

SETTLEMENT AGREEMENT

This Settlement Agreement (“Settlement 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); (the “United States”), the State of Connecticut, acting through the Attorney General of the State of Connecticut (the “State of Connecticut”), and Arlene Werner, PhD. (“Werner”) (hereafter collectively referred to as “the Parties”), through their authorized representatives.

RECITALS

A. Werner is licensed as a Psychologist in the State of Connecticut, and the owner of a private psychology practice in Waterford, Connecticut. Werner is enrolled as a provider in the Connecticut Medical Assistance Program (“CMAP”), which includes the state’s Medicaid program. The CMAP is administered by the State of Connecticut Department of Social Services (“DSS”).

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

C. The United States and the State of Connecticut contend that they have certain civil claims against Werner arising from Werner’s improper billing of psychotherapy services to Medicaid in violation of both the federal and State of Connecticut false claims acts during the period from January 1, 2011 through July 18, 2016. The United States and the State of Connecticut contend Werner billed Medicaid for psychotherapy services that were not provided. The United States and the State of Connecticut also contend that Werner billed Medicaid for family psychotherapy sessions under CPT code 90847 for multiple family members on the same

date of service when she should have been billing for individual psychotherapy services. That conduct is referred to below as the “Covered Conduct.”

D. This Settlement Agreement is neither an admission of liability by Werner nor a concession by the United States or the State of Connecticut that their 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. Werner agrees to pay the United States and the State of Connecticut the sum of One Hundred Twenty-Six Thousand, Seven Hundred Sixty Dollars and Nine Cents (\$126,760.09) (the “Settlement Amount”), of which \$63,380.05 is restitution. Werner agrees the Settlement Amount will be satisfied as follows:

a. Werner hereby agrees that the State of Connecticut shall retain the Medicaid funds that have been suspended and/or retained by the State of Connecticut, in the amount of One Hundred Twenty-Three Thousand, Nine Hundred Fifty-Four Dollars and Seventy-Four Cents (\$123,954.74) (the “Suspended Amounts”) forevermore. Werner expressly relinquishes any and all rights of any kind that she may have with respect to the Suspended Amounts, including, but not limited to: any and all claims or rights to have an overpayment determined by the DSS audit process as described in Conn. Gen. Stat. §17b-99, any and all rights to payment of those funds, and any and all rights to appeal, whether formally or informally and whether administratively or judicially, the right of the State of Connecticut and/or the United States to retain those funds, and any other rights Werner may have to challenge the Withholding or the Suspension of the Settlement Amount in any respect. Werner further agrees to execute

any documents necessary to effectuate the release of her right, title, and interest in the Suspended Amounts.

b. Over a period of two (2) years, Werner will pay the remaining Two Thousand, Eight Hundred Five Dollars and Thirty-Five Cents (\$2,805.35), plus interest at 2.875% compounded monthly, pursuant to a promissory note (Note) in the form of Exhibit A that Werner agrees to execute contemporaneously with this Settlement Agreement. The Note shall be secured pursuant to a Stipulated Judgment, in the form attached hereto as Exhibit B that Werner agrees to execute contemporaneously with this Settlement Agreement. The United States and the State of Connecticut will hold the Stipulated Judgment in escrow and will not file the Stipulated Judgment with the Court unless and until there is an event of Default, as set forth in Paragraph 4, below. Upon default, the United States and/or the State of Connecticut may, at their sole option, without further notice, file a civil complaint, and file the Stipulated Judgment with the Court. In the event that the Stipulated Judgment is filed with the Court, Werner agrees not to oppose the entry of judgment against her. Interest shall accrue on the unpaid settlement amount as indicated in the Note. Collectively the settlement amount and interest received by the United States shall be referred to as the Settlement Proceeds.

2. Conditioned upon Werner's full payment of the Settlement Amount, subject to the exceptions in Paragraph 7 (concerning excluded claims) below, and subject to Paragraph 18, below (concerning bankruptcy proceedings commenced within 91 days of the Effective Date of this Settlement Agreement or any payment made under this Settlement Agreement), the United States releases Werner 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. Conditioned upon Werner's full payment of the Settlement Amount, subject to the exceptions in Paragraph 7 (concerning excluded claims) below, and subject to Paragraph 18, below (concerning bankruptcy proceedings commenced within 91 days of the Effective Date of this Settlement Agreement or any payment made under this Settlement Agreement), the State of Connecticut releases Werner from any civil claims the State of Connecticut has, or could have asserted for the Covered Conduct under Section 4-275 et seq. of the Connecticut General Statutes (Connecticut False Claims Act) and the common law theories of payment by mistake, unjust enrichment, and fraud.

