



JOSH STEIN
ATTORNEY GENERAL

STATE OF NORTH CAROLINA
DEPARTMENT OF JUSTICE

SETH DEARMIN
CHIEF OF STAFF

June 12, 2017

North Carolina Senate President Pro Tempore Phil Berger
North Carolina House of Representatives Speaker Tim Moore
Co-Chairs, Joint Legislative Commission on Governmental Operations

Senator Warren Daniel
Senator Shirley Randleman
Senator Norman W. Sanderson
Representative James Boles, Jr.
Representative Ted Davis, Jr.
Representative Allen McNeill
Representative Rena W. Turner
Co-Chairs, Appropriations Subcommittee on Justice and Public Safety

North Carolina General Assembly
Raleigh, North Carolina 27601-1096

Re: G.S. §114-2.5; Report on Settlement Agreement for Perry Jeffries, D.D.S., PA

Dear Members:

Section 114-2.5 of the North Carolina General Statutes requires the Attorney General to report to the Joint Legislative Commission on Governmental Operations and the Chairs of the Appropriations Subcommittees on Justice and Public Safety regarding all settlements and court orders which result in more than \$75,000.00 being paid to the State. Pursuant to that statute, I am writing regarding the settlement of claims for Medicaid reimbursement to the state and federal governments in the above-referenced matter. Pursuant to federal law (42 C.F.R. § 433.320) recoveries in these cases are shared on a pro rata basis by the state and federal governments.

A Settlement has been executed between Perry Jeffries and the State of North Carolina.

The settlement resolves allegations that from January 1, 2012 through December 31, Perry Jeffries submitted claims to the Medicaid program for Full Mouth Debridements that were not medically necessary.

Under the terms of North Carolina's settlement, the State of North Carolina will recover \$185,000.00. Of that amount the federal government will receive \$121,970.50 for North Carolina's federal portion of Medicaid recoveries. The North Carolina Medicaid Program will receive \$28,602.79 as restitution. In addition, pursuant to Article IX, Section 7 of the North Carolina Constitution and G.S. § 115C-457.1, the penalty portion of the settlement in the amount of \$28,602.79 will be paid to the Civil Penalty Forfeiture Fund for the support of North Carolina public schools. Pursuant to G.S. § 115C-457.2 and G.S. § 108A-70.12(b)(3), the North Carolina Department of Justice will receive \$2,911.96 for investigative costs and \$2,911.96 for costs of collection.

We will be happy to respond to any questions you may have regarding this report.

Very truly yours,

A handwritten signature in blue ink, appearing to read 'Seth Dearmin', followed by a horizontal line.

Seth Dearmin
Chief of Staff

SD:ng

cc: Kristine Leggett, NCGA Fiscal Research Division

SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is entered into among the State of North Carolina ("the State"), Perry L. Jeffries, D.D.S., P.A., and Perry L. Jeffries, D.D.S. (collectively "Jeffries"). Each of the above hereafter collectively referred to as "the Parties" through their authorized representatives.

RECITALS

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

A. At all relevant times, Perry L. Jeffries, D.D.S., P.A., is a North Carolina company with its principal place of business at 871 Huffman Street, Greensboro, North Carolina 27405. Jeffries is a North Carolina Medicaid ("Medicaid") Provider and has been since at least 2012. Jeffries provides pediatric dental services to clients within the State of North Carolina. Perry L. Jeffries, D.D.S. is the owner of Perry L. Jeffries, D.D.S., P.A., at all applicable periods of time referenced below.

B. The State contends that during the dates of January 1, 2012, through December 31, 2016, Jeffries submitted or caused to be submitted claims for payment to the North Carolina Medicaid Program (Medicaid), Title XIX of the Social Security Act, 42 U.S.C. §§ 1396-1396v, in violation of the North Carolina False Claims Act, N.C.G.S. §§ 1-605, *et seq.*, and the Medical Assistance Provider Claims Act, N.C.G.S. §§ 108A-70.10, *et seq.*; and

C. The State contends that it has certain civil claims against Jeffries arising from the following conduct, during the dates of January 1, 2012 through December 31, 2016 for Jeffries' submission of claims to the North Carolina Medicaid Program for pediatric dental services, to wit, CDT 4355 "Full Mouth Debridements", which the State contends had no supporting clinical documentation exists, were not medically necessary and which were performed in violation of Division of Medical Assistance Clinical Coverage Policy 4A, et seq.

This conduct, as recited above in Paragraph C, is referred to below and throughout this Settlement Agreement as the "Covered Conduct."

D. This Agreement is neither an admission of facts or liability by Jeffries nor a concession by the State that the allegations are not well founded. Jeffries expressly denies the allegations of the State as set forth herein.

