

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA ex rel.)
MIDWEST TAXPAYERS AGAINST)
FRAUD, An Illinois Not-For-Profit)
Corporation and ROBERT B. RAMIREZ,)
an individual,)

Plaintiffs,)

v.)

JACKSON PARK HOSPITAL FOUNDATION,)
an Illinois Not-For-Profit)
Corporation and LOIS B. COLLINS,)
M.D., an individual,)

Defendants.)

No. 96 C 2634

Judge Gottschall

SETTLEMENT AGREEMENT AND RELEASE

This SETTLEMENT AGREEMENT AND RELEASE is entered into this 18th day of August, 1997, by and between the United States of America, acting through the United States Attorneys' Office for the Northern District of Illinois and the Department of Justice, and on behalf of the Office of Inspector General of the United States Department of Health and Human Services and Jackson Park Hospital Foundation ("Jackson Park Hospital") (hereinafter jointly referred to as "the Parties.").

Factual Background

1. Jackson Park Hospital is an Illinois not-for-profit corporation which operates an inpatient and outpatient facility located at 7531 South Stony Island Avenue, Chicago, Illinois.

60649.

2. Midwest Taxpayers Against Fraud, an Illinois not-for-profit corporation and Robert RAMIREZ ("the Relators") are residents of Illinois. On May 2, 1996, the Relators filed a qui tam action in the United States District Court for the Northern District of Illinois, entitled United States ex rel. Midwest Taxpayers Against Fraud et al. v. Jackson Park Hospital Foundation et al., Civil No. 96 C 2634, (the "Civil Action"). The Relators amended the complaint in September 1996. Pursuant to 31 U.S.C. § 3730(b), the United States of America (the "United States") intervened in the Civil Action on April 22, 1997, and assumed primary responsibility for the prosecution of Count Three of the complaint. The United States filed an amended complaint as to Count Three on May 30, 1997.

3. This agreement addresses the United States' civil and administrative monetary claims against Jackson Park Hospital, and all claims the Relators have or may have against Jackson Park Hospital and all named defendants, and for a share of the proceeds of this action based on the conduct described in Paragraphs E and the conduct alleged in the United States Amended Complaint and Count Three of the complaint filed by the Relators.

4. As part of this agreement, the Relators agree to dismiss with prejudice the remaining counts of their original amended complaint, specifically Counts One, Two and Four.

5. The United States alleges that Jackson Park Hospital through its authorized agent, Dr. Lois Collins, submitted claims for payment to:

(a). The Medicaid Program, a federally assisted grant program, operated on the federal level by the Health Care Finance Administration ("HCFA");

(b). The State of Illinois, through the Illinois Department of Public Aid (IDPA), which receives fifty percent (50%) of its Medicaid funds from the federal government. 305 ILCS § 35/1-2(5).

6. On February 2, 1979, Jackson Park submitted an "Illinois Department of Public Aid: Medicaid Management Information System Hospital Enrollment Form" to IDPA, requesting approval to become a participating Medicaid hospital. Jackson Park was assigned Medicaid Provider Identification Number 362448028001.

7. Jackson Park executed an "Illinois Department of Public Aid Agreement For Participation In The Illinois Medical Assistance Program.

8. The Illinois Department of Alcoholism and Substance Abuse ("DASA") governs drug and alcohol abuse services for IDPA. Jackson Park was certified to render DASA services on July 21, 1993. Dr. Collins submitted a "Medicaid Management Information System Enrollment Application" to IDPA on May 20, 1995. On June 1, 1995 Collins was assigned provider number 036067435.

9. Jackson Park through its authorized agent, Dr. Collins, began performing acupuncture as part of their outpatient rehabilitation program for chemical dependency in December 1995.

10. The Illinois Department of Public Aid Medical Assistance Handbook - Handbook for Hospitals, § H-204 (1993)

states: "Services for which medical necessity is not clearly established are not covered by the Medical Assistance Program Additionally, the following hospital services are excluded from coverage in the Medical Assistance Program and payment cannot be made for the provision of these services ...[a]cupuncture"

11. The United States alleges that Jackson Park and Collins caused fraudulent Medicaid reimbursement claims to be submitted to IDPA for services they knew, should have known, or in reckless disregard for the truth knew were not covered under Medicaid regulations.

12. As a direct result of the false claims submitted by or caused to be submitted by Jackson Park and Collins to IDPA, Jackson Park received \$21,238.48 for 1,194 fraudulent services rendered from July 1, 1995 through June 30, 1996.

13. The Relators and Jackson Park Hospital have settled the remaining claims and allegations set out in the Relators amended complaint (Counts One, Two and Four) in that those counts will be dismissed with prejudice. By separate agreement, the Relators and Jackson Park have also compromised attorneys fees, costs and expenses to which the Relators may be entitled under the False Claims Act.