4. Werner shall be deemed in "Default" of this Settlement Agreement if Werner fails to pay any portion of the Settlement Proceeds provided in Paragraph 1 of the Settlement Agreement and/or the Note attached hereto as Exhibit A, within five (5) days of the due date upon which each such payment is due.

5. In the event that Werner fails to pay any amounts due pursuant to this Settlement Agreement, the United States and/or the State of Connecticut agree that they will provide written Notice of the Default and an opportunity for Werner to cure said Default within five (5) business days of receipt of this notice. Notice of the Default will be sent by first class mail, addressed to the attorney for Werner, William McCoy, Esq., Heller, Heller & McCoy, 736 Norwich-New London Turnpike, Uncasville, CT 06382. Upon Default, which is not cured within five (5) business days of receipt of the Notice of Default, as set forth above, the full settlement amount will become immediately due and payable, and interest on the remaining unpaid balance shall thereafter accrue at the rate of 12% per annum, compounded daily from the date of Default, on the remaining unpaid total (principal and interest balance). In the event of Default, the United States and/or the State of Connecticut, at their sole discretion, may (a) take any action to execute and collect on the Stipulated Judgment against Werner; (b) declare this Settlement Agreement

breached, and proceed against Werner for any claims, including those to be released by this Settlement Agreement; (c) file an action for specific performance of the Settlement Agreement and/or the Stipulated Judgment; (d) offset the remaining unpaid balance, inclusive of interest, from any amounts due and owing to Werner by any department, agency, or agent of the United States or the State of Connecticut at the time of Default; (e) exercise any other right granted by law, or under the terms of this Settlement Agreement, or recognizable at common law or in equity.

Werner agrees not to contest any offset imposed and not to contest any collection action undertaken by the United States or the State of Connecticut pursuant to this Paragraph, either administratively or in any state or federal court, except on the grounds of actual payment to the United States or the State of Connecticut. In the event of Default, as defined above, and at their sole option, the United States and the State of Connecticut alternatively may rescind this Settlement Agreement and bring any civil and/or administrative claim, action, or proceeding against Werner for the claims that would otherwise be covered by the releases provided in Paragraphs 2 and 3, above. In the event that the United States or the State of Connecticut opt to rescind this Settlement Agreement pursuant to this Paragraph, Werner agrees not to plead, argue, or otherwise raise any defenses of statute of limitations, laches, estoppel or similar theories, to any civil or administrative claims that are (a) filed by the United States or the State of Connecticut against Werner within 120 days of written notification that this Settlement Agreement has been rescinded, and (b) relate to the Covered Conduct, except to the extent these defenses were available on or before the Effective Date of this Settlement Agreement.

6. In the event of a Default as defined in Paragraph 4, above, which is not cured by Werner pursuant to Paragraph 5, OIG-HHS may exclude Werner from participating in all Federal health care programs until Werner pays the Settlement Amount as set forth in Paragraph 1,

above. OIG-HHS will provide written notice of any such exclusion to Werner. Werner waives any further notice of the exclusion under 42 U.S.C. § 1320a-7(b)(7), and agrees not to contest such exclusion either administratively or in any state or federal court. Reinstatement to program participation is not automatic. If at the end of the period of exclusion Werner wants to apply for reinstatement, Werner must submit a written request for reinstatement to OIG-HHS in accordance with the provisions of 42 C.F.R. §§ 1001.3001-.3005. Werner will not be reinstated unless and until OIG-HHS approves such request for reinstatement.

7. Notwithstanding the releases given in Paragraphs 2 and 3 of this Settlement Agreement, or any other term of this Settlement 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 criminal liability;
- c. Except as explicitly stated in this Settlement Agreement, any administrative liability, including mandatory or permissive exclusion from Federal health care programs;
- d. Except as explicitly stated in this Settlement Agreement, any administrative liability to the DSS, including suspension from CMAP;
- e. Any liability to the United States or the State of Connecticut (or their respective agencies) for any conduct other than the Covered Conduct;
- f. Any liability based upon obligations created by this Settlement Agreement;
- g. Any liability of individuals;

8. VOLUNTARY SUSPENSION

a. In compromise and settlement of the rights of the DSS to suspend Werner pursuant to Regs. Conn. State Agencies §§17-83k-1 through 17-83k-7, based upon the Covered Conduct, Werner agrees to enter into a Suspension Agreement with the DSS (attached hereto as Exhibit C), thereby suspending her from providing goods or services to the Connecticut Medicaid program, and all other Connecticut health care programs for a period of 2 years. The suspension shall be effective upon the execution of the Consent Order by the DSS Commissioner.

