

DOCKET NO.

IN THE MATTER OF

PARKLAND MEMORIAL HOSPITAL LP

DALLAS, TEXAS

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BEFORE THE

DEPARTMENT OF  
STATE HEALTH SERVICES

AUSTIN, TEXAS

**AGREEMENT**

**I. JURISDICTION**

The Department of State Health Services (Department), Division for Regulatory Services, Enforcement Unit, is authorized to enforce the Health and Safety Code (HSC) Chapter 241 (Act), and Title 25 of the Texas Administrative Code (TAC) Chapters 133, 404, 405, 411, and 415 (Rules) relating to the licensing and regulation of General and Special Hospitals in Texas.

**II. RESPONDENT**

Parkland Memorial Hospital LP (Respondent), 5201 Harry Hines Blvd., Dallas TX 75325, is licensed by the Department as a General Hospital, license #000474, and is subject to the Act and Rules.

**III. FACTS**

Between the dates of January 21, 2011 and May 31, 2012, the Department conducted numerous on-site surveys and complaint investigations of the facility to determine Respondent's compliance with the Act and Rules. As a result of these, the Department concluded that Respondent failed to comply with provisions of 25 TAC §§133.41 - .49; and 25 TAC §415 Subchapter F.

The surveys and complaint investigations in 2011 resulted in termination proceedings initiated by the Centers for Medicare and Medicaid Services (CMS) based on the findings of the survey staff of the Department, acting as agents of CMS. From the surveys and complaint investigations conducted by the Department in 2011 and 2012 under state rules, the most egregious deficiencies cited by the department staff and referred for enforcement consideration fall into the following broad categories:

- Failure to comply with local, State, and Federal Laws;
- Failure to keep proper medical records;
- Failure of the governing body to enforce policies and procedures within the facility;
- Failure to conduct and implement quality assessment and performance improvement procedures;
- Failure to adequately staff nurses in certain areas of the facility, especially the emergency department and psychiatric emergency services; and,

- Failure to ensure appropriate infection control methods were utilized, such as the wearing of face masks, hand washing, reporting of infectious diseases to the Department and follow-up, and inadequate cleaning of the Operating Rooms.

In addition, other deficient practices were found in the following areas:

- Respiratory Care
- Pharmacy
- Patient Transfers
- Patient Rights
- Quality of Patient Care
- Nursing Services
- Physician Services
- Pharmaceutical Services
- Restraint and Seclusion

These deficient findings were determined through surveys and complaint investigations conducted on-site at the facility. Examples of specific situations that resulted in the aforementioned findings include the following:

- During an investigation conducted on or about January 21, 2011 it was determined that improper follow-up to surgery on a female patient resulted in the amputation of the patient's leg;
- An investigation of a complaint received on May 12, 2011 determined that inappropriate restraint and seclusion of a male psychiatric emergency unit patient who subsequently died resulted in rule violations;
- A complaint received on September 12, 2011 confirmed an elopement from the locked psychiatric emergency services unit and an elopement of a patient on a 1:1 observation status in the general hospital unit;
- A psychiatric emergency department patient under 1:1 observation ingested hand sanitizer;
- A female psychiatric emergency department patient retained a cigarette lighter, and set an article of clothing on fire, jeopardizing the safety of herself, other patients, and staff;
- A patient in the Emergency Department was found to have a loaded revolver among her belongings, jeopardizing her safety and the safety of other patients and staff;
- A male nurse was found to have unnecessarily assessed a male patient's genitalia on two occasions during the evening hours; the patient had been admitted for a badly infected finger;
- A patient was in for extraction of numerous teeth that were damaged beyond repair due to a traffic accident; a resident dental student, pulled the teeth from the wrong side of the mouth; and
- After increased security was implemented subsequent to the gun incident above, another patient was found to have loaded gun in her purse upon admission to the psychiatric emergency services unit after proceeding through the main emergency department.

As a result of the surveys and complaint investigations in 2011, and in lieu of Medicare termination, CMS decided to proceed with a Systems Improvement Agreement (SIA) on September 28, 2011. As a condition of this agreement, the Board of Managers of the Parkland Health and Hospital System hired consultants to assist the facility in coming into compliance with the Medicare Conditions of Participation for General Hospitals. The consultant team of Alvarez and Marsal (A & M) was hired on October 25, 2011. A & M conducted a Gap analysis regarding the practices of the facility. The GAP analysis, completed on February 2, 2012, reiterated many of the findings of the Department survey staff found at the facility within the previous twelve months. As part of the ongoing work of the A & M consulting group, the consultants issued a CMS-approved Corrective Action Plan on February 28, 2012. The facility was required to report to CMS their progress on achieving the goals set forth in the Corrective Action Plan on a monthly basis.

#### **IV. NOTICE**

Some of the above mentioned violations are more specifically described in the Department's July 29, 2011, Notice of Violation (Notice), which is adopted and incorporated by reference into this Agreed Order (Order).

The Notice informed the respondent of the Department's intent to impose an Administrative Penalty in the amount of \$12,400.00 for the violations listed in that Notice.

#### **V. RESPONSE**

Respondent replied to the Notice by making a written request for an Informal Conference.

#### **VI. SETTLEMENT**

##### **A. INFORMAL CONFERENCE**

1. An Informal Conference for the July 29, 2011 Notice was held on November 29, 2011. Due to the continuing influx of complaints, surveys and ongoing findings of noncompliance, the Department and Respondent found it to be in their own best interests to consolidate and summarily resolve all outstanding deficiencies as of 5/31/2012.
2. The Department alleged that the Respondent violated the Act and Rules as set forth in this Order. By entering into this Order, the Respondent admits no wrongdoing or unlawful conduct.
3. This settlement hereby resolves and discharges all potential litigation and enforcement actions through 5/31/2012, allowing both parties to avoid protracted litigation that would expend resources necessary for achieving their common goals of Respondent gaining compliance and protecting patients from harm. The terms of the settlement are contained in this Order.