14. Wishing to avoid the delay, expense, inconvenience and the uncertainty of protracted litigation, the Parties hereby reach a full and final settlement, except as reserved below, of all civil and administrative monetary claims the United States, the Relators have or may have against Jackson Park Hospital based

on the conduct alleged in the United States Amended Complaint and the conduct described in Count Three of the Relators amended complaint and Paragraph E of this Agreement and a full and final settlement of the Relators' claims for a share of the proceeds.

TERMS AND CONDITIONS

In reliance on the representations contained herein and in consideration of the mutual promises, covenants and obligations in this Agreement, and for good and valuable consideration, receipt of which is hereby acknowledged, the Parties agree as follows:

16. In settlement of the allegations in the United States Amended Complaint and the Relators' amended complaint, Count Three in the Civil Action and the facts and conduct described in Paragraphs 5-12 of this Agreement, Jackson Park Hospital agrees to pay the United States the total sum of seventy-five thousand dollars (\$75,000.00). The United States agrees that, pursuant to 31 U.S.C. § 3730(d)(1), the Relators' share of this settlement amount is ten percent or seventy-five hundred dollars (\$7,500.00). The United States authorizes Jackson Park Hospital to pay the \$7,500.00 directly to the Relators and their attorney. The United States will credit Jackson Park Hospital for payment of the relators share of the settlement, namely \$7,500.00, and will not assert any claim or demand against Jackson Park Hospital for the \$7,500.00.

17. The United States will also credit Jackson Park Hospital a total \$21,238.48 toward the total settlement amount based upon its agreement to reimburse DASA in agreement executed

by Dr. Collins on behalf of Jackson Park Hospital dated May 30, 1997.

18. Jackson Park Hospital will pay the total settlement amount set out in Paragraph 1 as follows:

A. Forty-six thousand, two hundred and sixty-one dollars and fifty-two cents (\$46,261.52) to the United States Attorneys' Office by check made payable to the Department of Justice and delivered to Daniel E. May, assistant United States Attorney, or alternatively, by electronic transfer according to instructions given to Jackson Park Hospital by Daniel E. May or his designated representative contemporaneous to the signing of this Agreement and its acceptance by the Court.

B. Seventy five hundred dollars (\$7,500.00) by check or checks made payable to Midwest Taxpayers Against Fraud and Robert B. Ramirez and given to Robert B. Ramirez contemporaneous to the signing of this Agreement and its acceptance by the Court.

19. Subject only to the conditions specified in Paragraph 22 below, on receipt of the payment described in Paragraphs 16-18 above, the United States will release and will be deemed to have released Jackson Park Hospital, its parents, affiliates, divisions, subsidiaries, successors and assigns, and their present and former directors, officers, employees and shareholders ("the Jackson Park Hospital") from any civil or administrative monetary claims that the United States has or may have under the False Claims Act, 31 U.S.C. § 3729 et seq. (as

amended); the Program Fraud Civil Remedies Act, 31 U.S.C. § 3801 et seq.; the Civil Monetary Penalties Law, 42 U.S.C. § 1320a-7a; or the common law for the conduct described in the Civil Action and Paragraphs 5-15 in this agreement.

20. Subject to the conditions specified in Paragraph 22 below, the United States will release Jackson Park Hospital from any civil or administrative monetary claims that the United States has or may have under the False Claims Act, 31 U.S.C. § 3729 et seq. (as amended); the Program Fraud Civil Remedies Act, 31 U.S.C. § 3801 et seq.; the Civil Monetary Penalties Law, 42 U.S.C. § 1320a-7a; or the common law for the specific conduct which Jackson Park Hospital has disclosed to the United States and which is described in Paragraphs 5-12 of this agreement.

21. Upon receipt of the payments described above, Midwest Taxpayers Against Fraud and Robert B. Ramirez, and the Relators' attorneys, for themselves, their heirs, successors and assigns, will release and will be deemed to have released and forever discharged:

(a). the Jackson Park Hospital from any claims the Relators have or may have that arises under or relates to any of the allegations in the Civil Action and/or the facts or conduct described in Paragraphs 5-12 of this Agreement including, all claims pursuant to 31 U.S.C. § 3730, but excluding those for attorneys' fees, expenses and costs; and

(b). the United States and the Jackson Park Hospital from any claims arising from or relating to the filing of the Civil Action, or, pursuant to 31 U.S.C. § 3730(d)(1), for a

share of the proceeds of the settlement under this Agreement.

22. The United States specifically does not release the Jackson Park Hospital Parties or any other entity or individual under this agreement from (a) any criminal liability which may arise from the conduct described in the Civil Action and Paragraphs 5-12 of this agreement; (b) any criminal, civil or administrative claims arising under Title 26, U.S. Code (Internal Revenue Code); (c) any liability to the United States (or any agencies thereof) for any conduct other than that identified in Paragraphs 5-12 of this agreement and the Civil Action; (d) claims against any individuals, including officers and directors of Jackson Park Hospital, who are criminally indicted or convicted, or who enter into criminal plea agreements, if such claims are based on the conduct alleged in the Civil Action or Paragraphs 5-12 above, provided, however, that if such individuals are entitled to repayment from Jackson Park Hospital, by claim for indemnification, contribution, reimbursement or otherwise, the releases provided above shall apply to such individuals; (e) any administrative action for exclusion by HHS pursuant to 42 U.S.C. sections 1320a-7 and 1320a-7a; (f) any obligations created by this Agreement; and (g) any claims for defective or deficient services.