b. Connecticut Medicaid program and all other Connecticut health care programs shall not pay any entity or person for items or services, including administrative and management services, furnished, ordered, or prescribed by Werner in any capacity while Werner is suspended. This payment prohibition applies to Werner and all other individuals and entities (including, for example, anyone who employs or contracts with Werner, and any hospital or other provider where Werner provides services). The suspension applies regardless of who submits the claim or other request for payment. Violation of the conditions of the suspension may result in criminal prosecution, the imposition of monetary penalties and assessments, and an additional period of suspension. Werner further agrees to hold the Medicaid program and all other Connecticut health care programs, and all Medicaid program and all Connecticut health care program beneficiaries and/or sponsors, harmless from any financial responsibility for items or services furnished, ordered, or prescribed to such beneficiaries or sponsors after the effective date of the suspension. Werner waives any further notice of the suspension and agrees not to contest such suspension either administratively or in any state or federal court.

c. Reinstatement to program participation is not automatic. If Werner wishes to be reinstated, Werner must submit a written request for reinstatement to DSS in accordance

with the provisions of Regs. Conn. State Agencies §17-83k-7. Such request may be made to the DSS no earlier than 120 days prior to the expiration of the 2 year period of suspension.

Reinstatement becomes effective upon application by Werner, approval of the application by DSS, and notice of reinstatement by DSS. Obtaining another license, moving to another state, or obtaining a provider number from a Medicare contractor, any non-Connecticut state agency, or a Federal health care program does not reinstate Werner's eligibility to participate in the Connecticut Medicaid program or any other Connecticut health care programs.

9. Werner has provided sworn financial disclosure statements (Financial Statements) to the United States and the State of Connecticut, and the United States and the State of Connecticut have relied on the accuracy and completeness of those Financial Statements in reaching this Settlement Agreement. Werner warrants that the Financial Statements are complete, accurate, and current. If the United States or the State of Connecticut learns of asset(s) in which Werner had an interest at the time of this Settlement Agreement that were not disclosed in the Financial Statements, or if the United States or the State of Connecticut learns of any misrepresentation by Werner on, or in connection with, the Financial Statements, and if such nondisclosure or misrepresentation changes the estimated net worth set forth in the Financial Statements by \$12,000 or more, the United States or the State of Connecticut may at its option: (a) rescind this Settlement Agreement and file suit based on the Covered Conduct, or (b) let the Settlement Agreement stand and collect the full Settlement Amount plus one hundred percent (100%) of the value of the net worth of Werner previously undisclosed. Werner agrees not to contest any collection action undertaken by the United States pursuant to this provision, and immediately to pay the United States or the State of Connecticut all reasonable costs incurred in such an action, including attorney's fees and expenses.

10. In the event that the United States or the State of Connecticut, pursuant to Paragraph 9 (concerning disclosure of assets), above, opts to rescind this Settlement Agreement, Werner agrees not to plead, argue, or otherwise raise any defenses under the theories of statute of limitations, laches, estoppel, or similar theories, to any civil or administrative claims that (a) are filed by the United States or the State of Connecticut within 30 calendar days of written notification to Werner that this Settlement Agreement has been rescinded, and (b) relate to the Covered Conduct, except to the extent these defenses were available on the Effective Date of this Settlement Agreement.

11. Werner waives and shall not assert any defenses Werner 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 Settlement Agreement bars a remedy sought in such criminal prosecution or administrative action. Nothing in this paragraph or any other provision of this Settlement Agreement constitutes an agreement by the State of Connecticut concerning the characterization of the Settlement Amount for the purposes of the laws and regulations administered and enforced by the Connecticut Department of Revenue Services.

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

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 payer, related to the Covered Conduct; and Werner agrees not to resubmit to any Medicare contractor 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.

14. Werner 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 Werner, her present or former employees and agents in connection with:

- (1) the matters covered by this Settlement Agreement;
- (2) the United States' and the State of Connecticut's audit(s) and civil investigation(s) of the matters covered by this Settlement Agreement;
- (3) Werner's investigation, defense, and corrective actions undertaken in response to the United States' and the State of Connecticut's audit(s) and civil investigation(s) in connection with the matters covered by this Settlement Agreement (including attorney's fees);
- (4) the negotiation and performance of this Settlement Agreement; and
- (5) the payment Werner makes to the United States and the State of Connecticut pursuant to this Settlement 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 Werner, and Werner 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 Werner or any of her affiliates to the Medicare, Medicaid, TRICARE, or FEHBP Programs.

c. Treatment of Unallowable Costs Previously Submitted for Payment: Werner further agrees that within 90 days of the Effective Date of this Settlement Agreement she 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 Werner or any of her 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. Werner agrees that the United States and the State of Connecticut, at a minimum, shall be entitled to recoup from Werner 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 the State of Connecticut pursuant to the direction of the Department of Justice and/or

the affected agencies. The United States and the State of Connecticut reserve their rights to disagree with any calculations submitted by Werner or any of her affiliates on the effect of inclusion of Unallowable Costs (as defined in this Paragraph) on Werner or any of her affiliates' cost reports, cost statements, or information reports.

d. Nothing in this Settlement Agreement shall constitute a waiver of the rights of the United States or the State of Connecticut to audit, examine, or re-examine Werner's books and records to determine that no Unallowable Costs have been claimed in accordance with the provisions of this Paragraph.

