

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

SUPERIOR COURT DEPARTMENT
CIVIL ACTION NO.

_____)
COMMONWEALTH OF MASSACHUSETTS,)
)
Plaintiff,)
)
v.)
)
SOUTH SHORE ANESTHESIA ASSOCIATES, INC.,)
)
Defendant.)
_____)

**ASSURANCE OF DISCONTINUANCE
PURSUANT TO G. L. C. 93A, SECTION 5**

I. INTRODUCTION

1. The Commonwealth of Massachusetts, through Attorney General Maura Healey, pursuant to her authority under G.L. c. 93A (“Chapter 93A”), conducted an investigation into certain billing and patient notification acts and practices of South Shore Anesthesia Associates, Inc. (“SSAA”), a medical group practice in Weymouth, Massachusetts that provided anesthesia and pain management services (the “Healthcare Services”) through June 30, 2020 (the “Investigation”).

2. In lieu of litigation against SSAA, the AGO accepts this Assurance of Discontinuance (“Assurance”), pursuant to Chapter 93A § 5. SSAA, without admitting any facts, liability or any wrongdoing, and in the interest of resolving the Investigation, enters into this Assurance on the terms and conditions contained herein.

3. Neither this Assurance nor the payment of monies pursuant to this Assurance constitutes an admission by SSAA of any fact, allegation, Alleged Violation or alleged noncompliance with any state or federal law, regulation or rule related to the matters investigated by the AGO. SSAA expressly denies any liability or wrongdoing related to the matters investigated by the AGO. This Assurance is made without trial or adjudication of any issue of fact or law.

4. The parties voluntarily enter into this Assurance.

II. DEFINITIONS

1. “AGO” means the Massachusetts Attorney General’s Office.

2. “Effective Date” means the date this Assurance is fully executed by the parties.

3. “OON Services” means any Healthcare Services that SSAA provided to patients with health plans for which SSAA was not a participating provider at the time of care.

4. “SSAA” means the medical group practice doing business as South Shore Anesthesia Associates, Inc. and all its predecessors, successors, parent corporations, affiliates, subdivisions, subsidiaries, officers, directors, and agents.

III. BACKGROUND

Due in large part to financial constraints exacerbated by the impact of COVID-19 on elective health care, SSAA ceased providing health care services as of June 30, 2020 and is working towards a voluntary wind up of its business. As of July 1, 2020, many of SSAA’s health care professionals were hired by South Shore Hospital and, accordingly, are now part of the same health insurance networks as is South Shore Hospital.

IV. ALLEGED VIOLATIONS

The Commonwealth sets forth the following Alleged Violations.

1. Through June 30, 2020, SSAA clinicians provided Healthcare Services in Massachusetts, including at South Shore Hospital. In some cases, SSAA clinicians did not participate in the same health insurance plans as the facilities where they provided care. Consequently, certain patients who sought care at a facility that was in-network with their health plan received OON Services and were billed by SSAA for amounts that exceeded what they would have been billed had the Healthcare Services been provided by an in-network anesthesiologist.

2. The Commonwealth contends that SSAA violated Chapter 93A in the following ways:

a. Despite SSAA's knowledge that patients with certain health plans were typically unaware that the Healthcare Services provided by SSAA would be out of network ("OON") for them (even though the healthcare facility itself was in-network with their health plan), SSAA generally did not adequately disclose information prior to care that would have allowed these patients to make informed financial decisions regarding their health care. Had patients known that SSAA was OON with their health plan, patients may have sought medical care elsewhere to avoid being charged for OON Services or taken other steps to mitigate unexpected financial responsibility for their Healthcare Services.

b. SSAA billed and sought to collect charges from patients with OON health plans that are unfairly high in that they do not reflect reasonable value for the Healthcare Services that SSAA provided. For example, SSAA billed and sought to collect charges for patients with OON health plans that far exceed the amounts that SSAA billed and collected for

patients with commercial plans for which SSAA is a network provider (and which are set by contract). In some instances, SSAA charged and collected amounts for OON Services that are significantly more than what it would have collected from patients with in-network commercial plans. Further, when OON health plans have not covered SSAA's charges in full, some patients made out-of-pocket payments that are hundreds of dollars more than they would have paid had SSAA been in-network with their health plan; other patients who were unable to pay SSAA's bills were sent to collection agencies.

