COPY

PREET BHARARA
United States Attorney
Southern District of New York
Attorney for the United States
By: HEIDI A. WENDEL
MARA E. TRAGER
Assistant United States Attorneys
86 Chambers Street, 3rd Floor
New York, New York 10007
Telephone: (212) 637-2636/2799
Email: Heidi.Wendel@usdoj.gov
Mara.Trager@usdoj.gov

RECEIVED
MAR 0 5 2013
U.S.D.C. S.D. N.Y.
CASHIERS

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA and the STATES OF NEW YORK, CONNECTICUT and MASSACHUSETTS *ex rel.* ZACHARY WOLFSON, Plaintiffs, vs. PARK AVENUE MEDICAL ASSOCIATES, PARK AVENUE MEDICAL ASSOCIATES P.C., PARK AVENUE MEDICAL ASSOCIATES PLLC, PARK AVENUE HEALTH CARE MANAGEMENT, LLC, PARK AVENUE HEALTH CARE MANAGEMENT, INC., BRAD MARKOWITZ, MITCHELL KAPLAN, DANIEL SUSSMAN and ANTONY MENDOLA, Defendants.	ECF CASE 11 Civ. 5107 (CM) COMPLAINT-IN-INTERVENTION OF THE UNITED STATES
UNITED STATES OF AMERICA, Plaintiff, v. PARK AVENUE MEDICAL ASSOCIATES,	Jury Trial Demanded

PARK AVENUE MEDICAL ASSOCIATES P.C., PARK AVENUE MEDICAL ASSOCIATES PLLC, PARK AVENUE HEALTH CARE MANAGEMENT, LLC, PARK AVENUE HEALTH CARE MANAGEMENT, INC.,

Defendants.

Plaintiff United States of America (the "United States" or the "Government"), by its attorney, Preet Bharara, United States Attorney for the Southern District of New York, brings this action against Park Avenue Medical Associates, Park Avenue Medical Associates, P.C., Park Avenue Medical Associates, PLLC, Park Avenue Health Care Management, LLC, and Park Avenue Health Care Management, Inc. (collectively "Defendants") alleging upon information and belief as follows:

PRELIMINARY STATEMENT

1. The United States brings this complaint under the False Claims Act, 31 U.S.C. §§ 3729-33, and common law, alleging that during the period from January 1, 2001 through the present, Park Avenue Medical Associates, P.C. ("PAMA PC") billed Medicare for services that (i) were not medically necessary, (ii) were not documented in the medical record, and/or (iii) failed otherwise to comply with Medicare rules and regulations.

2. Park Avenue Medical Associates ("PAMA") is a multi-specialty group practice that, among other services, provides behavioral health services to thousands of elderly patients at hospitals and nursing homes in the New York area. These elderly patients, many with serious psychiatric problems, are among the most vulnerable patient populations.

3. PAMA and PAMA PC, the entity that submitted claims to Medicare on behalf of

PAMA, took advantage of the extensive program of Medicare services available to this vulnerable patient population by billing for services that were unnecessary, such as psychotherapy services for patients who lacked the capacity to benefit from psychotherapy because they were suffering from severe dementia and/or other cognitive disorders. PAMA PC also billed Medicare for unnecessary and duplicative psychiatric diagnostic examinations that violated Medicare rules in that the PAMA doctor or other medical professional conducting the examination failed to (i) document the patient's medical and/or psychiatric history, (ii) conduct an adequate mental status test, (iii) coordinate with other health care professionals treating the patient, and/or (iv) otherwise comply with Medicare rules. In addition, PAMA PC billed for services without any documentation in the medical record to substantiate the services.

4. Moreover, PAMA incentivized the psychiatrists and psychologists it employed to perform unnecessary and duplicative services by compensating them based on how many services they provided and the level at which Medicare reimbursed for those services. At the same time, PAMA's compliance program was inadequate to counter those incentives by ensuring that unnecessary and duplicative services were not billed. As a result, PAMA and PAMA PC submitted thousands of fraudulent claims to Medicare and were paid based on those claims.

JURISDICTION AND VENUE

5. This Court has jurisdiction over the claims brought under the False Claims Act pursuant to 31 U.S.C. § 3730(a), and over the claims brought under the common law pursuant to 28 U.S.C. §§ 1331 and 1345.

