

JANE DOE NO. 1, JANE ROE NO. 1,	:	IN THE
JANE ROE NO. 2, and JANE ROE NO. 3	:	
Plaintiffs,	:	CIRCUIT COURT
v.	:	FOR
THE JOHNS HOPKINS HOSPITAL,	:	BALTIMORE CITY
JOHNS HOPKINS COMMUNITY	:	
PHYSICIANS, and	:	Case No.: 24-C-13-001041
JOHNS HOPKINS HEALTH SYSTEM	:	
CORPORATION	:	
Defendants.	:	
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**PROPOSED ORDER GRANTING FINAL APPROVAL OF MANDATORY CLASS SETTLEMENT AGREEMENT**

The Plaintiffs, Jane Doe No. 1, Jane Roe No. 1, Jane Roe No. 2, and Jane Roe No. 3, by and on behalf of others similarly situated (“Plaintiffs”), and Defendants, The Johns Hopkins Hospital, Johns Hopkins Community Physicians Inc., and The Johns Hopkins Health System Corporation (together, “Johns Hopkins”), having entered into a proposed Settlement Agreement in this Action, and the Court having duly considered and preliminarily approved the proposed Settlement Agreement, ordered the Parties to provide notice of the Settlement Agreement to the Settlement Class Members, duly considered all objections to Settlement Agreement, and considered the Parties’ arguments and submissions in support of final approval,

IT IS ORDERED AS FOLLOWS:

1. For purposes of this Order, the Court adopts the definitions set forth in the Settlement Agreement.

**Class Notice**

2. The Court previously ordered the Plaintiffs, through the Claims Administrator, to directly mail an approved form of notice of the Preliminary Approval Order to all individuals

who previously received written notice of the October 30, 2013 Conditional Certification Order and all individuals who previously registered as members of the Settlement Class. The Court further ordered the Parties to provide notice to any Settlement Class Members who were minors as of the date of the Preliminary Approval Order but who have not previously registered as Settlement Class Members (a) by mailing written notice to their parents or (b) through alternative means.

3. The Court previously ordered the Plaintiffs, through the Claims Administrator, to provide publication notice of the Preliminary Approval Order pursuant to the approved Class Publication Notice Plan.

4. Through the Claims Administrator, the Plaintiffs subsequently provided notice of the Preliminary Approval Order to the Settlement Class in the manner ordered by the Court, as required by Md. Rule 2-231(h).

5. The Court finds that the notice of Preliminary Approval Order, as well as the manner in which it was provided to Settlement Class Members, fairly and adequately described the proposed class settlement and the manner in which class members could object to the settlement.

6. The Court further finds the Plaintiffs provided valid, due, and sufficient notice to the Settlement Class Members; and complied fully with the Maryland Rules of Civil Procedure, due process, and all other applicable laws. A full and fair opportunity was afforded to Settlement Class Members to object to or to comment on the Settlement and to participate in the hearing convened to determine whether the Settlement Agreement should be given final approval.

7. In making the findings in Paragraphs 4-6, the Court has considered the sworn testimony of Jeanne C. Finegan, the President of HF Media, Inc., which is a division of the

Heffler Group and which has served as the Claims Administrator in this Action. The Court finds Ms. Finegan's testimony to be credible.

#### Class Certification

8. Pursuant to the Settlement Agreement and for purposes of this settlement only, the Court certifies the following final Settlement Class pursuant to Maryland Rule 2-231(b)(1)(B):

All former patients of Nikita A. Levy M.D. ("Dr. Levy") or all such persons' personal representatives, heirs or assigns, wherever located, who have or may in the future have any claim against (1) Nikita A. Levy, M.D. ("Dr. Levy") or the Estate of Nikita A. Levy, or (2) The Johns Hopkins Health System Corporation, The Johns Hopkins Hospital or Johns Hopkins Community Physicians (or any other person or entity affiliated with Johns Hopkins), arising out of, based upon, related to, or involving injuries and damages claimed as a result of the Dr. Levy's photographing or videotaping activities or boundary violations while he was an actual or apparent agent, servant, or employee of Johns Hopkins.

9. In connection with the final certification of this Settlement Class, the Court makes the following findings concerning the requirements of Maryland Rule 2-231(a):

- a. The Settlement Class consists of over 12,000 former patients of Dr. Levy, and therefore is (i) sufficiently numerous such that joinder of all members is impracticable and (ii) sufficiently ascertainable, in that former patients of Dr. Levy may be identified through Johns Hopkins' medical records.
- b. There are questions of law or fact common to the Settlement Class for purposes of determining whether this Settlement should be approved, including but not limited to:
  - i. Whether Dr. Levy was an actual or apparent agent, servant or employee of the Johns Hopkins Defendants at all times;