E. To avoid the delay, uncertainty, inconvenience, and expense of protracted litigation of the above claims, and in consideration of the mutual promises and obligations of this Settlement Agreement, the Parties agree and covenant as follows:

TERMS AND CONDITIONS

1. Jeffries shall pay to the State the aggregate principal amount of one hundred eighty five thousand dollars (\$185,000.00) (the "Settlement Amount") pursuant to written instructions to be provided by the North Carolina Department of Justice. No later than 30 days following the Effective Date of this Agreement, Jeffries shall pay the entirety of the \$185,000.00 Settlement Amount to be credited by the State towards the Settlement Amount. Upon any default by Jeffries of the terms contained in Paragraph 1 or any other terms of this Agreement,

the State shall have the unconditioned right to accelerate payment and require that the full Settlement Amount then-outstanding be immediately due and payable.

2. Subject to the exceptions in Paragraph 4 (concerning excluded claims), and conditioned upon Jeffries's full payment of the Settlement Amount, the State of North Carolina releases Perry L. Jeffries, D.D.S., P.A. and Perry L. Jeffries, D.D.S. (individually) from any civil or administrative monetary claim the State of North Carolina has for the Covered Conduct that is described above under the North Carolina Medical Assistance Provider Fraud Claims Act, N.C.G.S. '108A-70.10, et seq.; the North Carolina False Claims Act, N.C.G.S. § 1-605, et seq.; or the common law theories of payment by mistake, unjust enrichment, and fraud.

3. Default. In the event that Jeffries, either personally or through Perry L. Jeffries, D.D.S., P.A., fails to pay any amount as provided in Paragraph 1, above, within five (5) business days of the date upon which such payment is due, Jeffries shall be in Default of its payment obligations ("Default"). The State of North Carolina will provide written notice of the Default, and Jeffries shall have an opportunity to cure such Default within five (5) business days from the date of the receipt of the notice. Notice of Default will be delivered to Jeffries or to such representative as Jeffries shall designate in advance in writing. If Jeffries fails to cure the Default within five (5) business days of receiving the Notice of Default, the remaining unpaid balance of the Settlement Amount shall become immediately due and payable, and interest shall accrue at the rate of 12% per annum compounded daily from the date of Default on the remaining unpaid total (principal, balance and interest due).

4. Notwithstanding the releases given in paragraph 2 of this Agreement, or any other term of this Agreement, the following claims of the State are specifically reserved and are not released:

- a. Any 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 United States (or its agencies) for any conduct other than the Covered Conduct; or
- e. Any liability based upon obligations created by this Agreement;

5. Jeffries waives and shall not assert any defenses Jeffries may have to any criminal prosecution or administrative action relating to the Covered Conduct that are specifically limited to 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 State concerning the characterization of the Settlement Amount for purposes of the Internal Revenue laws, Title 26 of the United States Code.

6. Jeffries fully and finally releases the State of North Carolina, its agencies, officers, agents, employees, and servants, from any claims (including attorney's fees, costs, and expenses of every kind and however denominated) that Jeffries has asserted, could have asserted, or may assert in the future against the State of North Carolina, and its agencies, employees,

servants, and agents, related to the Covered Conduct and the State of North Carolina'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 payor, related to the Covered Conduct; and Jeffries agrees not to resubmit to any Medicaid carrier or intermediary or any state payor any previously denied claims related to the Covered Conduct, and agrees not to appeal any such denials of claims.

8. Jeffries agrees to the following:

a. Unallowable Costs Defined: 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. §§ 1395-1395kkk-1 and 1396-1396w-5; and the regulations and official program directives promulgated thereunder) incurred by or on behalf of Jeffries, its present or former officers, directors, employees, shareholders, and agents in connection with:

- (1) the matters covered by this Agreement;
- (2) the State's audit(s) and civil investigation(s) of the matters covered by this Agreement;
- (3) Jeffries's investigation, defense, and corrective actions undertaken in response to the State's audit(s) and civil investigation(s) in connection with the matters covered by this Agreement (including attorney's fees);

- (4) the negotiation and performance of this Agreement;
- (5) the payment Jeffries makes to the State pursuant to this Agreement, including any costs and attorney's fees; and

b. Future Treatment of Unallowable Costs: Unallowable Costs shall be separately determined and accounted for by Jeffries, and Jeffries shall not charge such Unallowable Costs directly or indirectly to any contracts with the State of North Carolina 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 Jeffries or any of its subsidiaries or affiliates to the North Carolina Medicaid Program.

c. Treatment of Unallowable Costs Previously Submitted for Payment: Within 90 days of the Effective Date of this Agreement, and to the extent necessary, Jeffries agrees to identify to the North Carolina Medicaid Program and/or its fiscal agents, any Unallowable Costs (as defined in this Paragraph) included in payments previously sought from the State Medicaid program, including, but not limited to, payments sought in any cost reports, cost statements, information reports, or payment requests already submitted by Jeffries 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. Jeffries agrees that the State, at a minimum, shall be entitled to recoup from Jeffries 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.