15. This Settlement 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 16 (waiver for beneficiaries paragraph), below.

16. Werner agrees that she waives and shall not seek payment for any of the health care billings covered by this Settlement 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.

17. Werner warrants that she has reviewed her financial situation and that she currently is solvent within the meaning of 11 U.S.C. §§ 547(b)(3) and 548(a)(1)(B)(ii)(I), and shall remain solvent following payment to the United States and the State of Connecticut of the Settlement Amount. Further, the Parties warrant that, in evaluating whether to execute this Settlement Agreement, they (a) have intended that the mutual promises, covenants, and obligations set forth constitute a contemporaneous exchange for new value given to Werner, within the meaning of 11 U.S.C. § 547(c)(1), and (b) conclude that these mutual promises, covenants, and obligations do, in fact, constitute such a contemporaneous exchange. Further, the Parties warrant that the mutual promises, covenants, and obligations set forth herein are intended

to and do, in fact, represent a reasonably equivalent exchange of value that is not intended to hinder, delay, or defraud any entity to which Werner was or became indebted to on or after the date of this transfer, within the meaning of 11 U.S.C. § 548(a)(1).

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

a. Werner's obligations under this Settlement Agreement may not be avoided pursuant to 11 U.S.C. § 547, and Werner shall not argue or otherwise take the position in any such case, proceeding, or action that: (i) Werner's obligations under this Settlement Agreement may be avoided under 11 U.S.C. § 547; (ii) Werner was insolvent at the time this Settlement Agreement was entered into, or became insolvent as a result of the payment made to the United States or the State of Connecticut; or (iii) the mutual promises, covenants, and obligations set forth in this Settlement Agreement do not constitute a contemporaneous exchange for new value given to Werner.

b. If Werner's obligations under this Settlement Agreement are avoided for any reason, including, but not limited to, through the exercise of a trustee's avoidance powers under the Bankruptcy Code, the United States and the State of Connecticut, at their sole option, may rescind the releases in this Settlement Agreement and bring any civil and/or administrative claim, action, or proceeding against Werner for the claims that would otherwise be covered by the releases provided in Paragraphs 2 and 3, above. Werner agrees that (i) any such claims,

actions, or proceedings brought by the United States and the State of Connecticut are not subject to an "automatic stay" pursuant to 11 U.S.C. § 362(a) as a result of the action, case, or proceedings described in the first clause of this Paragraph, and Werner shall not argue or otherwise contend that the United States' and the State of Connecticut's claims, actions, or proceedings are subject to an automatic stay; (ii) Werner shall not plead, argue, or otherwise raise any defenses under the theories of statute of limitations, laches, estoppel, or similar theories, to any such civil or administrative claims, actions, or proceeding that are brought by the United States and the State of Connecticut within 30 calendar days of written notification to Werner that the releases have been rescinded pursuant to this Paragraph, except to the extent such defenses were available on the Effective Date of this Settlement Agreement; and (iii) the United States and the State of Connecticut have a valid claim against Werner in the amount of \$200,000 and the United States and the State of Connecticut may pursue their claim in the case, action, or proceeding referenced in the first clause of this Paragraph, as well as in any other case, action, or proceeding.

c. Werner acknowledges that her agreements in this Paragraph are provided in exchange for valuable consideration provided in this Settlement Agreement.

19. Each Party shall bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Settlement Agreement.

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

21. This Settlement 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 Settlement Agreement is the United States District Court for the District of Connecticut, except

disputes only between the State of Connecticut and Werner will be resolved in Superior Court for the Judicial District of Hartford, Connecticut. For purposes of construing this Settlement Agreement, this Settlement Agreement shall be deemed to have been drafted by all Parties to this Settlement Agreement and shall not, therefore, be construed against any Party for that reason in any subsequent dispute.

22. This Settlement Agreement constitutes the complete agreement between the Parties. This Settlement 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 Settlement Agreement on behalf of the persons and entities indicated below.

