

FILED
KING COUNTY, WASHINGTON

MAR 28 2018

SUPERIOR COURT CLERK

EXP07

STATE OF WASHINGTON
KING COUNTY SUPERIOR COURT

STATE OF WASHINGTON,

Plaintiff,

v.

PROVIDENCE HEALTH &
SERVICES-WASHINGTON;
SWEDISH HEALTH SERVICES;
SWEDISH EDMONDS

Defendant.

NO. 18-2-08196-35E7

CONSENT DECREE

I. JUDGMENT SUMMARY

1.1	Judgment Creditor:	State of Washington
1.2	Judgment Debtor:	Providence Health & Services- Washington; Swedish Health Services; Swedish Edmonds
1.3	Principal Judgment Amount:	\$1,439,000
1.4	Post Judgment Interest Rate:	12% per annum
1.5	Attorney for Judgment Creditor:	Audrey Udashen Assistant Attorney General
1.6	Attorney for Judgment Debtor:	Jeffrey B. Coopersmith James Howard Davis Wright Tremaine LLP

1 1.7 Plaintiff, State of Washington (State), having conducted an investigation and
2 commenced this action pursuant to the Consumer Protection Act, RCW 19.86;

3 1.8 Defendants, Swedish Edmonds and Swedish Health Service ("Swedish"), and
4 Providence Health & Services-Washington ("Providence"), were served with a Summons and
5 Complaint in this matter;

6 1.9 The State appears by and through its attorneys, Robert Ferguson, Attorney
7 General, and Audrey Udashen, Assistant Attorney General;

8 1.10 Defendants appear by and through their attorneys, Jeffrey B. Coopersmith and
9 James Howard, of Davis, Wright, Tremaine LLP;

10 1.11 The State and Defendants agree on a basis for the settlement of the matters
11 alleged in the Complaint and to the entry of this Consent Decree against Defendants without
12 the need for trial or adjudication of any issue of law or fact;

13 1.12 The State and Defendants agree that this Consent Decree does not constitute
14 evidence or an admission regarding the existence or non-existence of any liability, fault, issue,
15 fact, or violation of any law, alleged by the State;

16 1.14 Defendants recognize and state that this Consent Decree is entered into voluntarily
17 and that no promises have been made by the Attorney General's Office or any member, officer,
18 agent, or representative thereof to induce Defendant to enter into this Consent Decree, except as
19 provided herein;

20 1.15 The State and Defendants waive any right they may have to appeal from this
21 Consent Decree;

22 1.16 The State and Defendants further agree that this Court retains jurisdiction of this
23 action and jurisdiction over the parties for the purpose of implementing and enforcing the terms
24 and conditions of this Consent Decree and for all other purposes related to this matter;

25 The Court finds no just reason for delay.
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1 NOW, THEREFORE, it is hereby ORDERED, ADJUDGED, AND DECREED as
2 follows:

3 **II. GENERAL**

4 2.1 Jurisdiction. This Court has jurisdiction over the subject matter of this action and
5 over the parties. Plaintiff's Complaint in this matter states claims upon which relief may be
6 granted under the provisions of the Consumer Protection Act, RCW 19.86.

7 2.2 Defendants. For purposes of this Consent Decree, the term "Defendants" where
8 not otherwise specified shall mean Swedish and Providence.

9 **III. INJUNCTIONS**

10 3.1 Application of Injunctions. The injunctive provisions of this Consent Decree shall
11 apply to Defendants and Defendants' successors, assigns, officers, servants, employees, facilities,
12 clinics, subparts, representatives, and all other persons or entities in active concert or participation
13 with Defendants.

14 3.2 Notice. This Consent Decree pertains to the provision of laboratory services to
15 Defendants' patients by an outside vendor with which the Defendants exclusively contract
16 ("Services"). Defendants shall immediately inform the following of the of the terms and
17 conditions of this Consent Decree, and shall direct those persons and/or entities to comply with
18 this Consent Decree, to the extent that the following have authority over or involvement in the
19 provision of Services: Defendants' successors, assigns, officers, agents, servants, employees,
20 facilities, affiliates, clinics, providers, subparts, representatives, and vendors.

21 3.3 Injunctions. Defendants' successors, assigns, officers, servants, employees,
22 facilities, clinics, subparts, or representatives involved in the oversight of or the provision of
23 Services are hereby permanently compelled to engage in the following acts or practices:
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1 3.4 Subject to paragraph 3.8, if Defendants contract with a laboratory Services
2 provider on an exclusive basis (“Laboratory”), it shall either maintain the contract terms identified
3 in 3.5, or if applicable, provide the notice specified in 3.6.

