

STATE SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement ("Agreement") is entered into this _____ day of _____, 2003. The parties to the Agreement are the state of Michigan and Abbott Laboratories ("Abbott") on behalf of its Ross Products Division ("Ross") (hereinafter jointly referred to as "the Parties")

PREAMBLE

A. WHEREAS, Abbott is entering into a civil settlement agreement with the United States of America, acting through and/or on behalf of its Department of Justice and the United States Attorney's Office for the Southern District of Illinois, and the Office of Inspector General of the United States Department of Health and Human Services ("HHS-OIG"), as well as settlement agreements with the state of Michigan and numerous other states, all of which are intended to resolve civil claims for the conduct alleged in Paragraph F below;

B. WHEREAS, this Agreement addresses the state of Michigan's claims against Abbott for the conduct alleged in Preamble Paragraph F below.

C. WHEREAS, on such date as the Court may set in United States of America v. C.G. Nutritionals, Inc., Criminal Action No. [to be assigned] (Southern District of Illinois)(the "Criminal Action"), Abbott's subsidiary C.G. Nutritionals, Inc. (hereinafter "Subsidiary") has agreed to enter a plea of guilty pursuant to Fed. R. Crim. P. 11(c)(1)(C) to a one count Information alleging a violation of Title 18, United States Code, Section 1518, namely, Obstruction of a Criminal Investigation of Health Care Offenses.

D. WHEREAS, Ross is a division of Abbott that manufactures, markets and distributes enteral nutrition products, including enteral nutrition infusion pumps, enteral feeding

supply kits (pump sets), enteral nutrition formulas, as well as related administration supplies and equipment

E. WHEREAS, the state of Michigan contends that claims for payment for Ross enteral nutrition products were submitted to the state's Medical Assistance Program ("Medicaid") established pursuant to Title XIX of the Social Security Act.

F. WHEREAS, the state of Michigan contends that it has Medicaid-related civil claims, including both direct Medicaid and so-called cross-over claims, against Abbott under various statutes and the common law and for causing false claims to be submitted to its Medicaid program under HCPCS codes B9000, B9002, and B4035, for the following alleged conduct from January 1992 through the present involving the marketing, leasing, sale and reimbursement of enteral nutrition products:

1. Ross marketed the enteral nutrition infusion pumps using a document called the Ross Pump Set Purchase Agreement or "Always Lease." Pursuant to the terms of the Always Lease, Ross agreed to provide the enteral nutrition infusion pumps to suppliers at no additional charge in exchange for the suppliers' agreement to buy a predetermined amount of pump sets.

2. At various times, certain Ross employees told suppliers and providers that they could bill Medicaid for the pump sets, as well as for the enteral nutrition infusion pump. Ross, along with others, counseled Durable Medical Equipment ("DME") suppliers and nursing homes to submit claims to the Medicaid program for enteral pumps and pump sets. Ross sold providers a "bundled" pump and plastic pump sets as one product at one price, but then advised providers that Medicaid allowed separate reimbursement for the pumps and pump sets. Providers then received two payments from Medicaid, once through the reimbursement for the pump sets and again through a separate charge for the pump itself. The structure of the bundled transaction made it difficult for

the Medicaid program and other healthcare agencies and regulators to discern the true and reasonable charges associated with the equipment.

3. Ross and others offered up-front payments, monetary incentives, and discounts to certain customers who entered into written contracts with Ross as an incentive to encourage their purchase of DME from Ross for ultimate use by Medicaid beneficiaries. Ross called these payments, among other names, signing bonuses, conversion fees, standardization fees, or education grants.

4. Certain suppliers, providers and others to whom Ross would provide enteral nutrition infusion pumps submitted claims to Medicaid for the pumps as well as the pump sets, and Medicaid paid for the pumps and pump sets that Ross had provided under the Always Lease.