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

25. This Settlement Agreement is binding on Werner's successors, transferees, heirs, and assigns.

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

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

THE UNITED STATES OF AMERICA

DATED: 4-28-18

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

DATED: _____

By: _____
ANNE F. THIDEMANN
Assistant United States Attorney
District of Connecticut

DATED: _____

BY: _____
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

THE UNITED STATES OF AMERICA

DATED: _____

BY: _____

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

DATED: 7/2/18

By: Anne F. Thidemann

ANNE F. THIDEMANN
Assistant United States Attorney
District of Connecticut

DATED: _____

BY: _____

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

THE UNITED STATES OF AMERICA

DATED: _____

BY: _____

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

DATED: _____

By: _____

ANNE F. THIDEMANN
Assistant United States Attorney
District of Connecticut

DATED: 6/29/2008

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

THE STATE OF CONNECTICUT

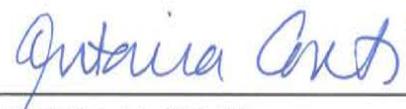
GEORGE JEPSEN
ATTORNEY GENERAL

DATED: 6/25/18

BY: 

MICHAEL E. COLE
Assistant Attorney General
Chief, Antitrust & Government Program Fraud Department

DATED: 6/25/18

BY: 

ANTONIA C. CONTI
Assistant Attorney General

ARLENE WERNER

DATED: 6/19/18

BY: 
ARLENE WERNER

DATED: 6/19/18

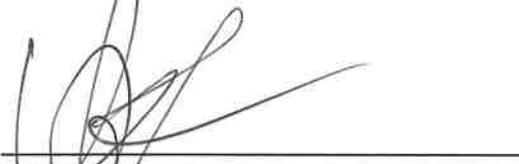
BY: 
WILLIAM E. MCCOY, ESQ.
Heller, Heller & McCoy
Counsel for Arlene Werner

EXHIBIT A

Promissory Note

For value received, and pursuant to a Settlement Agreement dated June __, 2018 attached hereto (Settlement Agreement), Arlene Werner (referred to as “Werner” or “Maker”), for herself and her successors and assigns, promises to pay to the United States of America (“Holder”), or its assignee, the full principal sum of \$2,805.35, together with interest accruing at the rate of 2.875% per annum (“Outstanding Balance”) as set forth below.

1. The total payment pursuant to the Settlement Agreement is \$126,760.09. An initial payment shall be satisfied on the Effective Date of the Settlement Agreement by Werner’s agreement that the State of Connecticut shall retain \$123,954.74 suspended payments. The principal balance of \$2,805.35, plus interest on the \$2,805.35 at the rate of 2.875%, shall be paid within twenty-four (24) months of the Effective Date of the Settlement Agreement according to the following schedule of payments:

Schedule of Payments (including interest)

Payment No.	Due Date	Payment (monthly payments include interest at 2.875%)
1	8/1/2018	\$120.42
2	9/1/2018	\$120.42
3	10/1/2018	\$120.42
4	11/1/2018	\$120.42
5	12/1/2018	\$120.42
6	1/1/2019	\$120.42
7	2/1/2019	\$120.42
8	3/1/2019	\$120.42
9	4/1/2019	\$120.42
10	5/1/2019	\$120.42
11	6/1/2019	\$120.42
12	7/1/2019	\$120.42
13	8/1/2019	\$120.42
14	9/1/2019	\$120.42
15	10/1/2019	\$120.42
16	11/1/2019	\$120.42
17	12/1/2019	\$120.42
18	1/1/2020	\$120.42
19	2/1/2020	\$120.42
20	3/1/2020	\$120.42
21	4/1/2020	\$120.42
22	5/1/2020	\$120.42
23	6/1/2020	\$120.42
24	7/1/2020	\$120.42

2. Payments will be made by electronic funds transfer pursuant to written instructions to be provided by the United States Attorney’s Office for the District of Connecticut. If there is any change in the method or instructions of payment, the Holder shall inform the Maker at least 5 business days before payment is due.

3. This Note may be prepaid, in whole or in part, without penalty or premium. Partial payment does not alter the interest rate applicable each month as reflected in paragraph 1 of this Note.
4. Maker is in default of this Note on the date of occurrence of any of the following events ("Events of Default").
 - A. Any Event of Default that occurs as set forth in Paragraph 5 of the Settlement Agreement.
 - B. If Paragraph 11 of the Settlement Agreement is violated.
5. The Maker shall provide the United States written notice of an Event of Default within two (2) business days of such event by overnight mail, delivered to AUSA Anne Thidemann at the Office of the United States Attorney for the District of Connecticut (USAO), 1000 Lafayette Boulevard, 10th Floor, Bridgeport, CT 06604.
6. Upon the occurrence of an Event of Default, without further notice or presentment and demand by the United States:
 - A. The Outstanding Balance shall become immediately due and payable ("Default Amount"). Interest shall accrue on the Default Amount from the date of the Event of Default at 12 per cent per annum, compounded daily.
 - B. The United States may take any and all actions provided under law and equity, or provided by the Settlement Agreement, to collect the Outstanding Balance pursuant to this Note.
 - C. The United States retains any and all other rights and remedies it has or may have under law and equity, and may exercise those rights and remedies.
 - D. No failure or delay on the part of the United States to exercise any right or remedy shall operate as a waiver of the United States' rights. No partial or single exercise by the United States of any right or remedy shall operate as a waiver of the United States' rights.
 - E. Maker will pay the United States all reasonable costs of collection, including reasonable attorneys' fees and expenses.
7. Waiver by the Holder of any default by Maker, its successors, or assigns will not constitute a waiver of a subsequent default. Failure by the Holder to exercise any right, power, or privilege which it may have by reason of default will not preclude the exercise of such right, power, or privilege so long as such default remains uncured or if a subsequent default occurs.
8. This Note shall be governed and construed according to the laws of the United States of America.

