

THE STATE OF NEW HAMPSHIRE

HILLSBOROUGH, SS.
NORTHERN DISTRICT

SUPERIOR COURT
FEBRUARY TERM, 2012

STATE OF NEW HAMPSHIRE)
Plaintiff,)
v.)
CAITLIN RAYMOND INTERNATIONAL,)
REGISTRY, INC. and UMASS)
MEMORIAL HEALTH VENTURES, INC.)
Defendants.)

CONSENT JUDGMENT / AGREED FINAL JUDGMENT

I. INTRODUCTION

1. The Plaintiff, the State of New Hampshire, by and through Michael A. Delaney, the Attorney General, and the Defendants, Caitlin Raymond International, Inc. (CRIR) and UMass Memorial Health Ventures, Inc. (UMMHV), charitable corporations under the laws of the Commonwealth of Massachusetts, as evidenced by the signatures of counsel, do consent to the entry of this Judgment and its provisions.
2. After engaging in settlement discussions, the Defendants enter into this Judgment to avoid the time and expense associated with litigation. This is a Judgment for which execution may issue. This agreement is for settlement purposes only and does not constitute an admission by Defendants that the law has been violated as alleged in the complaint, or that the facts as alleged in the complaint, other than the jurisdictional facts, are true.

3. The Defendants hereby accept and expressly waive any defect in connection with service of process issued to the Defendants by the Plaintiff.
4. This Judgment is entered into by the Defendants as their own free and voluntary act and with full knowledge and understanding of the nature of the proceedings and the obligations and duties imposed upon them by this Judgment, and they consent to its entry without further notice, and aver that no offers, agreements or inducements of any nature whatsoever have been made to them by the Plaintiff or their attorneys or any State employee to procure this Judgment.
5. The Defendants have, by signature of counsel hereto, waived any right to add, alter, amend, appeal, petition for certiorari, or move to reargue or rehear or be heard in connection with any judicial proceeding upon this Judgment and any and all challenges in law or equity to the entry of the Judgment by the Court. If the Court elects to hold any hearing on this Judgment, a representative of the Attorney General's office will briefly summarize the settlement for the court. The Defendants agree to support the Judgment and its terms at any such hearing for approval.
6. In the event the Court shall not approve this Judgment, this Judgment shall be of no force and effect against the State or the Defendants.

II. JURISDICTION

7. Jurisdiction of this Court over the subject matter and over the Defendants for the purpose of entering into and enforcing this Judgment is admitted. Jurisdiction is retained by this Court for the purpose of enabling the State to apply to this Court for such further Judgments and directions as may be necessary or appropriate for the construction, modification or execution of this Judgment, including the enforcement of compliance

therewith and remedies, penalties and sanctions for violation thereof. The Defendants agree to pay all court costs and attorneys' fees associated with any successful petition to enforce any provision of this Judgment against the Defendants.

III. RETENTION OF JURISDICTION

8. The Court retains jurisdiction for the duration of this Judgment to enforce its terms, after which time the case shall be dismissed. The parties may agree to modify the terms of this Judgment, and any party may move the Court for a modification of this Judgment if the interests of justice so require.

IV. DURATION OF CONSENT JUDGMENT

9. The effective date of this Judgment shall be the date on which it is entered by the Court.
10. This Judgment shall retain full force and effect for three years from the effective date.

V. VENUE

11. Pursuant to New Hampshire RSA 358-A:8 and RSA 358-A:4, venue as to all matters between the parties relating hereto or arising out of this Judgment shall be in Hillsborough County, Northern District, New Hampshire.

VI. DEFENDANTS

12. The Defendants represent that they are the proper parties to this Judgment.
13. The Defendants represent that the execution and delivery of this Judgment are their free and voluntary acts, and that this Judgment is the result of good faith negotiations.
14. The Defendants represent that signatories to this Judgment have authority to act for and bind the Defendants.

15. The Defendants acknowledge that they understand that the State and this Court expressly rely upon all representations set forth in paragraphs 12 through 14 in this Judgment. The Defendants further acknowledge and understand that if any Defendant makes any false or deceptive representation in that regard, the State has the right to vacate or set aside this Judgment, *inter alia*, in whole or in part, and to move that the Defendant making such false, or deceptive representation(s) be held in contempt and to seek sanctions and remedies under any other law, regulation or rule, together with any and all such other sanctions, remedies or relief as may be available to the State in law or equity, if the State so elects.

VII. APPLICATION OF JUDGMENT

16. The Defendants agree that the duties, responsibilities, burdens and obligations undertaken in connection with this Judgment shall apply to CRIR, UMMHV, their successors and assigns.