3. SSAA denies the Alleged Violations, and denies that it violated Chapter 93A.

V. **ASSURANCES**

SSAA's Dissolution

1. In accordance with its voluntary dissolution, which is unrelated to the AGO Investigation, SSAA shall not carry on any business except as is necessary for winding up its operations and complying with this Assurance.

2. SSAA shall provide the AGO with a copy of (a) any Articles of Dissolution it files or has filed with the Commonwealth; (b) any notice it files or has filed with the Department of Revenue concerning its dissolution; or, (c) other confirmation that it has completed winding up its operations.

SSAA's Cessation of Collecting Outstanding Account Balances

3. As of the Effective Date, SSAA, itself and through any other party, including any collection agency, shall (a) cease billing for and collecting on any remaining balances for patient accounts involving OON Services or uninsured patients, including all patient accounts identified as such by SSAA during the course of the Investigation, and (b) forgive the debts incurred by such patients.

4. As of the Effective Date, SSAA shall not sell or transfer any accounts or debt involving OON Services or uninsured patients to another party. SSAA represents that, while historically it has used third-party agencies to collect debt purportedly owed by its patients, it has not sold any patient accounts or debt at any time prior to the Effective Date.

5. No later than twenty-one (21) days after the Effective Date, SSAA:

a. shall have recalled all patient accounts involving OON Services or uninsured patients, including but not limited to all accounts previously identified by SSAA during the course of the Investigation, that have been sent to an outside collection agency at any time and informed the collection agency that these debts have been satisfied;

b. shall provide the AGO with information sufficient to identify all OON Services and uninsured patient accounts that have been sent to a collection agency through the Effective Date (including patient name, account number and identification of collection agency used);

c. shall undertake all necessary action, or cause all necessary action on the part of another party, to have all patient accounts involving OON Services or uninsured patients removed from any applicable credit report and/or credit reporting agency/bureau; and

d. shall obtain confirmation of such removal for each patient account involving OON Services or an uninsured patient.

6. No later than thirty (30) days after the Effective Date, SSAA shall provide the AGO confirmation that the obligations set forth in Paragraph (V)(5)(c)-(d) have been fulfilled.

SSAA's Billing Records

7. Within seven (7) days of the Effective Date, and pursuant to Civil Investigative Demand No. 2019-HCD-21, SSAA shall provide to the AGO billing records for the OON

Services its clinicians provided to patients from January 1, 2016 through June 30, 2020. The production shall include documents necessary for the AGO to accurately identify how much, by whom, and when SSAA was reimbursed in relation to such bills and shall generally consist of patient billing ledgers and Explanations of Benefits.

8. SSAA shall comply with all reasonable inquiries and requests from the AGO concerning the substance of the billing records described in Section V(7), including requests for further documentation to substantiate how much, by whom, and when SSAA was reimbursed.

VI. PAYMENT TO COMMONWEALTH

Within twenty-one (21) days after the Effective Date, SSAA shall pay to the Commonwealth \$260,000, which payment shall be made by an electronic fund transfer to an account or accounts identified by the Commonwealth. Such payment shall be designated as follows: (a) \$185,000 payable as a civil penalty, and (b) \$75,000 to be used for restitution payments to certain patients who incurred financial harm because of SSAA's billing practices, as determined by the AGO, and/or to be deposited into a trust fund for the purpose of assisting the AGO to discharge its duties, in accordance with G.L. c. 12 § 4A, and to be used in the sole discretion of the AGO to (i) promote initiatives designed to increase access to health care services, increase health care transparency, or otherwise assist Massachusetts health care consumers, or (ii) support efforts to enforce compliance with state and federal laws and regulations that protect Massachusetts health care consumers, including, but not limited to, through grants or other distributions to one or more political subdivisions of the Commonwealth, non-profit organizations, or to the Local Consumer Aid Fund, as established by G.L. c. 12, § 11G.