6. Venue lies in this District pursuant to 31 U.S.C. § 3732(a) and 28 U.S.C. §§ 1391(b) and 1391(c), because defendants are located in and do business in this district.

PARTIES

7. Plaintiff is the United States of America on behalf of its agency the United States Department of Health and Human Services ("HHS").

8. PAMA is a multi-specialty group practice that provides health care services in New York, Connecticut and Massachusetts and is owned, controlled, operated and managed by defendants PAMA PC, Park Avenue Medical Associates, PLLC, Park Avenue Health Care Management, LLC, and Park Avenue Health Care Management, Inc. PAMA PC is a New York professional corporation located at 3 Barker Avenue, White Plains, New York. Park Avenue Medical Associates, PLLC is a New York professional service limited liability company headquartered at 451 Park Avenue South, New York, New York. Park Avenue Health Care Management, LLC is a New York limited liability company headquartered at 3 Barker Avenue, White Plains, New York. Park Avenue Health Care Management, Inc. is a New York business corporation headquartered at 1 North Lexington Avenue, White Plains, New York.

9. PAMA directly employs physicians, nurses and other medical professionals who provide services to elderly patients at hospitals, including inpatient psychiatric facilities, nursing homes, and assisted living facilities, among other types of long-term care facilities. The patients and residents at these facilities suffer from various chronic health conditions, including Alzheimer's disease, dementia, schizophrenia, psychosis, depression and anxiety, among other illnesses. The doctors and nurses employed by PAMA receive a salary from PAMA, which contracts with the facilities. Psychiatrists and psychologists employed by PAMA receive bonuses in addition to their regular salary based on how many services they provide and the level

of reimbursement they generate for PAMA from government and other insurance providers, including Medicare.

FACTUAL ALLEGATIONS

I. Statutory and Regulatory Background

10. The United States, through HHS, administers the Supplementary Medical Insurance Program for the Aged and Disabled, established by Part B, Title XVIII, of the Social Security Act, 42 U.S.C. §§ 1395 *et seq.* ("Medicare Program"). Part B of the Medicare Program is a federally subsidized health insurance system for disabled persons or persons who are 65 or older. Medicare is administered by the Centers for Medicare and Medicaid Services ("CMS") through local carriers, called Medicare Administrative Contractors ("MAC"), that process claims from providers for reimbursement from Medicare. National Government Services ("NGS") is the MAC under contract to administer Medicare Part B claims arising from services provided in downstate New York, which consists of Bronx, Queens, Kings, New York, and Richmond counties, among others. Prior to March 18, 2008, Empire, formerly known as Empire Blue Cross and Blue Shield, was the local carrier for the downstate area, except that Group Health Incorporated ("GHI") was the local carrier for Queens County until July 17, 2008. In addition to processing claims, the MAC also issues Local Coverage Determinations ("LCDs"), which are decisions by the MACs regarding whether to cover a particular service in accordance with Section 1862(a)(1)(A) of the Social Security Act, 42 U.S.C. § 1395y.

11. Medical providers, including psychiatrists, psychologists and others are required to submit claims to the MAC for the area in which the services were rendered. In submitting these claims, medical providers are required to identify the services they perform by using the

codes contained in the American Medical Association's Current Procedural Terminology manual, which are commonly referred to as "CPT" codes. The claims are also required to reflect, among other things: (a) the diagnosis code that accurately identifies the medical diagnosis or the patient's condition; (b) the date the service was rendered; and (c) the name of the patient who received the service. Upon receiving a provider's claim, the local carriers, each applying its own and CMS's policies, determine whether a procedure or service is adequately documented, whether it is medically necessary and whether or not the claim otherwise qualifies for payment. Local carriers also compute the proper amount of the reimbursement for qualified claims.

12. Medicare's reimbursement to providers varies depending on the type, level and complexity of the services rendered. This information is reflected in the CPT code included in the claim submitted to the local carrier. PAMA PC submits its claims to the local carriers electronically. Before the Medicare carriers accept electronically-submitted claims, each provider is required to agree in writing that it is responsible for the accuracy of the Medicare claims submitted on its behalf and that all claims submitted under its provider number will be accurate, complete and truthful. Prior to electronic submission of claims, providers submitted hard copy certifications of the accuracy of their claims for reimbursement from Medicare.

