make any person who conspires to defraud the United States or Massachusetts, respectively, by getting a false or fraudulent claim allowed or paid, liable for three times the amount of the damages the affected government party sustains and a civil monetary penalty of between $5,000 and $10,000 per claim ($5,500 and $11,000 for claims made on or after September 29, 1999 under the Federal FCA).

22. The Federal and Massachusetts FCAs, 31 U.S.C. § 3729(b), and Mass. Gen. Laws ch. 12, § 5A, respectively, define "knowing" or "knowingly" to mean that a person, with respect to relevant information: (1) has actual knowledge of the information; (2) acts in deliberate ignorance of the truth or falsity of the information; or (3) acts in reckless disregard of the truth or falsity of the information, and no proof of specific intent to defraud is required.

23. The Federal and Massachusetts FCAs, respectively, 31 U.S.C. § 3729(c), and Mass. Gen. Laws ch. 12, § 5A, define a "claim" to include any request or demand, whether under contract or otherwise, for money or property which is made to the government, its representative, contractor, grantee, or other person if the government party in question (*i.e.*, the United States or Massachusetts) provides any portion of the money or property which is requested or demanded, or if the Government will reimburse such contractor, grantee, or other recipient for any portion of the money or property which is requested or demanded.

24. Under the federal FCA, section 3730(h), an employee who is discharged, threatened, harassed or in any other manner discriminated against by his or her employer because of lawful acts the employee takes involving a potential violation of the federal FCA is entitled to bring an action and to obtain all relief necessary to make him or her whole, including damages, attorneys fees, and reinstatement.

25. Under the Massachusetts FCA, Mass. Gen. Laws ch. 12, § 5J, an employee who is discharged, threatened, harassed or in any other manner discriminated against by his or her employer because of lawful acts the employee takes involving a potential violation of the FCA is entitled to bring an action and to obtain all relief necessary to make him or her whole.

FACTUAL ALLEGATIONS

26. After serving as Medical Director of Emergency Medicine at the New England Deaconess Hospital, Dr. Hobbs joined EBNHC in 1995 as Medical Director of the Urgent Care Department. After the Center went through bankruptcy proceedings in late 1999-2000, the center became reorganized. Shortly thereafter, in 2001, Dr. Hobbs resigned as Medical Director of Urgent Care, but continued to work at EBNHC as an urgent care physician.

27. In the summer of 2002, Dr. Terry Patinkin, a licensed physician board certified in emergency and family practice, joined EBNHC as the new director of the Urgent Care Department, the position once held by Dr. Hobbs. Soon after Dr. Patinkin's arrival, he introduced a new billing procedure for urgent care services, involving the use of a form known as a "T" sheet. The "T" sheet is a checklist designed for emergency room use, in which the attending physician enters relevant medical data, provides a diagnosis and submits the "T" sheet to a medical billing professional for coding in accordance with the Current Procedural Terminology ("CPT"). Historically EBNHC urgent care physicians personally selected a CPT Evaluation and Management (E&M) code at the time of a patient visit. With the implementation of "T" sheets urgent care doctors were asked to change their practice and no longer enter the billing codes themselves. Rather, EBNHC's new leadership directed that the administration/billing department of the EBNHC would determine the billing code and fill out the billing paperwork on behalf of and not subject to the review of the physician who provided the service.

28. Prior to the implementation of "T" sheet documentation Dr. Patinkin held an urgent care staff meeting to explain the use of "T" sheets and the new billing procedure. Dr. Hobbs questioned the use of a tool (the "T" sheets) designed to optimize Emergency Department

coding and billing in an urgent care setting which Dr. Hobbs had believed to be billing outpatient E&M codes. Dr. Patinkin admitted that emergency care E&M codes were already in use at EBNHC to bill for urgent care physician services. He stated that the use of "T" sheets was a way for the EBNHC urgent care department to improve its revenue by ensuring the documentation required for optimal E&M coding.

29. Dr. Hobbs objected to this new procedure. She believed it was open to abuse, and she knew that if inflated claims were submitted, an attending physician such as herself could be held personally liable for any overbilling done under her or her name and "UPIN" (Unique Physician Identification Number). On January 23, 2003, Dr. Hobbs spoke privately with the Defendant EBNHC's Chief Medical Officer, Dr. James Taylor, about her concerns. Dr. Taylor assured her that her concerns were unfounded, but could not justify the new billing procedure to Dr. Hobbs' satisfaction.