9. Maker acknowledges that it is entering into this Note freely, voluntarily and with no degree of compulsion whatsoever.

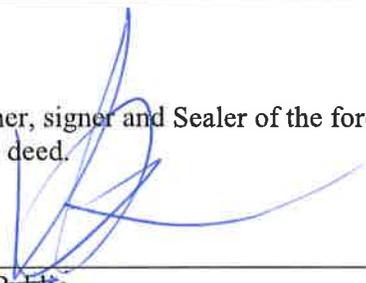
IN WITNESS THEREOF, Maker intending to be legally bound hereby and so bind its successors and assigns, has caused this Note to be executed by its proper corporate officer and its corporate seal hereunto affixed, duly attested this __, day of June, 2018

Dated: 6/19/18 BY: Arlene Werner
Arlene Werner

State of Connecticut :
: ss: Montville

County of Meriden

Before me personally appeared Arlene Werner, signer and Sealer of the foregoing Instrument and acknowledge the same to be her free act and deed.



Notary Public
My Commission Expires on _____

William E. Kelly
Commissioner of the Superior Court

EXHIBIT B

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA)	No. 3:
)	
)	
Plaintiff,)	
)	STIPULATED JUDGMENT
v.)	
)	
ARLENE WERNER)	
)	
Defendant.)	

IT IS HEREBY STIPULATED AND AGREED, by and between the undersigned, that the parties have negotiated a settlement in the above-referenced matter, which settlement took effect on June , 2018 (the Settlement Agreement); and that

As part of that negotiated settlement, Arlene Werner, pursuant to Fed. R. Civ. 54, hereby consents to entry of judgment against her, and in favor of the plaintiff, the United States, in the amount of One Hundred Twenty-Six Thousand, Seven Hundred Sixty Dollars and Nine Cents (\$126,760.09), plus interest of 2.875% per month on the unpaid balance beginning August 1, 2018, as set forth in the Settlement Agreement. A copy of the Settlement Agreement is attached as Exhibit A hereto, and is incorporated herein by reference.

Arlene Werner and the United States shall each bear their own costs, fees and expenses.

Respectfully submitted,

ON BEHALF OF THE UNITED STATES

Dated: _____

JOHN H. DURHAM
UNITED STATES ATTORNEY

By: _____

ANNE F. THIDEMANN
ASSISTANT U.S. ATTORNEY
Federal Bar No. CT28028
1000 Lafayette Boulevard, 10th Floor
Bridgeport, Connecticut 06604
(203) 696-3045 (phone)
(203) 579-5575 (fax)
Anne.Thidemann@usdoj.gov

ON BEHALF OF ARLENE WERNER

DATED: 6/19/18

BY: 
ARLENE WERNER

DATED: 6/19/18

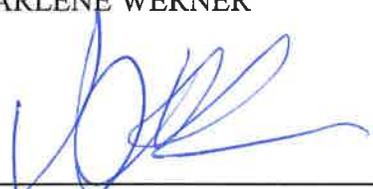
BY: 
WILLIAM E. MCCOY, ESQ.
Heller, Heller & McCoy
Counsel for Arlene Werner

EXHIBIT C

EXHIBIT C
STATE OF CONNECTICUT
DEPARTMENT OF SOCIAL SERVICES

RE: ARLENE WERNER, PhD

SUSPENSION AGREEMENT

This Suspension Agreement (“Suspension Agreement”) is entered into between the State of Connecticut Department of Social Services and Arlene Werner, PhD (collectively, “the Parties”) through their authorized representatives.