4 3.5 In any contracts with Laboratory Service providers that include an exclusivity
5 provision, Defendants shall include language which renders the exclusivity provision void if the
6 laboratory becomes an out-of-network provider with any insurance carrier with which Defendants
7 are in-network providers (“Relevant Carrier”).

8 3.5.1 Contract terms put in place pursuant to 3.5 shall also prohibit any
9 Laboratory that Defendants may contract with, that is terminated from, withdraws from, or is
10 otherwise no longer in-network with a Relevant Carrier for which Defendants are in-network,
11 from attempting to collect amounts from patients greater than either: (i) patient responsibility
12 portions, or (ii) patient responsibility portions that would otherwise have been applicable at no
13 more than the standard in-network benefit level, in the event that the Laboratory is able to
14 accurately determine such amount through the Relevant Carrier’s in-network fee schedule or the
15 Relevant Carrier’s calculations.

16 3.5.2 Contract terms put in place pursuant to 3.5 may allow the Laboratory to
17 attempt to collect from patients any amount due to the Laboratory from the relevant carrier that
18 has been paid directly to the patient instead of the Laboratory, but these collection efforts shall
19 only be allowed when the Laboratory is able to accurately determine these amounts through
20 information shared by the Relevant Carrier or by the patient.

21 3.5.3 If Defendants have exclusive contracts with Laboratories in effect at the
22 time of the entry of this Consent Decree, they shall either renegotiate the contracts to include the
23 language specified in this section 3.5, including its subparts, or alternatively and if applicable,
24 provide the notice described in 3.6.

1 3.6 Defendants shall provide notice of any Laboratory they have contracted with to
2 provide treatment to their patients on an exclusive basis that they know to be an out-of-network
3 provider with a Relevant Carrier for which Defendants are in-network providers.

4 3.6.1 The notice shall state that (a) Defendants use the Laboratory on an
5 exclusive basis, (b) the Laboratory is an out-of-network provider with the Relevant Carrier,
6 and (c) patients insured through the Relevant Carrier may incur larger out-of-pocket costs for
7 treatment at Defendants' facilities ("Notice").

8 3.6.2 Notice shall be provided by posting the notice outlined in 3.6.1
9 prominently and conspicuously in all locations where patients register or pay for treatment at
10 Defendants' facilities, in other areas in which patient notices are posted, and on Defendants'
11 website.

12 3.6.3 If practicable, Defendants shall also provide the notice outlined in 3.6.1
13 through one of the following means: (a) an electronic message sent through the MyChart
14 system or any means by which Defendants electronically communicate with patients; (b) in
15 writing during scheduling and registration; or (c) orally during scheduling and registration,
16 both in person and telephonically.

17 3.6.4 Defendants shall commence providing notice to patients within seven
18 (7) days of its first receipt of notice of a Laboratory's out-of-network status and until it is
19 notified that the Laboratory is an in-network provider with the Relevant Carrier, or until
20 Defendants cease to be in-network providers with the Relevant Carrier, whichever is earlier.

21 3.7 Defendant shall enact procedures to comply with this Consent Decree within
22 thirty (30) days of its entry.

23 3.8 The injunctive relief specified in this Consent Decree shall remain in force unless
24 Washington law is amended to (i) regulate the amounts that out-of-network laboratory
25 providers can charge patients and/or (ii) require that hospitals notify patients if they use out-of-
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1 network laboratory vendors. If such changes to Washington law occur, Defendants are only
2 required to comply with applicable Washington law.

3 IV. RESTITUTION

4 4.1 Defendants agree to cause restitution to be made in the maximum amount of \$385,101
5 (“Restitution”). This amount reflects the best efforts of Plaintiff and Defendants to determine the
6 amounts paid by Swedish and Providence patients to CellNetix as the result of the unexpected
7 billing by CellNetix alleged in the Complaint, that would not have otherwise been required as a
8 patient co-pay, deductible, or an in-network charge.