- ii. Whether the Johns Hopkins Defendants are vicariously liable for Dr. Levy's actions;
  - iii. Whether the Johns Hopkins Defendants' actions and/or alleged failures to act, including their alleged negligent failure to properly investigate, credential, qualify, select, monitor, and supervise Dr. Levy, directly and proximately resulted in foreseeable injuries or damages to the Settlement Class Members; and
  - iv. What was the extent and nature of Dr. Levy's alleged misconduct, including his surreptitious photography and videotaping of Settlement Class Members and/or engaging in boundary violations.
- c. The claims of the Representative Plaintiffs, Jane Doe No. 1 and Jane Roe Nos. 1, 2 & 3, are typical of the claims of Settlement Class Members, considering that each Representative Plaintiff is a former patient of Dr. Levy, and each seeks to recover damages from the Johns Hopkins Defendants arising from his alleged misconduct under vicarious liability and negligence theories.
- d. The class representatives will adequately represent the Settlement Class in that:
- i. The interests of the Representative Plaintiffs are sufficiently identical to the other members of the Settlement Class based on their status as former patients of Dr. Levy and the misconduct alleged in the Amended Complaint;

- ii. The Representative Plaintiffs have been cognizant of their duties and responsibilities to the Settlement Class Members; and
- iii. As previously determined in the Court's October 30, 2013 Order approving Plaintiff's Motion for the Appointment of a Steering Committee, Class Counsel are experienced in class actions and other complex litigation, and have been involved in protracted litigation involving medical malpractice for many years.

10. In connection with the final certification of the Settlement Class, the Court makes the following findings with respect to Maryland Rule 2-231(b)(1)(B):

- a. The Johns Hopkins Defendants are charitable organizations, and therefore entitled to immunity for third-party tort claims under the Maryland doctrine of charitable immunity, except to the extent of available insurance.
- b. The only assets potentially available to satisfy the Settlement Class members' claims are Johns Hopkins insurance policies, which are wasting policies.
- c. The \$190,000,000 Class Action Settlement Amount represents the total assets available to satisfy the Settlement Class Members' claims, considering that:
  - i. The limits of Johns Hopkins professional liability insurance would be substantially eroded (and indeed have already been eroded) were Johns Hopkins to continue defend this class action or, if

decertified, lawsuits brought by individual Settlement Class Members; and

- ii. Johns Hopkins' insurers have raised certain defenses to coverage.
- d. In making the findings set forth in paragraphs 10.b and 10.c, the Court has considered the sworn testimony of James R. Murray, Esq., an attorney in the Washington D.C. office of Dickstein Shapiro LLP and a nationally regarded expert in insurance coverage issues. The Court finds that Mr. Murray's testimony is credible.
- e. The Class Action Settlement Amount, which represents the limited fund set at its maximum, is insufficient in to pay all the claims of the 12,000 Settlement Class Members, considering both the sheer number of the claims and the nature the misconduct alleged in the Amended Complaint.
- f. Pursuant to the Settlement Agreement, the entirety of the Class Action Settlement Amount, less any costs, expenses or attorneys' fees awarded by the Court, will be devoted to the satisfaction of the Settlement Class Members' claims.
- g. Pursuant to the Settlement Agreement's Allocation Plan, the Class Action Settlement Amount will be distributed to similarly situated Settlement Class Members in an equitable manner. Plaintiffs' counsel will submit the expenses reasonably incurred in the course of the allocation procedure and administration of this matter for payment from the Qualified Settlement Fund, subject to the approval of this Court.

**Fairness, Adequacy and Reasonableness**

11. The Court finds that the Settlement Agreement, including all exhibits thereto is fair, adequate and reasonable under applicable Maryland law.

12. In connection with the final approval of the Settlement Agreement, the Court makes the following findings with respect to the Settlement Agreement's fairness:

- a. The Settlement Agreement is the result of over twenty months of vigorously contested mediation and negotiations between Plaintiffs and the Johns Hopkins Defendants.
- b. The mediation was conducted by John W. Perry, Jr., a highly regarded mediator in significant class actions across the country, and Brian Nash, a highly regarded attorney with 40 years of experience litigating and mediating cases in and around Baltimore City. The mediators engaged the Parties in repeated in-person and telephonic sessions in their attempt to reach a settlement.
- c. During the mediation, the Parties zealously advanced their arguments, and each side demonstrated a willingness to continue to litigate rather than accept a settlement that was not in their client's interests.
- d. Throughout this litigation, the Parties have been represented by highly experienced and competent counsel.
- e. In making the findings in paragraphs 12.a-d, the Court has considered the sworn testimony of the mediator, John W. Perry, Jr. and Brian Nash, whose testimony the Court finds is credible.

