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Southern District of New York  
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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA, ex rel. :  
Benjamin V. Climaco, :  
 : 99 Civ. 11137 (SAS)  
Plaintiff, :  
 :  
-against- : COMPLAINT OF THE  
 : UNITED STATES  
MONTEFIORE MEDICAL CENTER, INC., :  
 :  
Defendant. :  
----- x

The United States of America, by and through its attorney, David N. Kelley, United States Attorney for the Southern District of New York, having filed a notice of intervention pursuant to 31 U.S.C. § 3730(b)(4), alleges for its Complaint as follows:

1. This is a civil action brought by relator Benjamin V. Climaco ("Climaco") on his own behalf and on behalf of the United States of America ("United States") against defendant Montefiore Medical Center, Inc. ("Montefiore"), under the qui tam provisions of the False Claims Act, 31 U.S.C. §§ 3729 et seq. (the "False Claims Act"), to recover damages sustained by, and penalties owed to, the United States as a result of defendant Montefiore's having knowingly presented or caused to be presented

to the United States false or fraudulent information, which false information allowed defendant Montefiore to avoid payment owed under Part A of the Medicare Program, Title XVIII of the Social Security Act, 42 U.S.C. §§ 1395c-1395i-5.

2. The United States brings additional claims against Montefiore under the False Claims Act and under the common law for fraud, conversion and unjust enrichment.

#### JURISDICTION AND VENUE

3. This Court has jurisdiction over the claims brought under the False Claims Act pursuant to 31 U.S.C. § 3730(a) and 28 U.S.C. §§ 1331, 1345, over the remaining claims pursuant to 28 U.S.C. § 1345, and over all claims pursuant to the Court's general equitable jurisdiction.

4. Venue lies in this District pursuant to 31 U.S.C. § 3732(a) and 28 U.S.C. §§ 1391(b), 1391(c), because defendant Montefiore is located within this District, does business within this District, and because the acts complained of herein took place in this District.

#### PARTIES

5. Plaintiff is the United States, on behalf of its agency the United States Department of Health and Human Services ("HHS") and the Centers for Medicare and Medicaid Services ("CMS") of HHS.

6. Relator Climaco was employed by Montefiore as the

Associate Director for Reimbursement from 1989 to 2000.

7. Defendant Montefiore is a provider hospital under the Medicare program.

### FACTS

#### I. BACKGROUND TO THE MEDICARE PROGRAM

8. Title XVIII of the Social Security Act, 42 U.S.C. §§ 1395 et seq., established the Medicare Program for the purpose of paying the costs of health services for elderly and disabled persons. Part A of the Medicare Program provides reimbursement to provider hospitals for 100% of the reasonable inpatient hospital costs. 42 U.S.C. §§ 1395c-1395i-5.

9. The Centers for Medicare and Medicaid Services ("CMS") of HHS is the governmental body responsible for the administration of the Medicare program.

10. Fiscal Intermediaries are non-governmental organizations under contract with CMS who perform a variety of functions:

- Determine amounts of medical insurance benefits to be paid on a reasonable charge basis;
- Pay medical insurance benefits -- receiving, disbursing, and accounting for funds advanced by the Federal Government;
- Audit the records of providers as necessary to assure that proper payments are being made;
- Serve as a channel for the communication of information relating to the medical insurance plan.

11. At all times relevant hereto, HHS administered the Medicare program in the Southern District of New York through its fiscal intermediary, Empire Medicare Services ("Empire").

12. Provider hospitals receive reimbursement under the Medicare program for the reasonable costs they incur in treating Medicare beneficiaries. Among other things, provider hospitals may receive reimbursement for expenses incurred in operating a graduate medical education ("GME") program. 42 C.F.R. § 413.86.

