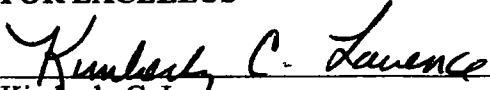


4. Class Representative Plaintiffs and Excellus respectfully request that this Court proceed with the hearing scheduled for June 3, 2005 at 11:00 o'clock A.M. to consider the settlement agreement and to enter the proposed order.

5. Respectfully submitted this 23rd day of May, 2005.

FOR EXCELLUS



Kimberly C. Lawrence
HINMAN STRAUB P.C.
121 State Street
Albany, New York 12207-1693
(518) 436-0751

FOR PLAINTIFFS:

Joseph P. Guglielmo
MILBERG WEISS BERSHAD
& SCHULMAN LLP
One Pennsylvania Plaza, 48th Floor
New York, NY 10119
(212) 594-5300

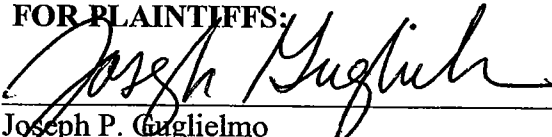
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EXHIBIT 1

STATE OF NEW YORK
SUPREME COURT COUNTY OF MONROE

WILLIAM A. DOLAN, M.D. and SYLVIA W.
NORTON, M.D., on behalf of themselves and all
others similarly situated,

Plaintiffs,

Index No. 9768-01

- against -

EXCELLUS, INC.; EXCELLUS HEALTH PLAN, INC.;
and EXCELLUS BENEFITS SERVICES, INC.,

Defendants.

STATE OF NEW YORK
SUPREME COURT COUNTY OF MONROE

MEDICAL SOCIETY OF THE STATE
OF NEW YORK

Plaintiff,

Index No. 9769-01

- against -

EXCELLUS, INC.; EXCELLUS HEALTH PLAN, INC.;
and EXCELLUS BENEFITS SERVICES, INC.,

Defendants.

**ORDER CONDITIONALLY CERTIFYING THE CLASS, PRELIMINARILY
APPROVING PROPOSED SETTLEMENT, SETTING FORM AND CONTENT OF
NOTICE TO THE CLASS AND SCHEDULING FINAL SETTLEMENT HEARING**

The Court having reviewed and considered the Joint Motion for Preliminary Approval of Proposed Settlement with Excellus, Inc. (a corporation no longer in existence), Excellus Benefits Services, Inc., and Excellus Health Plan, Inc., a New York not-for-profit corporation, (hereinafter collectively "Excellus" or "Company") dated May 23, 2005, and having been apprised of the terms and conditions of the proposed settlement (the "Settlement") as set forth in the Settlement Agreement dated May 23, 2005 (the "Settlement Agreement"), a copy of which has been

submitted with the joint motion, and on the basis of such submissions, together with the other submissions by the parties in support of the joint motion, and all prior proceedings had in this litigation, good cause for this Order having been shown,

NOW, THEREFORE, IT IS HEREBY ORDERED:

1. The terms of the Settlement Agreement are hereby preliminarily approved, subject to further consideration at the Settlement Hearing provided for below. The Court concludes that the Settlement is sufficiently within the range of reasonableness to warrant the conditional certification of the Settlement Class, the scheduling of the Settlement Hearing and the circulation of notice to members of the Class, each as provided for in this Order.

Conditional Certification of the Class

2. For purposes of settlement only, pursuant to New York Civil Practice Laws and Rules 902, the action styled William Dolan, M.D. and Sylvia Norton, M.D., on behalf of themselves and all others similarly situated v. Excellus, Inc., et al., Index No. 9768-01 is conditionally certified as a class action on behalf of the following persons (the "Class"):

any and all Participating and Non-Participating Physicians, Physician Groups and Physician Organizations who provided Covered Services in the State of New York to any Excellus Plan Member or any individual enrolled in or covered by an insured plan in the State of New York offered or administered by any Person named as a defendant in the Actions or by any of their respective current or former subsidiaries or affiliates, in each case from August 15, 1996 through the Preliminary Approval Date.