RECITALS

- A. Pursuant to Conn. Gen. Stat. §17b-2 (8), the State of Connecticut Department of Social Services (“Department”) is the single state agency responsible for administering the Medicaid Program, which is part of the Connecticut Medical Assistance Program (“CMAP”).
- B. Arlene Werner (“Werner”) is a psychologist who resides at 296 Hamilton Avenue Unit 26 Norwich, CT 06360 with a principal place of business located at 567 Vauxhall Street in Waterford, CT. During the time period covered by this Suspension Agreement, Werner was a licensed psychologist enrolled as a provider in the CMAP whose practice included, *inter alia*, providing behavioral health services to Medicaid beneficiaries.
- C. During the time period covered by this Suspension Agreement, Werner was the owner of her practice and exercised management authority and control over the submission of claims for reimbursement for counseling services provided to CMAP beneficiaries.
- D. The State of Connecticut, acting through the Attorney General of the State of Connecticut (the “State of Connecticut”), contends that it has certain civil claims against Werner,

arising from Werner's knowingly submitting or causing to be submitted claims to the CMAP for psychotherapy services that were not provided. The State of Connecticut also contends that Werner submitted claims for separate family psychotherapy sessions under CPT code 90847 for multiple family members on the same date of service when Werner knew or should have known that she should have been submitting claims for individual psychotherapy under CPT codes 90804-90807 and 90832-90837 after February 1 2013. The foregoing conduct is referred to below as the "Covered Conduct".

- E. Pursuant to the Covered Conduct, Werner has knowingly and voluntarily agreed to enter into a Settlement Agreement with the State of Connecticut. This Suspension Agreement is attached to the Settlement Agreement as **Exhibit C**.
- F. Pursuant to Conn. Gen. Stat. §17b-99 and Regulations of Connecticut State Agencies § §17-83k-1 through 17-83k-7, the Department may bring an administrative Notice of Regulatory Violations and Proposed Sanctions against Werner to suspend Werner from providing goods or services under the CMAP, or any other program administered by the Department, for the Covered Conduct for violations of rules, regulations, standards and laws.
- G. This Suspension Agreement is neither an admission of liability by Werner, nor a concession by the Department that its administrative claims are not well founded.
- H. In consideration of the provisions in the Settlement Agreement, as well as the mutual promises and obligations of this Suspension Agreement, the Parties agree and covenant as follows:

TERMS AND CONDITIONS

- 1. Pursuant to Connecticut General Statutes §17b-99 and Regulations of Connecticut State

Agencies §§17-83k-1 through 17-83k-7, inclusive, and the Consent Order, below, Werner knowingly and voluntarily agrees to be excluded and suspended from providing any goods or services or otherwise participating in the CMAP, the Medicaid Program, and/or any and all other programs administered by the Department for a period of two (2) years (hereinafter, the "Suspension"). The Suspension shall become effective upon execution of this Suspension Agreement.

2. Werner understands this Suspension may result in an exclusion that shall have national effect and apply to Medicare, Medicaid, and all other federal health care programs providing health care benefits, whether directly through insurance or otherwise, that is funded directly, in whole or part, by the United States Government, and any State health care program including, but not limited to, Medicaid, the Maternal and Child Health Services Block Grant program, and Block Grants to States for Social Services.
3. Werner acknowledges that pursuant to this Suspension, the Department shall not reimburse any enrolled provider for goods or services, including administrative and management services, furnished or ordered by Werner in any capacity. The prohibition against payment for administrative and management services extends to all services directly related, or indirectly related, to patient care, but that are a necessary component of providing goods and services to program beneficiaries including, but not limited to, services related to treatment plan reviews, data entry, claims processing, preparation for providing goods or services, transportation, delivery, or providing equipment, goods, or services used to provide goods and services to program beneficiaries. This payment prohibition applies to Werner and all other individuals and entities (including, for example, anyone who employs or contracts with Werner). The Suspension applies

regardless of who submits the claim or other request for payment.

4. Werner shall not submit or cause to be submitted to any program administered by the Department any claim or request for payment for goods or services, including administrative and management services, furnished, ordered or prescribed by Werner during the Suspension.
5. Werner understands that violation of the conditions of this Suspension may result in, among other things, criminal prosecution, civil prosecution, and the imposition of civil penalties including, but not limited to, monetary penalties and assessments.
6. Werner agrees to hold any and all programs administered by the Department, and all recipients and/or beneficiaries, harmless from any financial responsibility for goods or services furnished, ordered, or prescribed to such beneficiaries or sponsors by Werner during the period of the Suspension.
7. Werner agrees to not operate, have or acquire any ownership interest in, share in the profits of, receive any payments from, or loan any money to, any person or entity that applies for reimbursement for goods or services from any program administered by the Department during the Suspension. Werner shall not apply directly or indirectly for reimbursement for goods or services from any program administered by the Department during the Suspension. Werner shall not be employed by any person or entity that obtains reimbursement from any program administered by the Department for services performed by Werner during the Suspension, nor shall Werner receive compensation as an agent or contractor from any such entity or person for services performed by Werner during the Suspension.
8. Werner waives and shall not assert any defenses to this Suspension.

