

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 Connecticut, acting through the Attorney General of the State of Connecticut and the Connecticut Department of Social Services (collectively the "State of Connecticut"), Olivia Estrada, Kristi Rossomando, D.M.D. (Rossomando), and the Children's Dental Group, P.C. (CDG) (hereafter collectively referred to as "the Parties"), through their authorized representatives.

RECITALS

A. Rossomando is a dentist, licensed in the State of Connecticut, with a dental practice at 825 Grand Avenue, New Haven, Connecticut. CDG is Rossomando's professional corporation.

B. On or about January 28, 2010, relator Olivia Estrada (Relator) filed a *qui tam* action in the United States District Court for the District of Connecticut, captioned *United States of America and the State of Connecticut ex rel. Olivia Estrada v. Kristi Rossomando*, No. 3:10CV00161 (SRU), pursuant to the *qui tam* provisions of the False Claims Act, 31 U.S.C. § 3730(b) and pursuant to the State of Connecticut's False Claims Act, Conn. Gen. Stat. § 17b-301 *et seq.* (the "Civil Action").

C. The United States and the State of Connecticut contend that Rossomando and CDG submitted or caused to be submitted claims for payment to the Medicaid Program ("Medicaid"), 42 U.S.C. §§ 1396-1396w-5.

D. The United States and the State of Connecticut contend that they have certain civil claims against Rossomando and CDG arising from submitting, or causing to be submitted, claims for comprehensive oral evaluation services, billed pursuant to code D0150, which were either not provided or which were impermissibly provided by dental hygienists, during the time period February 1, 2005 through and including January 15, 2011. That conduct is referred to below as the Covered Conduct.

E. This Settlement Agreement is neither an admission of liability by Rossomando or CDG nor a concession by the United States or the State of Connecticut that their claims are not well founded.

F. Relator claims entitlement under 31 U.S.C. § 3730(d) and under Conn. Gen. Stat. §17b-301e(e), to a share of the proceeds of this Settlement Agreement and to Relator's reasonable expenses, attorneys' fees and costs.

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 Agreement, the Parties agree and covenant as follows:

TERMS AND CONDITIONS

1. Rossomando and CDG shall pay to the United States and the State of Connecticut the sum of Two Hundred Twelve Thousand Dollars (\$212,000) ("Settlement Amount") by electronic funds transfer pursuant to written instructions to be provided by the Office of the United States Attorney for the District of Connecticut, no later than the Effective Date of this Agreement.

2. Conditioned upon the United States and the State of Connecticut receiving the Settlement Amount from Rossomando and CDG, and as soon as feasible after receipt, the United States and the State of Connecticut shall pay \$31,800 to Relator by electronic funds transfer.

3. Rossomando and CDG agree to pay Relator's expenses and attorney's fees and costs, in the total amount of \$9,339.26, by check made payable to The Pellegrino Law Firm, 475 Whitney Avenue, New Haven, within five (5) business days after dismissal of the Civil Action pursuant to this Agreement.

4. Subject to the exceptions in Paragraph 9 (concerning excluded claims) below, and conditioned upon Rossomando and CDG's full payment of the Settlement Amount, the United States releases Rossomando and CDG, together with its current and former parent corporations; direct and indirect subsidiaries; brother or sister corporations; divisions; current or former owners; and officers, directors, and employees; 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.

5. Subject to the exceptions in Paragraph 9 (concerning excluded claims) below, and conditioned upon Rossomando and CDG's full payment of the Settlement Amount, the State of Connecticut releases Rossomando and CDG, together with its current and former parent corporations; direct and indirect subsidiaries; brother or sister corporations; divisions; current or former owners; and officers, directors, and employees; and the successors and assigns of any of them, from any civil claims the State of Connecticut has for the Covered Conduct under Conn.

Gen. Stat. §17b-301 *et seq.*, or common law theories of payment by mistake, unjust enrichment, and fraud.

6. Subject to the exceptions in Paragraph 9 below, and conditioned upon Rossomando and CDG's full payment of the Settlement Amount, Relator, for herself and for her heirs, successors, attorneys, agents, and assigns, releases Rossomando and CDG from any civil monetary claim the Relator has for the Covered Conduct on behalf of the United States under the False Claims Act, 31 U.S.C. §§ 3729-3733 and on behalf of the State of Connecticut under Conn. Gen. Stat. §17b-301 *et seq.*

7. OIG-HHS expressly reserves all rights to institute, direct, or maintain any administrative action seeking exclusion against Rossomando and CDG and/or its officers, directors, and employees from Medicare, Medicaid, and all other Federal health care programs (as defined in 42 U.S.C. § 1320a-7b(f)) under 42 U.S.C. § 1320a-7(a) (mandatory exclusion), or 42 U.S.C. § 1320a-7a or 42 U.S.C. § 1320a-7(b) (permissive exclusion).