9 4.2 Restitution shall be made only to Swedish and Providence patients for whom
10 spreadsheet data provided by CellNetix to the Attorney General (“CellNetix Data”) reflects
11 payments characterized as a patient payment or adjustment by CellNetix for the period that
12 CellNetix was out of network with Premera Blue Cross. The payments will be calculated as
13 follows. A total of \$100,000 shall be paid on a pro rata basis to patients for whom CellNetix Data
14 reflects a payment in an amount greater than \$1,000, so long as that payment is attributed in the
15 CellNetix Data as a patient payment or adjustment for a bill sent by CellNetix for Laboratory
16 Services that it provided during the period that CellNetix was out of network with Premera Blue
17 Cross. A total of \$250,000 shall be paid on a pro rata basis to patients for whom CellNetix Data
18 reflects a payment of greater than \$100 but less than \$1,000, so long as that payment is attributed
19 in the CellNetix Data as a patient payment or adjustment for a bill sent by CellNetix for
20 Laboratory Services it provided during the period that CellNetix was out of network with Premera
21 Blue Cross. The remaining \$35,101 shall be paid on a pro rata basis to patients for whom
22 CellNetix Data reflects a payment of up to \$100, so long as that payment is attributed in the
23 CellNetix Data as a patient payment or adjustment for a bill sent by CellNetix for Laboratory
24 Services it provided during the period that CellNetix was out of network with Premera Blue
25 Cross.
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1 4.3 Restitution shall be made to patients described in paragraph 4.2 by check sent to the
2 last known addresses that CellNetix's data reflects for such patients. Such checks will be mailed
3 within ninety (90) days of receipt of sufficient address data by Defendants from CellNetix, and
4 will be accompanied by a notice that the payment is being made pursuant to a settlement with the
5 Attorney General of Washington State.

6 4.4 Defendants shall not be responsible for locating patients who no longer reside at the
7 last known addresses shown in CellNetix's data.

8 4.5 If any check issued pursuant to 4.3 is returned to sender, or is not cashed before it
9 becomes invalid or expired, an amount equal to the check will be sent to the Washington State
10 Department of Revenue ("Department of Revenue") according to its usual protocol for disposition
11 as unclaimed funds.

12 4.5.1 If an intended recipient of an unclaimed, unexpired check contacts
13 Defendants and requests that his or her check be sent to address other than the one provided by
14 CellNetix at any time before Defendants send the check to the Department of Revenue,
15 Defendants shall resend the check to the address provided by the patient.

16 4.6 Defendants may, at their option and expense, retain a consultant to assist with the
17 process of paying Restitution called for by this Consent Decree.

18 4.7 While Defendants have represented that some or all of the Restitution to be paid
19 pursuant to this Consent Decree may be paid by CellNetix, Defendants will retain full
20 responsibility for arranging for the payment of such Restitution in such amounts and to the extent
21 required under this Consent Decree.

22 4.8 Defendants shall keep Plaintiff apprised of efforts to effectuate Restitution and will
23 produce a report for Plaintiff detailing the list of patients who were sent Restitution checks and the
24 amounts of such checks within one hundred and fifty (150) days of receipt of sufficient address
25 data by Defendants from CellNetix.
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1 6.3 This Consent Decree is entered pursuant to RCW 19.86.080. Jurisdiction is
2 retained for the purpose of enabling any party to this Consent Decree with or without the prior
3 consent of the other party to apply to the Court at any time for enforcement of compliance with
4 this Consent Decree, to punish violations thereof, or to modify or clarify this Consent Decree.

5 6.4 Representatives of the Office of the Attorney General shall be permitted, upon
6 advance written notice of twenty (20) days to Defendants, to access, inspect and/or copy business
7 records or documents in possession, custody or under control of Defendants to monitor
8 compliance with this Consent Decree, provided that the inspection and copying shall avoid
9 unreasonable disruption of Defendants' business activities. The State of Washington shall not
10 disclose any information described in this Paragraph 6.4 (Confidential Information) unless such
11 disclosure is required by law. In the event that a representative of the Office of the Attorney
12 General receives a request under the Public Records Act, subpoena, or other demand for
13 production that seeks the disclosure of Confidential Information, the Office of the Attorney
14 General shall notify Defendants as soon as practicable and in no event more than thirty (30)
15 calendar days after receiving such request and shall allow Defendants a reasonable time, not less
16 than ten (10) calendar days, from the receipt of such notice to seek a protective order relating to
17 the Confidential Information or to otherwise resolve any disputes relating to the production of the
18 Confidential Information before Washington discloses any Confidential Information. Nothing in
19 this Consent Decree shall affect State of Washington's compliance with the Public Records Act,
20 RCW 42.56.