Representative Plaintiffs are temporarily certified as representatives of the Class. In issuing this Order, the Court finds that the proposed class satisfies the requirements under CPLR 901 and 902, in that the numbers of the class are sufficiently numerous as to make joinder of all members of the class impracticable; there are issues of law and fact relating to the alleged uniform

practices of defendants which are common to the class; the claims of the class representatives are typical of those of the unnamed class members; and the class representatives have fairly and adequately represented the class and have retained qualified class counsel who have properly represented the class in the prosecution and settlement of this action. Moreover, the Court finds that the requirements of both CPLR 901 and 902 are satisfied, in that plaintiffs have alleged that defendants have acted in respects generally applicable to the class, thereby making appropriate final injunctive relief with regard to the class as a whole, and the questions of law and fact common to the class predominate over any questions affecting only individual members and a class action is superior to other available methods for the fair and efficient adjudication of this controversy. This conditional certification of the Settlement Class and class representatives is solely for purposes of effectuating the Settlement. If the Settlement Agreement is terminated or is not consummated for any reason, the foregoing conditional certification of the Class and appointment of class representatives shall be void and of no further effect and the parties to the Settlement shall be returned to the status each occupied before entry of this Order without prejudice to any legal argument that any of the parties to the Settlement Agreement might have asserted but for the Settlement Agreement.

Settlement Hearing: Right to Appear and Object

3. A hearing (the "Final Settlement Hearing") shall be held before the Court on _____, 2005, in the New York Supreme Court, Monroe County, 545 Hall of Justice, Rochester, New York 14614 to determine:

- (a) whether the Court should certify the Class and whether Representative Plaintiffs and their counsel have adequately represented the Class;

- (b) whether the Settlement, on the terms and conditions provided for in the Settlement Agreement, should be finally approved by the Court as fair, reasonable and adequate;
- (c) whether the Action should be dismissed on the merits and with prejudice;
- (d) whether the application for attorneys' fees and expenses to be submitted by Class Counsel in connection with the Settlement Hearing should be approved;
- (e) whether the application for a fee award to Representative Plaintiffs to be submitted in connection with the Settlement Hearing should be approved; and
- (f) such other matters as the Court may deem necessary or appropriate.

The Court may finally approve the Settlement at or after the Settlement Hearing with any modifications agreed to by the parties and without further notice to the Class.

4. Any member of the Class who has not timely provided notice of an election to opt-out of the Class and the Settlement in the manner set forth below, and any other interested person, may appear at the Settlement Hearing in person or by counsel and be heard, to the extent allowed by the Court, either in support of or in opposition to the matters to be considered at that hearing, provided, however, that no person shall be heard, and no papers, briefs or other submissions shall be considered by the Court in connection with its consideration of those matters, unless on or before _____, 2005, such person:

- (a) files with the Court a notice of such person's intention to appear, together with a statement setting forth such person's support or objections, if any, to the matters to be considered and the basis therefore, together with any

documentation that such person intends to rely upon at the Settlement Hearing; and

- (b) serves copies of all such materials either by hand delivery or by first-class mail, postage prepaid, upon the following counsel:

Kimberly C. Lawrence, Esq.
HINMAN STRAUB P.C.
121 State Street
Albany, NY 12207

Edith M. Kallas, Esq.
Joseph P. Guglielmo, Esq.
MILBERG WEISS BERSHAD & SCHULMAN LLP
One Pennsylvania Plaza
New York, NY 10119-0165

5. The Court may adjourn the Final Settlement Hearing, or any adjournment thereof, including the consideration of the application for attorneys' fees and expenses, without further notice of any kind other than an announcement of such adjournment in open court at the Settlement Hearing or any adjournment thereof.

Form and Timing of Notice

6. As soon as practicable after entry of this Order, but no later than 30 days after this Order is entered, Class Counsel or its designee shall cause copies of the Notice of Class Action and Proposed Settlement in the form attached as Exhibit "E" to the Settlement Agreement (the "Mailed Notice"), together with the proof of claim form substantially in the form attached to Exhibit "E" to the Settlement Agreement (the "Proof of Claim Form"), the forms of which is hereby approved, and attached hereto as Exhibits A and B respectively, to be mailed by first-class mail, postage pre-paid, to all potential members of the Class to the extent that such Class members can be identified with reasonable diligence from either (a) the Company's books and

records, at their last known address appearing in such books and records or (b) records maintained by the Medical Society of the State of New York ("MSSNY"), to the extent that such records can be obtained by Class Counsel for this purpose within the schedule for notice provided in this Order. No later than 20 days after entry of this Order, (i) the Company shall provide in machine readable format to Class Counsel or their designee the information available from its records concerning Class members that is necessary to comply with this provision and (ii) Class Counsel shall cause to be obtained from MSSNY, in machine readable form to the extent reasonably available, MSSNY records referred to in this paragraph.

