

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT is entered into between the State of North Carolina, by and through the North Carolina Attorney General ("State"), and Francis A. Bald, D.D.S.; Dr. Francis A. Bald & Associates, P.A., a North Carolina Corporation; and Northeastern North Carolina Oral Maxillo-Facial Surgery. (collectively "Dr. Bald"), (each of the above hereafter collectively referred to as "the Parties") by and through their authorized representatives.

I. PREAMBLE

As a preamble to this Settlement Agreement ("Agreement"), the Parties agree to the following:

A. Dr. Bald is licensed to practice dentistry in the state of North Carolina and has participated as a health care provider in the North Carolina Medicaid Program, Title XIX of the Social Security Act, 42 U.S.C. § 1396-1396v ("Medicaid").

B. The State contends that, in its capacity as a health care provider, Dr. Bald knowingly submitted false claims for approval to the Medicaid program, or made, used, or caused to be made or used a false record or statement material to a false or fraudulent claim for payment made to the Medicaid program.

C. On or about September 5, 2013, Dr. Bald entered a plea of guilty pursuant to State Misdemeanor Criminal Charges (the "Plea Agreement") to two separate counts of Medicaid Assistance Provider Fraud Scheme or Artifice (108A-63a) and was ordered to pay restitution to the North Carolina Fund for Medical Assistance in the amount of \$114,723.68.

D. The State contends that it has civil and administrative claims against Dr. Bald under North Carolina statutes and/or common law doctrines for submitting claims to the Medicaid program for certain services during the period from January 2, 2010 through December 30, 2011 pertaining to multiple North Carolina Medicaid recipients and CPT Codes D8221, D023, and D9230, respectively, ("Covered Conduct"), for which services were billed to Medicaid but not in fact rendered, and to which Dr. Bald pled guilty to as set forth above.

E. The parties have previously executed a Confession of Judgment and Escrow Agreement arising from the identical claims of the State. This document and the Confession of Judgment and Escrow Agreement are to be construed together as a single settlement agreement with each party being entitled to the benefits and responsible for the obligations contained in all instruments.

F. To avoid the delay, expense, inconvenience and uncertainty of protracted litigation of these claims, the Parties desire to reach a full and final settlement as set forth below.

II. TERMS AND CONDITIONS

NOW, THEREFORE, in consideration of the mutual promises, covenants, and obligations set forth below, and for good and valuable consideration as stated herein, the Parties agree as follows:

1. Dr. Bald agrees to pay the State of North Carolina the sum of Two Hundred Eighty Six Thousand Eight Hundred Nine Dollars and Twenty Cents (\$286,809.20) ("Settlement Amount") as follows: Dr. Bald agrees to deliver a certified or cashier's

check in the amount of \$500.00 made payable to the North Carolina Fund for Medical Assistance to the North Carolina Department of Justice, Medicaid Investigations Division, 5505 Creedmoor Road, Suite 300, Raleigh, NC 27612, on or before August 25, 2014. Thereafter, Dr. Bald agrees to deliver a certified or cashier's check made payable to the North Carolina Fund for Medical Assistance to the North Carolina Department of Justice at the address provided above, in the amount of \$500.00, continuing on or about the 1st day of each month thereafter until January 1, 2015. Thereafter, Bald shall pay the sum of \$1,000.00 on the 1st day of each month until July 1, 2015, at which time the payments shall increase to \$1,500.00 per month, due and payable on or about the 1st day of each month until January 1, 2016. Thereafter, the unpaid balance shall be due and payable. Provided, however, prior to recording the Confession of Judgment, the parties shall discuss a continuation of installment payments and an extension of this escrow agreement. Such discussions shall be in good faith and with a genuine attempt to resolve outstanding indebtedness taking into account Bald's financial condition, licensure, Medicaid and Medicare participation eligibility, assets, and the like.

2. Subject to the exceptions in this Agreement, in consideration of the obligations of Dr. Bald set forth in this Agreement, and conditioned upon payment in full of the Settlement Amount, the State releases and discharges Dr. Bald, its shareholders, and its officers, directors, and managers, from any civil monetary claims and administrative penalties the State has or may have under North Carolina statutes and/or common law doctrines for the Covered Conduct.