30. On January 26, 2003, Dr. Hobbs wrote to Dr. Taylor asking for a written assurance that, in the event of overbilling in her name, she would be indemnified by her employer, EBNHC. Dr. Hobbs never received the assurances she sought. Instead, she was invited to a meeting, with Dr. Taylor, Dr. Patinkin and two representatives from the billing office, including the EBNHC billing compliance officer. At this meeting, Dr. Hobbs discovered that the majority of claims submitted for "about two years" by EBNHC for patients seen in the Urgent Care Department were coded and billed as services rendered as an Emergency Care Department. Dr. Hobbs had never been informed of this change from the previous practice of billing outpatient E&M codes which she personally selected on a billing sheet at the time of an urgent care patient visit. Consequently, improperly coded claims have been submitted in her name as well as those of other physicians at EBNHC.

31. At that meeting Dr. Hobbs was assured that Defendant BMC had "passed off on" and approved the use of ED codes for the reimbursement of urgent care at EBNHC. EBNHC operates under the hospital license of BMC. According to the Annual Report of the Uncompensated Care Pool, several community health centers of Boston HealthNet appear to receive funds directly from the Uncompensated Care Pool; EBNHC is not listed as one of them. Upon information and belief, EBNHC receives its funds through BMC, billing the Uncompensated Care Pool through BMC, which has the direct billing contact with the Uncompensated Care Pool and the federal government, and is reimbursed by BMC for its provision of uncompensated care.

32. Dr. Hobbs asked Dr. Patinkin how the EBNHC justified its practice of accepting outpatient visit level co-payments (rather than the much higher level emergency department co-payments) from private Health Maintenance Organizations ("HMOs") patients treated in the urgent care department if emergency department E&M codes were billed to their HMO insurers. He admitted that about 80% of the Urgent Care ("UC") claims were submitted using Emergency Department ("ED") E&M codes and 20% using outpatient E&M codes. Dr. Hobbs inquired as to who was billed using an ED E&M code and charge and who was billed using an outpatient E&M code and charge, and how the billing office made this determination. Dr. Patinkin admitted that this was determined by which payers would pay for the ED level codes and charges and which payers had traditionally refused to pay EBNHC for ED level codes and charges for medical services provided in its Urgent Care Department. He indicated that it was primarily private HMO's which refused to pay for ED levels of care, and they were billed using the outpatient codes, while the remaining "about 80%" were billed using ED E&M codes and charges. This 80% roughly corresponds to the percent of urgent care visits by patients in the

public payment system. The Uncompensated Care Pool was billed at the higher ED E&M coding levels, and the EBNHC was reimbursed accordingly. In this way, EBNHC was able to bill for, and receive, higher levels of reimbursement than legally allowed. The EBNHC bills approximately 38,000 patient visits per year through its Urgent Care Department. If, as EBNHC management itself indicated, 80 percent of these visits are upcoded to emergency room billing status, then approximately 60,000 patient visits have been upcoded in a two-year period. Dr. Hobbs estimates that the Defendants may receive as much as $50 to $100 per visit in additional funding as a result of this improper billing.

33. Dr. Hobbs was assured that Defendant BMC had approved the EBNHC urgent care billing procedures, which included the submission of ED codes for payment from the Uncompensated Care Pool. Dr. Taylor stated that he had "total confidence" in the EBNHC billing office and "the OIG (Office of Inspector General) would never come after us" because they were only interested in entities with "deep pockets."

34. Dr. Taylor stated that billing for ED levels of care at EBNHC was justified because the EBNHC Urgent Care Department was considered to be an off campus location of the Boston Medical Center Emergency Department. On information and belief, BMC and EBNHC does not credential EBNHC urgent care physicians as emergency physicians at BMC. On information and belief, EBNHC neither provides to nor requires of its urgent care physicians the substantially higher level of malpractice insurance required by a physician to practice in an emergency department in Massachusetts over that required to practice in an urgent care department.

35. Defendant EBNHC is not qualified to bill for or be reimbursed at Emergency Department rates because it does not provide Emergency Department care according to the law

of Massachusetts. An emergency department must be located within a hospital and listed on the license of that hospital, except when a non-hospital based emergency department qualifies as a "Satellite Emergency Facility" (SEF). A SEF must meet the requirements of 105 CMR 130.820 through 130.836. This is apparently the designation the defendants have used to justify the billing for ED levels of care. However, EBNHC fails to meet the criteria of a qualified SEF, as described below.