13. Medicare prohibits payment for services that are not "reasonable and necessary for the diagnosis or treatment of illness or injury or to improve the functioning of a malformed body member." 42 U.S.C. § 1395y (a)(1)(A). Medicare also prohibits payment for any claim "unless there has been furnished such information as may be necessary in order to determine the amounts due such provider or other person under this part for the period with respect to which the

amounts are being paid or for any prior period." *See* 42 U.S.C. § 1395l (e). This provision requires submission of adequate documentation to evaluate the claim for payment.

14. Local Coverage Determination ("LCD") L26895 provides that psychotherapy services are not covered unless a patient's dementia is mild, the patient has the capacity to recall what occurred at the therapy from one session to the next, and that capacity is documented in the patient's record. Specifically, LCD L26895 states that:

> Patients with dementia represent a very vulnerable population in which co-morbid psychiatric conditions are common. However, for such a patient to benefit from psychotherapy services requires that their dementia to be [sic] mild and that they retain the capacity to recall the therapeutic encounter from one session, individual or group, to another. This capacity to meaningfully benefit from psychotherapy must be documented in the medical record. Psychotherapy services are not covered when documentation indicates that dementia has produced a severe enough cognitive defect to prevent psychotherapy from being effective.

LCD L26895. The LCD further requires that there must be a treatment plan setting forth "clearly defined goals" of the psychotherapy, as well as a "periodic summary of goals, progress toward goals, and an updated treatment plan," and that "[p]rolonged periods of psychotherapy must be well-supported in the medical record describing the necessity for ongoing treatment." *Id.*

15. Medicare also has policies regarding psychiatric examinations, which are billed under CPT code 90801, and are termed "psychiatric diagnosis interview examinations." This type of examination is typically conducted at the outset of an episode of illness for a patient or when a patient is transferred from one facility to another, such as from a long-term care facility to a hospital. Medicare provides that a 90801 exam "may be covered once, at the outset of an illness of suspected illness. It may be utilized for the same patient if a new episode of illness occurs after a hiatus or on admission or readmission to an inpatient status due to complications of

the underlying condition." *See* LCD 26895. Exams billed under CPT code 90801 have a high level of reimbursement among psychiatric services. PAMA PC billed Medicare for a far larger number of 90801 services per psychiatrist and psychologist during the period 2001 through 2012 than any other provider with a similar patient population in the New York area.

16. In August 2011, PAMA requested "clarification" from NGS regarding whether, among other things, it could bill for separate 90801 exams by both a psychiatrist and a psychologist at the outset of each episode of illness. NGS's response was that proper billing of a 90801 examination should be determined by what is clinically appropriate. Under certain circumstances, a psychiatrist and a psychologist could both appropriately conduct a 90801 exam at the outset of an episode of illness; however, the documentation must indicate that both examinations were in fact medically necessary.

II. PAMA PC Billed Medicare for Behavioral Health Services That Were Not Medically Necessary And/Or Failed to Comply With Medicare's Documentation Requirements

17. In violation of Medicare policies, as well as its own policies, PAMA provided psychotherapy to patients who lacked the capacity to benefit from psychotherapy due to severe dementia. In addition, PAMA PC billed for 90801 exams that were duplicative, failed to comply with Medicare rules, and reflected a lack of coordination of care both among PAMA's own psychiatrists, psychologists and nurses, and between PAMA's employees and staff at the facilities at which PAMA performed services. In addition, PAMA PC billed for services for which it lacked any documentation whatsoever.

18. PAMA's "Policy on Dementia and Psychotherapy" tracks the Medicare rules regarding when psychotherapy can be provided to demented patients. It states that "[w]hen some

cognitive impairment is present, suspected or noted in the medical record, the psychologist should administer a screening examination as part of the initial consultation (90801)." The policy requires that the screening examination "should be the SLUMS or similar instrument," referring to the St. Louis University Mental Status Examination. The policy further notes that when a patient has a diagnosis of dementia, in order for psychotherapy to be appropriate there must be documentation that the patient's dementia is mild, that the patient has the "capacity to recall therapeutic encounters," and "[t]here must not be any evidence in the medical record that would point to 'severe' cognitive deficits that would render psychotherapy ineffective." Furthermore, the policy states that "[i]t is not enough for a psychologist to simply render a clinical opinion that the above noted Medicare criteria for psychotherapy are met – there must be objective evidence to support the assertion." (Emphasis in original.) The policy states that "[n]europsychological testing would serve that function."