7. As soon as practicable after the first mailing of the Mailed Notice, and in all events no later than 30 days prior to the Opt-Out Deadline that is set forth below, Class Counsel shall cause to be published in the legal notices sections of the *Buffalo News, Rochester Democrat & Chronicle, Syracuse Post Standard, Watertown Daily Times, Utica Observer Dispatch, Oneonta Daily Star, Plattsburgh Press Republican, Elmira Star Gazette, Binghamton Press and Sun Bulletin, Wall Street Journal* one day a week for two consecutive weeks, a summary notice substantially in the form of Exhibit "G" to the Settlement Agreement, the form of which is hereby approved (the "Summary Notice") (attached hereto as Exhibit "C"). In addition, Class Counsel may cause the Summary Notice to be published on Excellus's Public Website as well as the websites of the Medical Society of the State of New York, Hinman Straub and Milberg Weiss Bershad & Schulman ("Milberg Weiss") and, to the extent feasible, in MSSNY's publication and may be accompanied by a statement that "The full Notice will be mailed to members of the Class on _____, 2005. [date of mailing of Mailed Notice]."

8. Beginning on the earliest date that notice is provided pursuant to paragraphs 6 and 7 of this Order and continuing through the deadline for members of the Class to return a

completed Proof of Claim Form (as that date is specified in the Settlement Agreement), Company, MSSNY and Class Counsel shall make available to potential members of the Class printable versions of the Mailed Notice and the Proof of Claim Form on the public websites maintained by or on behalf of Excellus or Class Counsel.

9. No later than five days prior to the Final Settlement Hearing, (a) Class Counsel shall serve and file a sworn statement attesting to compliance with paragraphs 6 and 7 of this Order and (b) Class Counsel and Excellus shall file a sworn statement attesting to compliance with paragraph 8 of this Order. Costs of providing the notice to the Class that is specified in this Order shall be paid as set forth in the Settlement Agreement.

10. The notice to be provided as set forth in paragraphs 6, 7 and 8 of this Order is hereby found to be the best means of notice to members of the Class that is practicable under the circumstances and, when completed, shall constitute due and sufficient notice of the Settlement and the Final Settlement Hearing to all persons affected by and/or entitled to participate in the Settlement or the Final Settlement Hearing, in full compliance with the requirements of due process and the CPLR Rule 904.

Ability of Class Members to Opt-Out of Settlement Class

11. All members of the Class who wish to opt-out of the Class must do so by sending written notice of their election to opt-out to the settlement administrator at the address set forth in the notices to be provided pursuant to paragraphs 6 and 7 of this Order. To be considered timely, and thereby effectively exclude a person from the Class, the envelope delivering a completed opt-out request for such person must be postmarked by no later than _____, 2005 (the "Opt-Out Deadline"). No later than five days before the Final Settlement Hearing, Class Counsel

or their designee shall submit to the Court a sworn statement setting forth the names and addresses of each member of the Class who has timely elected to opt-out from the Class.

12. Any potential member of the Class who does not properly and timely request exclusion from the Class shall be included in such Class and, if the Settlement is approved and becomes effective, shall be bound by all the terms and provisions of the Settlement Agreement, including but not limited to the releases, waivers and covenants not to sue described therein, whether or not such person shall have objected to the Settlement and whether or not such person makes a claim upon, or participates in, the Settlement or the other benefits to the Class to be provided under the Settlement Agreement.

Other Provisions

13. Capitalized terms used in this Order that are not otherwise defined herein have the meaning assigned to them in the Settlement Agreement.

14. All proceedings in this Action and the companion, substantially similar, non-class action captioned Medical Society of the State of New York v. Excellus, Inc., et al., Index No. 9769-01,¹ other than proceedings as may be necessary to carry out the terms and conditions of the Settlement, are hereby stayed and suspended until further order of the Court. Pending final determination of whether the Settlement and the Settlement Agreement should be approved and the Class permanently certified, all members of the Class and MSSNY are hereby barred and enjoined from commencing or prosecuting any action asserting any claims that are or relate in any way to the Released Claims.

