

## 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 and investigations of complaints 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 and investigations. *See* 45 C.F.R. §§ 160.306(c), 160.308, and 160.310(b).
  - B. The New York and Presbyterian Hospital (“NYP”), which is a covered entity, as defined at 45 C.F.R. §160.103, and therefore is required to comply with the HIPAA Rules.

HHS and NYP shall together be referred to herein as the “Parties.”

2. Factual Background and Covered Conduct.

On January 27, 2013, the HHS Office for Civil Rights received a complaint against NYP alleging that on April 28, 2011, NYP impermissibly disclosed protected health information (PHI) to a film crew and other staff of “NY Med,” a television program being filmed in the hospital. On May 29, 2013, HHS notified NYP of HHS’ investigation regarding NYP’s compliance with the Privacy Rule promulgated by HHS pursuant to the administrative simplification provisions of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), Pub.L. 104-191, 110 Stat. 1936.

HHS’ investigation indicated that the following conduct occurred (“Covered Conduct”):

- a. NYP impermissibly disclosed the PHI of two identified patients to the film crew and other staff of “NY Med” (See 45 C.F.R. § 164.502(a)).
- b. NYP failed to appropriately and reasonably safeguard its patients’ PHI from disclosure during the filming of “NY Med” on its premises. NYP also failed to implement policies, procedures and practices to protect the privacy of its

patients' PHI during the filming of aforementioned television show (*See* 45 C.F.R. § 164.530(c)).

3. Intention of Parties to Effect Resolution. This Agreement is intended to resolve OCR Transaction Number: 13-154685 and any 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 formal proceedings, the Parties agree to resolve this matter according to the Terms and Conditions below.

4. No Admission. This Agreement is not an admission, concession, or evidence of liability by NYP or of any fact or any violation of any law, rule, or regulation, including any violation of the HIPAA Rules. This Agreement is made without trial or adjudication of any alleged issue of fact or law and without any finding of liability of any kind, and NYP's agreement to undertake any obligation under this Agreement shall not be construed as an admission of any kind.

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

## **II. Terms and Conditions**

6. Payment. HHS has agreed to accept, and NYP has agreed to pay HHS, the amount of \$2,200,000 ("Resolution Amount"). NYP 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. NYP 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 NYP breaches the CAP, and fails to cure the breach as set forth in the CAP, then NYP 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 NYP's performance of its obligations under this Agreement, HHS releases NYP from any actions it may have against NYP 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 NYP from, nor waive any rights, obligations, or causes of action other than those arising out of or related to the Covered Conduct and referred to in this paragraph. 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. NYP 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. NYP 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 NYP 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 both Parties. Nothing in this agreement is intended to, or shall be used as, any basis for the denial of any license, authorization, approval, or consent that NYP may require under any law, rule or regulation.

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. Tolling of Statute of Limitations. Pursuant to 42 U.S.C. § 1320a-7a(c)(1), a civil money penalty (“CMP”) must be imposed within six years from the date of the occurrence of the violation. To ensure that this six-year period does not expire during the term of this Agreement, NYP agrees that the time between the Effective Date of this Agreement and the date the Agreement may be terminated by reason of NYP’s breach, plus one-year thereafter, will not be included in calculating the six (6) year statute of limitations applicable to the violations which are the subject of this Agreement. NYP waives and will not plead any statute of limitations, laches, or similar defenses to any administrative action relating to the covered conduct identified in paragraph I.2 that is filed by HHS within the time period set forth above, except to the extent that such defenses would have been available had an administrative action been filed on the Effective Date of this Agreement.

16. 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; provided however that HHS will use its best efforts to prevent the disclosure of information, documents, and/or other item produced by NYP to HHS as part of HHS’ review, to the extent such items are identified by NYP as confidential and constitute trade secrets and/or confidential commercial or financial information that is exempt from release in response to an FOIA request, or any other applicable exemption under FOIA and its implementing regulations.

17. 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.

18. Authorizations. The individual(s) signing this Agreement on behalf of NYP represent and warrant that they are authorized by NYP 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 the New York and Presbyterian Hospital**

/s/

04/19/2016

\_\_\_\_\_  
Laura L. Forese, MD, MPH  
Executive Vice President and Chief Operating Officer  
The New York and Presbyterian Hospital

\_\_\_\_\_  
Date

**For Department of Health and Human Services**

/s/

04/19/2016

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Linda C. Colón, Regional Manager  
Office for Civil Rights, Eastern and Caribbean Region

\_\_\_\_\_  
Date

**Appendix A**  
**CORRECTIVE ACTION PLAN**  
**BETWEEN THE**  
**U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES**  
**AND**  
**THE NEW YORK AND PRESBYTERIAN HOSPITAL**

**I. Preamble**

The New York and Presbyterian Hospital (hereinafter known as “NYP”) 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, NYP is entering into a Resolution Agreement (“Agreement”) with HHS, and this CAP is incorporated by reference into the Resolution Agreement as Appendix A. NYP 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