8. The State of Connecticut Department of Social Services expressly reserves all rights to institute, direct, or maintain any administrative action seeking exclusion against Rossomando and CDG and/or its officers, directors and employees from Medicaid, ConnPACE and all other Connecticut Medical Assistance Programs under Conn. Gen. Stat. § 17b-99(a)-(b) and Regulations of Connecticut State Agencies § 17-83k-1 through § 17-83k-7, inclusive.

9. Notwithstanding the releases given in Paragraphs 4, 5, 6, and 11 of this Agreement, or any other term of this Agreement, the following claims of the United States and the State of Connecticut are specifically reserved and are not released:

- a. Any liability arising under Title 26, U.S. Code (Internal Revenue Code);

- b. Any liability arising under the laws and regulations that are administered and enforced by the State of Connecticut Department of Revenue Services.
- c. Any criminal liability;
- d. Except as explicitly stated in this Agreement, any administrative liability, including mandatory exclusion from Federal or State health care programs;
- e. Any liability to the United States or the State of Connecticut (or their agencies) for any conduct other than the Covered Conduct;
- f. Any liability based upon obligations created by this Agreement;
- g. Any liability for express or implied warranty claims or other claims for defective or deficient products or services, including quality of goods and services;
- h. Any liability for personal injury or property damage or for other consequential damages

10. 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 Conn. Gen. Stat. §17b-301e(e). Conditioned upon Relator's receipt of the payment described in Paragraph 2, Relator and her heirs, successors, attorneys, agents, and assigns fully and finally release, waive, and forever discharge the United States and the State of Connecticut, 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 or Conn. Gen. Stat. §17b-301 *et seq.*, and from any claims to a share of the proceeds of this Agreement and/or the Civil Action.

11. Relator, for herself and for her heirs, successors, attorneys, agents and assigns, releases Rossomando and CDG and its officers, agents and employees, from any liability to Relator arising from the Covered Conduct or the filing of the Civil Action, or under 31 U.S.C. § 3730(d) or Conn. Gen. Stat. § 17b-301 *et seq.*, for a share of the proceeds of this Agreement and/or the Civil Action or for expenses or attorney's fees and costs. Relator does not release any claims made by Relator in the state court action titled Olivia Estrada, As Parent and Natural Guardian of Louis Islas, Minor v. Kirsti Rossomando and Children's Dental Group, Superior Court, Judicial District of New Haven, CV 10-609420 (the "State Court Action"). Relator, Rossomando, and CDG agree that this Settlement Agreement may not be offered into evidence in the State Court Action and shall be inadmissible in the State Court Action.

12. Rossomando and CDG fully and finally release the United States, the State of Connecticut, and their respective agencies, employees, servants, and agents from any claims in their official and individual capacity (including attorney's fees, costs, and expenses of every kind and however denominated) that Rossomando and CDG have asserted, could have asserted, or may assert in the future against the United States, the State of Connecticut, their respective agencies, employees, servants, and agents, related to the Covered Conduct and the United States' and the State of Connecticut's investigation and prosecution thereof.

13. Rossomando and CDG waive and shall not assert any defenses Rossomando and CDG 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. Nothing in this paragraph or any other provision of this Agreement constitutes an agreement by the United States or the State of Connecticut concerning the characterization of the Settlement Amount for purposes of the Internal Revenue laws, Title 26 of the United States Code or under the State of Connecticut income tax laws.

14. 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 carrier or intermediary or any state payer, related to the Covered Conduct; and Rossomando and CDG agree not to resubmit to any Medicare carrier or intermediary or any state payer any previously denied claims related to the Covered Conduct, and agree not to appeal any such denials of claims.

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

- (1) the matters covered by this Agreement;
- (2) the United States' and the State of Connecticut's audit(s) and criminal and civil investigation(s) of the matters covered by this Agreement;
- (3) Rossomando and CDG's self-audit, defense, and corrective actions undertaken in response to the United States' and the State of Connecticut's

audit(s) and criminal 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 Rossomando and CDG make to the United States and the State of Connecticut pursuant to this Agreement.

b. Future Treatment of Unallowable Costs: Unallowable Costs shall be separately determined and accounted for by Rossomando and CDG, and Rossomando and CDG shall not charge such Unallowable Costs directly or indirectly to any contracts with the United States or the State of Connecticut, or seek payment for such Unallowable Costs through any cost report, cost statement, information statement, or payment request submitted by Rossomando and CDG or any of its subsidiaries or affiliates to the Medicare, Medicaid, ConnPACE, TRICARE, or FEHBP Programs.

