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Department of Managed Health Care

10
11 BEFORE THE DEPARTMENT OF MANAGED HEALTH CARE
12 OF THE STATE OF CALIFORNIA

13 **IN THE MATTER OF:**

14 **Accountable Health Care IPA,**
15
16 **Respondent.**

Case No: 11-506

OAH No.: 2012080548

STIPULATED AGREEMENT

17 **RECITALS**

18
19 1. This stipulated agreement (“Agreement”) is made and entered into by Accountable
20 Health Care IPA (“Accountable”), George Jayatilaka, M.D., individually, and the Department of
21 Managed Health Care (the “Department”). Accountable is a risk bearing organization pursuant to
22 Health and Safety Code section 1375.4, subdivision (g), and California Code of Regulations, title 28,
23 section 1300.75.4, subdivision (b). As of July 16, 2012, Accountable maintained contracts with health
24 care service plans licensed by the Department. Accountable’s principal place of business is 2525
25 Cherry Ave., Suite 225, Signal Hill, CA 90755. George Jayatilaka, M.D., is the Chief Executive
26 Officer of Accountable.

27 2. On July 13, 2012, the Department issued Cease and Desist Orders to Accountable, Druvi
28 Jayatilaka, and Ambarish Pathak (collectively referred to herein as the “July 13, 2012, Cease and Desist

1 Orders"). On July 16, 2012, the Department issued Cease and Desist Orders to each of the Contracted
2 Plans (collectively referred to herein as the "July 16, 2012, Cease and Desist Orders").

3 3. Nothing in this Agreement constitutes an admission of guilt by the named individuals,
4 Druvi Jayatilaka, Ambarish Pathak, and/or George Jayatilaka, M.D., individually.

5 4. Through a letter to the Contracted Plans dated August 31, 2012 (the "August 31, 2012,
6 Letter to Accountable's Contracted Plans"), the Department requested that the Contracted Plans conduct
7 a focused audit to examine certain utilization functions.

8 5. Accountable, George Jayatilaka, M.D., individually, and the Department are willing to
9 enter into this Agreement to avoid having the contracted plans completing to conclusion the focused
10 audits, as previously required by the Department in the August 31, 2012, Letter to Accountable's
11 Contracted Plans.

12 AGREEMENT

13 In consideration of the recitals above and the promises contained in this Agreement, the Parties
14 agree as follows:

15 6. **Termination of Case Before the Office of Administrative Hearings.** This Agreement,
16 entered into freely and voluntarily by Accountable and the Department, shall have the effect of a final
17 written agreement and resolution as to the Office of Administrative Hearings ("OAH") Case Number
18 2012080548 (*In the Matter of Accountable Health Care IPA*). This Agreement shall terminate this case
19 before the OAH. This Agreement shall constitute a knowing, intelligent, and voluntary waiver by
20 Accountable of any right to a hearing before the OAH pertaining to or arising out of the July 13, 2012,
21 Cease and Desist Orders, the July 16, 2012, Cease and Desist Orders, the August 31, 2012, Letter to
22 Accountable's Contracted Plans, or any other act of the Department consistent with the terms of this
23 Agreement. Accountable shall immediately file with OAH and cause Druvi Jayatilaka and Ambarish
24 Pathak to file with OAH, a withdrawal with prejudice of each of their Notices of Defense and any other
25 documentation OAH may require to withdraw with prejudice any and all formal opposition to the July
26 13, 2012, Cease and Desist Orders. Accountable, and George Jayatilaka, M.D., individually, hereby
27 consent to the maintenance by the Department of the July 13, 2012, Cease and Desist Orders, which
28 shall remain in full force and effect.

1 7. **Installation of Monitor.** Accountable shall retain and install Berkeley Research Group,
2 and Frank Stevens, as the monitor exclusively for the Department of Managed Health Care ("Monitor").
3 The Monitor shall take direction from and work exclusively for the benefit of the Department. The
4 Monitor shall be tasked with, among other things, organizing, conducting, and completing the audits
5 requested by the Department in the August 31, 2012, Letter to the Contracted Plans. The Monitor will
6 also work with Accountable to reform, without limitation, obstruction or hindrance, any and all of
7 Accountable's policies, procedures, practices, systems, and processes, including, without limitation,
8 utilization management, claims review and processing practices, and claims remediation, in order to
9 bring Accountable into full regulatory compliance to the satisfaction of the Department. Accountable
10 and George Jayatilaka, M.D., agree that the Monitor, in order to perform the tasks related to this
11 Agreement, will have direct and unfettered access to, and may work directly with Accountable's
12 officers, including its president, Mark Wright, and any other person associated with or employed by
13 Accountable. The Monitor shall also have complete and unfettered access to Accountable's books,
14 records and other information, whether they be in written, electronic, or verbal form.