3. Notwithstanding any term of this Agreement, specifically reserved and excluded from the scope and terms of this Agreement, are the following:

- a. Any claims arising under any North Carolina revenue laws or regulations;
- b. Any liability to North Carolina for any conduct other than the Covered Conduct;
- c. Any claims based upon obligations created by this Agreement;
- d. Any claims for defective or deficient medical services, including claims as may be brought under North Carolina consumer protection statutes; and
- e. Any claims against any entities or persons other than Dr. Bald and its shareholders, officers, or managers.

4. Nothing in this Agreement constitutes an agreement by the State concerning the characterization of the settlement amount for purposes of the Internal Revenue Code or State revenue laws.

5. In the event that Dr. Bald breaches this Agreement, Dr. Bald expressly agrees not to plead, argue or otherwise raise any defenses under the theories of statute of limitations, laches, estoppel or similar theories, except to the extent that these defenses were available on or before the date this agreement is executed, to any civil claims (a) that are filed by the State within 120 days of written notification to Dr. Bald that this Agreement has been breached and the releases herein have been rescinded and (b) that relate to the Covered Conduct.

6. Dr. Bald fully and finally releases the State, its agencies and employees, from any claims (including attorneys fees, costs, and expenses of every kind and however denominated) which Dr. Bald could have asserted or may assert in the future against the State, its agencies and employees, related to the Covered Conduct and the investigation of the State of the Covered Conduct.

7. Dr. Bald agrees that it will not amend or resubmit any claims already submitted to the Medicaid program for the Covered Conduct unless requested to do so by the Medicaid Program.

8. Dr. Bald agrees that all costs incurred by or on behalf of himself and his corporation in connection with: (1) the matters covered by this Agreement, (2) the State's audit and investigation of the Covered Conduct, (3) Dr. Bald's investigation, defense, and corrective actions undertaken in response to the State's audit and investigation of the Covered Conduct, including attorney's fees, (4) the negotiation of this Agreement, and (5) the payment made pursuant to this Agreement, are unallowable costs on contracts with the State and United States and for Medicaid and Medicare reimbursement purposes (hereinafter, "unallowable costs"). Dr. Bald represents and agrees that these unallowable costs have been and will be separately estimated and accounted for by Dr. Bald, and that Dr. Bald has not and will not charge these unallowable costs directly or indirectly to any contracts with the State, the United States, or any state Medicaid Program, or seek payment for unallowable costs through any cost report, cost statement, information statement, or payment request submitted by Dr. Bald to the Medicaid Program, Medicare Program or to any other State or Federal program.

9. This Agreement is intended to be for the benefit of the Parties only, and by this instrument the Parties do not release any claims against any other person or entity.

10. Dr. Bald agrees that he will not seek payment for any of the health care claims covered by this Agreement from any health care recipients or their family members, sponsors, heirs, guardians, trustees, agents, attorneys-in-fact, or private insurance carriers. Dr. Bald waives any causes of action against these recipients or their

family members, sponsors, heirs, guardians, trustees, agents, attorneys-in-fact, or private insurance carriers based upon the claims for payment covered by this Agreement.

However, this provision is not intended to extend to any Medicaid billing company which Dr. Bald relied upon in its billing practices which are the subject of this Agreement.

11. The Parties expressly warrant that, in evaluating whether to execute this Agreement, the Parties (1) have intended that the mutual promises, covenants and obligations set forth herein constitute a contemporaneous exchange for new value given to Dr. Bald, within the meaning of 11 U.S.C. § 547(c)(1), and (2) have concluded that these mutual promises, covenants and obligations do, in fact, constitute such a contemporaneous exchange.

12. In the event that Dr. Bald commences, or a third party commences, within 91 days of any payment under this Agreement, any case, proceeding, or other action (a) under any law relating to bankruptcy, insolvency, reorganization or relief of debtors, seeking to have any order for relief of Dr. Bald's debts, or seeking to adjudicate Dr. Bald as bankrupt or insolvent, or (b) seeking appointment of a receiver, trustee, custodian or other similar official for Dr. Bald or for all or any substantial part of Dr. Bald's assets, Dr. Bald agrees as follows:

a. Dr. Bald's obligations under this Agreement may not be avoided pursuant to 11 U.S.C. § 547, and Dr. Bald will not argue or otherwise take the position in any such case, proceeding or action that (1) Dr. Bald's obligations under this Agreement may be avoided under 11 U.S.C. § 547; (2) Dr. Bald was insolvent at the time this Agreement was entered into, or became insolvent as a result of the payment made to the State hereunder; or (3) the mutual promises, covenants and obligations set forth in this