19. Despite this clear policy, as well as Medicare's rules, in numerous cases PAMA provided psychotherapy to patients with severe dementia, significant cognitive impairments, and memory impairments, and who clearly lacked the capacity to benefit from psychotherapy. The patients' clinical records indicated that they suffered from dementia to the extent that they lacked the ability to recall therapy from session to session. Moreover, the psychotherapy was not included in the patients' treatment plans, was not goal oriented, and, in some cases, was not even documented in progress notes or otherwise.

20. PAMA's policies also contain requirements for 90801 examinations, including that they involve "an assessment of the patient's history, mental status and disposition in relation to a specific presenting problem or referral question." *See* Park Avenue Coding Guide. The

policies provide that an "exam may incl[ude] communication with the family, or other sources, ordering and medical interpretation of lab tests and other medical diagnostic studies, as appropriate." *Id.* (emphasis in original). Park Avenue's policies further state that a 90801 examination must include the following, reflecting the comprehensive nature of this type of evaluation:

> Reason for Referral/presenting problem
> Prior Pysch history documented
> Pertinent medical social family history documented
> Clinical observations and mental status exam documented
> Mental status exam generally includes most or all of the following:
> Orientation to time, place, person
> recent and remote memory
> Attention span/concentration
> mood/affect
> Abnormal psychotic thoughts
> judgment & insight
> Eval of speech, language, fund of knowledge, associations
> Present Evaluation documented
> Diagnosis documented
> Recommendations (incl. long & short term benefits) noted
> Rationale & type of adaptive method present in record

Id. Despite these policies, and Medicare's rules, PAMA PC billed for numerous 90801 examinations that lacked a medical or psychiatric history, failed to include an adequate mental status exam, or otherwise failed adequately to include these elements of the examination, in addition to being duplicative of 90801 examinations done by other Park Avenue staff.

21. Set forth below are some specific examples of instances in which PAMA PC billed, and was paid by Medicare, for (i) psychotherapy to patients who lacked the capacity to benefit from psychotherapy due to severe dementia, (ii) 90801 exams that were duplicative, failed to comply with Medicare rules, and reflected a lack of coordination of care both among

PAMA's own psychiatrists, psychologists and nurses, and between PAMA's employees and staff at the facilities at which PAMA performed services, and/or (iii) services for which PAMA lacked any documentation whatsoever. The false claims made by PAMA PC in each of the examples below were material to Medicare's payment decision.

Patient A

22. PAMA PC billed Medicare for extensive psychotherapy for Patient A, a resident at Eger Harbor House ("Eger"), an Assisted Living Program facility in Staten Island, even though she was incapable of benefitting from psychotherapy. Patient A is an 82-year old female who was admitted to Eger in May 2009. She had a diagnosis of mild short term memory loss in December 2009, but continued to decline thereafter, as well as suffering from depression. On May 25, 2010, a PAMA Psychiatric Nurse Practitioner, Kehinde Idowu, examined her, found her to have cognitive decline along with psychiatric problems, and requested neuropsychological testing to rule out dementia. On June 2, 2010, Dr. Thomas Schattner, a PAMA psychologist, conducted an interview of Patient A as part of the neuropsychological testing and found that she had poor short term memory and cognitive impairment. He noted that Patient A's recall of psychotherapy she had received from another PAMA psychologist, Dr. Phyllis Brown, prior to that date was "poor." She was "unable to recall any of the recent weekly visits, and unable to recall any content of the sessions." Indeed, Patient A was "unable to recall seeing her therapist the day before the initial interview."

23. Dr. Schattner then conducted a full neuropsychological test on June 6, 2010 in which he found that Patient A "is experiencing varying levels of cognitive impairment including relatively severe memory problems along with constructional apraxis, acalculia, executive

dysfunction, and language impairment." His diagnosis was "Senile Dementia of the Alzheimer's type with depression . . .," and he concluded that Patient A was "currently a poor candidate for therapy as reflected by her performance on the assessment measures, specifically the memory and language impairment."

