

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”), and Rhode Island Dermatology and Cosmetic Center, LLC and Rhode Island Dermatology OBS, LLC (together hereafter referred to as “RIDCC”) (hereafter collectively referred to as “the Parties”), through their authorized representatives.

RECITALS

A. RIDCC is a Rhode Island corporation with a principal place of business located at 3 Wake Robin Rd., Lincoln, RI 02865. It operates, *inter alia*, dermatology, plastic surgery, and cosmetic surgery practices within the State of Rhode Island and Providence Plantations.

B. The United States contends that RIDCC submitted or caused to be submitted claims for payment to the Medicare Program, Title XVIII of the Social Security Act, 42 U.S.C. §§ 1395-1395kkk-1 (“Medicare”) for certain medical procedures performed at its facility.

C. The United States contends that it has certain civil claims against RIDCC based upon its conduct during the period between January 1, 2009 and June 13, 2014: namely that RIDCC, or employees acting on its behalf, submitted, or caused to be submitted, unsupported claims to the Medicare program for complex surgical closure procedures performed on patients in the State of Rhode Island. Specifically, the United States contends that RIDCC submitted false claims for compensation by utilizing, and seeking reimbursement for, Current Procedural Terminology (“CPT”) codes that required a level of complexity that was not supported by the patient’s condition or the circumstances of the closure, resulting in billings for complex closures that should properly have been classified as simple or intermediate procedures and thus

compensated by Medicare at a lower rate. The conduct set forth in this paragraph is referred to throughout this agreement as the “Covered Conduct.”

D. RIDCC denies the United States’ contentions as set forth in Paragraph C, or that is liable therefor.

E. This Settlement Agreement is not an admission of liability or unlawful conduct by RIDCC and it is not a concession by the United States that its claims are not well founded.

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. RIDCC shall pay to the United States the sum of ONE HUNDRED FIFTY ONE THOUSAND, SIX HUNDRED NINETY DOLLARS AND ZERO CENTS (\$151,690.00), together with interest thereon at a rate of 2.125% from September 25, 2015 to the date payment is made (the “Settlement Amount”), no later than thirty calendar days after the Effective Date of this Agreement by electronic funds transfer pursuant to written instructions to be provided by the Office of the United States Attorney for the District of Rhode Island.

2. Subject to the exceptions in Paragraph 3 (concerning excluded claims) below, and conditioned upon RIDCC’s full payment of the Settlement Amount, the United States releases RIDCC, together with its current and former parent companies; direct and indirect subsidiaries; brother or sister companies; divisions; current or former owners, or members; and officers, directors, managers, employees, agents and affiliates; and the successors and assigns of any of them, from any civil or administrative monetary claim the United States has 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; or the common law theories of payment by mistake, unjust enrichment, and fraud.

3. Notwithstanding the release provided in paragraph 2 of this Agreement, or any other term of this Agreement, the following claims of the United States 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 or permissive exclusion from Federal health care programs;
- d. Any liability to the United States (or its agencies) for any conduct other than the Covered Conduct;
- e. Any liability based upon obligations created by this Agreement;
- f. Any liability of individuals not party to, or released by, this agreement.

4. RIDCC waives and shall not assert any defenses RIDCC 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.

5. Nothing in 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. RIDCC fully and finally releases the United States, its agencies, officers, agents, employees, and servants, from any claims (including attorney's fees, costs, and expenses of every kind and however denominated) that RIDCC has asserted, could have asserted, or may assert in the future against the United States, and its agencies, officers, agents, employees, and servants related to the Covered Conduct and the United States' 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 Medicare contractor (e.g., Medicare Administrative Contractor, fiscal intermediary, carrier) or any state payer, related to the Covered Conduct; and RIDCC agrees not to resubmit to any Medicare or any state payer any previously denied claims related to the Covered Conduct, agrees not to appeal any such denials of claims, and agrees to withdraw any such pending appeals.

8. RIDCC 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 RIDCC, its present or former officers, directors, employees, shareholders, and agents in connection with:

- (1) the matters covered by this Agreement;
- (2) the United States' audit(s) and civil investigation(s) of the matters covered by this Agreement;
- (3) RIDCC's investigation, defense, and corrective actions undertaken in response to the United States' 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 RIDCC makes to the United States pursuant to this Agreement.

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 by RIDCC, and RIDCC 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 RIDCC or any of its subsidiaries or affiliates to the Medicare, Medicaid, TRICARE, or FEHBP Programs.

c. Treatment of Unallowable Costs Previously Submitted for Payment: RIDCC further agrees that within 90 days of the Effective Date of this Agreement it 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 RIDCC 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. RIDCC agrees that the United States, at a minimum, shall be entitled to

recoup from RIDCC 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 pursuant to the direction of the Department of Justice and/or the affected agencies. The United States reserves its rights to disagree with any calculations submitted by RIDCC or any of its subsidiaries or affiliates on the effect of inclusion of Unallowable Costs (as defined in this Paragraph) on RIDCC 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 United States to audit, examine, or re-examine RIDCC'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. RIDCC 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. Each Party shall bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

12. 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.

13. 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 Rhode Island. 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.

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

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

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

17. This Agreement is binding on RIDCC's successors, transferees, heirs, and assigns.

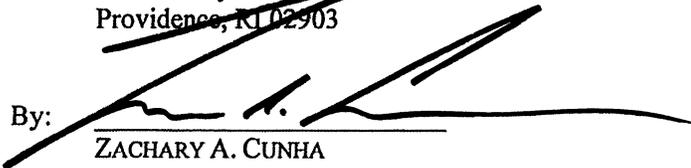
18. All parties consent to the United States' disclosure of this Agreement, and information about this Agreement, to the public.

19. 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.

FOR THE UNITED STATES OF AMERICA

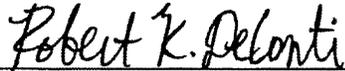
Dated: Providence, Rhode Island
Oct. 15, 2015

PETER F. NERONHA
United States Attorney
50 Kennedy Plaza, 9th Floor
Providence, RI 02903

By: 

ZACHARY A. CUNHA
Assistant U.S. Attorney
(401) 709-5000

Dated: 10/14/15

By: 

ROBERT K. DECONTI
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

FOR RHODE ISLAND DERMATOLOGY AND COSMETIC CENTER, LLC AND
RHODE ISLAND DERMATOLOGY OBS, LLC

Dated: Providence, Rhode Island
Oct. 8, 2015

RHODE ISLAND DERMATOLOGY
AND COSMETIC CENTER, LLC
AND RHODE ISLAND DERMATOLOGY OBS, LLC

By:



DANIEL VIDARS

By:



CHRISTOPHER J. O'CONNOR, ESQ.
Poore & Rosenbaum LLP
Commerce Center
30 Exchange Terrace
Providence, RI 02903
(401) 831-2600