36. Under 105 CMR § 130.820-836, a SEF must be listed on a hospital license as an Emergency Department. On information and belief the EBNHC, which operates under the license of BMC, is not listed as an Emergency Department on the hospital license of BMC. In addition a SEF must meet the following criteria:

(a) the SEF must be authorized to accept ambulances 24 hours per day, 7 days per week (CMR 105 130.820). This is not the case at EBNHC. Ambulance services are not authorized by the Massachusetts Department of Public Health to transport ambulance patients to EBNHC except under very limited or unusual circumstances.

(b) all physicians working at an SEF must be board certified or board prepared in emergency medicine as recognized by the American Board of Emergency Medicine (ABEM) or the American Board of Osteopathic Emergency Medicine (ABOEM). (CMR 105 130.828) Board certification or preparation in emergency medicine is not required for employment as a physician in urgent care at EBNHC. A 2003 list of the 42 physicians credentialed to provide urgent care at EBNHC shows only 3 of the 42 had board certification or preparation in emergency medicine (one of whom was Dr. Hobbs).

(c) all physicians, physician assistants and nursing staff at an SEF must also perform emergency services at a full-service, hospital-based emergency department for at least 25% of

their total hours per year. (CMR 105 130.828 and 130.829) On information and belief, EBNHC failed to meet this criterion during the time periods in question.

(d) an SEF must have the following ancillary and support services, according to 105 CMR 130.834: on site basic diagnostic radiology available 24 hours per day; the capability of performing on site basic laboratory testing with results available in less than one hour; laboratory services capable of performing blood gas analysis and routine hematology and chemistry available 24 hours per day; radiology services, including CT scans and ultrasound with a clinically appropriate turnaround time from the ordering to the reporting of results (if done off-site the SEF must have in place appropriate transport protocols); and plain film radiography available on site with technicians available 24 hours per day. EBNHC does not provide 24 hour on site availability of radiology or laboratory services, does not provide any services for blood gas analysis, has no on site CT scanning, and its ultrasound services are limited to daytime weekday hours.

(e) an SEF must also have the following clinical services and equipment according to 105 CMR 130.835: the availability, at all times, of pediatric and adult code carts and other standard and specialty equipment described in the hospital's policies and procedures; surgical or other emergency consultative services available, on site or at an appropriate full service hospital, within 30 minutes of a decision that such services are warranted; written policies that assure that all transfers from the SEF are carried out in accord with all applicable state and federal laws and the Massachusetts Statewide Interfacility Transfer Guidelines; and a written list of the medical conditions and problems that are appropriate and inappropriate for ambulance transport to the SEF based on the capability of the SEF and regional point of entry plans. On information and belief the EBNHC meets or partially meets most of these criteria.

37. Both Defendants BMC and EBNHC knew or should have known, during the relevant time periods, that EBNHC did not qualify as a "Satellite Emergency Facility" of BMC under the applicable regulations. Nonetheless, by EBNHC's own admission, it billed tens of thousands of urgent care visits as emergency care visits, with the knowledge and participation of BMC.

38. After Dr. Hobbs learned of these practices and challenged them in January 2003 she remained unsatisfied with the unconvincing and incomplete answers provided to her by EBNHC. Sensing hostility from management, Dr. Hobbs feared that pressing them further for justification of their practices would place her at risk of losing her job. EBNHC did in fact begin to target Dr. Hobbs as a trouble-maker. On May 21, 2003 Dr. Hobbs was called into a meeting with Dr. Patinkin and Michael Mancusi, EBNHC Administrative Director of Urgent Care. At that meeting Dr. Hobbs was reprimanded about criticizing the management of the health center in a public area. Records of that meeting purport that the management of the health center sought to limit any negative impact Dr. Hobbs's disagreements with management might have among the workforce.