5. The state of Michigan alleges that it suffered a loss as a result of Ross customers submitting fraudulent claims to its Medicaid programs for reimbursement for enteral products and by causing the Medicaid program to pay for enteral nutrition infusion pumps that were provided at no additional charge to Ross customers under HCPCS codes B9000, B9002, and B4035.

The conduct alleged in this Preamble Paragraph F is hereinafter referred to as the "Covered Conduct."

G. WHEREAS, the state of Michigan contends that it has administrative and civil claims against Abbott for administrative and monetary penalties under state and federal law for the Covered Conduct.

H. WHEREAS, except to the extent admitted in an Information, Plea Agreement and Stipulation of Facts entered in the Criminal Action, Abbott, Ross and CG Nutritionals, Inc. deny

the allegations of the state of Michigan, deny that they have any liability to the state of Michigan, and deny the remaining allegations of the state of Michigan set forth herein.

I. WHEREAS, to avoid the delay, expense, inconvenience and uncertainty of protracted litigation of these claims, the Parties mutually desire to reach a full and final compromise of the civil and administrative Medicaid-related claims the state of Michigan has against Abbott.

TERMS AND CONDITIONS

NOW, THEREFORE, in reliance on the representations contained herein and in consideration of the mutual promises, covenants, and obligations in this Agreement, and for good and valuable consideration, receipt of which is hereby acknowledged, the Parties agree as follows:

1. Abbott has agreed to pay Three Hundred Eighty Two Million Four Hundred Eight Thousand and Eighty-Seven Dollars (\$382,408,087) (the "Federal Settlement Amount") to the United States pursuant to a civil settlement agreement. Payment of that amount shall be made pursuant to the terms of the federal settlement agreement.

2. Abbott shall pay the Participating State Medicaid programs the sum of Thirty Two Million Forty Six Thousand Six Hundred Sixty Two Dollars (\$32,046,662), (the "State Settlement Amount"), which represents the state funded portion of the claims settled for the Covered Conduct for the Medicaid programs of all 50 states and the District of Columbia (the "Participating States"). This State Settlement Amount shall be paid to an escrow account pursuant to this Agreement no later than seven business days after Abbott receives written payment instructions from the state negotiating team (consisting of the Directors of the Missouri

and Ohio Medicaid Fraud Control Units and the Bureau Chief of the Medicaid Fraud Bureau of the Illinois Attorney General's Office) for the Participating States following the latest date on which the following occurs: (1) the Federal Civil Settlement Agreement is fully executed by the Parties and delivered to Abbott's attorneys, or (2) the Court accepts the Fed. R. Crim. P. 11(c)(1)(C) guilty plea in connection with the Criminal Action as described in the Preamble and imposes sentence, or (3) the State Settlement Agreement and Release is executed by or on behalf of the Participating States and Abbott, or as otherwise agreed by the state negotiating team and Abbott.

3. The total portion of the settlement amount paid by Abbott in settlement for alleged injury to the Medicaid Program for the state of Michigan is \$1,254,587.01, consisting of a portion paid to the state of Michigan under this Agreement and another portion paid to the federal government as part of the Federal Settlement Amount. The individual portion of the State Settlement Amount allocable to the state of Michigan, and which may be withdrawn by the state of Michigan from escrow pursuant to this Agreement, is \$829,669.69 (the "Individual State Settlement Amount"). The portion of the Federal Settlement Amount allocable to the state of Michigan is \$424,917.33.

4. If Subsidiary's agreed upon guilty plea pursuant to Fed. R. Crim. P. 11(c)(1)(C) in the Criminal Action described in Preamble Paragraph C is not accepted by the Court or the Court does not impose the agreed upon fine and sentence for whatever reason, this Agreement shall be null and void at the option of either the state of Michigan or Abbott. If either the state of Michigan or Abbott exercises this option, which option shall be exercised by notifying all Parties, through counsel, in writing within four business days of the Court's decision, the Parties will not object and this Agreement will be rescinded. If this Agreement is rescinded, Abbott

waives any affirmative defense based in whole or in part on the statute of limitations for the 30 day period after rescission of this Agreement.

