

SETTLEMENT AGREEMENT

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 Department of Health and Human Services (“HHS”), (collectively, the “United States”); the State of New York, acting through the New York State Office of the Attorney General, Medicaid Fraud Control Unit (“MFCU”) (“New York”); the State of New Jersey, acting through the New Jersey State Attorney General, Medicaid Fraud Control Unit (“New Jersey”); Barry L. Jacobson, DMD; HQRC Management Services LLC (“HQRC”) (now operating as PDS Management Solutions); and the following affiliated dental practices (“Pediatric Dentistry Practices”): Pediatric Dentistry of Paterson, Pediatric Dentistry of Teaneck, Pediatric Dentistry of Wykoff, Pediatric Dentistry of Flushing, Pediatric Dentistry of the Bronx, Pediatric Dentistry of Valley Stream, Pediatric Dentistry of Brooklyn (Avenue U), Pediatric Dentistry of Brooklyn (Boro Park), Pediatric Dentistry of Monsey, Pediatric Dentistry of Kingston, Pediatric Dentistry of Albany, Pediatric Dentistry of Malone, and North Country Pediatric Dentistry (collectively, the “Defendants”); and Lauren Simpson (“Relator”) (hereafter collectively referred to as “the Parties”), through their authorized representatives.

RECITALS

A. HQRC is a management company that provides management and administrative services to the affiliated Pediatric Dentistry Practices throughout New York and New Jersey.

During the relevant time period, HQRC had a primary office in Suffern, New York.

B. Barry L. Jacobson, DMD is the CEO of HQRC, and the founder and owner of the HQRC-affiliated Pediatric Dentistry Practices that are parties to this Agreement.

C. The Pediatric Dentistry Practices that are parties to this Agreement provide pediatric dentistry services at their respective locations.

D. On April 25, 2017, Lauren Simpson filed a qui tam action in the United States District Court for the District of New Jersey captioned *United States et al. ex rel. Simpson v. HQRC et al.*, No. 2017-cv-02823, pursuant to the qui tam and retaliation provisions of the False Claims Act, 31 U.S.C. § 3730(b) and (h), the New York State False Claims Act, N.Y. State Fin. Law §§ 187 *et seq.*, and the New Jersey State False Claims Act, N.J. Stat. § 2A:32C-1 *et seq.* (the “Civil Action”). Relator alleged that Defendants violated the federal, New York and New Jersey False Claims Acts by submitting, or causing the submission of, claims for dentistry services and procedures that were not medically necessary, as well as other allegedly fraudulent practices.

E. The United States, New York and New Jersey contend that Defendants submitted or caused to be submitted false or fraudulent claims for payment to the Medicaid Program, Title XIX of the Social Security Act, 42 U.S.C. §§ 1396-1396w-5 (“Medicaid”).

F. The United States, New York and New Jersey contend that they have certain civil claims against Defendants for engaging in the following conduct during the period from January 1, 2011 through December 31, 2021, specifically:

- Defendants submitted false claims to Medicaid for medically unnecessary therapeutic pulpotomies performed on pediatric patients. For example, certain dentists affiliated with HQRC performed therapeutic pulpotomies on primary teeth even though there was no dental decay in the inner third of the dentin. Defendants submitted claims to Medicaid for these medically unnecessary pulpotomies.
- Defendants provided inaccurate servicing provider information on claims for services submitted to New York and New Jersey Medicaid Managed Care Organizations (“MCOs”).

The above contentions are hereinafter referred to as the “Covered Conduct.”

G. Defendants admit the following:

- In some instances, between 2011 and 2018, some dentists affiliated with HQRC performed and billed Medicaid for therapeutic pulpotomies not supported by the medical records maintained at the respective HQRC affiliated dental practices.
- In some instances, between 2011 and 2014, HQRC made billing errors to New York and New Jersey Medicaid MCOs resulting in inaccurate servicing provider information on claims for services performed at three of its locations.