9. Werner waives any further notice of this Suspension and agrees not to contest the Suspension, under Connecticut General Statutes §17b-99 and Regulations of Connecticut State Agencies §§17-83k-1 through 17-83k-7, inclusive, either administratively or in any state or federal court.
10. Any notice necessary under the Consent Order shall be in writing and delivered by facsimile or certified mail return receipt requested. Such notice shall be effective upon receipt. Notice shall be addressed to the Department as follows:

John F. McCormick, Director
Office of Quality Assurance
Department of Social Services
55 Farmington Avenue
Hartford, CT 06105

and

Michael E. Cole, Assistant Attorney General
Antitrust & Government Program Fraud Department
Office of the Attorney General
P.O. Box 120
55 Elm Street
Hartford, CT 06141-0120.

Notice shall be addressed to Werner as follows:

William E. McCoy, Esq.
Heller, Heller & McCoy
736 Norwich-New London Turnpike
Uncasville, CT 06382

11. Werner admits all jurisdiction of the Commissioner to issue the Consent Order. Werner understands the Suspension Agreement shall have no force or effect, nor shall it become a part of the official record, unless or until it is accepted in writing by the Commissioner. Upon written acceptance by the Commissioner, the Consent Order shall become final without further notice to Werner, and shall relieve the Commissioner from all

responsibility to render a final decision regarding the suspension under Connecticut General Statutes §17b-99 and Regulations of Connecticut State Agencies §§17-83k-1 through 17-83k-7, inclusive. The Consent Order shall have the same force and effect of law as an Order entered into as a final decision after a full hearing with Findings of Fact and Conclusions of Law. The Consent Order shall be enforceable by the Department in the same manner in which a final decision by the Commissioner is enforceable. The Consent Order shall be governed by the laws of the State of Connecticut. Werner agrees that exclusive jurisdiction and venue for any dispute arising under the Consent Order shall be the Superior Court for the Judicial District of Hartford, Connecticut.

12. Werner fully and finally releases the Department, the State of Connecticut, and their respective agencies, officers, agents, employees, attorneys, and servants, from any legal claims (including attorney's fees, costs, and expenses of every kind and however denominated) that Werner has asserted, could have asserted, or may assert in the future against the Department, the State of Connecticut, and their respective agencies, officers, agents, employees, attorneys, and servants, concerning the Covered Conduct and the investigation and prosecution thereof.
13. Except as explicitly stated, this Suspension Agreement shall not create or extinguish any of the Parties' rights or obligations. This Suspension Agreement and Consent Order has no bearing on any criminal, civil, or federal administrative liability that Werner may have. This Suspension Agreement shall have no precedential effect whatsoever adverse to the Parties, and is based upon the unique circumstances surrounding this case. This Suspension Agreement constitutes the complete agreement between the Parties. This Suspension Agreement may not be amended except by written consent of the Parties. By

their signature below, each signatory warrants that they have full power and authority to enter into this Suspension Agreement on behalf of the Parties for which they sign, and that the signatory has been properly authorized and empowered to enter into this Suspension Agreement. The Parties consent to the disclosure of this Suspension Agreement to the public.

14. Should any part of this Suspension Agreement be rendered or declared invalid by a court of the State of Connecticut, such invalidation of such part or portion of this Suspension Agreement shall not invalidate the remaining portions thereof, and they shall remain in full force and effect.
15. Werner has read this Suspension Agreement, understands it, and agrees to be bound by it. Werner is knowingly and voluntarily signing this Suspension Agreement, and consenting to being excluded and suspended from providing goods or services or otherwise participating in the CMAP, the Connecticut Medicaid Program, and/or any and all other programs administered by the Department for a period of two (2) years, effective upon execution of this Suspension Agreement.

WITNESS

[Handwritten Signature]

Arlene Werner, PhD

Arlene B. Werner, PhD

William F. McLaughlin
PRINT NAME

Arlene B. Werner, PhD
PRINT NAME

Acknowledged before me on the 22nd day of July, 2018.

[Handwritten Signature]
Commissioner of the Superior Court/
Notary Public
My commission expires on: William F. McLaughlin

STATE OF CONNECTICUT
DEPARTMENT OF SOCIAL SERVICES

Date

6/11/18

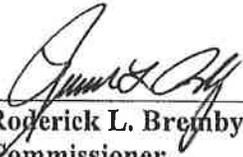
[Handwritten Signature]
John F. McCormick, Director
Office of Quality Assurance
Department of Social Services

CONSENT ORDER

The provisions of the Suspension Agreement between Arlene Werner, PhD and the State of Connecticut Department of Social Services, set forth in paragraphs A through G, and paragraphs 1 through 15, above, are hereby incorporated by reference and accepted as an order of the State of Connecticut Department of Social Services.

Accepted and approved and Consent Order entered by the Commissioner on the

13 day of June, 2018.



Roderick L. Bremby
Commissioner
Department of Social Services