

SETTLEMENT AGREEMENT

I. PARTIES

This Settlement Agreement (Agreement) is entered into among the United States of America, acting through the United States Department of Justice and on behalf of the Office of Inspector General (OIG-HHS) of the United States Department of Health and Human Services (HHS), the State of North Carolina, by and through the North Carolina Attorney General, and the North Carolina Division of Medical Assistance (collectively the "Government"); and Michael A. DeRose, DDS, P.A. d/b/a Medicaid Dental Center ("MDC"), and Letitia L. Ballance, DDS, d/b/a MDC, Ballance & DeRose, DDS, P.A. d/b/a MDC (collectively, "MDC") (hereinafter referred to as "the Parties"), through their authorized representatives.

II. PREAMBLE

As a preamble to this Agreement, the Parties agree to the following:

A. MDC owns and operates a chain of four (4) dental clinics in North Carolina that provide services primarily to Medicaid-eligible patients.

B. The Government contends that MDC submitted, or caused to be submitted, claims for payment to the North Carolina Medicaid Program (Medicaid), Title XIX of the Social Security Act of 1965, 42 U.S.C. § 1396 et seq.

C. The Government contends that it has certain civil claims, among others and as specified in Paragraph 2, below, against MDC for engaging in the following conduct (hereinafter referred to as the "Covered Conduct") in connection with services and items that it provided to children who were North Carolina Medicaid beneficiaries during the period from July 1, 2001 to June 30, 2003: 1) submitting claims for reimbursement for performing pulpotomies that were not medically necessary and/or were performed in a manner that did not meet professionally-

recognized standards of care; 2) submitting claims for reimbursement for placing stainless steel crowns that were not medically necessary and/or were performed in a manner that did not meet professionally-recognized standards of care; and 3) failing, in some cases, to obtain informed consent for medical procedures and services. The Covered Conduct referenced in this Agreement expressly excludes any services or items provided outside the State of North Carolina. The Government alleges that the claims described in the Covered Conduct constitute fraud.

D. The Government also contends that it has certain administrative claims against MDC for engaging in the Covered Conduct.

E. This Agreement is neither an admission of liability by MDC nor a concession by the Government that its claims are not well founded.

F. To avoid the delay, uncertainty, inconvenience, and expense of protracted litigation of the above claims, the Parties reach a full and final settlement pursuant to the Terms and Conditions below.

III. TERMS AND CONDITIONS

1. MDC agrees to pay to the Government \$10,050,000.00 (the "Settlement Amount"). MDC agrees to pay the Settlement Amount to the Government by electronic funds transfer pursuant to written instructions to be provided by the Office of the United States Attorney for the Western District of North Carolina. MDC agrees to make this electronic funds transfer no later than five (5) days after the Effective Date of this Agreement.

2. Subject to the exceptions in Paragraph 4, below, in consideration of the obligations of MDC in this Agreement, conditioned upon MDC's full payment of the Settlement Amount, and subject to Paragraph 12, below (concerning bankruptcy proceedings commenced

within 91 days of the Effective Date of this Agreement or any payment made under this Agreement), the Government (on behalf of itself, its officers, agents, agencies, and departments) agrees to release MDC from any civil or administrative monetary claim the United States has or may have for the Covered Conduct under the False Claims Act, 31 U.S.C. §§ 3729-3733; the Civil Monetary Penalties Law, 42 U.S.C. § 1320a-7a; the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801-3812; the North Carolina Medical Assistance Provider Fraud Claims Act, N.C.G.S. § 108A-70.10 *et seq.*, and the common law theories of payment by mistake, unjust enrichment, and fraud.

3. OIG-HHS expressly reserves all rights to institute, direct or to maintain any administrative action seeking exclusion against MDC, and/or their owners, officers, directors and employees from Medicare, Medicaid or other Federal health care programs (as defined in 42 U.S.C. § 1320a-7b(f)) under 42 U.S.C. § 1320a-7(a) (mandatory exclusion) or 42 U.S.C. § 1320a-7(b) (permissive exclusion).