NYP 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:

Laura L. Forese, MD, MPH  
Executive Vice President and Chief Operating Officer  
The New York and Presbyterian Hospital

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

Linda C. Colón, Regional Manager, Eastern and Caribbean Region  
Office for Civil Rights  
U.S. Department of Health and Human Services  
26 Federal Plaza, Suite 3312  
New York, New York 10278  
Voice Phone (212) 264-4136  
Fax: (212) 264-3039  
Linda.Colon@HHS.gov

NYP 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 for compliance (“Compliance Term”) with the obligations assumed by NYP under this CAP shall begin on the Effective Date of this CAP and end two (2) years from the Effective Date unless HHS has notified NYP under section VIII hereof of its determination that NYP 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 NYP that it has determined that the breach has been cured. After the Compliance Term ends, NYP shall still be obligated to submit the final Annual Report as required by section VI and 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**

NYP agrees to the following:

#### **A. Policies and Procedures**

1. NYP shall develop, maintain, and revise, as necessary, its written policies and procedures to comply with the Federal standards that govern the privacy and security of individually identifiable health information (45 C.F.R. Part 160 and Subparts A, C, and E of Part 164, the Privacy and Security Rules). NYP’s policies and procedures shall include, but not be limited to, the minimum content set forth in section V.C.

2. NYP shall provide such policies and procedures, consistent with paragraph 1 above, to HHS within ninety (90) days of the Effective Date for review and approval. Upon receiving any recommended changes to such policies and procedures from HHS, NYP shall have 30 days to revise such policies and procedures accordingly and provide the revised policies and procedures to HHS for review and approval.

3. NYP shall implement such policies and procedures within sixty (60) days of receipt of HHS' final approval.

#### B. Distribution and Updating of Policies and Procedures

1. NYP shall distribute the policies and procedures identified in section V.A. to all members of the workforce within sixty (60) days of HHS approval of such policies and to new members of the workforce within thirty days of their beginning of service.

2. NYP shall require, at the time of distribution of such policies and procedures, a signed written or electronic initial compliance certification from all members of the workforce stating that the workforce members have read, understand, and shall abide by such policies and procedures.

3. NYP shall assess, update, and revise, as necessary, the policies and procedures as appropriate at least annually (and more frequently if appropriate).

#### C. Minimum Content of Revised Policies and Procedures

The Revised Policies and Procedures shall include:

1. A specific prohibition on the use or disclosure of protected health information (PHI) by NYP workforce members, agents and business associates to any person or entity planning, coordinating or engaging in, for purposes not related to the provision of medical care, photography, video recording or audio recording without the prior authorization of the patient who is the subject of the PHI sought to be disclosed or his or her personal representative.

2. A process for evaluating and approving authorizations requesting the disclosure of PHI by NYP.

3. Identification of NYP personnel or representatives who workforce members, agents or business associates may contact in the event of any inquiry or concern regarding compliance with HIPAA in relation to these activities.

4. A requirement that all photography, video recording and audio recording conducted on NYP premises be actively monitored by appropriate NYP representatives for compliance with the Privacy Rule and NYP's policies.

5. Measures that address the following Privacy Rule provisions:

a. Uses and Disclosures of PHI – 45 C.F.R. § 164.502(a)

b. Safeguards – 45 C.F.R. § 164.530(c)(1)

- c. Authorizations – 45 C.F.R. 164.508(a)
- d. Training – 45 C.F.R. § 164.530(b)(1)
- e. Internal Reporting Procedures – NYP shall require all members of its workforce to report to the designated Privacy Officer at the earliest possible time, any violation of the Policies and Procedures of which she or he is aware.

6. Measures providing that upon receiving information that a member of its workforce may have violated these policies and procedures, NYP shall promptly investigate and address the violation in an appropriate and timely manner.

7. Application of appropriate sanctions (which may include re-training or other instructive corrective action, depending on the circumstances) against members of NYP's workforce, including supervisors and managers, who fail to comply with the NYP Policies and Procedures.

#### D. Reportable Events.

During the Compliance Term, NYP shall, upon receiving information that a workforce member (or business associate) may have failed to comply with its Privacy Policies and Procedures, promptly investigate this matter. If NYP determines, after review and investigation, that a member of its workforce, or a business associate that has agreed to comply with policies and procedures under section V.B.2., has failed to comply with these policies and procedures, NYP shall notify in writing HHS within thirty (30) days. Such violations shall be known as Reportable Events. The report to HHS shall include the following information:

1. A complete description of the event, including the relevant facts, the persons involved, and the provision(s) of the policies and procedures implicated; and
2. A description of the actions taken and any further steps NYP plans to take to address the matter to mitigate any harm, and to prevent it from recurring, including application of appropriate sanctions against workforce members who failed to comply with its Privacy, Security, or Breach Notification Rule Policies and Procedures.

