

NO. 08-01-21154

STATE OF TEXAS,

Plaintiff,

v.

SELECT MEDICAL CORPORATION
And SELECT PHYSICAL THERAPY
TEXAS LIMITED PARTNERSHIP,

Defendants.

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IN THE DISTRICT COURT OF

HOCKLEY COUNTY, TEXAS

286TH JUDICIAL DISTRICT

AGREED FINAL JUDGMENT AND PERMANENT INJUNCTION

1. On this the 16th day of July, 2008, came before this Court, plaintiff, STATE OF TEXAS and Defendants, SELECT MEDICAL CORPORATION (hereafter "Select Corp.") and SELECT PHYSICAL THERAPY TEXAS LIMITED PARTNERSHIP, (hereafter "Select Texas"), in the above entitled and numbered cause. The STATE OF TEXAS, by and through, Texas Attorney General, GREG ABBOTT, and Defendants, by and through their attorney of record, announce to the Court that all matters of fact and things in controversy between them has been fully and finally compromised and settled and present to the Court this Agreed Final Judgment and Permanent Injunction ("Judgment"). By the duly authorized signatures, the parties stipulated to the Court the following: that they understand the terms of this Judgment; that they agree to the terms of this Judgment; that they have waived all rights of appeal from this Judgment; that they actively participated in the negotiations leading up to this Judgment and are aware of the duties placed upon them by it and are desirous and capable of carrying out those duties in full; that they acknowledge receipt of copies of this Judgment and have full and actual notice of the terms of this Judgment; that the issuance and service of a writ of injunction are waived; that the terms of this Judgment are sufficiently detailed and specific to be enforceable by the Court in conformance with Tex. R. Civ. P. 683; that this Judgment represents as a compromise and settlement of all matters arising out of facts alleged by the STATE OF TEXAS in this cause.

FILED at 9:00 o'clock AM
7-16-08 DENNIS PRICE
District Court Clerk, Hockley Co., TX
By D.P. Deputy

2. Pursuant to the agreement, the parties submit to the jurisdiction of the court and do not contest the entry of this Judgment.

3. Select Corp. and Select Texas, desiring to resolve the Attorney General's concerns without trial or adjudication of any issue of fact or law, has consented to entry of this Judgment, which is not an admission of liability by Select Corp. or Select Texas as to any issue of fact or law.

4. It appearing to the Court that all parties agree to the entry of this Judgment and that they have approved its entry by their duly authorized signatures and the signatures of their respective attorneys below, the Court, upon the stipulations of the parties and after being fully advised in this matter, finds as follows:

- A. THAT it has jurisdiction of the parties and subject matter of this suit;
- B. THAT the settlement of this dispute is fair, reasonable, and just; and
- C. THAT it would be in the best interests of the parties if the Court approved the settlement and rendered judgment accordingly.

5. Based on these findings, and having heard and considered the representations made by the parties, the Court is of the opinion that a permanent injunction should be issued as granted in this Judgment and that Plaintiff, STATE OF TEXAS is entitled to recover of and from Defendant Select Texas as set forth below.

DEFINITIONS

6. For purposes of this Judgment, these words are defined as follows:

- A. "Personal Identifying Information" means an individual's first name or initial and last name in combination with any one or more of the following items:
 - (1) Date of birth;
 - (2) Social security number or other government-issued identification number;
 - (3) Mother's maiden name;
 - (4) Unique biometric data, including the individual's fingerprint, voice print, and retina or iris image;

- (5) Unique electronic identification number, address, or routing code; and
 - (6) Telecommunication access device, including debit and credit card information; or
 - (7) Financial institution account number or any other financial information.
- B. “Sensitive Personal Information” means:
- (1) An individual’s first name or first initial and last name in combination with any one or more of the following items, if the name and the items are not encrypted:
 - (a) Social security number;
 - (b) Driver’s license number or government-issued identification number; or
 - (c) Account number or credit or debit card number in combination with any required security code, access code, or password that would permit access to an individual’s financial account; and
 - (2) Does not include publicly available information that is lawfully made available to the general public from the federal government or a state or local government.
- C. “Facilities” means all outpatient rehabilitation clinics or practices owned and operated by Select Texas and/or its subsidiaries in the State of Texas.
- D. “Managers and Supervisors” means all employees of Select Texas, and/or its subsidiaries in the State of Texas, whose positions involve supervisory responsibilities relating to the Facilities, including, but not limited to the present titles of Managers, Supervisors, Center Managers, Market Managers and Region Directors.
- E. “Person” means an individual, partnership, corporation or entity of any kind.