5. In consideration of this Agreement and payment set forth herein and subject to the exceptions from release set forth in Paragraph 6 below, the state of Michigan on behalf of itself, its officers, agents, agencies and departments shall release and forever discharge Abbott, its predecessors, subsidiaries, divisions, and their corporate parents and affiliates, successors and assigns, and their current and former directors, officers, and employees from any civil or administrative claims for damages or penalties that the state of Michigan has or may have relating to the Covered Conduct. The payment of the Settlement Amount fully discharges Abbott from any obligation to pay Medicaid-related restitution, damages, and/or any fine or penalty to the State for the Covered Conduct.

6. Notwithstanding any term of this Agreement, the state of Michigan specifically does not herein release Abbott, its predecessors, subsidiaries, divisions, and their corporate parents and affiliates, successors and assigns, and their current and former directors, officers, and employees from any and all of the following: (a) any potential criminal, civil or administrative claims arising under state of Michigan revenue codes; (b) any criminal liability not specifically released by this Agreement; (c) any potential liability to the state of Michigan (or any agencies thereof) for any conduct other than the Covered Conduct; (d) any claims based upon obligations created by this Agreement; (e) except as explicitly stated in this Agreement, any administrative liability, including mandatory exclusion from Federal health care programs; (f) any express or implied warranty claims or other claims for defective or deficient products and services provided by Abbott; (g) any claims for personal physical injury or property damage or for other consequential damages arising from the Covered Conduct; (i) any claim based on a failure to

deliver items or services due; or (j) any civil or administrative claims against individuals, including current and former directors, officers, and employees of Abbott, its predecessors, subsidiaries, joint venture owners, and their corporate affiliates, who have, prior to the effective date of this Agreement, received written notification that they are the target of a criminal investigation related to the Covered Conduct.

7. In consideration of the obligations of Abbott set forth in this Agreement, conditioned upon Abbott's payment in full of the State Settlement Amount and except as reserved in paragraph 6 above, the state of Michigan agrees to release and refrain from instituting, directing or maintaining any administrative claim or any action seeking exclusion from the state of Michigan's Medicaid program against Abbott, its predecessors, subsidiaries, divisions, their corporate parents and affiliates, successors and assigns, for the Covered Conduct or for Subsidiary's conviction in the Criminal Action. Nothing in this Agreement precludes the state of Michigan from taking action against Abbott in the event that Abbott is excluded by the federal government, or for conduct and practices other than the Covered Conduct or the conviction in the Criminal Action. The Medicaid Fraud Control Unit for the state of Michigan further agrees to refrain from recommending, causing or attempting to cause any administrative action or sanction, including suspension or debarment, by any other government agency of the state of Michigan for the Covered Conduct or for the Subsidiary's conviction in the Criminal Action.

8. This Agreement is expressly conditioned upon resolution of the Criminal Action. In consideration of the Criminal Action, the state of Michigan agrees that it shall not investigate, prosecute, or refer for prosecution or investigation to any agency, Abbott, its predecessors,

subsidiaries, divisions, and their corporate parents and affiliates, successors and assigns for the Covered Conduct.

9. Abbott fully and finally releases the state of Michigan, its agencies, employees, servants, and agents from any claims (including attorneys fees, costs, and expenses of every kind and however denominated) which Abbott has asserted, could have asserted, or may assert in the future against the state of Michigan, its agencies, employees, servants, and agents, related to or arising from the investigation and prosecution of the Covered Conduct up to the effective date of this Settlement Agreement.