39. A further meeting, held on or about June 11, 2003, was convened at which Dr. James Taylor, Dr. B.J. Beck, Michael Mancusi, Tim Rogers, Linda Daily and Dr. Alan Frohlich were present. The notes of the meeting suggest a concern for morale in the work place but clearly state the underlying purpose of the meeting: "there was a recommendation ***to pursue a strategy of asking Dr. Hobbs for her resignation.***" (emphasis added) The notes of a meeting held two days later confirm this agenda: "***We continued to review and build upon the strategy to ask for her resignation.***" (emphasis added)

40. On June 13, 2003, Dr. Hobbs departed for ten days' vacation. The day she returned Dr. Hobbs was required to attend a personnel meeting in which she was taken to task for "disruptive behavior and attitude toward management." The following day, after nearly eight years of service and exceptional clinical performance at Defendant EBNHC, Dr. Hobbs was terminated, effective at the end of that working week: June 27, 2003.

41. Dr. Hobbs pursued an administrative appeal of her termination, which is at its final stage and has to date been unsuccessful. Her letter to the members of the Medical Executive Committee dated June 29, 2003, sets out her belief that the termination was, in part, due to her identification of fraudulent billings of urgent care under emergency department rates. Her appeal was heard by a committee of EBNHC physician managers, including Drs. James Pedulla, James Taylor, Terry Patinkin, Leslie Scherl, BJ Beck, Alan Frolich and Fran Keubler and was rejected. She has been unemployed since June, 2003.

LEGAL CLAIMS FOR RELIEF

COUNT ONE (BOTH DEFENDANTS)

VIOLATIONS OF THE FEDERAL FCA: 31 U.S.C. § 3729(a)(1)

42. Relator restates and realleges the allegations contained in paragraphs 1-41 above as if each were stated herein in their entirety and said allegations are incorporated herein by reference.

43. The Defendants knowingly presented and caused to be presented false or fraudulent claims to Government Health Care Programs, the Uncompensated Care Pool and the United States, all in violation of the False Claims Act, 31 U.S.C. § 3729(a)(1).

44. The United States paid said claims and has sustained damages because of these acts by the Defendants.

COUNT TWO (BOTH DEFENDANTS)

VIOLATIONS OF THE FEDERAL FCA: 31 U.S.C. § 3729(a)(2)

45. Relator restates and realleges the allegations contained in paragraphs 1-44 above as if each were stated herein in their entirety and said allegations are incorporated herein by reference.

46. The Defendants knowingly made, used or caused to be made or used false statements to get false or fraudulent claims paid by Government Health Care Programs, the Uncompensated Care Pool and the United States, all in violation of the False Claims Act, 31 U.S.C. § 3729(a)(2).

47. The United States paid said claims and has sustained damages because of these acts by the Defendant.

COUNT THREE (BOTH DEFENDANTS)

VIOLATIONS OF THE FEDERAL FCA: 31 U.S.C. § 3729(a)(3)

48. Relator restates and realleges the allegations contained in paragraphs 1-47 above as if each were stated herein in their entirety and said allegations are incorporated herein by reference.

49. The Defendants knowingly conspired with each other and their respective officers, employees, and agents, to defraud the United States by causing false and fraudulent claims to be allowed and paid, all in violation of the False Claims Act, 31 U.S.C. § 3729(a)(3).

50. The United States paid said claims and has sustained damages because of these acts by the Defendants.

COUNT FOUR (BOTH DEFENDANTS)

VIOLATIONS OF THE MASSACHUSETTS FCA

MASS. GEN. LAWS CH. 12, § 5B(1)

51. Relator restates and realleges the allegations contained in Paragraphs 1-50 above as if each were stated herein in their entirety and said allegations are incorporated herein by reference.

52. The Defendants knowingly presented and caused to be presented false and fraudulent claims to Government Health Care Programs, the Uncompensated Care Pool and the Commonwealth of Massachusetts, all in violation of the Massachusetts False Claims Act, Mass. Gen. Laws ch. 12, § 5B(1).

53. The Commonwealth of Massachusetts paid said claims and has sustained damages because of these acts by the Defendants.

COUNT FIVE (BOTH DEFENDANTS)

VIOLATIONS OF THE MASSACHUSETTS FCA

MASS. GEN. LAWS CH. 12, § 5B(2)

54. Relator restates and realleges the allegations contained in paragraphs 1-53 above as if each were stated herein in their entirety and said allegations are incorporated herein by reference.

55. The Defendants knowingly made, used and caused to be made, and used false statements to get false and fraudulent claims paid by Government Health Care Programs, the Uncompensated Care Pool and the Commonwealth of Massachusetts, all in violation of the Massachusetts False Claims Act, Mass. Gen. Laws ch. 12, § 5B(2).

56. The Commonwealth of Massachusetts paid said claims and has sustained damages because of these acts by the Defendants.