13. To obtain reimbursement from Medicare, provider hospitals submit claims to the fiscal intermediary based on estimated costs and receive interim payments throughout the year. 42 C.F.R. § 413.64(e). Once each year, provider hospitals submit a "Cost Report" to the fiscal intermediary setting forth the costs actually incurred. 42 C.F.R. § 413.20(b). The Cost Report is certified by the hospital as true, correct and complete. 42 C.F.R. § 413.24(f)(4). Based on the information in the Cost Report, the fiscal intermediary determines the correct amount of Medicare reimbursement due the provider hospital for the year and adjusts the payments accordingly. 42 C.F.R. § 413.64(f).

14. After review of the Cost Report, the fiscal intermediary issues a Notice of Program Reimbursement ("NPR"), setting forth the amount of Medicare reimbursement to which the Provider is entitled for that year. If the interim payments made by the fiscal intermediary to the provider hospital were less

than the allowable costs incurred, the provider is entitled to further reimbursement; if the interim payments exceed allowable costs, the Provider must repay the Medicare program.

## **II. MONTEFIORE'S FAILURE TO REPAY \$5.6 MILLION**

15. Montefiore's Cost Report for 1988 was not finally settled with the fiscal intermediary until 1997. In the interim, new federal regulations went into effect modifying the method for calculating reimbursement for GME expenses, which required retrospective adjustment to Montefiore's 1988 Cost Report. The new method calculated GME reimbursement not on a cost basis but based on a per-resident amount. Empire issued a series of amended NPRs to Montefiore between 1991 and 1997.

16. In particular, Empire generated an NPR relating to the 1988 Cost Report for Montefiore on or about September 10, 1991. In a letter dated September 30, 1991, Empire informed Montefiore that Montefiore owed Medicare \$8,106,590 as a settlement for 1988.

17. The \$8.1 million obligation was reduced by \$5.6 million to account for future reimbursement Montefiore was likely to receive as a result of the GME expense recalculations. To that end, in the NPR dated October 31, 1991, Empire included a specially designated line item at line 7A entitled "Graduate Medical Education - Reclassification Addback," which overrode the default line 7A ("Additional Payment for High Percentage of ESRD

Beneficiary Discharges"). The amount of the GME reclassification addback was a \$5,655,431 liability.

18. In 1993, the new methodology for calculating GME expense reimbursement was applied to the 1988 cost year, and the total amount due to Montefiore for GME expenses was redetermined. The \$5.6 million, however, was not deducted from the total GME reimbursement amount.

19. The Fiscal Intermediary issued an NPR dated September 21, 1993, which set forth the total GME expense amount at approximately \$22 million, but also included the \$5.6 million GME adjustment on line 7A. Montefiore did not correct the NPR, deduct the \$5.6 from its total GME reimbursement, or otherwise repay Medicare for that amount.

20. Montefiore's internal financial worksheets from October 1993 identify the \$5.6 million as an "adjustment."

21. In 1994, Montefiore's internal financial worksheets identified the \$5.6 million amount as an outstanding balance due Medicare, and Montefiore noted on its internal financial worksheets that it was a "real liability." Montefiore, however, did not repay that amount to the Medicare program.

22. As of January 1996, Montefiore's internal financial worksheets continued to describe the \$5.6 million GME amount as a "real liability." Montefiore, however, did not repay that amount to the Medicare program.

23. Subsequently in 1996, Montefiore removed the outstanding \$5.6 million liability from its internal books and records, thus effectively writing off the \$5.6 million amount that Montefiore owed the Medicare program and reducing it to zero.

24. The final NPR for 1988, dated May 15, 1997, set forth the total GME expense amount of \$23,111,703. Nevertheless, Line 7A of the NPR (now returned to its default name), continued to list the GME adjustment as \$5.6 million. Montefiore did not correct the NPR, deduct the \$5.6 million from its total GME reimbursement, or otherwise repay Medicare for that amount.

25. Montefiore was not entitled to retain the \$5.6 million. Montefiore knew that the \$5.6 million constituted an overpayment to which it was not entitled, but nevertheless received and deposited those funds and reduced its liability to zero with respect to that amount. Montefiore failed to repay Medicare for that amount at any time from 1991 forward.

