

## RESOLUTION AGREEMENT

### I. RECITALS

1. Parties. The Parties to this Resolution Agreement ("Agreement") are:

A. The United States Department of Health and Human Services, Office for Civil Rights ("HHS"), which enforces the Federal standards that govern the privacy of individually identifiable health information (45 C.F.R. Part 160 and Subparts A and E of Part 164, the "Privacy Rule"), the Federal standards that govern the security of electronic individually identifiable health information (45 C.F.R. Part 160 and Subparts A and C of Part 164, the "Security Rule"), and the Federal standards for notification in the case of breach of unsecured protected health information (45 C.F.R. Part 160 and Subparts A and D of 45 C.F.R. Part 164, the "Breach Notification Rule"). HHS has the authority to conduct compliance reviews alleging violations of the Privacy, Security, and Breach Notification Rules (the "HIPAA Rules") by covered entities and business associates, and covered entities and business associates must cooperate with HHS compliance reviews. See 45 C.F.R. §§ 160.306(c), 160.308, and 160.310(b).

B. Boston Medical Center Corporation ("BMC"), which is a covered entity, as defined at 45 C.F.R. § 160.103, and therefore is required to comply with the HIPAA Rules. BMC is a 567-bed, private, not-for-profit, academic medical center located in the South End of Boston, Massachusetts that provides a full range of health care services, including emergency services, for more than one million patients a year. BMC is a Disproportionate Share Hospital pursuant to Section 1886(d)(1)(B) of the Social Security Act and is the largest safety net hospital in New England.

HHS and BMC shall together be referred to herein as the "Parties."

2. Factual Background and Covered Conduct.

On January 26, 2015, HHS initiated a compliance review of BMC based on information contained in a Boston Globe article dated January 12, 2015. The article indicated BMC permitted ABC News to film a medical documentary program at BMC (HHS Transaction Number 15-202245).

HHS' investigation alleges the following conduct occurred ("Covered Conduct"):

BMC impermissibly disclosed the protected health information ("PHI") of patients to ABC employees during the production and filming of a television program at BMC (*See* 45 C.F.R. § 164.502(a)).

3. No Admission. This Agreement is not an admission of liability by BMC. Potential violations alleged in the covered conduct do not constitute findings of fact. BMC denies that it impermissibly disclosed PHI and contends that it had proper consent for the filming.

4. No Concession. This Agreement is not a concession by HHS that BMC is not in violation of the HIPAA Rules and not liable for civil money penalties.

5. Intention of Parties to Effect Resolution. This Agreement is intended to resolve HHS Transaction Number: 15-202245 and any alleged violations of the HIPAA Rules related to the Covered Conduct specified in paragraph I.2 of this Agreement. In consideration of the Parties' interest in avoiding the uncertainty, burden, and expense of further investigation and formal proceedings, the Parties agree to resolve this matter according to the Terms and Conditions below.

## II. TERMS AND CONDITIONS

6. Payment. HHS has agreed to accept, and BMC has agreed to pay HHS, the amount of \$100,000 ("Resolution Amount"). BMC agrees to pay the Resolution Amount on the Effective Date of this Agreement as defined in paragraph II.14 by automated clearing house transaction pursuant to written instructions to be provided by HHS.

7. Corrective Action Plan. BMC has entered into and agrees to comply with the Corrective Action Plan ("CAP"), attached as Appendix A, which is incorporated into this Agreement by reference. If BMC breaches the CAP, and fails to cure the breach as set forth in the CAP, then BMC will be in breach of this Agreement and HHS will not be subject to the Release set forth in paragraph II.8 of this Agreement.

8. Release by HHS. In consideration of and conditioned upon BMC's performance of its obligations under this Agreement, HHS releases BMC from any actions it may have against BMC under the HIPAA Rules arising out of or related to the Covered Conduct identified in paragraph I.2 of this Agreement. HHS does not release BMC from, nor waive any rights, obligations, or causes of action other than those arising out of or related to the Covered Conduct referred to in Section I.2. This release does not extend to actions that may be brought under section 1177 of the Social Security Act, 42 U.S.C. § 1320d-6.