c. Treatment of Unallowable Costs Previously Submitted for Payment: Rossomando and CDG 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, ConnPACE and FEHBP fiscal agents, any Unallowable Costs (as defined in this Paragraph) included in payments previously sought from the United States, or any State program, including, but not limited to, payments sought in any cost reports, cost statements, information reports, or payment requests already submitted by Rossomando and CDG 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. Rossomando and CDG agree

that the United States and the State of Connecticut, at a minimum, shall be entitled to recoup from Rossomando and CDG 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 and/or the State of Connecticut pursuant to the direction of the Department of Justice or the Connecticut Attorney General's Office, respectively, and/or the affected agencies. The United States and the State of Connecticut reserve their rights to disagree with any calculations submitted by Rossomando and CDG or any of its subsidiaries or affiliates on the effect of inclusion of Unallowable Costs (as defined in this Paragraph) on Rossomando and CDG 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 and/or the State of Connecticut to audit, examine, or re-examine Rossomando and CDG's books and records to determine that no Unallowable Costs have been claimed in accordance with the provisions of this Paragraph.

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. Rossomando and CDG 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, above, the Parties shall promptly sign and file in the Civil Action a Joint Stipulation of Dismissal of the Civil Action pursuant to Rule 41(a)(1) of the Federal Rules of Civil Procedure.

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.

20. 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.

21. This Agreement is governed by the laws of the United States and the State of Connecticut. The exclusive jurisdiction and venue for any dispute relating to this Agreement is the United States District Court for the District of Connecticut. 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 Rossomando and CDG's 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' and the State of Connecticut's disclosure of this Agreement, and information about this Agreement, to the public.


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

THE UNITED STATES OF AMERICA

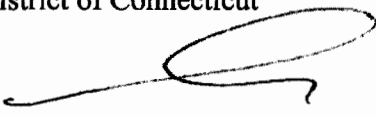
DATED: 9/14/11

BY: 
JOHN B. HUGHES
Assistant United States Attorney
Chief, Civil Division
District of Connecticut

DATED: 9/14/11

By: 
RICHARD M. MOLOT
Assistant United States Attorney
District of Connecticut

DATED: 9/13/11

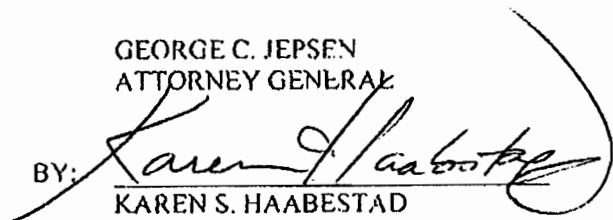
BY: 
GREGORY E. DEMSKE
Assistant Inspector General for Legal Affairs
Office of Counsel to the Inspector General
Office of Inspector General
United States Department of Health and Human Services

THE STATE OF CONNECTICUT

GEORGE C. JEPSEN
ATTORNEY GENERAL

DATED: 9/6/11

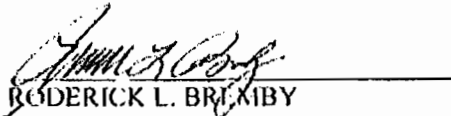
BY:



KAREN S. HAABESTAD
Assistant Attorney General
State of Connecticut

DATED: 8/31/2011

BY:




RODERICK L. BREXIBY
Commissioner
Connecticut Department of Social Services

KRISTI ROSSOMANDO, D.M.D.

DATED: 08-23-2011

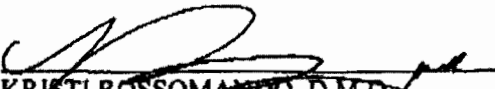
BY: 
KRISTI ROSSOMANDO, D.M.D.

DATED: 8/26/2011

BY: 
JEFFREY LICHTMAN, ESQ.
Counsel for Rossomando

THE CHILDREN'S DENTAL GROUP, P.C.

DATED: 08-23-2011

BY: 
KRISTI ROSSOMANDO, D.M.D.
TITLE:
The Children's Dental Group, P.C.

DATED: 8/26/2011

BY: 
JEFFREY LICHTMAN, ESQ.
Counsel for The Children's Dental Group

OLIVIA ESTRADA-RELATOR

DATED: 8/1/2011

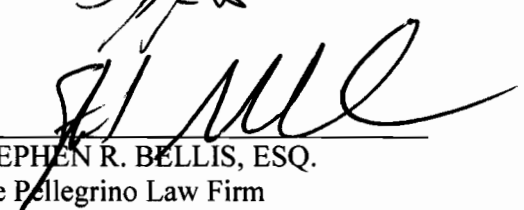
BY:



OLIVIA ESTRADA

DATED: 8/1/11

BY:



STEPHEN R. BELLIS, ESQ.
The Pellegrino Law Firm
Counsel for Olivia Estrada