H. Relator claims entitlement under 31 U.S.C. § 3730(d) and N.Y. State Fin. Law § 190(6) to a share of the proceeds of this Settlement Agreement and to Relator’s reasonable expenses, attorneys’ fees and costs.

In consideration of the mutual promises and obligations of this Agreement, the Parties agree and covenant as follows:

TERMS AND CONDITIONS

1. Defendants shall pay the following sums, plus interest at a rate of 1.5% from June 13, 2022, no later than ten business days after the Effective Date of this Agreement (defined below) by electronic funds transfer pursuant to written instructions to be provided by the Office of the United States Attorney for the District of New Jersey, by electronic funds transfer pursuant to written instructions to be provided by New York MFCU, and by certified funds pursuant to written instructions to be provided by the Office of the Attorney General for the State of New Jersey: (a) \$313,783.17 to the United States, of which \$142,628.71 is restitution, and (b) \$432,345.95 to the State of New York, of which \$196,520.88 is restitution, and (c) \$7,328.79, to the State of New Jersey, of which \$3,331.26 is restitution. The total of these sums (\$753,457.91)

shall hereafter be referred to as the “Settlement Amount” and the Settlement Amount plus Interest as described above shall hereafter be referred to as the “Settlement Proceeds.”

2. Conditioned upon the United States, New York, and New Jersey receiving the entire Settlement Proceeds and as soon as feasible after receipt, the United States shall pay \$56,480.97 to Relator by electronic funds transfer, the State of New Jersey shall pay \$1,319.18 to Relator and the State of New York shall pay \$77,822.27 to Relator (collectively, the “Relator’s Share”).

3. Subject to the exceptions in Paragraph 4 (concerning reserved claims) below, and upon the United States’ and New Jersey’s receipt of their part of the Settlement Proceeds, the United States and New Jersey release Defendants from any civil or administrative monetary claims the United States or New Jersey 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 New Jersey False Claims Act, N.J. Stat. Ann. § 2A:32C-1, *et. seq.*; and the common law theories of payment by mistake, unjust enrichment, and fraud.

4. Notwithstanding the release given in Paragraph 3 of this Agreement, or any other term of this Agreement, the following claims and rights of the United States and New Jersey are specifically reserved and are not released:

- a. Any liability arising under Title 26, U.S. Code (Internal Revenue Code) and New Jersey tax laws;
- b. Any criminal liability;
- c. Except as explicitly stated in this Agreement, any administrative liability or enforcement right, including mandatory or permissive exclusion from federal and state health care programs;

- d. Any liability to the United States and New Jersey (or their agencies) for any conduct other than the Covered Conduct;
- e. Any liability based upon obligations created by this Agreement;
- f. Any liability of individuals, other than Barry L. Jacobson, DMD for the Covered Conduct;
- g. Any liability that may be asserted by or on behalf of any payor or insurer paid by New Jersey's Medicaid Programs on a capitated basis, other than liability of Defendants to New Jersey for the Covered Conduct;
- h. Any liability for express or implied warranty claims or other claims for defective or deficient products or services, including quality of goods and services;
- i. Any liability for failure to deliver goods or services due; and
- j. Any liability for personal injury or property damage or for other consequential damages arising from the Covered Conduct.

5. Subject to the exceptions in Paragraph 6 (concerning reserved claims), below, and upon New York's receipt of its portion of the Settlement Proceeds, New York agrees to release Defendants from any civil monetary claims for the Covered Conduct under the New York False Claims Act, N.Y. State Fin. Law. §§ 187 *et seq.*; N.Y. Exec. Law § 63(12); N.Y. Soc. Serv. Law § 145-b; and the common law or equitable theories of payment by mistake, unjust enrichment, and fraud.