9. Agreement by Released Parties. BMC shall not contest the validity of its obligation to pay, nor the amount of, the Resolution Amount or any other obligations agreed to under this Agreement. BMC waives all procedural rights granted under Section 1128A of the Social Security Act (42 U.S.C. § 1320a-7a) and 45 C.F.R. Part 160 Subpart E, and HHS claims collection regulations at 45 C.F.R. Part 30, including, but not limited to, notice, hearing, and appeal with respect to the Resolution Amount.

10. Binding on Successors. This Agreement is binding on BMC and its successors, heirs, transferees, and assigns.

11. Costs. Each Party to this Agreement shall bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

12. No Additional Releases. This Agreement is intended to be for the benefit of the Parties only, and by this instrument the Parties do not release any claims against or by any other person or entity.

13. Effect of Agreement. This Agreement constitutes the complete agreement between the Parties. All material representations, understandings, and promises of the Parties are contained in this Agreement. Any modifications to this Agreement shall be set forth in writing and signed by all Parties.

14. Execution of Agreement and Effective Date. The Agreement shall become effective (i.e., final and binding) upon the date of signing of this Agreement and the CAP by the last signatory (Effective Date).

15. Disclosure. HHS places no restriction on the publication of the Agreement. In addition, HHS may be required to disclose material related to this Agreement to any person upon request consistent with the applicable provisions of the Freedom of Information Act, 5 U.S.C. § 552, and its implementing regulations, 45 C.F.R. Part 5.

16. Execution in Counterparts. This Agreement may be executed in counterparts, each of which constitutes an original, and all of which shall constitute one and the same agreement.

17. Authorizations. The individual(s) signing this Agreement on behalf of BMC represent and warrant that they are authorized by BMC to execute this Agreement. The individual(s) signing this Agreement on behalf of HHS represent and warrant that they are signing this Agreement in their official capacities and that they are authorized to execute this Agreement.

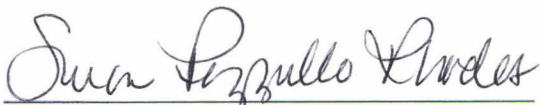
**For Boston Medical Center Corporation**



2018/8/13

David Beck, Senior Vice President, Chief Legal Counsel, Clerk Date  
Boston Medical Center Corporation

**For Department of Health and Human Services**



8/3/2018

Susan M. Pezzullo Rhodes, Regional Manager  
Office for Civil Rights, New England Region

Date

**Appendix A**  
**CORRECTIVE ACTION PLAN**  
**BETWEEN THE**  
**DEPARTMENT OF HEALTH AND HUMAN SERVICES**  
**AND**  
**BOSTON MEDICAL CENTER CORPORATION**

**I. Preamble**

Boston Medical Center Corporation (hereinafter known as "BMC") hereby enters into this Corrective Action Plan ("CAP") with the United States Department of Health and Human Services, Office for Civil Rights ("HHS"). Contemporaneously with this CAP, BMC is entering into a Resolution Agreement ("Agreement") with HHS, and this CAP is incorporated by reference into the Resolution Agreement as Appendix A. BMC enters into this CAP as part of consideration for the release set forth in paragraph II.8 of the Agreement.

**II. Contact Persons and Submissions**

**A. Contact Persons**

BMC has identified the following individual as its authorized representative and contact person regarding the implementation of this CAP and for receipt and submission of notifications and reports:

To be determined by  
Boston Medical Center  
One Boston Medical Center Place  
Boston, MA 02118  
Telephone:  
Facsimile:

HHS has identified the following individual as its authorized representative and contact person with whom BMC is to report information regarding the implementation of this CAP:

Susan M. Pezzullo Rhodes, Regional Manager  
Office for Civil Rights, New England Region  
U.S. Department of Health and Human Services  
JFK Federal Building, Room 1875  
Boston, MA 02203  
Email: [susan.rhodes@hhs.gov](mailto:susan.rhodes@hhs.gov)  
Telephone: (617) 565-1347  
Facsimile: (617) 565-3809

BMC and HHS agree to promptly notify each other of any changes in the contact persons or the other information provided above.