15. No discovery with regard to the Settlement or the Settlement Agreement shall be permitted as to any of the parties to the Settlement Agreement other than as may be directed by

¹ The companion Medical Society of the State of New York v. Excellus, Inc., et al., Index No. 9769-01, is also being settled in connection with and as part of the Settlement Agreement.

the Court upon a proper showing by the party seeking such discovery by motion properly noticed and served in accordance with the CPLR.

16. Neither the Settlement Agreement nor any provision therein, nor any negotiations, statements or proceedings in connection therewith, shall be construed as, or be deemed to be evidence of, an admission or concession on the part of any of the Representative Plaintiffs, MSSNY, Class Counsel, any members of the Class, Defendants or any other person of any liability or wrongdoing by them, or that the claims and defenses that have been, or could have been, asserted in the Action are, or are not meritorious, and neither the Settlement Agreement nor any such communications shall be offered or received in evidence in any action or proceeding, or be used in any way as an admission or concession or evidence of any liability or wrongdoing of any nature or that Representative Plaintiffs, MSSNY, any member of the Class or any other person has or has not suffered any damage.

17. In the event that the Settlement Agreement is terminated or is not consummated for any reason, the Settlement and all proceedings had in connection therewith shall be null and void, except to the extent expressly provided to the contrary in the Settlement Agreement, and without prejudice to the rights of the parties to the Settlement Agreement before it was executed.

DONE AND ORDERED in Chambers in Rochester, New York this ____ day of
May, 2005.

HAROLD L. GALLOWAY, J.S.C.

EXHIBIT A

STATE OF NEW YORK
SUPREME COURT COUNTY OF MONROE

WILLIAM A. DOLAN, M.D. and SYLVIA W.
NORTON, M.D., on behalf of themselves and all
others similarly situated,

Plaintiffs,

Index No. 9768-01

-against-

EXCELLUS, INC.; EXCELLUS HEALTH PLAN, INC.;
and EXCELLUS BENEFITS SERVICES, INC.,

Defendants.

**NOTICE OF PROPOSED SETTLEMENT OF A CLASS ACTION WITH
EXCELLUS, OF SETTLEMENT HEARING TO CONSIDER THE
PROPOSED SETTLEMENT AND OF YOUR RIGHTS CONCERNING
THE PROPOSED SETTLEMENT**

IF YOU ARE A PHYSICIAN, PHYSICIAN GROUP OR PHYSICIAN ORGANIZATION WHO PROVIDED COVERED SERVICES IN THE STATE OF NEW YORK TO ANY EXCELLUS PLAN MEMBER OR ANY INDIVIDUAL ENROLLED IN OR COVERED BY AN INSURED PLAN IN THE STATE OF NEW YORK OFFERED OR ADMINISTERED BY EXCELLUS, INC., EXCELLUS HEALTH PLAN, INC. OR EXCELLUS BENEFITS SERVICES, INC. FROM AUGUST 15, 1996 THROUGH MAY __, 2005, PLEASE READ THIS NOTICE CAREFULLY. THIS CLASS ACTION AND THE PROPOSED SETTLEMENT MAY AFFECT YOUR RIGHTS.

I. WHY SHOULD YOU READ THIS NOTICE?

If you are or have been a physician who actively practiced in New York at any time since August 15, 1996, or a physician's group or physician organization, your rights may be affected by a proposed settlement with Excellus, Inc., Excellus Health Plan, Inc., and Excellus Benefits Services, Inc. (together, "Excellus" or "Defendants") in the class action lawsuit known as Dolan, et al. v. Excellus, et al., and a companion case, Medical Society of the State of New York v. Excellus, et al. which is not a class action, but is also the subject of the Settlement Agreement. Together, the Dolan and MSSNY actions against Excellus shall be referred to herein, collectively, as the "Actions." The class representatives and the Medical Society of the State of New York have agreed to settle all claims against Excellus in the Actions in exchange for Excellus' adoption of a number of commitments and initiatives regarding its business practices, provision of certain in-kind benefits to actively practicing physician Class Member claimants and