VIII. INJUNCTION

17. All of the requirements of this section, Part VIII, are cumulative and any representation that the Defendants make shall comply with each and every provision in this Part VIII. The Defendants, directly or through any corporation, partnership, subsidiary, division, or other device, are hereby enjoined pursuant to N.H. RSA Chapter 358-A:

- A. UMMHV and CRIR employees shall inform prospective New Hampshire donors of the amount that will appear on an Explanation of Benefits (EOB) form related to the HLA testing.
- B. UMMHV and CRIR shall provide to prospective New Hampshire donors information that the HLA testing may be conducted and billed by an affiliate of

UMMHV, CRIR, UMass Memorial Labs, Inc. or UMass Memorial Medical Center.

- C. UMMHV and CRIR shall prominently display at all donor outreach locations signage to highlight, at a minimum, that a donor's health plan will be billed for the cost of HLA testing and that a lab affiliated with UMMHV may conduct the testing.
- D. UMMHV and CRIR shall provide to each donor a duplicate copy of the signed CRIR consent and disclosure form executed by that donor. UMMHV and CRIR agree to provide such copy to each donor at the time that form is executed and consent given for HLA testing.
- E. UMMHV and CRIR shall obtain express consent to undertake the collection of missing insurance information before submitting a claim to the donor's insurance company. UMMHV and CRIR agree to make efforts to obtain complete insurance information from eligible donors at the time of recruitment for HLA testing. All prospective donors who have consented to having their health insurance billed, but who failed to supply all necessary insurance-related information at the time of recruitment, shall be provided with an express written disclosure stating that UMMHV/CRIR or the applicable laboratory may collect any missing insurance information through standard means, including third party commercial databases.
- F. UMMHV and CRIR shall refrain from the practice of holding raffles in connection with UMMHV/CRIR donor outreach events.

- G. UMMHV and CRIR shall refrain from the practice of using models for UMMHV/CRIR donor outreach events.
- H. UMMHV and CRIR shall refrain from the practice of non-medical employees/recruiters wearing lab coats while attending UMMHV/CRIR donor outreach events.

IX. OTHER CONDITIONS

- 18. The amount UMMHV and CRIR affiliated laboratories charge to insurance companies for all New Hampshire insurance claims shall be capped in accordance with New Hampshire RSA 415:6-m, including those claims from self-pay and self-funded ERISA accounts. For purposes of this Section, a New Hampshire insurance claim shall mean a claim submitted on behalf of a donor who identifies him or herself as either (a) covered under a New Hampshire insurance plan (e.g., a member of Anthem Blue Cross and Blue Shield of New Hampshire), or (b) a subscriber or a dependent of a subscriber of a health insurance plan where the subscriber both resides in the State of New Hampshire and is employed at a worksite in New Hampshire.
- 19. UMMHV and CRIR agree to revise their consent and disclosure form for use with prospective donors and further agree to submit that form for approval by the Attorney General prior to use. That form must satisfy all of the requirements of N.H. RSA 415:6-m. No further recruitment of prospective donors from or in New Hampshire may occur without express approval by the Attorney General of the revised form.
- 20. Within ten (10) days after the entry of this Final Judgment by Consent, the Defendants shall furnish a true and correct copy of this Consent Judgment to every person who on the date of entry of this Consent Judgment is an employee or independent contractor engaged

to market, administer or manage bone-marrow donor outreach or registration services for CRIR or UMMHV.

21. Within sixty (60) days after the entry of this Final Judgment by Consent, the Defendants shall retrain every person who is an employee or independent contractor engaged to market, administer or manage bone-marrow donor outreach or registration services for CRIR or UMMHV to ensure that each such person understands the terms of this Consent Judgment and any disclosure or consent forms drafted to comply with this Consent Judgment.
22. UMMHV and CRIR will deploy “secret shoppers” from time to time to CRIR donor outreach locations to ensure that CRIR staff members comply with all applicable policies. “Secret shoppers” so employed shall generate reports of their findings which shall be regularly reviewed by UMMHV and CRIR management to ensure compliance. Copies of those reports shall be provided to the Attorney General during the first year after the entry of this final Judgment by Consent, and during the following two years, upon request of the Attorney General.
23. UMMHV and CRIR agree to promptly submit to a qualified lab donor samples for testing provided the donor satisfies applicable clinical and other eligibility criteria; and no samples shall be withheld from testing because of missing insurance information.
24. UMMHV and CRIR shall develop and enforce a chain of custody procedure for the handling of donor samples.
25. Within thirty (30) days after the entry of this final Judgment by Consent, UMMHV shall pay civil penalties to the State of New Hampshire in the amount of \$200,000.00. The

payment of civil penalties is for settlement purposes only and does not constitute an admission by Defendants that the law has been violated as alleged in the complaint, or that the facts as alleged in the complaint, other than the jurisdictional facts, are true.