24. On June 16, 2010, Patient A tripped and sustained a pelvic fracture. She was hospitalized for the fracture and was readmitted to Eger for rehabilitation. One month later, on July 13, 2010, another PAMA psychologist, Dr. Galina Kitchens, evaluated Patient A and recommended psychotherapy for her. Dr. Kitchens' evaluation did not document previous psychiatric history or treatment, including two years of extensive psychotherapy and other services Patient A had received previously from PAMA psychiatrists and psychologists at Eger, such as psychotherapy from Dr. Brown. Dr. Kitchens gave no indication of having contacted or communicated with any PAMA psychiatrist or psychologist who had treated Patient A at Eger previously, including Dr. Brown. Nor did Dr. Kitchens give any indication that she had reviewed Patient A's clinical record at Egers or was aware of the neuropsychological testing that had been conducted by Dr. Schattner.

25. PAMA PC billed for psychotherapy by Dr. Kitchens repeatedly from July 20, 2010 through September 21, 2010, even though the services were not medically necessary because Patient A was not capable of benefitting from psychotherapy. Likewise, numerous psychotherapy sessions provided by Dr. Brown during the period prior to Dr. Schattner's neuropsychological testing in June 2010 were also medically unnecessary, given that Patient A was unable to remember those therapy sessions when she was interviewed by Dr. Schattner.

26. Further, on July 30, 2010, again following Dr. Schattner's neuropsychological testing of Patient A, Psychiatric Nurse Practitioner Idowu again evaluated Patient A. She found that Patient A's memory was "profoundly poor" and that she suffered from other cognitive impairments. Ms. Idowu's findings were consistent with her prior findings in May 2010 and those of the neuropsychological testing performed by Dr. Schattner. However, there is no evidence in her report that she was aware of the neuropsychological testing and its findings. This evaluation lacked medical necessity.

27. In addition, PAMA lacked any documentation for many of the psychotherapy services for which it billed.

28. In submitting claims for these services with respect to Patient A for reimbursement by Medicare, PAMA and PAMA PC knew, or recklessly disregarded that, these services failed to comply with the relevant reimbursement rules. PAMA purportedly audited Dr. Kitchen's services with respect to Patient A on August 10, 2010 without even considering whether Patient A was capable of benefitting from psychotherapy. The audit, which found no problems with Dr. Kitchen's provision of services, consisted of a mere checklist of such items as whether Dr. Kitchen's notes included the patient's name and the facility name. Thus, PAMA and PAMA PC knowingly, or with reckless disregard for the truth, presented false claims to Medicare for these services.

Patient B

29. Patient B is a 72-year old woman who was transferred to Workmen's Circle MultiCare Center ("Workmen's Circle") in the Bronx on March 9, 2010 from Harlem Hospital in Manhattan with an admission diagnosis of dementia, among other diagnoses. On March 11,

2010, she was seen by PAMA psychologist Dr. Lafontant, based on a referral from a doctor at Workmen's Circle, requesting an evaluation of whether Patient B had the "capacity to make decisions." Dr. Lafontant's report of his 90801 exam failed to mention Patient B's diagnosis of dementia and failed to document utilization of any screening tool for cognitive deficits that would impact a determination of Patient B's capacity to make decisions. Dr. Lafontant failed to review Patient B's clinical records or her hospital discharge documentation, or interview staff or family members. His complete failure to review Patient B's history was particularly egregious because she had been admitted to Harlem Hospital as a result of an order from New York Adult Protective Services and a New York City police transfer after being found in a pool of urine and feces.

30. Dr. Lafontant made no determination as to capacity to make decisions, recommending instead that neuropsychological testing should be conducted. However, there is no evidence in the medical record that he either conducted neuropsychological testing at that time or otherwise followed up with Patient B. In fact, no neuropsychological testing was done with respect to Patient B until June 21, 2010. Yet, in the intervening period, PAMA doctors continued to bill for a variety of evaluations of Patient B. These include another 90801 evaluation on March 15, 2010 by PAMA psychiatrist Dr. Mitchell Kaplan. The claims submitted by PAMA PC for all of these services with respect to Patient B lacked medical necessity. PAMA and PAMA PC submitted these claims to Medicare with knowledge of their falsity or with reckless disregard as to whether they were false.