- F. “Privacy Protection Laws” includes Tex. Bus. & Com. Code Ann. §35.48 (hereafter “Section 35.48) and Chapter 48 of the Tex. Bus. & Com. Code Ann. §48.001, *et seq* (hereafter “Identify Theft Enforcement and Protection Act”).
- G. “Employees” means all persons in Texas who are employees of Select Texas, and/or its subsidiaries in the State of Texas, and who provide services at the Facilities.

INJUNCTIVE RELIEF

7. IT IS ORDERED that Select Texas’ officers, agents, servants, employees and any other persons or entities in active concert or participation with Select Texas, shall be permanently enjoined from disposing of records that contain Personal Identifying Information or Sensitive Personal Information unless:

- A. Select Texas modifies such records by shredding, erasing, or by some other means that makes the Personal Identifying Information or Sensitive Personal Information unreadable or undecipherable; or
- B. Select Texas contracts with a person engaged in the business of disposing of records for the modification of Personal Identifying Information or Sensitive Personal Information contained therein, by shredding, erasing, or by other means, to make it unreadable or undecipherable.

8. IT IS FURTHER ORDERED that Select Texas shall amend its information security program and related policies and procedures to protect and safeguard from unlawful use, disposal or disclosure any Personal Identifying Information or Sensitive Personal Information (“collectively Personal Information”) collected or maintained by its Facilities when such records are being transported from one location to another, including when a facility is relocating or is being closed. Such amended information security program (“Program”) shall protect and safeguard Personal Information and, at a minimum, must include the elements set forth in the following paragraphs 9 through 19 below.

COMPLIANCE REPRESENTATIVE

9. Select Texas shall designate a qualified corporate based employee to serve as its Texas Compliance Representative, who shall be responsible for assuring compliance with Select Texas' Program and specifically, for overseeing efforts to comply with the terms of this Judgment and Privacy Protection Laws. For a period of five (5) years after entry of this Judgment, the duties of the Compliance Representative shall include oversight of the following:

- A. A corporate based employee or third party vendor to whom Select Texas' employees may anonymously report any failures to comply with the Program and Privacy Protection Laws; and
- B. A corporate based employee or employees who shall be responsible for responding to questions from Select Texas' employees regarding compliance with this Judgment, the Program, or Privacy Protection Laws.

WRITTEN PROGRAM

10. Within sixty (60) days after entry of this Judgment, Select Texas shall adopt and commence implementation of the Program, which will be fully documented in writing and contain administrative, technical, and physical safeguards appropriate to Select Texas' operations and activities and the sensitivity of the Personal Information collected from or about customers. The Program shall include specific requirements, directives and instructions for employees, managers and supervisors.

11. Within ninety (90) days after entry of this Judgment, Select Texas shall provide notice of the following in writing to all managers and supervisors with responsibility for its Facilities:

- A. That their compliance with the Program and their region or Facility's compliance with the Program may be taken into account in connection with compensation, promotion and retention decisions;
- B. That Select Texas will monitor each Facility and individual employee's compliance with the Program;

- C. That failure to comply with the Program and Privacy Protection Laws may constitute grounds for termination; and
- D. That training regarding the Program will be provided to all employees on or before a specific date.

RECORD MODIFICATION

12. When disposing of records in Texas that contain Personal Information, Select Texas will either modify such records by shredding, erasing or by some other means that makes the Personal Information unreadable or undecipherable or contract with a person engaged in the business of disposing of records for the modification of Personal Information by shredding, erasing, or by other means, to make it unreadable or undecipherable. Records containing Personal Information that are in storage, inactive or pending modification must be placed in secured locked containers, maintained in a secured area, or otherwise be stored securely to prevent the unlawful use, dissemination or disposal of such records. If Select Texas elects to contract with a third party provider, then the third party provider must provide certification to Select Texas that all Personal Information has been shredded, erased, or otherwise modified rendering it unreadable or undecipherable. Select Texas shall maintain in its files, the required certification and records identifying the specific third party provider that services each of its Texas Facilities. Select Texas shall either require the third party provider to maintain in its records the required certifications for a minimum period of six months or shall maintain the required certifications in its files for a minimum period of six months.