Further, the characterization of the payments described herein as "civil penalties" shall have application to this case only, and said characterization shall have no legal or other relevance beyond the confines of this Judgment.

26. Within thirty (30) days after the entry of final Judgment by Consent, UMMHV and CRIR shall pay to the State of New Hampshire its costs of prosecuting this action, including reasonable attorneys' fees in an amount not to exceed \$50,000.00.
27. Within thirty (30) days after the entry of final Judgment by Consent, UMMHV and CRIR shall make a donation to the National Bone Marrow Registry in the amount of \$100,000.00 in support of the work of bone marrow donation and to improve the image of bone marrow recruitment organizations.
28. No part of this Consent Judgment shall create a private cause of action or confer any right to any third party for violation of any federal or state statute except that the State may file an action, if necessary, to enforce the terms of this Consent Judgment. The Defendants agree that a breach of the obligations set forth in this Consent Judgment may be enforced on an expedited basis with the Court's equitable power. The Defendants shall be provided with a reasonable opportunity to cure any alleged violation of this Order prior to the Attorney General initiating any enforcement action.
29. No waiver, modification, or amendment of the terms of this Judgment shall be valid or binding unless made in writing, signed by the parties, approved by this Court and then

only to the extent specifically set forth in such written waiver, modification or amendment.

30. If any clause, provision or section of this Judgment shall, for any reason, be held illegal, invalid or unenforceable, such illegality, invalidity or unenforceability shall not affect any other clause, provision or section of this Judgment and this Judgment shall be construed and enforced as if such illegal, invalid or unenforceable clause, section or other provision had not been contained herein.
31. The Defendants shall comply with all reasonable inquiries and requests from the Office of the Attorney General regarding the implementation of the terms contained in this Final Judgment by Consent.
32. This Final Judgment by Consent finally resolves the allegations and civil claims that the Attorney General raised or could have raised pursuant to his criminal and civil law enforcement authority relating to the investigation of CRIR, UMMHV and their solicitation, registration and processing of bone marrow donors, associated HLA testing, and reimbursement claims for that testing. By execution of this Judgment and following a full and complete payment to the State, the State of New Hampshire releases and forever discharges to the fullest extent of the law, the released parties, as defined above, from the following: all criminal and civil claims, causes of action, damages, restitution, fines, costs, and penalties that the New Hampshire Attorney General could have asserted against the Released Parties under New Hampshire law, including those under the New Hampshire Consumer Protection Act, N.H. RSA Chapter 358-A, resulting from the covered conduct up to and including the effective date that is the subject of this Judgment.

33. In addition to use of the Court's equitable powers, any violation of this Final Judgment by Consent may be punishable by civil contempt proceedings, or as otherwise provided by law.
34. Nothing in this Judgment shall be construed as relieving the Defendant of the obligation to comply with all state and federal laws, regulations or rules, nor shall any of the provisions of this Judgment be deemed to be permission to engage in any acts or practices prohibited by such law, regulation, or rule.
35. This Judgment sets forth the entire agreement between the parties, and there are no representations, agreements, arrangements, or understanding, oral or written, between the parties relating to the subject matter of this Judgment which are not fully expressed hereto or attached hereto.

X. PENALTY FOR FAILURE TO COMPLY

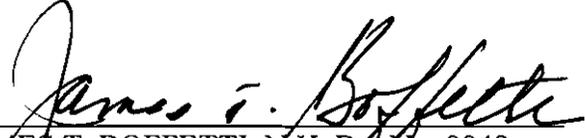
36. The defendants understand and acknowledge that pursuant to the provisions of the New Hampshire Consumer Protection Act, RSA 358-A:6, any person who violates the injunctive terms of this Judgment shall be guilty of a misdemeanor if a natural person, or guilty of a felony if any other person, in addition to any other authorized sanctions. Notwithstanding the foregoing, the Defendants shall be provided with a reasonable opportunity to cure any alleged violation of this Order prior to the Attorney General initiating any enforcement action.

IT IS SO ORDERED, ADJUDGED, AND DECREED.

JUDGE

**JOINTLY APPROVED AND
SUBMITTED FOR ENTRY:**

FOR THE STATE OF NEW HAMPSHIRE,

 2/2/2012
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**FOR CAITLIN RAYMOND INTERNATIONAL REGISTRY, INC. AND UMASS
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 2/2/2012
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