VII. GENERAL PROVISIONS

1. This Assurance shall be binding on SSAA.
2. This Assurance shall be governed by and interpreted in accordance with the laws of the Commonwealth of Massachusetts.
3. This Assurance shall be filed in the Superior Court of Suffolk County. The Superior Court has and shall retain jurisdiction over this Assurance.
4. This Assurance shall not relieve SSAA of any obligations to comply with all applicable current and future federal, state, and local laws and regulations.
5. This Assurance is not intended to impair any right of action that any person or entity might have against SSAA.
6. In consideration of SSAA's promises contained herein, the Commonwealth shall not proceed with or institute a civil action or proceeding pursuant to Chapter 93A against SSAA, including but not limited to an action or proceeding seeking restitution, injunctive relief, fines, penalties, multiple damages, attorneys' fees or costs, for any acts or practices based on the Alleged Violations prior to the Effective Date. This Assurance does not resolve and shall not be deemed a waiver of any other actual or potential claims the Commonwealth may have against SSAA, such as any civil or administrative liability that any person and/or entity, including SSAA, has or may have to the Commonwealth not expressly covered by the release in this paragraph, including, but not limited to, Medicaid claims and state false claims violations. This Assurance does not resolve any claims by any party other than the Commonwealth. This Assurance similarly does not resolve any actual or potential claims by the Commonwealth against any other parties.

7. By virtue of the provisions of Chapter 93A, §5, evidence of a violation of the terms of this Assurance by SSAA shall constitute prima facie evidence of a violation of Chapter 93A, § 2, in any civil action or proceeding commenced against SSAA by the AGO.

8. Nothing in this Assurance shall be interpreted to limit the Commonwealth's authority to issue a CID, bring a lawsuit under Chapter 93A, § 4 against SSAA, or proceed otherwise, to the extent such authority exists under applicable law, other than as noted in Paragraph 6 above.

9. Any time period within which a party must perform, or begin to perform, or complete an obligation of this Assurance may be extended upon written agreement of the parties.

10. Except for purposes of enforcement, no part of this Assurance shall be construed or admitted into evidence as an admission of liability by SSAA or any of its respective past or present affiliates, officers, directors or employees in any other proceeding, and any such alleged liability is expressly denied by SSAA.

11. SSAA shall comply with all reasonable inquiries and requests from the AGO regarding the implementation of the terms contained within this Assurance.

12. SSAA hereby accepts the terms and conditions of this Assurance and waives any right to challenge the validity and binding effect of this Assurance in any action or proceeding.

13. Any notices or communications required to be transmitted between the AGO and SSAA pursuant to this Assurance shall be provided in writing by first class mail, postage prepaid, and by electronic mail to the parties or successors as follows, unless otherwise agreed in writing.

To the AGO

Lisa M. Gaulin
Assistant Attorney General
Office of the Attorney General
One Ashburton Place
Boston, MA 02108
email: lisa.gaulin@mass.gov

To SSAA

Jacqueline A. Welch, Esq.
Morrison Mahoney LLP
250 Summer Street
Boston, MA 02210
email: jwelch@morrisonmahoney.com

14. The undersigned represents that (a) he is duly authorized to execute this Assurance on behalf of and to bind SSAA to all provisions of this Assurance, and (b) on behalf of SSAA, he voluntarily enters into this Assurance.

APPROVED FOR DEFENDANT:

By: John J. O'Connor
Dr. John O'Connor
President, South Shore Anesthesia Associates

Date: 5/25/21

APPROVED AND SUBMITTED by:

COMMONWEALTH OF MASSACHUSETTS

Maura Healey, Attorney General



Lisa M. Gaulin (BBO# 654655)

Assistant Attorney General

Health Care Division

Office of the Attorney General

One Ashburton Place

Boston, MA 02108

617-963-2346

lisa.gaulin@mass.gov

Date: 5.24.21