

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA, the
States of NEW JERSEY and NEW
YORK and the City of NEW YORK
CITY ex rel. ANU DODDAPANENI
and CHRISTIAN REYES,

Plaintiffs,

- against -

AMIT POONIA, M.D.; NEW JERSEY
INTERVENTIONAL PAIN
MANAGEMENT CENTER, P.C.; NY
INTERVENTIONAL PAIN
MANAGEMENT P.C.; ADVANCED
INTERVENTIONAL PAIN
MANAGEMENT CENTER, LLC;
INTERVENTIONAL PAIN
MANAGEMENT & ORTHO SPINE
CENTER, LLC; INTERVENTIONAL
PAIN MANAGEMENT CENTER PC;
ADVANCED MULTISPECIALTY
GROUP; CENTRAL JERSEY PAIN
INSTITUTE LLC; GLOBAL
ANESTHESIA GROUP LLC; PARK
AVENUE SURGERY CENTER LLC;
SPRINGFIELD SURGERY CENTER
LLC; ENDO SURGI CENTER OF
OLD BRIDGE LLC; MAIN AVENUE
CLIFTON SURGERY CENTER LLC;
PREMIUM INTERVENTIONAL
PAIN MANAGEMENT; SYNERGY
MEDICAL LABORATORIES, INC.;
UNIVERSAL TRANSPORTATION
SERVICE LLC.,

Defendants.

STIPULATION AND
ORDER OF SETTLEMENT

Civil Action No. 18-5214

IT IS HEREBY STIPULATED, AGREED AND ORDERED:

This Stipulation and Order of Settlement (“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 of the Department of Health and Human Services (“OIG-HHS”), the Office of Personnel Management (“OPM”) (collectively, the “United States”), Endo Surgi Center of Old Bridge LLC (“ESCOB”), and Anu Doddapaneni and Christian Reyes (“Relators”) (hereafter collectively referred to as “the Parties”), through their authorized representatives.

RECITALS

A. Endo Surgi Center of Old Bridge LLC is an ambulatory surgery center located in New Jersey.

B. At all times relevant to this Agreement, ESCOB 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 *et seq.*, and the Federal Employees Health Benefit Program (“FEHBP”), 5 U.S.C. §§ 8901-8914.

C. On or about September 17, 2018, Relators filed the above-captioned action in the United States District Court for the Eastern District of New York pursuant to the *qui tam* provisions of the False Claims Act (“FCA”), 31 U.S.C. § 3730(b) (the “Civil Action”). Relators alleged, among other things, that the defendants named in the Civil Action (collectively, the “Defendants”), which included ESCOB, submitted false claims for the implantation of “P-Stim” and Neuro-Stim System (“NSS”) devices under Current Procedural Terminology (“CPT”) billing code 64555.

D. CPT Code 64555 is for “percutaneous implantation of neurostimulator electrode array; peripheral nerve (excludes sacral nerve).”

E. The United States investigated Relators’ allegations in the Civil Action and contends that, during the period January 1, 2012 through April 17, 2017 (the “Relevant Period”),

ESCOB engaged in the conduct described below (which conduct is referred to in this Agreement as the “Covered Conduct”):

- (1) ESCOB provided P-Stim and NSS treatments to patients who were eligible to receive Medicare and FEHBP benefits (“eligible patients”);
- (2) The P-Stim and NSS devices applied to patients by ESCOB were electro-acupuncture devices;
- (3) Medicare and FEHBP do not reimburse for acupuncture;
- (4) ESCOB submitted false claims to the Medicare Part B program and FEHBP for reimbursement for P-Stim and NSS treatments administered by its providers to eligible patients using CPT Code 64555 (as described in Recital B);
- (5) ESCOB administered anesthesia in conjunction with the P-Stim and NSS procedures it performed;
- (6) Medicare and FEHBP do not reimburse for anesthesia administered in conjunction with procedures that are not eligible for reimbursement, specifically, in this case, P-Stim and NSS procedures;
- (7) ESCOB submitted false claims to Medicare and FEHBP for anesthesia administered in conjunction with the P-Stim and NSS procedures; and
- (8) During the Relevant Period, Medicare and FEHBP reimbursed ESCOB for P-Stim and NSS treatments due to the billing code used.

The United States contends that the Covered Conduct gives rise to civil liability under the FCA.

F. Certain other Defendants (the “Provider Entities”), named in a separate Agreement to be signed contemporaneously with this one (the “Provider Entities Agreement”), are resolving

the same Covered Conduct, for which, the United States contends, ESCOB and the Provider Entities are jointly and severally liable.