COUNT SIX (BOTH DEFENDANTS)

VIOLATIONS OF THE MASSACHUSETTS FCA

MASS. GEN. LAWS CH. 12, § 5B(3)

57. Relator restates and realleges the allegations contained in paragraphs 1-56 above as if each were stated herein in their entirety and said allegations are incorporated herein by reference.

58. The Defendants knowingly conspired with each other and their respective officers, employees, and agents, to defraud the Commonwealth of Massachusetts by causing false and fraudulent claims to be allowed and paid, all in violation of the Massachusetts False Claims Act, Mass. Gen. Laws ch. 12, § 5B(3).

59. The Commonwealth of Massachusetts paid said claims and has sustained damages because of these acts by the Defendants.

COUNT SEVEN (EAST BOSTON NHC ONLY)

VIOLATION OF THE FEDERAL FCA: 31 U.S.C. § 3729(h)

60. Relator restates and realleges the allegations contained in Paragraphs 1-59 above as if each were stated herein in their entirety and said allegations are incorporated herein by reference.

61. East Boston NHC discharged, threatened, harassed and otherwise discriminated against Relator because of her lawful acts involving a potential violation(s) of the False Claims Act by her then employer, East Boston NHC. By these actions East Boston NHC violated the anti-retaliation provisions of the False Claims Act, 31 U.S.C. § 3730(h).

62. Relator has been damaged as a direct result of these illegal actions. She has suffered economic harm, loss of income, and emotional injury.

COUNT EIGHT(EAST BOSTON NHC ONLY)

VIOLATIONS OF THE MASSACHUSETTS FCA

MASS. GEN. LAWS CH. 12, § 5J

63. Relator restates and realleges the allegations contained in Paragraphs 1-62 above as if each were stated herein in their entirety and said allegations are incorporated herein by reference.

64. EBNHC discharged, threatened, harassed and otherwise discriminated against Relator because of her lawful acts involving a potential violation(s) of the Massachusetts FCA by her then employer, EBNHC. By these actions EBNHC violated the anti-retaliation provisions of Mass. Gen. Laws ch. 12, § 5J.

65. Relator has been damaged as a direct result of these illegal actions. She has suffered economic harm, loss of income, and emotional injury.

PRAYERS FOR RELIEF

WHEREFORE, Dr. Hobbs, acting on behalf of and in the name of the United States of America and the Commonwealth of Massachusetts, and on her own behalf, prays that judgment be entered as follows:

1. In favor of the United States against both Defendants on Counts One through Three, for treble the amount of the United States' damages under federal False Claims Acts, plus the maximum civil penalties for violations of the federal FCA;

2. In favor of the Commonwealth of Massachusetts against both Defendants on Counts Four through Six, for treble the amount of the Commonwealth's damages under federal False Claims Acts, plus the maximum civil penalties for violations of the Massachusetts FCA.

3. In favor of Relator Dr. Hobbs under Counts One through Six for the maximum amount allowed as a relator's share pursuant to the Federal and Massachusetts FCAs, and for her reasonable expenses, attorneys' fees and costs necessarily incurred;

4. In favor of Relator Dr. Hobbs against Defendant EBNHC under Count Seven for all available damages and relief under 31 U.S.C. section 3730(h), including, without limitation, two times back pay plus interest (and prejudgment interest), reinstatement or in lieu thereof front pay, and compensation for any special damages, litigation costs, and attorneys' fees;

5. In favor of Relator Dr. Hobbs against Defendant EBNHC on Count Eight for all available damages and relief under the Massachusetts FCA, including, without limitation, two times back pay plus interest (and prejudgment interest), reinstatement or in lieu thereof front pay, and compensation for any special damages, including without limitation, litigation costs and attorneys' fees; and

6. For such other and further relief as this Court deems just and equitable.

PLAINTIFF DEMANDS A TRIAL BY JURY ON ALL COUNTS

Dated: November 21, 2003

Respectfully submitted,

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Robert M. Thomas, Jr. (BBO #645600)
Rory H. Delaney (BBO #655666)
THOMAS & ASSOCIATES
Federal Reserve Building
600 Atlantic Avenue, 12th Floor
Boston, MA 02210
(617) 371-1072

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Suzanne E. Durrell (BBO #139280)
180 Williams Avenue
Milton, Massachusetts 02186
(617) 333-9681