**B. Proof of Submissions.** Unless otherwise specified, all notifications and reports required by this CAP may be made by any means, including certified mail, overnight mail, or hand delivery, provided

that there is proof that such notification was received. For purposes of this requirement, internal facsimile confirmation sheets do not constitute proof of receipt.

### **III. Effective Date and Term of CAP**

The Effective Date for this CAP shall be calculated in accordance with paragraph II.14 of the Agreement ("Effective Date"). The period of compliance ("Compliance Term") with the obligations assumed by BMC under this CAP shall begin on the effective date of this CAP and end two years from the Effective Date unless HHS has notified BMC under section VIII hereof of its determination that BMC breached this CAP. In the event of such a notification by HHS under section VIII hereof, the Compliance Term shall not end until HHS notifies BMC. Except that after the Compliance Term ends, BMC shall still be obligated to comply with the document retention requirement in section VII.

### **IV. Time**

In computing any period of time prescribed or allowed by this CAP, all days referred to shall be calendar days. The day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday, in which event the period runs until the end of the next day which is not one of the aforementioned days.

### **V. Corrective Action Obligations.**

#### **A. Workforce Communication**

1. All members of BMC's workforce who have access to PHI have access to BMC's policy and procedure website, which includes BMC's policy on filming patients for non-clinical purposes, such as by the news media. BMC requires all workforce members to be familiar with and follow the policies and procedures on the policy and procedure website.

2. Within 30 days of execution of this CAP, BMC will send an e-mail communication to all of its workforce members reminding them of BMC's policy on filming patients for non-clinical purposes. This email will include attachment of HHS' frequently asked question entitled, "Can health care providers invite or arrange for members of the media, including film crews, to enter treatment areas of their facilities without prior authorization?"

### **VI. Document Retention**

BMC shall maintain for inspection and copying, and shall provide to HHS, upon request, all documents and records relating to compliance with this CAP for six (6) years from the Effective Date.

### **VII. Breach Provisions**

BMC is expected to fully and timely comply with all provisions contained in this CAP.

#### **A. Timely Written Requests for Extensions**

BMC may, in advance of any due date set forth in this CAP, submit a timely written request for an extension of time to perform any act required by this CAP. A "timely written request" is defined as a request



in writing received by HHS at least five (5) days prior to the date such an act is required or due to be performed.

B. Notice of Breach of this CAP and Intent to Impose Civil Monetary Penalty. The parties agree that a breach of this CAP by BMC may constitute a breach of the Agreement. Upon a determination by HHS that BMC has breached this CAP, HHS may notify BMC of: (1) BMC's breach; and (2) HHS' intent to impose a civil money penalty ("CMP") pursuant to 45 C.F.R. Part 160, or other remedies for the Covered Conduct set forth in paragraph I.2 of the Agreement ("Notice of Breach and Intent to Impose CMP").

C. BMC's Response. BMC shall have 30 days from the date of receipt of the Notice of Breach and Intent to Impose CMP to demonstrate to HHS' satisfaction that:

1. BMC is in compliance with the obligations of the CAP that HHS cited as the basis for the breach;
2. The alleged breach has been cured; or
3. The alleged breach cannot be cured within the 30-day period, but that: (a) BMC has begun to take action to cure the breach; (b) BMC is pursuing such action with due diligence; and (c) BMC has provided to HHS a reasonable timetable for curing the breach.

D. Imposition of CMP. If at the conclusion of the 30-day period, BMC fails to meet the requirements of section VIII.C of this CAP to HHS' satisfaction, HHS may proceed with the imposition of a CMP against BMC pursuant to 45 C.F.R. Part 160 for any violations of the Covered Conduct set forth in paragraph I.2 of the Agreement. HHS shall notify BMC in writing of its determination to proceed with the imposition of a CMP.

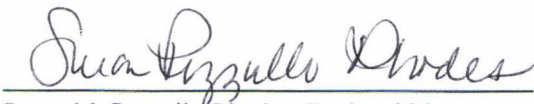
**For Boston Medical Center Corporation**



David Beck, Senior Vice President, Chief Legal Counsel, Clerk  
Boston Medical Center Corporation

Date 2018/8/13

**For Department of Health and Human Services**



Susan M. Pezzullo Rhodes, Regional Manager  
Office for Civil Rights, New England Region

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