

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”); the New Jersey Office of the State Comptroller, Medicaid Fraud Division (the “OSC”); Dr. Dinesh Patel (“Dr. Patel”); Daxa Patel, Satish Mehtani and Edison Adult Medical Daycare (“Edison”). The United States, Dr. Patel, Daxa Patel, Satish Mehtani, and Edison, through their authorized representatives, are collectively referred to as the “Parties.”

RECITALS

As a preamble to this Agreement, the Parties agree to the following:

- A. Defendant Edison owns and operates an adult daycare facility located at 1655-150 Oak Tree Road, Edison, New Jersey 08820.
- B. Dr. Patel is an individual residing, doing business and practicing medicine in the State of New Jersey within the District of New Jersey. Dr. Patel is a former half-owner of Edison.
- C. Daxa Patel is an individual residing and doing business in the State of New Jersey within the District of New Jersey. Daxa Patel has a 50% ownership interest in Edison.
- D. Satish Mehtani is an individual residing and doing business in the State of New Jersey within the District of New Jersey. Satish Mehtani has a 50% ownership interest in Edison.
- E. On December 13, 2011, Dr. Patel was arrested and charged with accepting cash kickback payments from a diagnostic facility, in exchange for his referral of Medicare and Medicaid patients.
- F. On March 17, 2012, Dr. Patel was excluded by the State of New Jersey from participating in any capacity in the Medicaid program.

G. On March 22, 2012, Dr. Patel transferred his 50% ownership interest in Edison to his wife, Daxa Patel.

H. On September 19, 2012, Dr. Patel pled guilty to one count of violating the federal healthcare program anti-kickback statute for accepting cash kickback payments from a diagnostic facility, in exchange for his referral of patients. Dr. Patel was sentenced to three months in jail, two years' supervised release with three months of home confinement, and a fine of \$30,000.

I. On February 20, 2014, Dr. Patel was excluded by OIG-HHS from participating in any capacity in the Medicare, Medicaid, and all Federal health care programs as defined in section 1128B(f) of the Social Security Act for a period of five years.

J. The United States and the OSC contend that Edison, Dr. Patel, Daxa Patel, and Satish Mehtani submitted, or caused to be submitted, claims for payment to the Medicaid Program, 42 U.S.C. §§ 1396-1396w-5 ("Medicaid"). Edison, Dr. Patel, Daxa Patel, and Satish Mehtani hereafter may collectively be referred to as the Defendants.

K. Covered Conduct. The United States and the OSC contend that they have certain civil claims against Defendants for Defendants' improper billing and receipt of payments from Medicaid. Specifically, during the period from March 17, 2012 through August 4, 2015, Edison submitted claims to, and received payments from, Medicaid while Dr. Patel, an excluded Medicaid provider, provided administrative and management services to Edison.

Dr. Patel was excluded from participating in the Medicaid program on March 17, 2012, and federally excluded on February 20, 2014 for a period of five years. Immediately following his exclusion from participating in the Medicaid program, Dr. Patel transferred his 50% ownership interest in Edison to his wife, Daxa Patel. Dr. Patel, with full knowledge of the owners of Edison (Daxa Patel and Satish Mehtani), continued to participate in the administrative and management

services of Edison in violation of the terms of his exclusion. Despite Defendants' knowledge of Dr. Patel's exclusion and his participation in the management of Edison, Defendants continued to submit, or caused to submit, claims to, and receive payments from, Medicaid. The conduct described in this Paragraph K is referred to below as the "Covered Conduct."

L. This Agreement is neither an admission of any wrongdoing or any liability by Defendants, nor a concession by the United States or the State of New Jersey that their claims are not well founded.

