

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”); (the “United States”), the State of Connecticut, acting through the Attorney General of the State of Connecticut (the “State of Connecticut”), Robert Sorrentino, DDS (“Sorrentino”) and Oral and Maxillofacial Surgical Associates P.C. (“OMSA”) (hereafter collectively referred to as “the Parties”), through their authorized representatives.

RECITALS

- A. Robert Sorrentino, DDS is the former owner and operator of Oral and Maxillofacial Surgical Associates P.C., a dental practice in New Haven, Connecticut. Sorrentino sold his practice and retired in November 2014. Sorrentino 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 Sorrentino and OMSA 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 Sorrentino and OMSA arising from Sorrentino and OMSA’s improper billing of oral surgery and maxillofacial services to Medicaid in violation of both the federal and State of Connecticut false claims acts during the period from January 1, 2010 through December 31, 2011. Sorrentino and OMSA submitted claims for services under American Dental Association Procedure code D9221 (each additional 15 minutes deep sedation/general anesthesia) that were

not provided. Sorrentino and OMSA also submitted claims for services under codes D7320 (removal of bone, not in conjunction with extraction) and D7970 (removal of tissue, not in conjunction with extraction) that were not performed or were encompassed in services covered under claims for extractions Sorrentino and OMSA submitted for the same date of service. Sorrentino and OMSA also submitted claims for D7485 (surgical reduction of osseous tuberosity) that were not performed or were medically unnecessary. That conduct is referred to below as the "Covered Conduct."

D. This Settlement Agreement is neither an admission of liability by Sorrentino and OMSA 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. Sorrentino and OMSA shall pay to the United States and the State of Connecticut two hundred fifty-two thousand, nine hundred thirteen dollars and twenty-six cents (\$252,913.26) ("Settlement Amount"), of which one hundred twenty-six thousand four hundred fifty-six dollars and sixty-three cents (\$126,456.63) is restitution, no later than five (5) 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 Connecticut.

2. Subject to the exceptions in Paragraph 4 (concerning excluded claims) below, and conditioned upon Sorrentino's and OMSA's full payment of the Settlement Amount, the United States releases Sorrentino and OMSA 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 Sorrentino's and OMSA's full payment of the Settlement Amount, subject to the exceptions in Paragraph 4 (concerning excluded claims) below, the State of Connecticut releases Sorrentino and OMSA 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. Notwithstanding the releases given in paragraphs 2 and 3 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. Except as explicitly stated in this Settlement Agreement, any administrative liability to the DSS, including suspension from CMAP;
- c. Any criminal liability;
- d. Except as explicitly stated in this Agreement, any administrative liability, including mandatory or permissive exclusion from Federal health care programs;
- 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 Agreement;

5. VOLUNTARY SUSPENSION

a. In compromise and settlement of the rights of the DSS to suspend Sorrentino and OMSA pursuant to Regs. Conn. State Agencies §§17-83k-1 through 17-83k-7, based upon the Covered Conduct, Sorrentino and OMSA agree to enter into a Suspension Agreement with the DSS (attached hereto as Exhibit A), thereby suspending them from providing goods or services to the Connecticut Medicaid program, and all other Connecticut health care programs for a period of 5 years. The suspension shall be effective upon the execution of the Consent Order by the DSS Commissioner.

b. The 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 Sorrentino or OMSA in any capacity while Sorrentino and OMSA are suspended. This payment prohibition applies to Sorrentino, OMSA and all other individuals and entities (including, for example, anyone who employs or contracts with Sorrentino or OMSA, and any hospital or other provider where Sorrentino or OMSA provide 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. Sorrentino and OMSA further agree 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. Sorrentino and OMSA waive 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 Sorrentino or OMSA wish to be reinstated, Sorrentino and OMSA 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 5-year period of suspension. Reinstatement becomes effective upon application by Sorrentino and OMSA, 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 Sorrentino's or OMSA's eligibility to participate in the Connecticut Medicaid program or any other Connecticut health care programs.