## B. ENFORCEMENT

The Department and Respondent have agreed, for a period of 2 years from the date of this Order, to the following:

1. Respondent shall be assessed an administrative penalty in the amount of \$1,000,000.00 for the violations described in Section III. \$750,000 shall be payable upon ratification of this agreement and \$250,000 shall be held in abeyance subject to compliance with the terms of this agreement.
2. During the remainder of the time A&M provides consultant services to Respondent, Respondent will provide the Department with monthly and quarterly progress reports on Respondent's compliance. The Respondent shall provide to the Department an exact copy of the monthly progress reports that it provides to CMS, concurrent with their submission to CMS.
3. Within two business days of becoming aware of a reportable event, as described under 25 TAC §133.48(b)(1)(A), Respondent shall report the event to the Department, and within 45 days of becoming aware of the event, make available to the Department a root cause analysis of the event and an action plan with strategies to reduce the risk of similar events occurring in the future.
4. The Respondent shall make available to the Department all Quality Assurance and Performance Improvement (QAPI) minutes from all QAPI meetings conducted for 24 months from the date this agreement is ratified. Such QAPI minutes are generated in accordance with Texas Health & Safety Code sections 161.031-161.033 and as provided by law are not subject to disclosure under Texas Government Code Chapter 552.
5. Respondent shall comply with this Order and with all applicable laws, rules, and regulations governing General Hospitals, as including but not limited to HSC 241 and 25 TAC 133
6. Respondent shall provide all reports, documentation and/or notifications required under this section by telephone, facsimile, personal delivery, or overnight delivery by private carrier to:

Patient Quality Care Unit, Health Care Quality Section  
Division for Regulatory Services, Department of State Health Services  
Mail Code 1979  
8407 Wall Street, Austin, Texas 78754-4535  
(512) 834-6700  
Fax (512) 834-6736

## **VII. COMPLETE AGREEMENT**

This Order is made pursuant to Government Code, §2001.056(2), and the procedural rules adopted by the Department. This Order represents the complete settlement of all allegations contained in this document, as described in sections "III. Facts," "IV. Notice" and "VI. Enforcement" of this Order.

### **A. WAIVER OF APPEAL AND AGREEMENT REGARDING SIGNATURE**

In exchange for the execution of this Order, Respondent waives the right to a hearing and appeal regarding the Department findings arising from events occurring through May 31, 2012, the assessment of the proposed administrative penalty and the Department's disposition of this case through the Department's issuance of an Order. Respondent has no objection to this Order being signed by either the Commissioner of the Department or his designee.

### **B. NO WAIVER WITH REGARD TO OTHER VIOLATIONS**

The Department does not waive the right to enforce this Order or to prosecute any subsequent violations that Respondent may commit. The Department may consider this Order in the processing of any other enforcement actions.

The Department reserves its right to conduct onsite surveys and complaint investigations to determine compliance with the applicable licensing law and rules, and to take enforcement action for any deficiencies found arising from events occurring after 5/31/2012.

### **C. COMPLETE UNDERSTANDING**

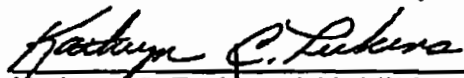
The Respondent understands the terms of this settlement agreement, enters into the settlement agreement freely, and agrees to the terms and conditions of this Order.

**NOW THEREFORE, IT IS ORDERED** that:

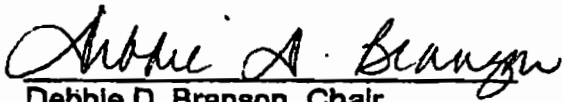
1. Respondent shall remit to the Department an administrative penalty in the amount of \$750,000.00 of the \$1,000,000 penalty assessed for the violations described in Section III, as set out in Section VI.B.1. Respondent's payment of \$750,000.00 is due within 30 days after full and final execution of the Order. Respondent shall remit a cashier's check, money order, or company check made payable to the Department of State Health Services that bears the notation, Deposit in Budget #ZZ156, Fund #152. Respondent shall mail the penalty payment to: Cash Receipts Branch, MC 2003, Department of State Health Services, and P.O. Box 149347, Austin, Texas 78714-9347;
2. During the remainder of the time A&M provides consultant services to Respondent, Respondent will provide the Department monthly and quarterly progress reports. The Respondent shall provide to the Department an exact copy of the monthly progress reports that it provides to CMS, concurrent with their submission to CMS;

3. Within two business days of becoming aware of a reportable event, as described under 25 TAC§133.48(b)(1)(A), Respondent shall report the event to the Department, and within 45 days of becoming aware of the event, make available to the Department a root cause analysis of the event and an action plan with strategies to reduce the risk of similar events occurring in the future;
4. Respondent shall make available to the Department all Quality Assurance and Performance Improvement (QAPI) minutes from all QAPI meetings conducted for 24 months after the date of this order;
5. Respondent shall authorize direct communications regarding issues of compliance under the SIA between the contractor, A & M, and the Department; and,
6. Respondent shall henceforth comply with this Order and with all applicable laws, rules, and regulations. Failure to comply may result in additional enforcement action consistent with this Order.

Ordered this 31<sup>st</sup> day of August, 2012.

  
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Kathryn C. Perkins, RN, MBA  
Assistant Commissioner  
Division for Regulatory Services

Agreed As to Form and Substance:

  
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Debbie D. Branson, Chair  
Parkland Board of Managers  
Parkland Health and Hospital System  
License Number 000474

August 31, 2012  
Date