Patient C

31. PAMA PC also billed Medicare for psychotherapy services for Patient C, a 65-year old resident of Shore View Nursing Home in Brooklyn, New York, even though she lacked the capacity to benefit from those services. On February 9, 2010, a PAMA psychiatrist, Dr. Konstantin Nikiforov, diagnosed her with "dementia vascular type." On July 16, 2010, she was diagnosed with psychosis. On August 26, 2010, her medical record indicated that she was "forgetful and confused." Nevertheless, PAMA PC billed for 49 psychotherapy sessions provided by its psychologist Dr. Grigory Orenbakh at Shore View from August 18, 2010 through September 21, 2011.

32. Dr. Nikiforov stated that at the time he saw Patient C in February 2010 she was unable to benefit from psychotherapy. He further noted that in August 2010 this patient had a "pre-existing diagnosis of dementia," "was agitated and . . . was confabulating and . . . had hallucinations," "could also have been delirious," and "also suffer[ed] from probably acute confusion, secondary to some kind of medical problems." Dr. Nikiforov further stated that although both he and Dr. Orenbakh worked at Shore View, among other facilities, Dr. Orenbakh had never spoken to him about whether Patient C could benefit from therapy, and Dr. Nikiforov did not even know Dr. Orenbakh was providing psychotherapy to Patient C.

33. More generally, Dr. Nikiforov stated that no PAMA psychologist had ever spoken with him about whether one of their patients could benefit from psychotherapy even though he worked at the same facilities as those psychologists and saw many of the same patients. This total failure of coordination between PAMA's psychologists and psychiatrists resulted in billing for services that were not reasonable or necessary.

34. Moreover, as therapy progressed, Dr. Orenbakh did not address the issue of whether Patient C had the capacity to recall therapeutic encounters from one session to the next. Each of his therapy notes primarily records the patient's mood on the date of the therapy, such as a note on August 24, 2010, in which he reported that Patient C "stated about her mood: 'I feel not so well, I want to be home, I would feel better if I was not sick.'"

35. Furthermore, Dr. Orenbakh's 90801 exam on August 18, 2010 to evaluate her capacity to benefit from therapy was also not medically necessary and failed to comply with both Medicare's and PAMA's requirements for a 90801 exam in that it lacked an adequate assessment of Patient C's history and mental status. In addition, Dr. Orenbakh's failure to consult with other doctors, such as Dr. Nikiforov, who had treated Patient C renders his evaluation inadequate to satisfy Medicare's documentation requirements for a 90801 exam.

36. In submitting claims for these services with respect to Patient C for reimbursement by Medicare, PAMA knew, or recklessly disregarded, that these services failed to comply with the relevant reimbursement rules. PAMA purportedly audited Dr. Orenbakh's services with respect to Patient C on November 24, 2010 without even considering whether Patient C was capable of benefitting from psychotherapy. As with Dr. Kitchens, the "audit," which failed to identify any problems with Dr. Orenbakh's provision of services, consisted of a mere checklist of such items as whether Dr. Orenbakh's notes included the patient's name and the facility name.

Patient D

37. Patient D is a 77-year old patient who was transferred from St. Luke's Hospital in Manhattan, to Grand Manor Nursing Home ("Grand Manor") in the Bronx on February 11, 2010

with a diagnosis of senile dementia with behavioral disturbance and delusions, chronic schizophrenia, and other ailments. While at Grand Manor, Patient D was seen by PAMA Psychiatric Nurse Practitioner Sofia Umali-Jhanji. On April 8, 2010, and April 19, 2010, Umali-Jhanji entered a diagnosis of schizoaffective disorder and paranoid schizophrenia. Evaluations conducted by Grand Manor psychiatrists on February 15, 2010, March 25, 2010, and April 19, 2010 showed that Patient D was diagnosed with dementia in addition to schizophrenia. On April 20, 2010, Patient D was transferred to Gracie Square Hospital, a psychiatric hospital, after she was found to be a danger to herself and others at Grand Manor. The admitting psychiatrist at Gracie Square, PAMA psychiatrist Dr. Antony Mendola, diagnosed her with senile delusions.

38. On April 22, 2010, two days after Patient D's admission to the hospital, PAMA psychologist Dr. Amy Miller conducted a 90801 examination to evaluate Patient D's capacity for psychotherapy. The history portion of Dr. Miller's evaluation of Patient D did not even mention that the patient had dementia, which was prominently indicated in the Grand Manor records from the time of her transfer to Grand Manor from St. Luke's and prior to her transfer to Gracie Square. Dr. Miller did not analyze whether Patient D's dementia was sufficiently mild that she could benefit from psychotherapy despite her condition. Moreover, Patient D's treatment plan, prepared by the hospital staff attending to her, including the psychiatry, nursing staff and the social workers, made no mention of any psychotherapy, which is particularly noteworthy given that supportive therapy by the social worker was discussed in the plan. Dr. Miller did not participate in Patient D's treatment plan, nor in treatment plan meetings for most of her psychotherapy patients because she did "not have the right schedule for it."