G. Relators claim entitlement under 31 U.S.C. § 3730(d) to a share of the proceeds of this Agreement, and to Relators' reasonable expenses, attorneys' fees, and costs from ESCOB.

H. This Agreement is neither an admission of liability by ESCOB nor a concession by the United States that its claims are not well founded.

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. ESCOB shall pay to the United States a total of one million, six hundred and fifty-seven thousand, seven hundred and eighty dollars and forty-five cents (\$1,657,780.45), of which one million, four hundred and thirty-one thousand, three hundred and sixty-eight dollars and seventy-five cents (\$1,431,368.75) is restitution, in satisfaction of its portion of the total amount of seven million, four hundred and forty seven thousand, three hundred forty dollars and seventy-five cents (\$7,447,340.75) (the "Settlement Amount"), of which six million six hundred and ninety-six thousand two hundred and seventeen dollars and thirty-five cents (\$6,696,217.35) restitution, for which, the United States contends, ESCOB and the Provider Entities are jointly and severally liable, no later than thirty (30) days after the Effective Date of this Agreement.

2. Conditioned upon the United States receiving the Settlement Amount from the Provider Entities and as soon as feasible after receipt, the United States shall pay to Relators the Relators' Share, as set forth in the Provider Entities Agreement.

3. The Provider Entities shall pay to Relators the expenses, attorneys' fees, and costs set forth in the Provider Entities Agreement no later than thirty (30) calendar days after the

Effective Date of this Agreement by electronic funds transfer pursuant to written instructions provided by Relator.

4. Subject to the exceptions in Paragraph 7 (concerning excluded claims) below, and conditioned upon the full payment of the United States' Settlement Amount, the United States releases ESCOB, its predecessors, successors, agents and assigns from any civil or administrative monetary claim the United States has for the Covered Conduct under the FCA, 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. In consideration of the obligations of ESCOB in this Agreement and the Integrity Agreement ("IA") entered into between OIG-HHS and ESCOB, and upon the United States' receipt of full payment of the Settlement Amount, the OIG-HHS shall release and refrain from instituting, directing, or maintaining any administrative action seeking exclusion from Medicare, Medicaid, and other Federal health care programs (as defined in 42 U.S.C. § 1320a-7b(f)) against ESCOB under 42 U.S.C. § 1320a-7a (Civil Monetary Penalties Law) or 42 U.S.C. § 1320a-7(b)(7) (permissive exclusion for fraud, kickbacks, and other prohibited activities) for the Covered Conduct, except as reserved in this paragraph and in Paragraph 7 (concerning reserved claims), below. The OIG-HHS expressly reserves all rights to comply with any statutory obligations to exclude ESCOB from Medicare, Medicaid, and other Federal health care programs under 42 U.S.C. § 1320a-7(a) (mandatory exclusion) based upon the Covered Conduct. Nothing in this paragraph precludes the OIG-HHS from taking action against entities or persons, or for conduct and practices, for which claims have been reserved in Paragraph 7, below.

6. In consideration of the obligations of ESCOB in this Agreement, and conditioned upon the full payment of the United States' Settlement Amount, Relators, for themselves and for

their heirs, successors, attorneys, agents, and assigns, release ESCOB, its predecessors, and its current and former divisions, parents, affiliates, subsidiaries, successors, and assigns, and its current and former directors, officers, and employees from any claims or allegations that Relators asserted or could have asserted arising from the Covered Conduct or the allegations in the Civil Action, and from all liability, claims, demands, actions, or causes of action whatsoever, whether known or unknown, fixed or contingent, in law or in equity, in contract or in tort, under any federal or state statute or regulation, or in common law, that Relators would have standing to bring in any capacity as of the Effective Date of this Agreement as limited to the Covered Conduct or the allegations in the Civil Action. Relators acknowledge that they may later discover facts different from or in addition to those which they or their attorneys now know or believe to be true. It is the intention of Relators to fully, finally, and forever settle and release all claims against ESCOB arising from the Covered Conduct or the allegations in the Civil Action, and the releases provided herein shall remain in effect notwithstanding the discovery or existence of any additional or different facts or the occurrence of any future events, circumstances or conditions. Relators' claims that are released include, but are not limited to, any claims by Relators, Relators' counsel, or the heirs, successors, attorneys, agents, or assigns of any of them against ESCOB arising from the filing of the Civil Action or the negotiation of this Agreement, including claims for reasonable expenses, attorneys' fees, and costs under 31 U.S.C. § 3730(d), or claims under 31 U.S.C. § 3730(h).