4. Notwithstanding any term of this Agreement, specifically reserved and excluded from the scope and terms of this Agreement as to any entity or person (including MDC) are the following claims of the Government:

- a. Any civil, criminal, or administrative liability arising under Title 26, U.S. Code (Internal Revenue Code);
- b. Any criminal liability;
- c. Except as explicitly stated in this Agreement, any administrative liability, including mandatory exclusion from Federal health care programs;
- d. Any liability to the Government (or its agencies) for any conduct other than the Covered Conduct;

- e. Any liability based upon such obligations as are created by this Agreement;
- f. Any liability for express or implied warranty claims or other claims for defective or deficient products or services, including quality of goods and services;
- g. Any liability for personal injury or property damage or for other consequential damages arising from the Covered Conduct; and
- h. Any liability of individuals, including officers and employees.

5. MDC waives and shall not assert any defenses MDC may have to any criminal prosecution or administrative action relating to the Covered Conduct that may be based in whole or in part on a contention that, under the Double Jeopardy Clause in the Fifth Amendment of the Constitution, or under the Excessive Fines Clause in the Eighth Amendment of the Constitution, this Agreement bars a remedy sought in such criminal prosecution or administrative action. Nothing in this paragraph or any other provision of this Agreement constitutes an agreement by the United States concerning the characterization of the Settlement Amount for purposes of the Internal Revenue laws, Title 26 of the United States Code.

6. MDC fully and finally releases the Government, its agencies, employees, servants, and agents from any claims (including attorney's fees, costs, and expenses of every kind and however denominated) that MDC has asserted, could have asserted, or may assert in the future against the Government, its agencies, employees, servants, and agents, related to the Covered Conduct and the Government's investigation and prosecution thereof.

7. The Settlement Amount shall not be decreased as a result of the denial of claims for payment now being withheld from payment by any Medicaid carrier or intermediary or any state payer, related to the Covered Conduct; and MDC agrees not to resubmit to any Medicaid

fiscal intermediary or any state payer any previously denied claims related to the Covered Conduct, and agree not to appeal any such denials of claims.

8. MDC agrees to the following:

a. Unallowable Costs Defined: that all costs (as defined in the Federal Acquisition Regulation, 48 C.F.R. § 31.205-47; and in Titles XVIII and XIX of the Social Security Act, 42 U.S.C. §§ 1395-1395hhh and 1396-1396v; and the regulations and official program directives promulgated thereunder) incurred by or on behalf of MDC, its present or former officers, directors, employees, shareholders, and agents in connection with the following shall be "Unallowable Costs" on government contracts and under the Medicare Program, Medicaid Program, or other Federal programs.

- i. the matters covered by this Agreement;
- ii. the Government's audit(s) and civil investigation(s) of the matters covered by this Agreement;
- iii. MDC's investigation, defense, and corrective actions undertaken in response to the Government's audit(s) and civil investigation(s) in connection with the matters covered by this Agreement (including attorney's fees);
- iv. the negotiation and performance of this Agreement;
- v. the payment MDC makes to the Government pursuant to this Agreement, including costs and attorneys fees; and
- vi. All costs described or set forth in this Paragraph 8.a. are hereafter "Unallowable Costs."

b. Future Treatment of Unallowable Costs: These Unallowable Costs shall

be separately determined and accounted for by MDC, and MDC shall not charge such Unallowable Costs directly or indirectly to any contracts with the United States or any State Medicaid program, or seek payment for such Unallowable Costs through any cost report, cost statement, information statement, or payment request submitted by MDC or any of its subsidiaries or affiliates to the Medicare, Medicaid, or other Federal programs.