39. PAMA PC billed Medicare for psychotherapy to Patient D on April 26 and 29, 2010, and on May 3 and 17, 2010, even though Dr. Daniel Sussman, a PAMA psychiatrist who saw the patient on April 26, 2010, diagnosed Patient D with "schizophrenia, chronic paranoid type, complicated by dementia." Dr. Miller never spoke to Dr. Sussman about Patient D.

40. Patient D was readmitted to Gracie Square on December 10, 2010. On December 11, 2010, Dr. Miller conducted yet another 90801 examination of Patient D for psychotherapy, again without mentioning Patient D's history of dementia. The evaluation was done at the request of Dr. Anthony Mendola, a PAMA psychiatrist, but there is no explanation in his request as to why he viewed Patient D as appropriate for psychotherapy. Dr. Miller noted that Patient D was delusional and had paranoid ideation but, incredibly, did not comment on her memory abilities. She made no finding as to whether Patient D was capable of benefitting from psychotherapy despite her diagnoses of dementia and schizophrenia. As was the case with Dr. Sussman, Dr. Miller had never spoken with Dr. Mendola about Patient D's dementia. Nevertheless, PAMA PC billed for psychotherapy by Dr. Miller on eight dates during December 2010 and January 2011, beginning on December 23, 2010 and ending on January 13, 2011. All of PAMA PC's claims for services provided by Dr. Miller for Patient D, including the 90801 examinations and the psychotherapy, lacked medical necessity. They were false claims for payment submitted to Medicare with knowledge of, or reckless disregard as to, their falsity.

Patient E

41. Patient E is a 75-year old patient who was transferred to Workmen's Circle on January 27, 2010 from Westchester Square Hospital with a diagnosis of depression, as well as various physical ailments. PAMA psychiatrist Dr. Antony Mendola performed a 90801

evaluation of Patient E on February 3, 2010 in which he diagnosed Patient E with depression and indicated that she required medication. On February 19, 2010, Dr. Evens Lafontant, a PAMA psychologist, conducted another 90801 evaluation, purportedly because Patient E was found sleeping on the floor and suffered from "crazy" dreams. In the report of his 90801 evaluation, Dr. Lafontant did not reference Dr. Mendola's 90801 evaluation two weeks earlier in which he called the patient's cognitive status into question. Nor did Dr. Lafontant indicate anywhere in his report that he had discussed Patient E with Dr. Mendola or knew that Dr. Mendola had concerns about Patient E's cognitive status. Dr. Lafontant did not conduct any screening for cognitive impairment. He noted that Patient E was depressed, but made no assessment or plan for addressing Patient E's symptoms. Dr. Lafontant's 90801 evaluation was not medically necessary and should not have been billed to Medicare.

42. On February 22, 2010, another PAMA psychologist, Dr. Marian Matthaey, conducted yet another 90801 evaluation with respect to Patient E. Dr. Matthaey's report made no mention of Dr. Lafontant's evaluation just three days earlier or of Dr. Mendola's evaluation three weeks before that. Dr. Matthaey recommended neuropsychological testing for Patient E, apparently unaware that Dr. Mendola had previously made this same request.

43. These services billed to Medicare by PAMA PC for Patient E lacked medical necessity. In submitting them to Medicare for payment, PAMA and PAMA PC acted with knowledge of, or reckless disregard to, their falsity.

PAMA and PAMA PC Billed Medicare for Unnecessary Services on Many Other Occasions

44. PAMA PC also billed Medicare for unnecessary services on many other occasions, including for psychotherapy to patients who were incapable of benefitting from therapy. For example, PAMA PC billed for services provided to Patient F, a patient at Gracie Square Hospital with severe dementia who was provided psychotherapy on September 17, 2010; PAMA also billed for psychotherapy provided to Patient G, a patient at Bethel Springvale Inn with severe dementia on September 14, 2011, and many others.