M. 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 Agreement, the Parties agree and covenant as follows:

TERMS AND CONDITIONS

1. Defendants have agreed to pay the United States and the OSC Two million, seven hundred twenty-four thousand dollars (\$2,724,000), plus interest accrued at the rate of 2.375% from April 11, 2017 and continuing until and including the day full payment is made ("Interest"), no later than ten business days after the Effective Date of this Agreement, with each defendant contributing as follows:

(a) Edison shall pay the following sums plus interest at a rate of 2.375% from April 11, 2017: (1) One million, sixty-two thousand dollars (\$1,062,000) to the United States, and (2) One million, sixty-two thousand dollars (\$1,062,000) to the OSC ;

(b) Dr. Patel shall pay the following sums plus interest at a rate of 2.375% from April 11, 2017: (1) One Hundred Thousand Dollars (\$100,000) to the United States, and (2) One Hundred Thousand Dollars (\$100,000) to the OSC;

(c) Daxa Patel shall pay the following sums plus interest at a rate of 2.375% from April 11, 2017: (1) One Hundred Thousand Dollars (\$100,000) to the United States, and (2) One Hundred Thousand Dollars (\$100,000) to the OSC; and

(d) Satish Mehtani shall pay the following sums plus interest at a rate of 2.375% from April 11, 2017: (1) One Hundred Thousand Dollars (\$100,000) to the United States, and (2) One Hundred Thousand Dollars (\$100,000) to the OSC.

(e) The total of these sums (\$2,724,000) shall hereafter be referred to as the “Settlement Amount,” and the Settlement Amount plus Interest as described above shall hereafter be referred to as the “Settlement Proceeds.”

(f) The sums due to the United States as set forth in Paragraphs 1(a)-(d) shall be paid no later than ten days after the Effective Date of this Agreement by electronic funds transfer pursuant to written instructions to be provided by the United States Attorney’s Office for the District of New Jersey.

(g) Payments to the OSC in the amounts set forth in Paragraphs 1(a)-(d) shall be by certified check, bank check, or attorney trust made payable to “Treasurer, State of New Jersey,” and shall be delivered no later than ten days after the Effective Date of this Agreement to: Processing Bureau Treasurer, State of New Jersey, Division of Revenue, 200 Woolverton Street, Building 20 Lockbox 656, Trenton, New Jersey 08646. “Edison Adult Medical Daycare – OSC-MFD” must be included in the memo line of the check.

2. Subject to the exceptions in Paragraph 4 (concerning excluded claims) below, and conditioned upon Defendants’ full payment of the Settlement Proceeds, the United States releases Defendants 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 excluded claims) below, and conditioned upon Defendants' full payment of the Settlement Proceeds, the OSC releases Defendants from any civil or administrative monetary claims or enforcement actions the OSC has or could have asserted for the Covered Conduct under 1) the New Jersey False Claims Act (NJFCA), N.J.S.A. 2A:32C-1 to 18; 2) the common law theories of payment by mistake, unjust enrichment, and fraud; and 3) administrative sanctions under authority of N.J.S.A.30:4D and N.J.A.C.10:49-1.1 et seq., including suspension or termination of Edison's provider agreement or Medicaid managed care contracts. OSC shall not authorize any further recoveries for the Covered Conduct by any Medicaid Managed Care Organizations under contract with the N.J. Medicaid Program.

4. Notwithstanding the releases given in Paragraphs 2 and 3 of this Agreement, or any other term of this Agreement, the following claims of the United States and the OSC 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 or State health care programs;
- d. Any liability to the United States or the OSC (or their respective 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, other than Dr. Patel, Daxa Patel, and Satish Mehtani.

5. Defendants waive and shall not assert any defenses Defendants 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 or the OSC concerning the characterization of the Settlement Amount for purposes of the Internal Revenue laws, Title 26 of the United States Code.

6. Voluntary Exclusion:

a. In compromise and settlement of the rights of OIG-HHS to exclude Dr. Patel pursuant to 42 U.S.C. § 1320a-7(b)(7), based upon the Covered Conduct, Dr. Patel agrees to be excluded under this statutory provision from Medicare, Medicaid, and all other Federal health care programs, as defined in 42 U.S.C. § 1320a-7b(f), for a period of five (5) years. The exclusion shall be effective upon the Effective Date of this Agreement.

b. Such exclusion shall have national effect. Federal health care programs shall not pay anyone for items or services, including administrative and management services, furnished, ordered, or prescribed by Dr. Patel in any capacity while Dr. Patel is excluded. This payment prohibition applies to Dr. Patel and all other individuals and entities (including, for example, anyone who employs or contracts with Dr. Patel, and any daycare facility, hospital or

other provider where Dr. Patel provides services). The exclusion applies regardless of who submits the claim or other request for payment. Violation of the conditions of the exclusion may result in criminal prosecution, the imposition of civil monetary penalties and assessments, and an additional period of exclusion. Dr. Patel further agrees to hold the Federal health care programs, and all federal beneficiaries and/or sponsors, harmless from any financial responsibility for items or services furnished, ordered, or prescribed to such beneficiaries or sponsors after the effective date of the exclusion. Dr. Patel waives any further notice of the exclusion and agrees not to contest such exclusion either administratively or in any state or federal court.