c. Treatment of Unallowable Costs Previously Submitted for Payment: MDC further agrees that within 90 days of the Effective Date of this Agreement it shall identify to applicable Medicaid fiscal intermediaries, carriers, and/or contractors, and Medicaid and fiscal agents, any Unallowable Costs (as defined in this Paragraph) included in payments previously sought from the United States, or any State Medicaid program, including, but not limited to, payments sought in any cost reports, cost statements, information reports, or payment requests already submitted by MDC or any of its subsidiaries or affiliates, and shall request, and agree, that such cost reports, cost statements, information reports, or payment requests, even if already settled, be adjusted to account for the effect of the inclusion of the unallowable costs. MDC agrees that the United States, at a minimum, shall be entitled to recoup from MDC any overpayment plus applicable interest and penalties as a result of the inclusion of such Unallowable Costs on previously-submitted cost reports, information reports, cost statements, or requests for payment.

d. Any payments due after the adjustments have been made shall be paid to the United States pursuant to the direction of the Department of Justice and/or the affected agencies. The United States reserves its right to disagree with any calculations submitted by MDC or any of its subsidiaries or affiliates on the effect of inclusion of Unallowable Costs (as defined in this Paragraph) on MDC or any of its subsidiaries or affiliates' cost reports, cost

statements, or information reports. Nothing in this Agreement shall constitute a waiver of the rights of the United States to audit, examine, or re-examine MDC's books and records to determine that no Unallowable Costs have been claimed in accordance with the provisions of this Paragraph.

9. This Agreement is intended to be for the benefit of the Parties only. The Parties do not release any claims against any other person or entity, except to the extent provided for in Paragraph 10 (waiver for beneficiaries paragraph), below.

10. MDC waives and shall not seek payment for any of the health care billings covered by this Agreement from any health care beneficiaries or their parents, sponsors, legally responsible individuals, or third party payors based upon the claims defined as Covered Conduct.

11. MDC warrants that it has reviewed its financial situations and that it currently is solvent within the meaning of 11 U.S.C. §§ 547(b)(3) and 548(a)(1)(B)(ii)(I), and shall remain solvent following payment to the Government of the Settlement Amount. Further, the Parties warrant that, in evaluating whether to execute this Agreement, they (a) have intended that the mutual promises, covenants, and obligations set forth constitute a contemporaneous exchange for new value given to MDC, within the meaning of 11 U.S.C. § 547(c)(1), and (b) conclude that these mutual promises, covenants, and obligations do, in fact, constitute such a contemporaneous exchange. Further, the Parties warrant that the mutual promises, covenants, and obligations set forth herein are intended to and do, in fact, represent a reasonably equivalent exchange of value that is not intended to hinder, delay, or defraud any entity to which MDC was or became indebted to on or after the date of this transfer, within the meaning of 11 U.S.C. § 548(a)(1).

12. If within 91 days of the Effective Date of this Agreement or of any payment made under this Agreement, MDC commences, or a third party commences, any case, proceeding, or

other action under any law relating to bankruptcy, insolvency, reorganization, or relief of debtors (a) seeking to have any order for relief of MDC' debts, or seeking to adjudicate MDC as bankrupt or insolvent; or (b) seeking appointment of a receiver, trustee, custodian, or other similar official for MDC or for all or any substantial part of MDC's assets, the Parties agree as follows:

a. MDC's obligations under this Agreement may not be avoided pursuant to 11 U.S.C. § 547, and MDC shall not argue or otherwise take the position in any such case, proceeding, or action that: (i) MDC's obligations under this Agreement may be avoided under 11 U.S.C. § 547; (ii) MDC was insolvent at the time this Agreement was entered into, or became insolvent as a result of the payment made to the Government; or (iii) the mutual promises, covenants, and obligations set forth in this Agreement do not constitute a contemporaneous exchange for new value given to MDC.