EMPLOYEE TRAINING

13. Select Texas' Program shall include the following employee training elements:
- A. A review of the Program and of any other of Select Texas' policies and practices relating to the safeguarding and disposal of records containing Personal Information along with notice that compliance with the Program and any related policies and practices will be taken into account in connection with performance reviews and disciplinary decisions up to and including termination;

- B. An explanation of identity theft, its cost to individual consumers and businesses and thus, the importance of abiding by the Program and any related policies and practices;
- C. A review of the Privacy Protection Laws applicable to the proper safeguarding and disposal of Personal Information;
- D. The name and telephone number and/or e-mail address of the specific corporate-based employee or third party vendor to whom employees may anonymously report any failures to comply with the Program; and
- E. Written or electronic acknowledgment that each employee has completed the Program training and understands how to comply with the Program.

14. The requirements of paragraph 13 shall remain in effect for a period of five (5) years after entry of this Judgment. Thereafter, Select Texas may elect to modify the training elements required by this paragraph. In that event, Select Texas shall maintain and make available to the Attorney General, upon request, documents which (a) describe in detail Select Texas' training program; (b) explain how that program serves to assure compliance with Privacy Protection Laws; and (c) demonstrate that its Texas employees have completed such training and understand how to comply with Select Texas' program.

TRAINING SCHEDULE

15. Within one hundred and twenty (120) days after entry of this Judgment, Select Texas shall provide all current Texas employees with the training described in the preceding paragraphs 13 and

16. Select Texas shall provide this same training to new employees within sixty (60) days of the employee's first date of employment and this training may be incorporated into new hire training or orientation. Select Texas shall provide all of its employees with additional, periodic training at least annually to ensure they maintain the requisite knowledge, skill and motivation regarding compliance with the Program.

CORPORATE DOCUMENTATION OF TRAINING

17. For a period of five (5) years after entry of this Judgment, Select Texas shall on the

anniversary date of its entry, forward to the Office of the Attorney General a sworn statement signed by the Compliance Representative certifying that Select Texas' employees have completed the training program described in paragraphs 13 and 14.

POSTED NOTICES REQUIRED

18. Select Texas shall post and maintain notices in each of its Facilities that clearly explains to all employees the procedure to be used at that facility to properly dispose of records containing Personal Information. These notices shall be posted in prominent locations and must include directives regarding the handling, filing and disposal of duplicates of original documents containing Personal Information.

COMPLIANCE ASSESSMENTS

19. Select Texas' Program shall include policies and procedures to safeguard records and data containing Personal Information when such records are being transported from one location to another, including when a facility is relocating or is being closed. At a minimum, such policies and procedures must include: (a) designation of a regional level representative charged with implementing requirements to safeguard Personal Information; (b) procedures to assure the proper inventory, packing and labeling of all records containing Personal Information to be transported; (c) procedures to assure that the documents are safeguarded from the time they leave the location of origin until they are delivered to their destination; (d) documentation of proper packing and labeling of such records; and (e) documentation evidencing the date and time that such records left the location of origin; the date, time and location to which they were delivered and identifying the person who received the records. In the event that Select Texas elects to hire a third party provider for services related to the relocation or closure of a facility, Select Texas must enter into a written contract with such provider which shall include clear and conspicuous notice to the provider that documents being transported contain Personal Information and further requiring the provider to take appropriate measures to safeguard that Personal Information from the time the records leave the location of origin until they reach their destination. In connection with compliance with this

paragraph, Select Texas shall conduct an initial and annual internal assessments of its procedures. Each assessment shall set forth the specific administrative, technical and physical safeguards which Select Texas has implemented and maintained; explain how such safeguards are appropriate to Select Texas' size and complexity, the nature and scope of Select Texas' activities and the sensitivity of Personal Information collected from or about consumers. Select Texas' Chief HIPAA or privacy compliance officer shall review such assessment and certify that Select Texas' safeguards for the transportation and transfer of records with Personal Information are sufficiently effective to safeguard such information. The initial assessment required by this paragraph must be completed within 180 days of entry of this Judgment. Thereafter such assessments shall be performed on an annual basis for a period of five (5) years from the date of entry of Judgment.