Agreement do not constitute a contemporaneous exchange for new value given to Dr. Bald.

b. In the event that Dr. Bald's obligations hereunder are avoided pursuant to 11 U.S.C. § 547, the State, at its sole option, may rescind the releases in this Agreement, and bring any civil claim, action or proceeding against Dr. Bald for the claims that would otherwise be covered by the release provided herein. If the State chooses to do so under the provisions of this subparagraph, but in no other event, Dr. Bald agrees that (1) any such claims, actions or proceedings brought by the State are not subject to an "automatic stay" pursuant to 11 U.S.C. § 362(a) as a result of the action, case or proceeding described in the first clause of this paragraph, and that Dr. Bald will not argue or otherwise contend that the State's claims, actions or proceedings are subject to an automatic stay; (2) that the State has a valid claim against Dr. Bald in the amount of at least \$286,809.20 under State statutes and/or common law doctrines, and the State may pursue its claim in any case, action, or proceeding. The statement contained herein regarding the State's "valid claim" is solely for the purposes of this subpart and, except in the event the State brings an action under the provisions of this subparagraph, in no way admits liability on the part of Dr. Bald for the claims of the State, said liability being expressly denied.

c. Dr. Bald acknowledges that its agreements in this paragraph are provided in exchange for valuable consideration provided in this Agreement.

13. The Parties will each bear their own respective legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

14. Dr. Bald represents that this Agreement is freely and voluntarily entered into without any degree of duress or compulsion whatsoever and in consultation with legal counsel.

15. This Agreement shall be governed, construed, and enforced by and in accordance with the laws of the State of North Carolina, without regard to its conflict of laws rules, and the Parties agree that the sole and exclusive jurisdiction and sole and exclusive venue for any dispute arising between the Parties under, regarding, or relating to this Agreement will be Superior Court for Wake County, North Carolina.

17. This Agreement, and the aforementioned Confession of Judgment and Escrow Agreement constitutes the complete agreement between the parties and supercedes all prior negotiations, agreements, and understanding with respect thereto. This Agreement may not be amended except by written consent of the Parties.

18. The undersigned individuals signing this Agreement represent and warrant that they are fully authorized to execute this Agreement on behalf of the Parties, and that any and all necessary actions (including but not limited to formal corporate Board of Directors' action, resolution, and/or other Board or shareholder authorization) have been taken to fully authorize the execution of this Agreement by the undersigned individuals on behalf of the respective Parties.

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. The invalidity, illegality, or unenforceability of any provisions of this Agreement shall not affect the validity, legality, or enforceability of any other provisions of this Agreement, which shall remain in full force and effect.

21. This Agreement is effective on the date of signature of the last signatory to the Agreement and shall become final and binding only upon signing by each of the Parties hereto.

This SETTLEMENT AGREEMENT agreed and executed by the Parties hereto:

THE STATE OF NORTH CAROLINA

10/24/2014
DATE

BY: Charles H. Hobgood
CHARLES H. HOBGOOD
Special Deputy Attorney General
North Carolina Department of Justice
Director, Medicaid Investigations Division
5505 Creedmoor Road, Suite 300
Raleigh, North Carolina 27612

FRANCIS A. BALD, D.D.S.

Oct 7, 2014
DATE

BY: Francis A. Bald
FRANCIS A. BALD, D.D.S. (individually)

DR. FRANCIS A. BALD & ASSOC., P.A.

Oct 7, 2014
DATE

BY: Francis A. Bald
FRANCIS A. BALD, D.D.S.

NORTHEASTERN NORTH CAROLINA ORAL
MAXILLO-FACIAL SURGERY

Oct 7, 2014
DATE

BY: Francis A. Bald
FRANCIS A. BALD., D.D.S.

Oct 24 2014
DATE

BY: John S. Morrison
JOHN S. MORRISON
THE TWIFORD LAW FIRM, P.C.
COUNSEL FOR DEFENDANT(S)

ATTEST:

Secretary
{CORPORATE SEAL}