6. Notwithstanding the releases given in Paragraph 5 of this Agreement, or any other term of this Agreement, the following claims and rights of New York are specifically reserved and are not released:

- a. Any liability arising under New York tax law;

- b. Any criminal liability;
- c. Any administrative liability or enforcement right, including mandatory or permissive exclusion from federal and state health care programs;
- d. Any liability to New York or its agencies for any conduct other than the Covered Conduct;
- e. Any liability based upon obligations created by this Agreement; and
- f. Any liability of individuals, other than Barry L. Jacobson DMD for the Covered Conduct;
- g. Any liability that may be asserted by or on behalf of any payor or insurer paid by New York's Medicaid Program on a capitated basis, other than liability of Defendants to New York for the Covered Conduct;
- h. Any liability for express or implied warranty claims or other claims for defective or deficient products or services, including quality of goods and services;
- i. Any liability for failure to deliver goods or services due; and
- j. Any liability for personal injury or property damage or for other consequential damages arising from the Covered Conduct.

7. Subject to the exceptions in Paragraph 4 (as to the United States and New Jersey) and Paragraph 6 (as to New York), and upon the United States' and the States of New York and New Jersey's receipt of the Settlement Proceeds, Relator, for herself and for her heirs, successors, attorneys, agents, and assigns, releases Defendants from any civil monetary claims the Relator has on behalf of the United States, New York, and New Jersey for the Covered Conduct under the False Claims Act, 31 U.S.C. §§ 3729-3733, the New York False Claims Act,

N.Y. State Fin. Law §§ 187 *et seq.*, and the New Jersey False Claims Act, N.J. Stat. Ann. § 2A:32C-1 *et seq.*

8. Relator and her heirs, successors, attorneys, agents, and assigns shall not object to this Agreement but agree and confirm that this Agreement is fair, adequate, and reasonable under all the circumstances, pursuant to 31 U.S.C. § 3730(c)(2)(B) and N.Y. State Fin. Law § 190(5)(b)(ii), and N.J. Stat. Ann. § 2A:32C-6. Conditioned upon Relator's receipt of the Relator's Share, Relator and her heirs, successors, attorneys, agents, and assigns fully and finally release, waive, and forever discharge the United States, New York, and New Jersey, their agencies, officers, agents, employees, and servants, from any claims arising from the filing of the Civil Action or under 31 U.S.C. § 3730, N.Y. State Fin. Law § 190, N.J. Stat. Ann. § 2A:32C-6, and N.J. Stat. Ann. § 2A:32C-7 and from any claims to a share of the proceeds of this Agreement and/or the Civil Action.

9. Relator, for herself, and for her heirs, successors, attorneys, agents, and assigns, releases Defendants and their officers, agents, and employees, from any liability to Relator arising from the filing of the Civil Action or the conduct described therein, or under 31 U.S.C. § 3730(d) or (h), N.Y. State Fin. Law § 190(6) and N.J. Stat. Ann. § 2A:32C-8 for expenses or attorneys' fees and costs.

10. Defendants waive and shall not assert any defenses Defendants 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.

11. Defendants fully and finally release the United States, New York, and New Jersey, and their agencies, officers, agents, employees, and servants, from any claims (including attorneys' fees, costs, and expenses of every kind and however denominated) that Defendants have asserted, could have asserted, or may assert in the future against the United States, New York, and/or New Jersey and their agencies, officers, agents, employees, and servants, related to the Covered Conduct or the investigation or prosecution thereof.

12. Defendants fully and finally release the Relator from any claims (including attorneys' fees, costs, and expenses of every kind and however denominated) that Defendants have asserted, could have asserted, or may assert in the future against the Relator, related to the qui tam case and the Relator's investigation and prosecution thereof, except claims under the Confidential Settlement and Release Agreement, dated September 12, 2022, among Relator and Defendants.

13. The Settlement Amount shall not be decreased as a result of the denial of claims for payment now being withheld from payment by any Medicare contractor (e.g., Medicare Administrative Contractor, fiscal intermediary, carrier) or any state payor, related to the Covered Conduct; and Defendants agree not to resubmit to any Medicare contractor or any state payor any previously denied claims related to the Covered Conduct, agree not to appeal any such denials of claims, and agree to withdraw any such pending appeals.