INSPECTION AND REVIEW OF THE PROGRAM

20. Select Texas shall upon request of the Attorney General make available for inspection and review a copy of the Program as well as all assessments and training materials. Unless otherwise agreed to by the parties, such materials shall be made available to the Attorney General within ten (10) business days of Select Texas' receipt of such request.

POTENTIAL CONFLICTS OF LAW

21. To the extent that the terms of this Judgment conflict with any Texas, local or federal law or regulation which now exists or is later enacted or amended, such law and not this Judgment shall apply where such conflict exists. For purposes of this Judgment, a conflict exists if conduct prohibited by this Judgment is required or permitted by such Texas, local, or federal law or regulation, or if such conduct required by this Judgment is prohibited by such Texas, local, or federal law or regulation.

MODIFICATION

22. In the event that Select Texas concludes, based on changed circumstances, that the terms of this Judgment unfairly restrict its business practices, then Select Texas may submit a written request to the Attorney General seeking to modify the injunctive terms of this Judgment, including

requesting that any or all of Select Texas' obligations under the injunctive terms cease. The Attorney General shall make a good faith evaluation of Select Texas' request and shall respond to the request within ninety (90) days of receipt of such request. If the Attorney General denies Select Texas' requested modification, Select Texas may in accordance with the Texas Rules of Civil Procedure, petition the Court for modification of the terms and conditions of this Judgment.

ENFORCEMENT

23. If the Attorney General has reason to believe that Select Texas has failed to comply with any of the terms of this Judgment, the Attorney General will notify Select Texas in writing of such failure to comply and Select Texas shall then have fifteen (15) business days from receipt of such written notice to provide a good faith written response to the Attorney General's notification. The response shall include a sworn statement signed by the Compliance Representative containing, at a minimum:

- A. A statement explaining why Select Texas believes it is in full compliance with the Judgment; or
- B. A detailed explanation of how the alleged violation(s) occurred; and a statement that the alleged breach has been cured and a description of the action taken by Select Texas to cure the breach; or
- C. A statement that the alleged breach cannot be reasonably cured within fifteen (15) business days from receipt of the notice, but (a) Select Texas has begun to take corrective action to cure the alleged breach; (b) Select Texas is pursuing such corrective action with reasonable and due diligence; and (c) Select Texas has provided the Attorney General with a detailed and reasonable time table for curing the alleged breach.

Nothing herein shall prevent the Attorney General from agreeing to provide Select Texas with additional time beyond the fifteen (15) business day period to respond to the notice. Nothing in paragraph 23 shall be construed to limit the authority or discretion of the Attorney General to act in the public interest to enforce applicable state laws.

MONETARY PAYMENT

24. Within thirty (30) days of the entry of this Agreed Final Judgment and Permanent Injunction, Select Texas shall pay to the State of Texas the sum of Nine Hundred and Ninety Thousand Dollars (\$990,000.00) which includes One-Hundred Thousand Dollars (\$100,000.00) for attorneys' fees. The remaining Eight Hundred Ninety Thousand Dollars (\$890,000.00) is to be deposited in the general revenue fund and as provided by Tex. Bus. & Com. Code Ann. §48.201, may be appropriated only for the investigation and prosecution of cases under the Identity Theft Enforcement and Protection Act.

25. Such payment shall be made in the form of a certified check or wire transfer made payable to the Office of the Attorney General of Texas, bearing the Attorney General number #07-2478589 and shall be delivered to the Office of the Attorney General, Consumer Protection and Public Health Division, 300 W. 15th St., 9th Floor, Austin, Texas 78701, Attention: Janie Salazar.