#### E. Training

1. All members of NYP's workforce shall receive training on NYP's policies and procedures to comply with the Privacy Rule, including the specific items referenced in Section V.C. of this agreement, within sixty (60) days of the implementation of such Policy and Procedure or within sixty (60) days of when they become a member of the workforce of NYP.

2. At a minimum, training shall cover all of the topics that are necessary and appropriate for each member of the workforce to carry out that workforce member's function within NYP.

3. Each workforce member shall certify, in writing or in electronic form, that she or he has received and understands the required training. The training certification shall specify the

date on which training was received. All course materials shall be retained in compliance with section VII below.

4. NYP shall review the training annually, and, where appropriate, update the training to reflect changes in Federal law or HHS guidance, any issues discovered during internal or external audits or reviews, and any other relevant developments.

5. NYP shall not provide access to PHI to any member of its workforce if that workforce member has not signed or provided the written or electronic certification required by Paragraph V.E.3 of this section.

## **VI. Implementation Report and Final Report**

A. Implementation Report. Within ninety (90) days after the receipt of HHS' approval of the policies and procedures required by section V.A., NYP shall submit a written report to HHS summarizing the status of its implementation of the requirements of this CAP. This report, known as the "Implementation Report," shall include:

1. An attestation signed by officer of NYP attesting that the Revised Privacy Policies and Procedures are being implemented and, have been distributed to all appropriate members of the workforce, and that NYP has obtained all of the compliance certifications in accordance with Paragraph V.B.2;

2. A copy of all training materials used for the training required by this CAP, a description of the training, including a summary of the topics covered, the length of the session(s) and a schedule of when the training session(s) were held;

3. An attestation signed by an officer of NYP attesting that all members of the workforce have completed the initial training required by this CAP and have executed the training certifications required by section V.E.3.;

4. An attestation signed by an officer of NYP listing all NYP locations (including locations and mailing addresses), the corresponding name under which each location is doing business, the corresponding phone numbers and fax numbers, and attesting that each such location has complied with the obligations of this CAP; and

5. An attestation signed by an officer of NYP stating that he or she has reviewed the Implementation Report, has made a reasonable inquiry regarding its content and believes that, upon such inquiry, the information is accurate and truthful.

B. Final Report. Within sixty (60) days following the expiration of the compliance term, as provided in Section III of this CAP, NYP shall submit to HHS a report with respect to the status of and findings regarding NYP's compliance with this CAP. This Final Report shall include:

1. A schedule, topic outline, and copies of the training materials for the training programs attended in accordance with this CAP during the Reporting Period that is the subject of the report;

2. An attestation signed by an officer of NYP attesting that it is obtaining and maintaining written or electronic training certifications from all persons that require training that they received training pursuant to the requirements set forth in this CAP;

3. A summary of Reportable Events (defined in section V.D.) identified during the Reporting Period and the status of any corrective and preventative action relating to all such Reportable Events;

4. An attestation signed by an officer of NYP attesting that he or she has reviewed the Final Report, has made a reasonable inquiry regarding its content and believes that, upon such inquiry, the information is accurate and truthful.

## **VII. Document Retention**

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

## **VIII. Breach Provisions**

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

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

NYP 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 NYP constitutes a breach of the Agreement. Upon a determination by HHS that NYP has breached this CAP, HHS may notify NYP of: (1) NYP’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 and any other conduct that constitutes a violation of the HIPAA Privacy, Security, or Breach Notification Rules (“Notice of Breach and Intent to Impose CMP”).

**C. NYP’s Response.** NYP shall have thirty (30) days from the date of receipt of the Notice of Breach and Intent to Impose CMP to demonstrate to HHS’ satisfaction that:

1. NYP 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) NYP has begun to take action to cure the breach; (b) NYP is pursuing such action with due diligence; and (c) NYP has provided to HHS a reasonable timetable for curing the breach.

D. Imposition of CMP. If at the conclusion of the 30-day period, NYP 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 NYP pursuant to 45 C.F.R. Part 160 for any violations of the Covered Conduct set forth in paragraph I.2 of the Agreement and for any other act or failure to act that constitutes a violation of the HIPAA Rules. HHS shall notify NYP in writing of its determination to proceed with the imposition of a CMP. NYP shall be entitled to challenge any CMP so imposed by requesting a hearing before an Administrative Law Judge, pursuant to 45 C.F.R. § 160.504, *et seq.*

**For the New York and Presbyterian Hospital**

/s/

4/19/2016

\_\_\_\_\_  
Laura L. Forese, MD, MPH  
Executive Vice President and Chief Operating Officer  
The New York and Presbyterian Hospital

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Date

**For the United States Department of Health and Human Services**

/s/

04/19/2016

\_\_\_\_\_  
Linda C. Colón, Regional Manager  
Office for Civil Rights, Eastern and Caribbean Region

\_\_\_\_\_  
Date