c. Reinstatement to program participation is not automatic. If Dr. Patel wishes to be reinstated, Dr. Patel must submit a written request for reinstatement to the OIG in accordance with the provisions of 42 C.F.R. §§ 1001.3001-.3005. Such request may be made to the OIG no earlier than 120 days prior to the expiration of the five-year period of exclusion. Reinstatement becomes effective upon application by Dr. Patel, approval of the application by the OIG, and notice of reinstatement by the OIG. Obtaining another license, moving to another state, or obtaining a provider number from a Medicare contractor, a state agency, or a Federal health care program does not reinstate Dr. Patel's eligibility to participate in these programs.

7. Defendants fully and finally release the United States and the OSC, and their respective agencies, officers, agents, employees, and servants, from any claims (including attorneys' fees, costs, and expenses of every kind and however denominated) that Defendants have asserted, could have asserted, or may assert in the future against the United States and the OSC, and their respective agencies, officers, agents, employees, and servants, related to the Covered Conduct and the United States' and OSC's investigation and 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.*, a Medicare Administrative Contractor, fiscal intermediary, or carrier); or any state payer, related to the Covered Conduct; and Defendants agree not to resubmit to any Medicare contractor, or any state payer any previously denied claims related to the Covered Conduct, and agree not to appeal any such denials of claims, and agree to withdraw any such pending appeals.

9. Defendants agree 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 and 1396-1396w-5; and the regulations and official program directives promulgated thereunder) incurred by or on behalf of Defendants, their present or former officers, directors, employees, shareholders, and agents in connection with:

- (1) the matters covered by this Agreement;
- (2) the United States' and the OSC's audit(s) and civil and any criminal investigation(s) of the matters covered by this Agreement;
- (3) the Defendants' investigation, defense, and corrective actions undertaken in response to the United States' and the OSC's audit(s) and civil and any criminal investigation(s) in connection with the matters covered by this Agreement (including attorneys' fees);
- (4) the negotiation and performance of this Agreement; and
- (5) the payments Defendants make to the United States and the OSC 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 Defendants, and Defendants shall not charge such Unallowable Costs directly or indirectly to any contracts with the United States, the OSC 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 Defendants to the Medicare, Medicaid, TRICARE, or FEHBP Programs.

c. Treatment of Unallowable Costs Previously Submitted for Payment: Defendants further agree that within 90 days of the Effective Date of this Agreement they shall identify to applicable Medicare and TRICARE fiscal intermediaries, carriers, or contractors, and Medicaid, the OSC 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 Defendants or any of their 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. Defendants agree that the United States and the OSC, at a minimum, shall be entitled to recoup from Defendants 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 and/or the OSC pursuant to the direction of the Department of Justice or the OSC, respectively, and/or the affected agencies. The United States and the OSC reserve their rights to disagree with any calculations submitted by Defendants or any of its subsidiaries or affiliates on the effect of inclusion of Unallowable Costs (as defined in this Paragraph) on Defendants' 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 OSC to audit, examine, or re-examine Defendants' books and records to determine that no Unallowable Costs have been claimed in accordance with the provisions of this Paragraph.

10. Defendants agree to cooperate fully and truthfully with the United States' or the OSC's investigation of individuals and entities not released in this Agreement. Upon reasonable notice, Defendants shall encourage, and agree not to impair, the cooperation of its directors, officers, and employees, and shall use its best efforts to make available, and encourage, the cooperation of former directors, officers, and employees for interviews and testimony, consistent with the rights and privileges of such individuals. Defendants further agree to furnish to the United States or the OSC, upon request, complete and unredacted copies of all non-privileged documents, reports, memoranda of interviews, and records in its possession, custody, or control concerning any investigation of the Covered Conduct that it has undertaken, or that has been performed by another on its behalf.

11. 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 12 (waiver for beneficiaries' paragraph), below.