26. All costs of Court expended or incurred in this cause shall be paid by the party incurring same.

RESOLUTION OF CLAIMS AND INVESTIGATIONS

27. The Judgment is a complete settlement and release of all claims under Section 35.48 and the Identity Theft Enforcement and Protection Act, Chapter 48, relating to or alleging that Select Corp. and/or Select Texas unlawfully disposed of records containing Personal Information that have been or could have been brought against Select Corp. and/or Select Texas based upon acts, practices or courses of conduct that have occurred through the date of this Judgment. Nothing in this paragraph shall be deemed to preclude the Office of the Attorney General's review of acts, practices or courses of conduct that occur after the entry of this Judgment.

MISCELLANEOUS

28. Legal Exposure - This Judgment is not intended to grant or limit any legal rights or remedies of any nature to any third party.

29. Notices - All notices required by this Judgment shall be sent by certified or registered mail, return receipt requested, postage prepaid or by hand delivery to:

If to the Attorney General:

Sharon B. Shaw
Assistant Attorney General
Consumer Protection and Public Health Division
Office of the Attorney General
4630 50th Street, Suite 500
Lubbock, Texas 79414
(806) 747-5238

and

John Owens, Deputy Chief
Consumer Protection and Public Health Division
Office of the Attorney General
300 West 15th Street
Austin, Texas 78501
(512) 475-4628

If to Select Medical Corporation and/or Select Physical Therapy Texas Limited Partnership:

Edward D. ("Ed") Burbach
Gardere Wynne Sewell, L.L.P.
600 Congress Avenue, Suite 3000
Austin, Texas 78701
(512) 542-7000

AND

John F. Duggan
Senior Vice President, Legal Counsel
Select Medical Corporation
Select Physical Therapy Texas Limited Partnership
4714 Old Gettysburg Road
P.O. Box 2034
Mechanicsburg, PA 17055
(717) 975-4534

30. Retention of Jurisdiction - Jurisdiction is retained for the purpose of enabling any party to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for

modification of the injunctive provisions hereof, for the enforcement and compliance herewith, and for the punishment of violations hereof.

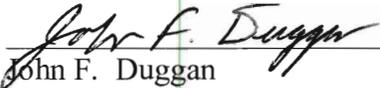
31. Fax signatures hereon are effective as originals.
32. After signing by the Court, this agreement constitutes a final judgment.
33. All relief not expressly granted herein is denied.

SIGNED on July 16, 2008.


HONORABLE PAT PHELAN

APPROVED AS TO FORM AND SUBSTANCE AND ENTRY REQUESTED:

SELECT MEDICAL CORPORATION and
SELECT PHYSICAL THERAPY TEXAS
LIMITED PARTNERSHIP



John F. Duggan

Senior Vice President, Legal Counsel

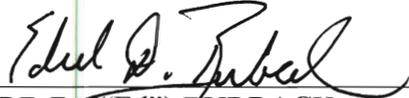
Select Medical Corporation

on behalf of Select Medical Corporation and

Select Physical Therapy Texas Limited

Partnership

APPROVED AS TO FORM:



EDWARD D. ("Ed") BURBACH

State Bar No. 03355250

Gardere Wynne Sewell, L.L.P.

600 Congress Avenue

Suite 3000

Austin, Texas 78701

(512) 542-7000 - Telephone

(512) 542-7270 - Facsimile

ATTORNEY FOR SELECT MEDICAL
CORPORATION and SELECT
PHYSICAL THERAPY TEXAS
LIMITED PARTNERSHIP

APPROVED AS TO FORM AND SUBSTANCE AND ENTRY REQUESTED:

FOR THE STATE OF TEXAS:

GREG ABBOTT
Attorney General of Texas

KENT C. SULLIVAN
First Assistant Attorney General

JEFF L. ROSE
Deputy First Assistant Attorney General

PAUL D. CARMONA
Chief, Consumer Protection &
Public Health Division



SHARON B. SHAW
State Bar No. 24034253
Assistant Attorney General
Office of the Attorney General
Consumer Protection and Public Health Division
4630 50th Street, Suite 500
Lubbock, Texas 79414
(806) 747-5238 - Telephone
(806) 747-6307 - Facsimile

JOHN OWENS
State Bar No. 15379200
Deputy Division Chief
Consumer Protection & Public Health Division
300 West 15th Street, 9th Floor
Austin, Texas 78711
(512) 475-4632
(512) 473-8301- Facsimile