23. With respect to the conduct alleged in the Civil Action and in Paragraphs 5-12 of this agreement, Jackson Park Hospital hereby waives any defenses it may have to any criminal prosecution which defenses may be based in whole or in part on

the Double Jeopardy Clause of the Constitution or the holding or principles set forth in United States v. Halper, 490 U.S. 435 (1989), and agrees not to argue that the amounts paid under this Agreement are punitive in nature or effect in any such criminal prosecution. Nothing in this Paragraph or any other provision of this Agreement constitutes an agreement by the United States concerning the characterization of the amounts paid hereunder for purposes of any proceeding under Title 26 of the Internal Revenue Code.

24. Pursuant to 31 U.S.C. § 3730(c)(2)(B), the Relators assert that the settlement of claims in the Civil Action is fair, adequate and reasonable under all the circumstances.

25. Promptly after this Agreement is executed, the Parties will notify the Court in the Civil Action that they have reached a settlement and that all Parties have stipulated that the Civil Action be dismissed with prejudice and with no additional costs.

26. After payment has been made pursuant to this agreement and the Court has dismissed the Civil Action, Jackson Park Hospital, and their respective attorneys, will release and will be deemed to have released and forever discharged the Relators and their counsel from any claims or counterclaims arising from their prosecution of the Civil Action; provided, however, that nothing in this paragraph:

(a). prohibits the United States or Jackson Park Hospital from taking action to enforce the terms or provisions of this Agreement;

(b). prohibits Jackson Park Hospital or Relators from taking

action to enforce the terms or provisions of the separate settlement agreement referred to in relation to the Relators attorneys fees, expenses and costs; or

(c). resolves or in any manner affects any claims the United States has or may have against the Relators arising under Title 26, U.S. Code (Internal Revenue Code), or any claims arising under this Agreement.

27. For government contracting purposes and for Medicare and Medicaid Program purposes, Jackson Park Hospital agrees to treat as unallowable all costs (as defined in the Federal Acquisition Regulations ("FAR") §31.205-47(a)), incurred by or on behalf of Jackson Park Hospital, and/or its current or former officers, directors, shareholders, employees, parents, subsidiaries, divisions, predecessors or successors, in connection with (a) the matters covered by this Settlement Agreement; (b) the government's audit and investigation of the matters covered by the Agreement; (c) Jackson Park Hospitals investigation and defense of the matters covered by this Agreement, and corrective actions undertaken in response to the government's investigation and pursuant to this Agreement, (d) the negotiation of this Agreement, and (e) all payments made to the United States or the Relators pursuant to this Agreement. These amounts shall be separately estimated and accounted for by Jackson Park Hospital, and Jackson Park Hospital will not charge such costs directly or indirectly to any contracts with the United States, or to any cost report submitted to the Medicare or Medicaid Programs.

28. Jackson Park Hospital agrees to take all reasonable and necessary steps to avoid resubmission of any claims to a Medicare or Medicaid carrier or intermediary that were submitted as described in Paragraphs 5-12 above, and to correct any erroneous information resulting from claims submitted as described in Paragraphs 5-12.

29. The Parties acknowledge that this document effects a settlement of disputed matters, and that nothing in this Agreement constitutes evidence or an admission by any person or entity and shall not be construed to be an admission by any person or entity.

30. This Agreement shall be binding upon the Parties, their successors, assigns and heirs.

31. The undersigned Jackson Park Hospital and Relator signatories represent and warrant that they are fully authorized and empowered to execute this Agreement. The undersigned United States signatories represent that they are signing this Agreement in their official capacity.

32. This Agreement shall become final and binding only upon signing by each respective party hereto, and it may not be changed or modified except in writing signed by the Parties.

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

34. This Agreement is effective on the date of the last signatory to it.

THE UNITED STATES OF AMERICA

By: _____
Daniel E. May
Assistant United States Attorney
Northern District of Illinois

Dated: _____

JACKSON PARK HOSPITAL FOUNDATION

By: _____
Peter E. Friedell, M.D.
President

Dated: _____

By: _____
Ronald Lipinski
Seyfarth, Shaw, Fairweather
55 East Monroe Street
Chicago, Illinois 60603

Dated: _____

Counsel to Jackson Park Hospital Foundation

RELATORS Midwest Taxpayers Against Fraud and Robert B. Ramirez

By: _____
Robert B. Ramirez, individually,
and as counsel for Relators,
Midwest Taxpayers Against Fraud
and Robert B. Ramirez

Dated: _____