

SETTLEMENT AGREEMENT AND MUTUAL RELEASE

THIS SETTLEMENT AGREEMENT AND MUTUAL RELEASE (“Settlement Agreement”) is entered into this 12th day of October, 2017 (“Effective Date”) by and between LOUIS TRATENBERG, DDS (“Tratenberg”), represented by DEBRA M. MARCUS, ESQ., of SCHECHNER MARCUS LLP, and STATE OF NEW JERSEY, OFFICE OF THE STATE COMPTROLLER, MEDICAID FRAUD DIVISION (“MFD”). Tratenberg and MFD are hereinafter collectively referred to as the “Parties” and each individually as a “Party.”

WHEREAS, MFD investigated Tratenberg and found that between January 1, 2011 and May 23, 2016, Tratenberg improperly billed the Division of Medical Assistance and Health Services (“DMAHS”) and/or its fiscal agent and/or the Managed Care Organizations (“MCO”) that contract with DMAHS, for Current Procedure Terminology (“CPT”) code D9410 and D9920, in violation of N.J.A.C. 10:56-2.4, N.J.S.A. 30:4D-12(d), N.J.A.C. 10:49-9.8, N.J.A.C. 10:56-3.12(g) and applicable MCO contracts, and Tratenberg double-billed certain claims as both fee-for-service and MCO encounters during this time period (hereinafter this is referred to as the “Covered Conduct”); and

WHEREAS, MFD determined that, based on the Covered Conduct, Tratenberg received overpayments from the Medicaid program; and

WHEREAS, Tratenberg disputed MFD’s determination and denied any civil wrongdoing in connection with the Covered Conduct; and

WHEREAS, the parties desire to amicably resolve all disputes between them giving rise to the Covered Conduct and have reached a mutually acceptable resolution of the controversies that exist between them;

NOW THEREFORE, in consideration of the mutual promises contained herein, as well as for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree to settle their dispute on the following terms:

(1) Tratenberg agrees to pay restitution to the Medicaid program in the sum of Two Hundred and Fifty Thousand Dollars (\$250,000.00) principal, in the following manner:

(a) Seventy-Five Thousand Dollars (\$75,000) shall be due upon execution of this Settlement Agreement;

(b) Thirty Thousand Dollars (\$30,000) shall be due by November 1, 2017;

(c) Twenty-Nine Thousand Dollars (\$29,000) shall be due by December 1, 2017;

(d) Twenty-Nine Thousand Dollars (\$29,000) shall be due by January 1, 2018;

(e) Twenty-Nine Thousand Dollars (\$29,000) shall be due by February 1, 2018;

(f) Twenty-Nine Thousand Dollars (\$29,000) shall be due by March 1, 2018;

(g) Twenty-Nine Thousand Dollars (\$29,000) shall be due by April 1, 2018;

(2) Payment shall be by certified check, bank check, or attorney trust check made payable to "Treasurer, State of New Jersey," and shall be mailed or delivered as follows:

Attention: Processing Bureau
Treasurer, State of New Jersey
Division of Revenue
200 Woolverton Street, Building 20
Lockbox 656
Trenton, New Jersey 08646

Tratenberg must include the following in the memo line to ensure that it is properly credited: "Tratenberg – OSC-MFD [REDACTED]."

(3) If any payment provided for in this Settlement Agreement is more than ten (10) days late, Tratenberg will be in default of this Settlement Agreement and the outstanding and unpaid balance plus interest and any applicable penalties will immediately become due and collected through any means available to MFD as provided by law.

(4) Tratenberg agrees to abide by the terms of the Corrective Action Plan (“CAP”), which will be entered into concurrently herewith and is incorporated herein by reference.

(5) The parties agree that this Settlement Agreement is intended to be a final resolution of all issues arising out of the Covered Conduct, referenced above, and is intended by each party to release the other party and its representatives from liability arising out of the Covered Conduct, unless MFD is mandated to act by federal or State law; or mandated by order or judgment of a court or administrative agency (other than MFD).

(6) Nothing in this Settlement Agreement waives the rights of any other State or federal agency, including, among others, the New Jersey Division of Criminal Justice, from continuing with a pending or beginning a future civil or criminal investigation or other action for alleged conduct concerning Tratenberg or from taking any action for such conduct. Nothing in this Settlement Agreement waives the rights of MFD to conduct an audit or investigation of prior or future years for the improper submission of any claims or conduct not specifically covered by this agreement, and to take any action civilly or criminally for such conduct. Nothing in this Settlement Agreement waives any defenses that Tratenberg, its officers, directors, successors or assigns may raise with respect to claims of any nature that may be raised by MFD or any other state or federal agency.

(7) Subject to the express terms of this Settlement Agreement as provided for in paragraphs 1-6 above, by the signatures set forth below, the authorization of which is hereby affirmed, Tratenberg and MFD agree to the following release: in consideration of the provision hereof including this release, each party agrees to release the other party and its representatives from liability, obligations and damages arising out of the Covered Conduct, referenced above.

(8) Nothing herein shall constitute an admission, concession or finding of wrongdoing or liability by any party.