14. Defendants agree 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. §§ 1395-1395lll and 1396-1396w-5; and the regulations and official program directives promulgated thereunder) incurred by or on behalf of Defendants, their present or former officers, directors, employees, shareholders, and agents in connection with:

- (1) the matters covered by this Agreement;
- (2) the United States' and New York and New Jersey's audit(s) and civil and any criminal investigation(s) of the matters covered by this Agreement;
- (3) Defendants' investigation, defense, and corrective actions undertaken in response to the United States', New York's, and New Jersey's audit(s) and civil and any criminal investigation(s) in connection with the matters covered by this Agreement (including attorneys' fees);
- (4) the negotiation and performance of this Agreement;
- (5) the payment Defendants make to the United States, New York, and New Jersey pursuant to this Agreement and any payments that Defendants may make to Relator, including costs and attorneys fees;

are unallowable costs for government contracting purposes and under the Medicare Program, Medicaid Program, TRICARE Program, and Federal Employees Health Benefits Program ("FEHBP") (hereinafter referred to as Unallowable Costs).

b. Future Treatment of Unallowable Costs: Unallowable Costs shall be separately determined and accounted for in nonreimbursable cost centers by Defendants, and Defendants 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 Defendants or any of their subsidiaries or affiliates to the Medicare, Medicaid, TRICARE, or FEHBP Programs.

c. Treatment of Unallowable Costs Previously Submitted for Payment: Defendants further agree that within 90 days of the Effective Date of this Agreement they shall identify to applicable Medicare and TRICARE fiscal intermediaries, carriers, and/or contractors,

and Medicaid and FEHBP 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 Defendants or any of their 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. Defendants agree that the United States, New York, and New Jersey, at a minimum, shall be entitled to recoup from Defendants 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 United States, New York, and New Jersey pursuant to the direction of the Department of Justice and/or the affected agencies. The United States, New York, and New Jersey reserve their rights to disagree with any calculations submitted by Defendants or any of their subsidiaries or affiliates on the effect of inclusion of Unallowable Costs (as defined in this paragraph) on Defendants or any of their subsidiaries or affiliates' cost reports, cost statements, or information reports.

d. Nothing in this Agreement shall constitute a waiver of the rights of the United States, New York, and New Jersey to audit, examine, or re-examine Defendants' books and records to determine that no Unallowable Costs have been claimed in accordance with the provisions of this paragraph.

15. Defendants agree to cooperate fully and truthfully with the United States,' New York's, and New Jersey's investigation of individuals and entities not released in this Agreement. Upon reasonable notice, Defendants shall encourage, and agree not to impair, the cooperation of their directors, officers, and employees, and shall use their best efforts to make

available, and encourage, the cooperation of former directors, officers, and employees for interviews and testimony, consistent with the rights and privileges of such individuals.

Defendants further agree to furnish to the United States and to the States of New York and New Jersey, upon request, complete and unredacted copies of all non-privileged documents, reports, memoranda of interviews, and records in their possession, custody, or control concerning any investigation of the Covered Conduct that they have undertaken, or that have been performed by another on their behalf.

16. 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 17 (waiver for beneficiaries paragraph), below.

17. Defendants agree that they waive 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.

18. Upon receipt of the payment described in Paragraph 1, the United States, New York, New Jersey, and Relator shall promptly sign and file in the Civil Action a Joint Stipulation of Dismissal of the Civil Action pursuant to Rule 41(a)(1).

19. Each Party shall bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement, except as provided in 31 U.S.C. § 3730(d) and N.Y. State Fin. Law § 190(6).

20. Each Party and signatory to this Agreement represents that it freely and voluntarily enters into this Agreement without any degree of duress or compulsion.

21. 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 United States District

Court for the District of New Jersey. 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.