10. Abbott waives and will not assert any defenses it may have to any criminal prosecution or administrative action relating to the Covered Conduct which defenses may be based in whole or in part on a contention that, under the Double Jeopardy Clause of the Fifth Amendment of the Constitution or Excessive Fines Clause of the Eighth Amendment of the Constitution, this Settlement Agreement bars a remedy sought in such criminal prosecution or administrative action. Provided, however, that nothing in this paragraph is intended to, or will operate to, limit the scope of Paragraph 8. Abbott agrees that this Agreement is not punitive in purpose or effect.

11. The Federal and State Settlement Amounts that Abbott must pay pursuant to Paragraph 1 and 2 above will not be decreased as a result of the denial of claims for payment now being withheld from payment by the state of Michigan's Medicaid program where such denial resulted from the Covered Conduct. If applicable, Abbott agrees not to resubmit to the program any previously denied claims where such denial resulted from the Covered Conduct and agrees not to appeal any such denials of claims.

12. Abbott expressly warrants that it has reviewed its financial situation and that it currently is solvent within the meaning of 11 U.S.C. Section 547(b)(3) and will remain solvent following its payment to the state of Michigan hereunder. Further, the Parties expressly warrant that, in evaluating whether to execute this agreement, the Parties (1) have intended that the mutual promises, covenants and obligations set forth herein constitute a contemporaneous exchange for new value given by Abbott, within the meaning of 11 U.S.C. Section 547(c)(1), and (2) have concluded that these mutual promises, covenants, obligations do, in fact, constitute such a contemporaneous exchange.

13. In addition to all other payments and responsibilities under this agreement, Abbott agrees to pay all reasonable travel costs and expenses (including distribution costs) of the state negotiating team. Abbott will pay this amount by separate check or wire transfer made payable to the National Association of Medicaid Fraud Control Units after all Participating States execute this Agreement or as otherwise agreed upon by the state negotiating team and Abbott.

14. Abbott has entered into a Corporate Integrity Agreement ("CIA") with HHS-OIG. Abbott acknowledges that the state of Michigan may gain access to and use information provided by Abbott under the CIA. The state of Michigan hereby agrees to abide by all confidentiality provisions and restrictions contained in the CIA and to afford such information the maximum degree of confidentiality permitted by law.

15. This Agreement is intended to be for the benefit of the Parties only, and by this instrument the Parties hereto do not intend to create a benefit for any other party or entity, and do not waive, compromise, or release their claims or causes of action against any other person or entity.

16. Nothing in any provision of this Agreement constitutes an agreement by the state of Michigan concerning the characterization of the Settlement Amount for purposes of the state internal revenue laws or the United States Internal Revenue Code.

17. Abbott covenants to cooperate fully and truthfully with the state of Michigan in any ongoing investigation or investigation commenced within five years of the execution of this Agreement of individuals and entities not specifically released by this Agreement (including any parties with whom Abbott has or has had a business or professional relationship, including but not limited to vendors, contractors, partners, joint venturers, physicians, and referral sources) relating to the Covered Conduct. More specifically, upon reasonable request from the state of Michigan:

A. Abbott will make reasonable efforts to facilitate access to, and encourage the cooperation of, its current and former directors, officers, and employees for interviews and testimony relating to the Covered Conduct, consistent with the rights and privileges of such individuals. To encourage the cooperation of such individuals, Abbott agrees to advise such individuals in writing that the state of Michigan wishes to interview them or seek their testimony, and that the individuals' cooperation is in the best interest of Abbott. Cooperation provided pursuant to this subparagraph will include identification of witnesses who, to Abbott's knowledge, may have material information related to the state of Michigan's inquiry. The testimony referred to in this paragraph includes, but is not limited to, testimony deemed necessary by the state of Michigan or a court to identify or establish the source, original location, authenticity, or other evidentiary foundation for any documents and to authenticate such documents in any criminal, civil and administrative investigations and proceedings in which the state of Michigan is involved.