(9) This Settlement Agreement shall be construed, enforced and governed by the laws of the State of New Jersey.

(10) This Settlement Agreement may be executed in counterparts.

(11) This Settlement Agreement is effective upon the last date it is executed by the parties hereto.

(12) This Settlement Agreement and CAP set forth the entire agreement between and among the parties hereto with respect to the claims described herein and supersede any other written or oral understandings. This Settlement Agreement and CAP do not reflect any other terms or conditions or agreements between or among the parties with respect to any other matter.

IN WITNESS WHEREOF, and intending to be legally bound, the parties hereto have executed the foregoing Settlement Agreement:

FORM AND CONTENT ACCEPTED AND AGREED TO BY:



By: *Louis Tratenberg DDS*
Louis Tratenberg DDS

DATE: 10/16/17

By: *Debra M. Marcus*
Debra M. Marcus, Esq.
Schechner Marcus LLP
Counsel to Tratenberg

PHILIP JAMES DEGNAN
STATE COMPTROLLER

DATE: 10/12/17

By: *Josh Lichtblau*
Josh Lichtblau, Director
Medicaid Fraud Division



By: *Jillian Holmes*
Jillian Holmes, Regulatory Officer
Medicaid Fraud Division



State of New Jersey

CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

OFFICE OF THE STATE COMPTROLLER
MEDICAID FRAUD DIVISION
P.O. BOX 025
TRENTON, NJ 08625-0025
(609) 826-4700

PHILIP JAMES DEGNAN
State Comptroller

JOSH LICHTBLAU
Director

CORRECTIVE ACTION PLAN DR. LOUIS TRATENBERG

The Office of the State Comptroller, Medicaid Fraud Division ("MFD") conducted an investigation of Dr. Louis Tratenberg ("Tratenberg"). During the course of the investigation, MFD found multiple instances in which Tratenberg billed the Division of Medical Assistance and Health Services ("DMAHS") and/or its fiscal agent and/or the Managed Care Organizations (MCO) that contract with DMAHS (collectively referred to as "Medicaid") improperly. Specifically, MFD found that between January 1, 2011 and May 23, 2016, Tratenberg billed Medicaid for Current Procedure Terminology ("CPT") code D9410 and D9920 improperly, in violation of N.J.A.C. 10:56-2.4, N.J.A.C. 10:56-2.5, N.J.S.A. 30:4D-12(d), N.J.A.C. 10:49-9.8, N.J.A.C. 10:56-3.12(g) and applicable MCO contracts. MFD also found that Tratenberg had double-billed certain claims as both fee-for-service and MCO encounters.

MFD and Tratenberg have reached a mutually acceptable resolution to address the overpayments identified by entering into a Settlement Agreement. This Corrective Action Plan ("CAP") is being entered into in connection with the Settlement Agreement and is incorporated by reference into the Settlement Agreement and is effective as of the same date as the Settlement Agreement. Nothing herein shall constitute an admission, concession or finding of liability by any party.

Corrective Actions

Tratenberg hereby agrees that he will:

1. Maintain proper and complete patient records in accordance with applicable laws and regulations, including but not limited to, N.J.S.A. 30:4D-12(d), N.J.A.C. 10:49-9.8, and N.J.A.C. 13:30-8.7.
2. In accordance with N.J.A.C. 10:56-2.4 and N.J.A.C. 10:56-2.5, any billing for house calls/visits using CDT code D9410 shall be limited to once per trip to the facility, regardless of the number of patients examined or treated. This shall apply regardless of whether Tratenberg is billing the claim as a fee for service claim or an encounter claim.
3. When billing CDT code D9920 for behavior management, Tratenberg will maintain proper documentation to demonstrate that the billing was necessary and proper, and billings will

comply with the standards set forth in N.J.A.C. 10:49-9.8 and N.J.A.C. 10:56-3.12(g). This shall apply regardless of whether Tratenberg is billing the claim as a fee for service claim or an encounter claim.

Tratenberg is on notice that the MFD deems the underlying conduct which gave rise to the recovery in this matter improper and/or abusive of the New Jersey Medicaid and/or NJ FamilyCare program and that said conduct must cease. Nothing in this CAP waives the rights of MFD to conduct an audit or investigation of prior or future years for the improper submission of any claims or conduct not specifically covered by the Settlement Agreement, and to take any action civilly or criminally for such conduct.

All violations of the corrective actions identified in this CAP could lead to future recovery attempts by MFD, including but not limited to an exclusionary action and/or the recovery of any improper payments, as well as any civil penalties provided by N.J.S.A. 30:4D-17(e), which include: (1) payment of interest on the amount of the excess benefits or payments at the maximum legal rate, (2) payment of an amount not to exceed three-fold the amount of such excess benefits or payments, and (3) payment in the sum of not less than and not more than the civil penalty allowed under the federal False Claims Act (31 U.S.C. s.3729 et seq.) for each excessive claim for assistance, benefits or payments.

FORM AND CONTENT ACCEPTED AND AGREED TO BY:

DATE: 10/4/17

By: Dr. Louis Tratenberg
Dr. Louis Tratenberg