15 8. **Contract with the Monitor - Period of Contract.** Within fourteen (14) calendar days
16 of the execution of this Agreement, Accountable shall enter into a contract with the Monitor in a form
17 acceptable to the Department. The contract shall specify that (1) the Monitor is answerable only to the
18 Department, (2) the Monitor is conducting an investigation for the benefit of and at the sole direction of
19 the Department, (3) the Monitor will be paid by Accountable for a period of no fewer than three years,
20 which may be continued on a per-year basis as deemed necessary in the Department's exclusive
21 discretion to verify Accountable's ongoing compliance, (4) neither Accountable nor any of its officers,
22 employees or any other person associated with it, shall do anything to hinder or obstruct the Monitor's
23 performance under the contract and pursuant to this Agreement, (5) Accountable shall timely and fully
24 implement any and all corrective actions and/or recommendations communicated to Accountable by the
25 Monitor and/or the Department, and (6) the contract cannot be modified, amended, or terminated
26 without the prior written approval of the Department. The Monitor shall submit reports to the
27 Department, as frequently as requested by the Department. Upon the Monitor's determination that full
28 compliance by Accountable has been achieved, the Monitor shall submit a report to the Department

1 confirming that determination. Thereafter, the Monitor shall be engaged and permitted to conduct
2 periodic and/or unannounced reviews of Accountable at any time, with or without prior notification to
3 Accountable.

4 **9. Confidentiality of Monitor - Department Communications.** The Monitor shall be
5 explicitly permitted to communicate with the Department in any manner and disclose any information to
6 the Department without limitation and without notification to Accountable. The Department may
7 communicate with the Monitor and/or exchange information with the Monitor at any time deemed
8 necessary and for any purpose related to any matter regarding Accountable. The Monitor will hold as
9 confidential the content and existence of any and all communications or exchange of information with
10 the Department subject to any and all applicable privileges, including without limitation the
11 Department's investigatory privilege. The Department may, in its sole discretion, disclose the content
12 and/or existence of the communications or exchange of information between itself and the Monitor,
13 Accountable, any health care service plan, or any third party. Further, the Department may, in its sole
14 discretion, authorize the Monitor to communicate with or disclose any information to Accountable, any
15 other government agency, any health care service plan, or any other entity representing a health care
16 service plan. Any such disclosure of information or communications in furtherance of a Department
17 investigation shall not waive any Department privilege, including, but not limited to, the Department's
18 investigative privilege.

19 **10. Plan and Monitor Cooperation.** Accountable formally agrees to follow each and every
20 recommendation of the Department and/or the Monitor, and shall timely and fully implement those
21 recommendations. Accountable agrees to honestly, fully, and continuously cooperate with any of its
22 contracted health care service plans, the Department, and/or the Monitor in the continuing investigation
23 of alleged utilization management, claims processing practices, and any other violations. Upon request
24 by the Department, Accountable agrees to provide a notice approved by the Department to each
25 employee, contractor, or affiliate of Accountable with a directive to fully and openly cooperate with and
26 provide information to directly the Monitor and/or to the Department. Accountable shall not couch the
27 identity of the Monitor in terms that may otherwise conceal the purpose or authority of the Monitor.
28

1 11. **Remediation of Utilization Management Decisions.** For any enrollee of any health
2 care service plan that is identified by the Monitor as having care denied, modified, delayed, or cancelled
3 as a result of Druvi Jayatilaka, Ambarish Pathak, or any other individual whose identity cannot be
4 verified to be a medical physician licensed by the State of California, Accountable will assign a care
5 manager, whose identity shall be disclosed and approved by the Department, who will follow-up with
6 each of the identified affected enrollees to facilitate the enrollee's access to appropriate medically
7 necessary health care for a period of one year from the date of the care manager's initial contact with
8 that enrollee.

9 12. **Grant to Health Care Organizations.** Accountable voluntarily agrees to donate
10 \$500,000 to a free clinic or other non-profit organization which provides health care to uninsured or
11 underinsured individuals. Accountable shall identify six (6) possible independent organizations that are
12 financially unrelated and unaffiliated with Accountable, its officers, its employees, its contractors, or
13 any person or entity affiliated with Accountable, and submit the names of those organizations to the
14 Department no later than October 15, 2012. The Department will conduct a review of those
15 organizations and may consider additional clinics or organizations not proposed by Accountable.
16 Accountable shall make the donation to the entity selected by the Department pursuant to the following
17 payment schedule: (i) \$150,000 paid within thirty (30) calendar days of receipt of notice of that
18 selection; (ii) \$150,000 paid by the date that is one (1) year following receipt of notice of that selection;
19 and (iii) \$200,000 paid by the date that is two (2) years following receipt of notice of that selection. .
20 This donation is not, and shall not be construed as, a payment of a civil penalty, fine, or damages by
21 Accountable.