6. Sorrentino and OMSA waive and shall not assert any defenses Sorrentino or OMSA 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.

7. Sorrentino and OMSA fully and finally release the United States, the State of Connecticut, and 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 Sorrentino or OMSA have 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.

8. 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 Sorrentino and OMSA agree 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.

9. Sorrentino and OMSA 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 Sorrentino and OMSA, their present or former officers, directors, employees, shareholders, and agents in connection with:

- (1) the matters covered by this Agreement;
- (2) the United States' and the State of Connecticut's audit(s) and civil investigation(s) of the matters covered by this Agreement;
- (3) Sorrentino's and OMSA'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 Agreement (including attorney's fees);
- (4) the negotiation and performance of this Agreement; and
- (5) the payment Sorrentino or OMSA make to the United States and the State of Connecticut 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 Sorrentino and OMSA, and Sorrentino and OMSA 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 Sorrentino, OMSA or any of their affiliates to the Medicare, Medicaid, TRICARE, or FEHBP Programs.

c. Treatment of Unallowable Costs Previously Submitted for Payment: Sorrentino and OMSA further agree that within 90 days of the Effective Date of this Agreement he 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 Sorrentino or OMSA or any of their 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. Sorrentino and OMSA agree that the United States and the State of Connecticut, at a minimum, shall be entitled to recoup from Sorrentino or OMSA 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 Sorrentino, OMSA or any of their affiliates on the

effect of inclusion of Unallowable Costs (as defined in this Paragraph) on Sorrentino, OMSA or any of their affiliates' cost reports, cost statements, or information reports.

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

10. 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 11 (waiver for beneficiaries paragraph), below.

11. Sorrentino and OMSA 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.

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

13. 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.

14. 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 Connecticut, except disputes only between the State of Connecticut and Sorrentino or OMSA will be resolved in Superior Court for the Judicial District of Hartford, 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.

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

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

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

18. This Agreement is binding on Sorrentino's and OMSA's successors, transferees, heirs, and assigns.

19. 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.

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

THE UNITED STATES OF AMERICA

DATED: 3-21-19

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

DATED: 4/4/19

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: 3/26/19

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

WILLIAM TONG
ATTORNEY GENERAL

DATED: 3/19/19

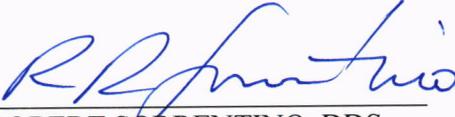
BY: 
MICHAEL E. COLE
Assistant Attorney General
Chief, Antitrust & Government Program Fraud Department

DATED: 3/19/2019

BY: 
ROBERT B. TEITELMAN
Assistant Attorney General

ROBERT SORRENTINO

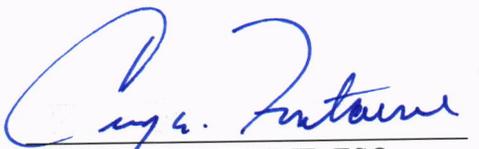
DATED: 3/8/19

BY: 
ROBERT SORRENTINO, DDS

DATED: 3/8/19

BY: 
RICHARD T. MEEHAN, JR., ESQ.
MEEHANLAW, LLC
Counsel for Sorrentino

DATED: 3/12/19

BY: 
CRAIG A. FONTAINE, ESQ.
FONTAINE ALISSI P.C.
Counsel for Sorrentino

ORAL AND MAXILLOFACIAL SURIGAL ASSOCIATES P.C.

DATED: 3/8/19

BY: 
ROBERT SORRENTINO, DDS
Owner of Oral and Maxillofacial Surgical Associates P.C.

DATED: 3/8/19

BY: 
RICHARD T. MEEHAN, JR., ESQ.
MEEHANLAW, LLC
Counsel for Oral and Maxillofacial Surgical Associates P.C.

DATED: 3/12/19

BY: 
CRAIG A. FONTAINE, ESQ.
FONTAINE ALISSI P.C.
Counsel for Oral and Maxillofacial Surgical Associates P.C.