7. Notwithstanding the releases given in Paragraphs 4 and 5 of this Agreement, or any other term of this Agreement, the following claims and rights 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 or enforcement right, 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 express or implied warranty claims or other claims for defective or deficient products or services, including quality of goods and services;
- g. Any liability for failure to deliver goods or services due;
- h. Any liability for personal injury or property damage or for other consequential damages arising from the Covered Conduct; or
- i. Any liability of individuals not explicitly released by this Agreement.

8. Relators, 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 and expressly waive the opportunity for a hearing or any objection to the Agreement pursuant to 31 U.S.C. § 3730(c)(2)(B). Conditioned upon Relators' receipt of the Relators' Share, 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.

9. Conditioned upon Relators' receipt of the payment described in Paragraph 2, Relators, for themselves, and for their heirs, successors, attorneys, agents, and assigns, release the United States, its agencies, officers, agents, and employees from any claims Relators have asserted,

could have asserted or may assert in the future on behalf of the United States arising from the Covered Conduct or the allegations in the Civil Action, and from any claim to a share of the proceeds of the United States' Settlement Amount.

10. ESCOB waives and shall not assert any defenses ESCOB 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.

11. ESCOB 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 ESCOB 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 or the United States' investigation or prosecution thereof.

12. ESCOB, on behalf of itself and its predecessors, and its current and former divisions, parents, affiliates, subsidiaries, successors, and assigns, and their current and former directors, officers, and employees, fully and finally release the from any claims (including attorney's fees, costs, and expenses of every kind and however denominated) or allegations that ESCOB asserted or could have asserted arising from the Covered Conduct or the allegations in the Civil Action, and from all liability, claims, demands, actions, or causes of action whatsoever, whether known or unknown, fixed or contingent, in law or in equity, in contract or in tort, under any federal or state statute or regulation, or in common law, that ESCOB would have standing to bring in any capacity as of the Effective Date of this Agreement that ESCOB has asserted, could have asserted, or may assert in the future against the Relator, related to the Covered Conduct, the allegations in the Civil Action, and the Relator's investigation and prosecution thereof. ESCOB

acknowledges that it may later discover facts different from or in addition to those which they or their attorneys now know or believe to be true. It is the intention of ESCOB to fully, finally, and forever settle and release all claims against Relators arising from the Covered Conduct or the allegations in the Civil Action, and the releases provided herein shall remain in effect notwithstanding the discovery or existence of any additional or different facts or the occurrence of any future events, circumstances or conditions. ESCOB claims that are released include, but are not limited to, any claims by ESCOB, ESCOB's counsel, or the heirs, successors, attorneys, agents, or assigns of any of them against Relators arising from the filing of the Civil Action or the negotiation of this Agreement.

13. 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; ESCOB 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, and agrees to withdraw any such pending appeals

14. ESCOB 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 and 1396-1396w-5; and the regulations and official program directives promulgated thereunder) incurred by or on behalf of ESCOB, 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) ESCOB's investigation, defense, and corrective actions undertaken in response to the United States' audit(s) and investigation(s) in connection with the matters covered by this Agreement (including attorney's fees);
- (4) the negotiation and performance of this Agreement;
- (5) the payment ESCOB makes to the United States pursuant to this agreement, and any payment that ESCOB may make to Relators, including costs and attorney's fees; and,
- (6) the negotiation of, and obligations undertake pursuant to the IA to: (i) retain an independent review organization to perform quarterly reviews as described in Section E of the IA; and (ii) prepare and submit reports to OIG-HHS;

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). However, nothing in paragraph 14.a.(6) that may apply to the obligations undertaken pursuant to the IA affects the status of costs that are not allowable based on any other authority applicable to ESCOB.

b. Future Treatment of Unallowable Costs: Unallowable Costs shall be separately determined and accounted for, in nonreimbursable cost centers, by ESCOB, and ESCOB 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 ESCOB or any of their subsidiaries or affiliates to the Medicare, Medicaid, TRICARE, or FEHBP Programs.

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

15. ESCOB agrees to cooperate fully and truthfully with the United States' investigation of individuals and entities not released in this Agreement. Upon reasonable notice, ESCOB shall encourage, and agree not to impair, the cooperation of their directors, officers, and employees, and shall use their 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. ESCOB further agrees to furnish to the United States, 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.

16. 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 17 (waiver for beneficiaries paragraph), below.