FIRST CLAIM

Violations of the False Claims Act: Presenting False Claims for Payment (31 U.S.C. § 3729(a) (1) (2006), and, as amended, 31 U.S.C. § 3729(a)(1)(A))

45. The United States incorporates by reference each of the preceding paragraphs as if fully set forth in this paragraph.

46. The United States seeks relief against defendants under Section 3729(a)(1) of the False Claims Act, 31 U.S.C. § 3729(a)(1)(2006), and, as amended, 31 U.S.C. § 3729(a)(1)(A).

47. As set forth above, in connection with the foregoing schemes, defendants knowingly, or with reckless disregard for the truth, presented and/or caused to be presented false or fraudulent claims for payment by the federal government.

48. By reason of these false claims, the United States has sustained damages in a substantial amount to be determined at trial, and is entitled to a civil penalty as required by law for each violation.

SECOND CLAIM

Violations of the False Claims Act: Use of False Statements (31 U.S.C. § 3729(a)(2) (2006), and, as amended, 31 U.S.C. § 3729(a)(1)(B))

49. The United States incorporates by reference paragraphs 1 through 44 as if fully set forth in this paragraph.

50. The United States seeks relief against defendants under the False Claims Act, 31 U.S.C. § 3729(a)(2)(2006), and, as amended, 31 U.S.C. § 3729(a)(1)(B).

51. As set forth above, in connection with the foregoing schemes, defendants knowingly, or in reckless disregard for the truth, made, used, and caused to made and used false records and statements to get false or fraudulent claims paid by the federal government.

52. By reason of these false claims, the United States has sustained damages in a substantial amount to be determined at trial, and is entitled to a civil penalty as required by law for each violation.

THIRD CLAIM

Payment Under Mistake of Fact

53. The United States incorporates by reference each of paragraphs 1 through 44 as if fully set forth in this paragraph.

54. The United States seeks relief against defendants to recover monies paid under mistake of fact.

55. The United States made payments under the Medicare program for services rendered under the erroneous belief that defendants were entitled to payment of such funds. In making such payments, the United States relied upon and assumed defendants had complied with

the applicable Medicare rules and regulations and that the claims for Medicare reimbursement were consistent with the relevant Medicare regulations. This erroneous belief was material to the United States' decision to pay these claims. In such circumstances, the United States' payment of federal funds under the Medicare program was by mistake and was not authorized.

56. By reason of these false claims, the United States has sustained damages in a substantial amount to be determined at trial.

FOURTH CLAIM

Negligence

57. The United States incorporates by reference each of paragraphs 1 through 44 as if fully set forth in this paragraph.

58. The United States seeks relief against defendants to recover monies paid because of defendants' negligence.

59. Defendants were negligent in failing to comply with Medicare rules and regulations relating to payment for psychiatric services. The United States made substantial Medicare payments that would not have been made but for defendants' misrepresentation that the services were provided consistent with the applicable Medicare rules and regulations even though those rules and regulations had not been complied with.

60. By reason of these false claims, the United States has sustained damages in a substantial amount to be determined at trial.

FIFTH CLAIM

Unjust Enrichment

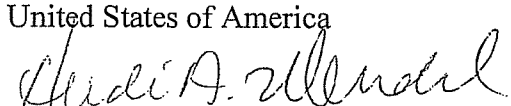
61. The United States incorporates by reference each of paragraphs 1 through 44 as if fully set forth in this paragraph.

62. By reason of the payments made by the Government in connection with providing reimbursement of Medicare claims based on false statements submitted to the Government by defendants, defendants were unjustly enriched. The circumstances of defendants' receipt of such payments are such that, in equity and good conscience, defendants should not retain those payments, the amount of which is to be determined at trial.

WHEREFORE, plaintiff, the United States, requests that judgment be entered in its favor and against defendants for treble the United States' damages, in an amount to be determined at trial, plus civil penalties for each false claim presented, and any other relief as is just and proper.

Dated: New York, New York
March 5, 2013

PREET BHARARA
United States Attorney for the
Southern District of New York
Attorney for Plaintiff
United States of America

By: 
HEIDI A. WENDEL
MARA E. TRAGER
Assistant United States Attorneys
86 Chambers Street
New York, New York 10007
Telephone: (212) 637-2636/2799
Facsimile: (212) 637-2686
heidi.wendel@usdoj.gov
mara.trager@usdoj.gov