b. If MDC's obligations under this Agreement are avoided for any reason, including, but not limited to, through the exercise of a trustee's avoidance powers under the Bankruptcy Code, the Government, at its sole option, may rescind the releases in this Agreement and bring any civil and/or administrative claim, action, or proceeding against MDC for the claims that would otherwise be covered by the releases provided in Paragraphs 2 - 6, above MDC agrees that (i) any such claims, actions, or proceedings brought by the Government (including any proceedings to exclude MDC from participation in Medicare, Medicaid, or other Federal health care programs) are not subject to an "automatic stay" pursuant to 11 U.S.C. § 362(a) as a result of the action, case, or proceedings described in the first clause of this Paragraph, and MDC shall not argue or otherwise contend that the Government's claims, actions, or proceedings are subject to an automatic stay; (ii) MDC shall not plead, argue, or otherwise

raise any defenses under the theories of statute of limitations, laches, estoppel, or similar theories, to any such civil or administrative claims, actions, or proceeding that are brought by the Government within ninety (90) calendar days of written notification to MDC that the releases have been rescinded pursuant to this Paragraph, except to the extent such defenses were available on December 1, 2007; and (iii) the Government has a valid claim against MDC in the amount of \$15,075,000.00, and the Government may pursue its claim in the case, action, or proceeding referenced in the first clause of this Paragraph, as well as in any other case, action, or proceeding.

c. MDC acknowledges that the agreements in this Paragraph are provided in exchange for valuable consideration provided in this Agreement.

13. Each Party shall bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

14. MDC represents that this Agreement is freely and voluntarily entered into without any degree of duress or compulsion whatsoever.

15. This Agreement is governed by the laws of the United States. The Parties agree that the exclusive jurisdiction and venue for any dispute arising between and among the Parties under this Agreement is the United States District Court for the Western District of North Carolina, Charlotte Division.

16. For purposes of construction, this Agreement shall be deemed to have been drafted by all Parties to this Agreement and shall not, therefore, be construed against any Party for that reason in any subsequent dispute.

17. This Agreement constitutes the complete agreement between the Parties. This Agreement may not be amended except by written consent of the Parties.

18. The individuals signing this Agreement on behalf of MDC represent and warrant that they are authorized by MDC to execute this Agreement. The Government signatories represent that they are signing this Agreement in their official capacities and that they are authorized to execute this Agreement.

19. This Agreement may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same Agreement.

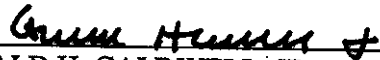
20. This Agreement is binding on MDC's successors, transferees, heirs, and assigns.

21. All parties consent to the Government's disclosure of this Agreement, and information about this Agreement, to the public.


22. This Agreement is effective on the date of signature of the last signatory to the Agreement (Effective Date of this Agreement). Facsimiles of signatures shall constitute acceptable, binding signatures for purposes of this Agreement.

THE UNITED STATES OF AMERICA

DATED: 3/26/08

BY: 
DONALD H. CALDWELL, JR.
Assistant United States Attorney
Western District of North Carolina

DATED: 3/20/08


BY: 
GREGORY E. DEMSKE
Assistant Inspector General for
Legal Affairs
Office of Counsel to the
Inspector General
Office of Inspector General
United States Department of
Health and Human Services

THE UNITED STATES OF AMERICA

DATED: _____

BY: _____
DONALD H. CALDWELL, JR.
Assistant United States Attorney
Western District of North Carolina

DATED: 3/20/08

BY: 
GREGORY E. DEMSKE
Assistant Inspector General for
Legal Affairs
Office of Counsel to the
Inspector General
Office of Inspector General
United States Department of
Health and Human Services

THE STATE OF NORTH CAROLINA

DATED: 3/18/08

BY: Charles H. Hobbgood
CHARLES H. HOBGOOD
Special Deputy Attorney General
Director, North Carolina Medicaid Fraud
Control Unit

MDC

DATED: 3/28/08

BY: Michael A. DeRose
MICHAEL A. DEROSE, DDS
President
Michael A. DeRose, DDS, P.A.

DATED: 3/28/08

BY: Letitia R. Ballance, DDS
LETTIA L. BALLANCE, D.D.S.

DATED: 3/28/08

BY: Michael A. DeRose
MICHAEL A. DEROSE
President
Ballance & DeRose, DDS, P.A.

DATED: 3/18/08

BY: James F. Wyatt, III
JAMES F. WYATT, III, Esquire
Wyatt & Blake, LLP
Counsel for MDC