Any payments due after the adjustments have been made shall be paid to the State pursuant to the direction of the North Carolina Department of Justice and/or the affected

agencies. The State reserves its rights to disagree with any calculations submitted by Jeffries or any of its subsidiaries or affiliates on the effect of inclusion of Unallowable Costs (as defined in this Paragraph) on Jeffries or any of its subsidiaries or affiliates' cost reports, cost statements, or information reports.

d. Nothing in this Agreement shall constitute a waiver of the rights of the State to audit, examine, or re-examine Jeffries'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.

10. Jeffries agrees that it 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. Jeffries warrants that he has reviewed his financial situation and that he currently is solvent within the meaning of 11 U.S.C. §§ 547(b)(3) and 548(a)(1)(B)(ii)(I), and shall, to the fullest extent possible, remain solvent during payment to the State 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 Jeffries, within the meaning of 11 U.S.C. § 547(c)(1), and (b) conclude that these mutual promises, covenants, and obligations due, 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 Jeffries 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, Jeffries 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 Jeffries' debts, or seeking to adjudicate Jeffries as bankrupt or insolvent; or (b) seeking appointment of a receiver, trustee, custodian, or other similar official for Jeffries or for all or any substantial part of Jeffries' assets, Jeffries agrees as follows:¹

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

b. If Jeffries' 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 State of North Carolina, at its sole option, may rescind the releases in this

¹ This clause should only be used if you have a reasonable basis to believe that bankruptcy or similar proceedings are likely. In the event there is reason to believe that any of the events described in this paragraph might take place, consult the Commercial Litigation Branch memorandum entitled "Bankruptcy Law with Special Emphasis on Chapter 11 and Civil Fraud." This memorandum is available on the "Bankruptcy" page of the False Claims Research Site maintained by the Civil Division.

Agreement and bring any civil and/or administrative claim, action, or proceeding against Jeffries for the claims that would otherwise be covered by the releases provided in Paragraph 2 above. Jeffries agrees that (i) any such claims, actions, or proceedings brought by the State of North Carolina 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 Jeffries shall not argue or otherwise contend that the State of North Carolina's claims, actions, or proceedings are subject to an automatic stay; (ii) Jeffries 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 United States within 90 calendar days of written notification to Jeffries that the releases have been rescinded pursuant to this Paragraph, except to the extent such defenses were available on June 1, 2017²; and (iii) the State of North Carolina has a valid claim against Jeffries in an amount no less than \$8,096,039.00, and the State of North Carolina 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. Jeffries acknowledges that its 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. Each party and signatory to this Agreement represents that it freely and voluntarily enters in to this Agreement without any degree of duress or compulsion.

² E.g., as noted above, use the Effective Date of the Agreement, the date any underlying action was filed, or the first day covered by any tolling agreement protecting the State of North Carolina's claims, whichever provides the fullest protection for the State of North Carolina.

15. This Agreement is governed by the laws of the United States. The exclusive jurisdiction and venue for any dispute relating to this Agreement is the Superior Court for the County of Wake, State of North Carolina. For purposes of construing this Agreement, 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.

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

17. The undersigned represent and warrant that they are fully authorized to execute this Agreement on behalf of the persons and entities indicated below.

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

19. This Agreement is binding on the Parties' successors, transferees, heirs, and assigns.

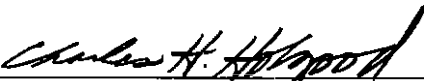
20. All parties consent to the State's disclosure of this Agreement, and information about this Agreement, to the public.

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

[Settlement Agreement B Remainder of Page Intentionally Blank]

THE STATE OF NORTH CAROLINA

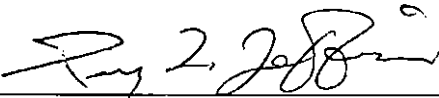
DATED: 5/17/2017

BY: 

**Charles H. Hobgood
Special Deputy Attorney General
Director, North Carolina Medicaid Investigations
Division**

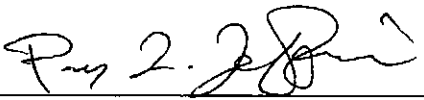
PERRY L. JEFFRIES, D.D.S., P.A.

DATED: 5/16/2017

BY: 
Perry L. Jeffries, D.D.S.
(as Owner)

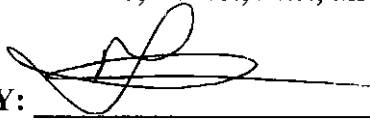
PERRY L. JEFFRIES, D.D.S.

DATED: 5/16/2017

BY: 
Perry L. Jeffries, D.D.S.
(as an Individual)

COUNSEL FOR PERRY L. JEFFRIES, D.D.S., P.A., and PERRY L. JEFFRIES, D.D.S.

DATED: 5/16/2017

BY: 
Tara L. Nichols
Nichols and Satterfield, PLLC
3708 Lyckan Parkway, Ste. 106
Durham, NC 27707