21 6.5 To monitor compliance with this Consent Decree, the State shall be permitted to
22 serve interrogatories pursuant to the provisions of CR 26 and 33. If necessary following
23 exhaustion of other discovery efforts, the State shall be permitted to question Defendants or any
24 officer, director, agent, or employee of Defendants by deposition pursuant to the provisions of CR
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1 26 and CR 30, provided that the State attempts in good faith to schedule the deposition at a time
2 convenient for the deponent and his or her legal counsel.

3 6.6 This Consent Decree in no way limits the Office of the Attorney General, or any
4 other state agency, from conducting any lawful non-public investigation to monitor Defendant's
5 compliance with this Consent Decree or to investigate other alleged violations of the CPA, which
6 may include but is not limited to interviewing customers or former employees of Defendant.

7 6.7 Nothing in this Consent Decree shall be construed to limit or bar any other
8 governmental entity or consumer from pursuing other available remedies against Defendants.

9 6.8 Under no circumstances shall this Consent Decree or the name of the State of
10 Washington, the Office of the Attorney General, Consumer Protection Division, or any of their
11 employees or representatives be used by Defendants in connection with any selling, advertising,
12 or promotion of products or services, or as an endorsement or approval of Defendants' acts,
13 practices or conduct of business.

14 6.9 This Consent Decree shall be binding upon and inure to the benefit of Defendants'
15 successors and assigns. Defendants and their successors and assigns shall notify the Attorney
16 General's Office at least thirty (30) days prior to any change-in-control of Defendants that would
17 change the identity of the corporate entity responsible for compliance obligations arising under
18 this Consent Decree until all such compliance obligations are completed, including but not limited
19 to dissolution, assignment, sale, merger, or other action that would result in the emergence of a
20 successor corporation; the creation or dissolution of a subsidiary, parent, or affiliate that engages
21 in any acts or practices subject to this order; the proposed filing of a bankruptcy petition; or a
22 change in the corporate address. Provided, however, that with respect to any proposed change in
23 the corporation about which Defendants and its successors and assigns learn less than thirty (30)
24 days prior to the date such action is to take place, Defendants and its successors and assigns shall
25 notify the Attorney General's Office as soon as is practicable after obtaining such knowledge.
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1 6.10 Any notice or other communication required or permitted under this Consent
2 Decree shall be in writing and delivered to the following persons or any person subsequently
3 designated by the parties:

4 For the State of Washington:

5 Office of the Attorney General
6 Consumer Protection Division
7 Attention: Audrey Udashen, AAG
8 800 Fifth Avenue, Suite 2000
9 Seattle, WA 98104-3188

For Defendants:

 Jeffrey B. Coopersmith
 James Howard
 Davis Wright Tremaine
 1201 Third Avenue, Suite 2200
 Seattle, WA 98101

 NOTE: Relocating to Madison
 Centre in November 2018

 Department of Legal Affairs
 Providence and Swedish
 800 Fifth Avenue, Suite 1200
 Seattle, WA 98104
 Attn: Chief Legal Officer

14 6.11 Upon entry of this Consent Decree, all claims in this matter not otherwise
15 addressed by this Consent Decree are dismissed.

16 6.12 The Clerk of Court is ordered to enter the foregoing Judgment and Consent
17 Decree immediately.
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20 **VII. DISMISSAL AND WAIVER OF CLAIMS**

21 7.1 This Consent Decree resolves with prejudice all issues raised by the Attorney General
22 pertaining to the acts or omissions addressed in the Complaint filed in this matter. Upon entry
23 of this Consent Decree, all claims in this matter, not otherwise addressed by the Consent
24 Decree, are dismissed.
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DONE IN OPEN COURT this _____ day of 3/28, 2018.

HENRY H. JUDSON

MAR 28 2018



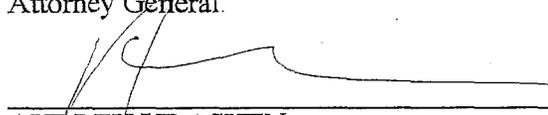
JUDGE/COURT COMMISSIONER

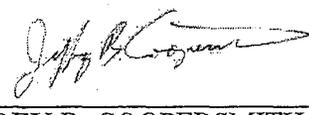
COURT COMMISSIONER

Approved for entry and presented by:

Approved for Entry, Notice of
Presentation Waived:

ROBERT W. FERGUSON
Attorney General.





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