13. In connection with the final approval of the Settlement Agreement, the Court makes the following findings with respect to the Settlement Agreement's reasonableness and adequacy:

- a. The Class Action Settlement Amount represents all of the assets reasonably available to compensate the Settlement Class Members' claims.
- b. Notwithstanding Dr. Levy's widely publicized misconduct, if the case were litigated further, the Plaintiffs would still face difficulties in establishing Johns Hopkins liability and proving damages.
- c. If the Settlement Agreement is not approved, there will be expensive and protracted litigation for years to come. No matter the outcome of that litigation, the assets available to compensate the Settlement Class Members' claims will consist of Johns Hopkins' reasonably available insurance proceeds under the Maryland doctrine of charitable immunity, which will have been substantially eroded, if not eliminated, by the additional litigation.
- d. Over 14,000 former patients of Dr. Levy received notice of this settlement. Between 8,000 and 9,500 individuals have registered as members of the Settlement Class, but only approximately 20 objections to the Settlement Agreement were filed.
- e. In making these findings and otherwise concluding that the settlement is adequate, the Court has considered the sworn testimony of John W. Perry,



Jr., James R. Murray, Geoffrey C. Hazard, Jr., [Arnold Weiner] and Joseph F. Murphy, Jr., all of whom the Court finds credible.

14. The Court has considered the remaining ■ unresolved objections to the Settlement Agreement filed by individual Settlement Class Members, finds them unpersuasive, and therefore overrules them.

**Further Administration of the Settlement Agreement**

15. The Parties are directed to implement the Settlement Agreement according to its terms and conditions, including, but not limited to, the funding of the Qualified Settlement Fund pursuant to Section 4 of the Settlement Agreement.

16. Consistent with the Court's July 21, 2014 Order preliminarily approving the Settlement Agreement, the Bar Date for Settlement Class Members to register for potential distributions from the settlement fund shall remain November 14, 2014.

17. The Release set forth in Section 4.11 of the Settlement Agreement is expressly incorporated herein and shall be effective as of the date of this Order, and forever discharges the Released Parties from any claims or liabilities released by the Settlement Agreement.

18. Upon execution, this Order shall have a res judicata effect and immediately bar each and every Settlement Class Member from bringing any action asserting any "Released Claims" as the term is defined in Section 4.11 of the Settlement Agreement.

19. No funds shall be distributed to Class Members until the Parties mutually agree to the selection of the Lien Resolution Administrator, and the Lien Resolution Administrator has satisfied the obligations set forth in Section 8 of the Settlement Agreement.

20. Funds shall be distributed to Settlement Class Members in accordance with the Allocation Plan attached as Exhibit A to the Settlement Agreement.

21. No funds shall be distributed to Class Members until the Claims Adjudicator's final Allocation Plan has been presented to and approved by this Court.

22. Notwithstanding this Order, the Settlement Agreement remains contingent on the occurrence of the Effective Date. If the Effective Date does not occur or if the Settlement Agreement is otherwise terminated prior to the Effective Date, this Order and the accompanying Judgment shall be vacated by its terms and the Action shall revert to the status that existed before the Court's October 30, 2013 Order conditionally certifying a class for purposes of the facilitating settlement negotiations. In such event, (a) the Parties shall retain all of their respective rights, remedies, objections or defenses with respect to the class certification; (b) there shall be a 180 day "Grace Period" beginning on the day that the October 30, 2013 order is vacated; (c) during the Grace Period, the Defendants shall not assert any statutes of limitations and/or statutes of repose under applicable common law, under federal, state or local statutory law, or any other time-related defenses, including laches, with respect to any claim that would be released by this Settlement Agreement, other than a defense that the claim was already barred as of February 22, 2013, when the Plaintiffs filed the first putative class action complaint; (d) Defendants shall reserve all applicable time-based defenses to any claim filed by a Settlement Class Member (or putative Settlement Class Member) after the Grace Period ends; and (e) Plaintiffs shall have preserved all causes of action, rights and remedies provided by law which were available to them as of February 22, 2013, the date on which the first putative class action complaint was filed, but nothing in Court's October 30, 2013 Order or this Settlement Agreement shall be deemed to shorten any applicable statute of limitation.

23. The digital files that are the subject of the Court's February 5, 2014 Protective Order shall remain in the possession of TOSS, LLC under the terms of the Protective Order until

March 1, 2017, at which point the files shall be destroyed by TOSS, LLC absent further order of this Court.

24. This Court shall retain exclusive and continuing jurisdiction and exclusive venue with respect to the implementation, enforcement, construction, interpretation, performance, and administration of the settlement.

25. The Clerk of Court is directed to enter Judgment immediately and dismiss this Action with prejudice.

SO ORDERED, this 19<sup>th</sup> day of September, 2014

SYLVESTER B. COX

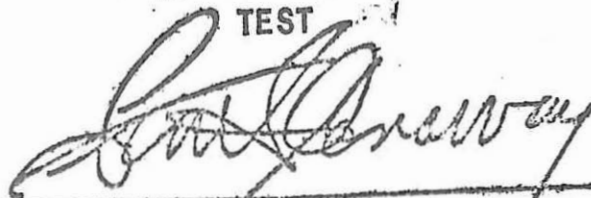
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ER B. COX

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FRANK M. CONAWAY, CLERK

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