22 13. **Remediation of Claims.** Accountable agrees to submit to a retrospective review of all
23 claims, including but not limited to, unpaid, underpaid, and late paid claims, beginning from January 1,
24 2009, to the present, which will be overseen and audited by the Monitor and the Department, and/or by
25 any other entity contracted by the Department or the Monitor. Accountable agrees to pay any amount
26 found due on any and all claims, including but not limited to, unpaid, underpaid, and late paid claims,
27 and agrees to pay interest and penalties due on any claims found to be out of compliance with
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1 Accountable's reimbursement obligations pursuant to legal requirements, including but not limited to
2 those contained in the Knox-Keene Act, as determined by the Monitor and/or the Department.

3 **14. Replacement of Plan Cease and Desist Orders with Consent Orders.** The
4 Department agrees to use its best efforts to enter into a Consent Order with each of the Contracted Plans
5 that were served with the July 16, 2012, Cease and Desist Orders. On the execution of a Consent Order
6 by a Contracted Plan, the Department will withdraw the Cease & Desist Order as to that Contracted
7 Plan.

8 **15. What Constitutes a Breach?** Accountable shall be considered to be in breach of this
9 Agreement if it or any of its officers, independent contractors, and/or employees fails to fulfill any of its
10 obligations under this Agreement, acts in a manner contrary to the terms of this Agreement, or
11 repudiates any part of this Agreement either verbally, in writing, or by conduct. In the event that
12 Accountable breaches this Agreement, Accountable shall promptly develop and produce a corrective
13 action plan with implementation timeframes satisfactory to the Department and the Monitor.

14 **16. Breach of this Stipulated Agreement.** Notwithstanding anything to the contrary in this
15 Agreement, Accountable agrees that if it or any of its officers, independent contractors, and/or
16 employees breaches this Agreement, the terms of this Agreement do not prevent the Department from
17 exercising any and all aspects of its authority. In the event Accountable breaches the provisions of this
18 Stipulated Agreement, Accountable shall not contest in any form or manner, and hereby consents to, the
19 Department's immediate issuance of any orders the Department deems necessary, including, without
20 limitation, de-delegation orders to each of the Contracting Plans, or any health care service plans then
21 contracted with Accountable. Accountable knowingly, intelligently, and voluntarily waives its right to a
22 hearing on any such matter in which the Department may direct any or all of Accountable's contracting
23 health care service plans to take back any and all risk, and/or terminate any risk sharing agreements with
24 Accountable, and/or cease and desist from delegating any claims and/or utilization review functions to
25 Accountable.

26 **17. Not a Waiver of Department's Investigatory, Administrative or Disciplinary**
27 **Authority.** Nothing in this Agreement shall constitute a, disclaimer, accord, relinquishment, estoppel,
28 or a waiver of any form of any right or authority of the Department, including without limitation to

1 continue with its current investigations, audits, or examinations and/or to exercise its enforcement and
2 disciplinary authority relative to, or independent of, those investigations, audits or examinations.
3 Nothing in this Agreement shall limit, affect, or inhibit in any manner the Department's powers to
4 initiate any new or additional investigations, routine or non-routine audits or examinations, or to require
5 and/or order any remediation, penalties, and/or other remedies the Department deems necessary or
6 appropriate to carry out the objectives and purposes of this Agreement and/or the Knox-Keene Act,
7 including, without limitation, actions necessary to protect and/or effectuate remediation to enrollees
8 and/or providers.

9 18. **Enrollee's rights not limited or Affected.** Nothing in this Agreement shall, nor shall
10 this Agreement be construed to limit or affect in any way any rights any individual enrollee may have
11 under any law or laws, including without limitation remedies available to the enrollee or the Department
12 under the Knox-Keene Health Care Service Act of 1975.

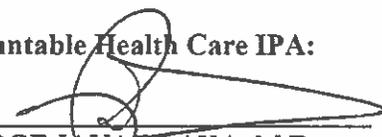
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14 **IN WITNESS WHEREOF**, the parties hereby execute this Agreement by the signature of their
15 respective duly authorized officials.

16
17 Dated: 10/4/12

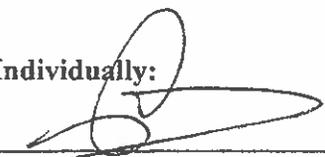
16 Department of Managed Health Care:

18 ANTHONY B. MANZANETTI
19 Deputy Director | Chief Counsel
20 Office of Enforcement

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22 Dated: 10/3/12

21 Accountable Health Care IPA:

23 GEORGE JAYATILAKA, M.D.
24 Chief Executive Officer
25 Accountable Health Care IPA

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27 Dated: 10/3/12

26 Individually:

28 GEORGE JAYATILAKA, M.D.

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Dated: 10/4/12

Tin-Kin Lee Law Offices:



TIN KIN LEE, ESQ.
Attorney For Accountable Health Care IPA and
George Jayatilaka, M.D.