### **III. THE \$4.2 MILLION OVERPAYMENT**

26. In 1995, Empire determined that in connection with the 1990 cost year, Montefiore had received an overpayment of \$8.5 million for GME expenses.

27. Medicare did not seek to recoup the entire amount at once, but rather provided that for each of the next four years, Montefiore would pay 25 percent of the amount.

Accordingly, Montefiore was obligated to repay the amount in four equal annual installments of approximately \$2.1 million each in 1995, 1996, 1997 and 1998.

28. Montefiore paid the first installment due Medicare in 1995.

29. Montefiore paid the second installment due Medicare in 1996.

30. Montefiore did not pay either of the last two installments due Medicare in 1997 and 1998, or subsequently. Approximately \$4.2 million of Montefiore's original liability to the Medicare program remains due and owing.

#### **FIRST CLAIM**

#### **Violations of the False Claims Act (31 U.S.C. § 3729(a)(7))**

31. The United States incorporates by reference paragraphs 1 through 25 above as if fully set forth herein.

32. The United States seeks relief against defendant Montefiore under Section 3729(a)(7) of the False Claims Act, 31 U.S.C. § 3729(a)(7).

33. As set forth above, defendant Montefiore knowingly, with deliberate ignorance, or in reckless disregard of the truth, made, used or caused to be made or used, false records and statements to conceal, avoid, or decrease an obligation to pay or transmit money to the Government.

34. The United States was wrongfully denied payment



due and owing under the Medicare Act because of the acts and conduct of defendant Montefiore.

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

### SECOND CLAIM

#### **Common Law Fraud**

36. The United States incorporates by reference paragraphs 1 to 25 above as if fully set forth herein.

37. Defendant Montefiore made material misrepresentations of fact to the United States, or aided and abetted the making of material misrepresentations to the United States, with knowledge of, or in reckless disregard of, their truth.

38. Defendant Montefiore intended that the United States would rely upon the accuracy of the representations referred to above.

39. The United States justifiably relied upon the false representations made by defendant Montefiore.

40. By reason of the foregoing, the United States has sustained damages in an amount to be determined at trial.

### THIRD CLAIM

#### **Conversion**

41. The United States incorporates by reference

paragraphs 1 to 25 above as if fully set forth herein.

42. Defendant Montefiore converted to its own use monies rightfully belonging to the United States.

43. The United States has been damaged in an amount to be determined at trial as a result of Defendant Montefiore's conduct.

#### FOURTH CLAIM

##### **Unjust Enrichment**

44. The United States incorporates by reference paragraphs 1 through 30 above as if fully set forth herein.

45. By reason of defendant Montefiore's failure to repay moneys it knew were overpayments made to it by Medicare, defendant Montefiore has been unjustly enriched to the detriment of the United States in an amount to be determined at trial. The circumstances of defendant Montefiore's retention of these payments are such that, in equity and good conscience, defendant Montefiore should not retain any portion of these payments made to it by Medicare.

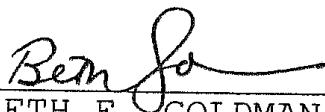
WHEREFORE, plaintiff, the United States, requests that judgment be entered in its favor and against defendant Montefiore as follows:

- (a) On the First Claim for Relief (Violations of the False Claims Act, 31 U.S.C. § 3729(a)(7)), for treble the United States' damages, in an amount to be determined

- at trial;
- (b) On the First Claim for Relief, an award of costs pursuant to 31 U.S.C. § 3729(a);
  - (c) On the Second Claim for Relief (Common-Law Fraud), in an amount to be determined at trial, together with costs and interest;
  - (d) On the Third Claim for Relief (Conversion), in an amount to be determined at trial, together with costs and interest;
  - (e) On the Fourth Claim for Relief (Unjust Enrichment), in an amount to be determined at trial, together with costs and interest; and
  - (f) awarding such further relief as is proper.

Dated: New York, New York  
March 11, 2004

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