12. Defendants 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.

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

14. 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.

15. This Agreement is governed by the laws of the United States and the State of New Jersey. The exclusive jurisdiction and venue for any dispute relating to this Agreement is the United States District Court for the District of New Jersey, except that disputes only between the OSC and the Defendants will be resolved in the Office of Administrative Law or the Superior Court of the State of New Jersey, as applicable. 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.

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

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

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

19. This Agreement is binding on Defendants and their successors, transferees, heirs, and assigns.


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

21. 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.

ON BEHALF OF THE UNITED STATES OF AMERICA

DATED: 9/27/17 BY: Nicole Mastroiери
NICOLE F. MASTROPIERI
Assistant U.S. Attorney
United States Attorney's Office
District of New Jersey

APPROVED:



JACOB T. ELBERG
Chief, Health Care & Government Fraud Unit
United States Attorney's Office
District of New Jersey

DATED: _____ BY: _____
LISA M. RE
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

ON BEHALF OF THE UNITED STATES OF AMERICA

DATED: _____

BY: _____

NICOLE F. MASTROPIERI
Assistant U.S. Attorney
United States Attorney's Office
District of New Jersey

APPROVED:

JACOB T. ELBERG
Chief, Health Care & Government Fraud Unit
United States Attorney's Office
District of New Jersey

DATED: 9/27/17

BY: Lisa M. Re

LISA M. RE
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

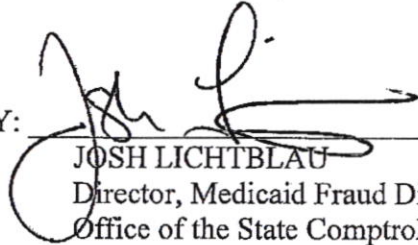
ON BEHALF OF THE STATE OF NEW JERSEY

PHILIP JAMES DEGNAN
STATE COMPTROLLER

DATED:

9/18/17

BY:



A handwritten signature in black ink, appearing to read 'Josh Lichtblau', is written over a horizontal line. The signature is stylized and cursive.

JOSH LICHTBLAU
Director, Medicaid Fraud Division
Office of the State Comptroller

ON BEHALF OF EDISON ADULT MEDICAL DAYCARE

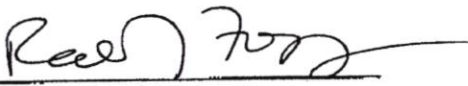
DATED: 9/25/17

BY: 
SATISH MEHTANI

DATED: 9-15-17

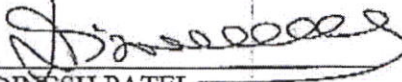
BY: 
DAXA PATEL


DATED: 9-25-17

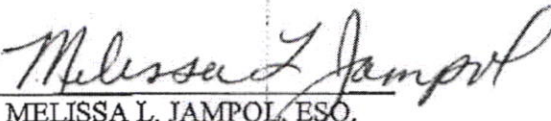
BY: 
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101 Carnegie Center, Suite 300
Princeton, New Jersey 08540

Counsel for Edison Adult Medical Daycare

ON BEHALF OF DR. DINESH PATEL

DATED: Sept 15 2017 BY: 
DINESH PATEL

DATED: September 15, 2017 BY: 
STEVEN D. FELDMAN, ESQ.
Murphy & McGonigle, P.C.
1185 Avenue of the Americas, 21st Flr.
New York, New York 10036

DATED: September 15, 2017 BY: 
MELISSA L. JAMPOL, ESQ.
Epstein Becker & Green, P.C.
250 Park Ave.
New York, New York 10177

Counsel for Dr. Dinesh Patel

ON BEHALF OF DAXA PATEL

DATED: 9-15-17 BY: *Daxa Patel*
DAXA PATEL

DATED: 9/17/17 BY: *Nicholas C. Harbist*
NICHOLAS C. HARBIST, ESQ.
Blank Rome LLP
301 Carnegie Center
Princeton, New Jersey 08540


Counsel for Daxa Patel

ON BEHALF OF SATISH MEHTANI

DATED: 9/22/17

BY: 
SATISH MEHTANI

DATED: 9/22/17

BY: 
DENIS F. DRISCOLL, ESQ.
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Counsel for Satish Mehtani