17. ESCOB 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.

18. Upon receipt of the payments described in Paragraph 1, 2, and 3, above, the Parties shall promptly sign in the Civil Action and Joint Stipulation of Dismissal of the Civil Action pursuant to Rule 41(a)(1). The Joint Stipulation of Dismissal of the Civil Action may be filed under seal or held by the United States to be filed at the time the case is unsealed. The dismissal shall be with prejudice as to Relators. With respect to the United States, the dismissal shall be with prejudice as to the Covered Conduct, and without prejudice as to any other allegations contained in the Civil Action. With respect to the States of New York and New Jersey, the dismissal shall be without prejudice as to the Covered Conduct and any other allegation contained in the Civil Action.

19. The Parties shall each bear their own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement, except as otherwise expressly provided for in this Agreement.

20. Each party and signatory to this Agreement represents that it freely and voluntarily enters into this Agreement without any degree of duress or compulsion.

21. 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 Eastern District of New York.

22. 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.

23. This Agreement, along with the Provider Entities Agreement among the United States, OIG-HHS, Relators, and the Provider Entities, which is being executed contemporaneously with this Agreement, constitutes the complete agreement among the Parties. This Agreement may not be amended except by written consent of the Parties. The undersigned counsel represent and warrant that they are fully authorized to execute this Agreement on behalf of the persons and entities indicated below.

24. This Agreement may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same Agreement. Signatures delivered by facsimile transmission, or as .pdf attachments to emails, shall constitute acceptable, binding signatures for purposes of this Stipulation.

25. This Agreement is binding on ESCOB's successors, transferees, heirs, and assigns.

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

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

28. The Effective Date of this Agreement is the date upon which it is signed by the
Court.

SO ORDERED:

Brooklyn, New York
January 11, 2022

A handwritten signature in black ink, appearing to read "Eric N. Vitaliano", is written over a yellow rectangular highlight.

HONORABLE Eric N. Vitaliano
United States District Judge, E.D.N.Y.

THE UNITED STATES OF AMERICA

DATED: Brooklyn, New York
November 24, 2021

BREON PEACE
United States Attorney
Eastern District of New York

By: Jolie Apicella
Jolie Apicella
Assistant United States Attorney
(718) 254-6528

DATED: Washington, DC
December 3, 2021

LISA M. RE

GREGORY DEMSKE

Digitally signed by GREGORY
DEMSKE
Date: 2021.12.03 17:48:14 -05'00'

Assistant Inspector General for Legal Affairs
Office of Counsel to the Inspector General
Office of Inspector General United State
Department of Health and Human Services

**EDWARD
DEHARDE**

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DEHARDE
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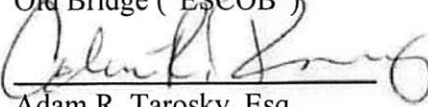
EDWARD M. DEHARDE
Assistant Director of Federal Employee Insurance
Operations
Healthcare and Insurance
United States Office of Personnel Management

FOR DEFENDANT ENDO SURGI CENTER OF OLD BRIDGE

DATED: Washington, DC
November 26, 2021

NIXON PEABODY LLP
Adam Tarosky
Counsel for Endo Surgi Center of
Old Bridge ("ESCOB")

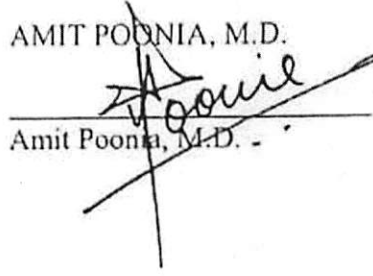
By:


Adam R. Tarosky, Esq.
799 9th Street NW
Suite 500
Washington, DC 20001-5327

DATED: Old Bridge, NJ
November 26, 2021

AMIT POONIA, M.D.

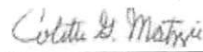
By:


Amit Poonia, M.D.

RELATORS ANU DODDAPANENI AND CHRISTIAN REYES

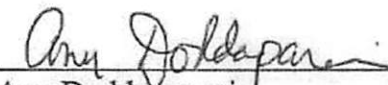
DATED: Washington, DC
November 24, 2021

PHILLIPS & COHEN, LLP
Attorneys for Relator
Anu Doddapaneni and
Christian Reyes

By: 
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2000 Massachusetts Ave NW
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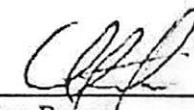
DATED: Orlando, FL
November 24, 2021

ANU DODDAPANENI

By: 
Anu Doddapaneni
Relator

DATED: Smithfield, NC
November 24, 2021

CHRISTIAN REYES

By: 
Christian Reyes
Relator