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

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

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

25. This Agreement is binding on Defendants' successors, transferees, heirs, and assigns.

26. This Agreement is binding on Relator's successors, transferees, heirs, and assigns.

27. All Parties consent to the United States, New York's and New Jersey's disclosure of this Agreement, and information about this Agreement, to the public. The Defendants shall not take any action or make or permit to be made any statement denying, directly or indirectly, any contentions and provisions in this Agreement or creating the impression that the Agreement is without factual basis. Nothing in this paragraph affects the Defendants' testimonial obligations or their right to take legal or factual positions in any litigation or other legal proceedings to which the United States or the New York Attorney General or the New Jersey Attorney General is not a party.

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

THE UNITED STATES OF AMERICA

DATED: 10/4/22

BY: Susan J. Pappy
Susan J. Pappy
Assistant United States Attorney
District of New Jersey

DATED: 09/27/2022 BY: Lisa M. Re

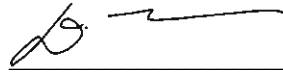
LISA M. RE
Assistant Inspector General for Legal Affairs
Office of Counsel to the Inspector General
Office of Inspector General
United States Department of Health and Human Services

STATE OF NEW YORK

LETITIA JAMES
Attorney General
State of New York

DATED: September 19, 2022

BY:



Diana Elkind
Deputy Chief, Civil Enforcement Division
Medicaid Fraud Control Unit
New York State Office of the Attorney General

STATE OF NEW JERSEY

MATHEW J. PLATKIN
Acting Attorney General
State of New Jersey

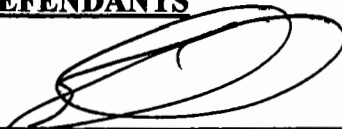
DATED: 9/20/2022

By: /s/ Charisse M. Penalver
Charisse M. Penalver
Deputy Attorney General
Medicaid Fraud Control Unit
State of New Jersey

DEFENDANTS

DATED: 9.23.22


BY:



Barry L. Jacobson

DATED: 9.23.22

BY:

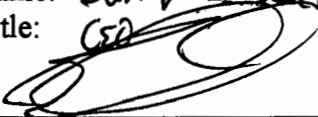


HQRC Management Services, LLC

Name: Barry L. Jacobson, DMD
Title: CEO

DATED: 9.23.22

BY:

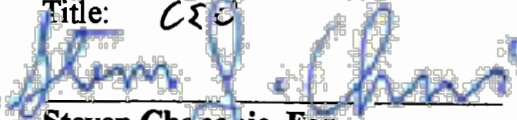


Pediatric Dentistry of Paterson
Pediatric Dentistry of Teaneck
Pediatric Dentistry of Wykoff
Pediatric Dentistry of Flushing
Pediatric Dentistry of the Bronx
Pediatric Dentistry of Valley Stream
Pediatric Dentistry of Brooklyn (Avenue U)
Pediatric Dentistry of Brooklyn (Boro Park)
Pediatric Dentistry of Monsey
Pediatric Dentistry of Kingston
Pediatric Dentistry of Albany
Pediatric Dentistry of Malone
North Country Pediatric Dentistry

Name: Barry L. Jacobson, DMD
Title: CEO

DATED:

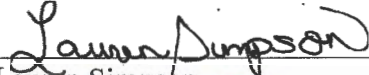
BY:



Steven Chananie, Esq.
Keeley McCarty, Esq.
Sheppard Munin LLP
Counsel for Barry L. Jacobson, DMD, HQRC and its
affiliated Pediatric Dentistry Practices listed above

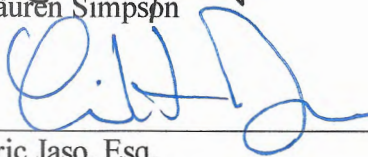
RELATOR

DATED: 9/19/2022

BY: 

Lauren Simpson

DATED: 9.19.22

BY: 

Eric Jaso, Esq.
Counsel for Lauren Simpson
Spiro Harrison LLP