B. Upon written request, Abbott will provide copies of non-privileged documents and records in its possession, custody or control relating to the Covered Conduct and relating to the subject of the state of Michigan's inquiry. In connection with this, Abbott shall provide such technical assistance as is necessary and reasonable to facilitate the state of Michigan's access to any computerized information covered by this paragraph.

18. Nothing in this agreement shall be construed as a waiver by Abbott of its attorney-client privilege or work product privilege.

19. Notwithstanding any provision of this Agreement, Abbott is not required to (1) request of its present or former officers, directors, employees or agents that they forego seeking the advice of an attorney nor that they act contrary to that advice; (2) take any action against its directors, employees or agents for following their attorney's advice or for failing to submit to an interview or otherwise cooperate with the state of Michigan; or (3) waive any privilege or claim of work product. The failure of any individual to submit to an interview or otherwise to refuse to cooperate with the state of Michigan shall not constitute a breach of this agreement by Abbott.

20. The state of Michigan acknowledges Abbott's cooperation in the state of Michigan's investigation of the marketing, leasing, sale and reimbursement of enteral nutrition products and agrees to communicate the nature and extent of this cooperation to other parties upon the request of Abbott. The making of this Agreement, and Abbott's provision of information pursuant to it, shall not be construed by the state of Michigan as a basis for the exclusion of any of Abbott's products from the state of Michigan's formulary.

21. Abbott represents that this Agreement is freely and voluntarily entered into without any degree of duress or compulsion whatsoever.

22. Concurrent with the execution of this Agreement and payment of the Settlement Amount, the state of Michigan agrees to dismiss with prejudice any lawsuit against Abbott, Ross, or Subsidiary, including any *qui tam* or "whistleblower" lawsuit currently pending against Abbott, Ross or Subsidiary in the courts of the state of Michigan, relating to the Covered Conduct.

23. This Agreement is governed by the laws of the state of Michigan.

24. Unless otherwise stated in writing subsequent to the execution of this Agreement, all notifications and communications made pursuant to this Agreement shall be submitted to the entities listed below:

state of Michigan
MFCU of Michigan
Office of the Attorney General
6520 Mercantile Way
Lansing, MI 48913

Abbott Laboratories
Office of the General Counsel
Department 364, Bldg AP6D
100 Abbott Park Road
Abbott Park, IL 60064

25. The undersigned Abbott signatory represents and warrants authorization by the Board of Directors to execute this Agreement. The undersigned state of Michigan signatories represent that they are signing this Agreement in their official capacities and they are authorized to execute this Agreement on behalf of the state of Michigan through their respective agencies and departments.

26. This Agreement is effective on the date of signature of the last signatory to the Agreement, or the date on which the state settlement amount is paid into an escrow account pursuant to Paragraph 2 of the Agreement, whichever date is later.

27. This Agreement shall be binding on all successors, transferees, heirs and assigns of the Parties.

28. This Agreement constitutes the complete agreement between the Parties with regard to the Covered Conduct. This Agreement may not be amended except by written consent of the Parties.

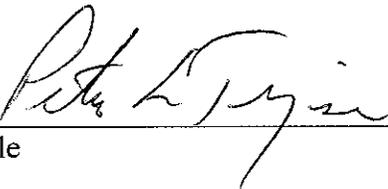
29. Each party agrees to perform any further acts and to execute and deliver any further documents reasonably necessary to carry out this Agreement. This Agreement may be executed in counterparts, each of which shall constitute an original and all of which shall constitute one and the same Agreement.

FOR THE STATE OF MICHIGAN
ATTORNEY GENERAL

By: 
Director, Medicaid Fraud Control Unit

Dated: 6/5/03

FOR THE MICHIGAN MEDICAID PROGRAM

By: 
Title

Dated: 6-4-03

ABBOTT LABORATORIES

By: 

Dated: 10/9/2003

By: 

Dated: 10/6/03

Dan K. Webb
Winston & Strawn
35 West Wacker Drive
Chicago, IL 60601
Counsel to Abbott Laboratories