

## Settlement Agreement

### I. Parties

This Settlement Agreement and Release ("Agreement") is entered into between the State of Michigan, acting through the Department of Attorney General's Health Care Fraud Division (referred to as the "State"), David Fireberg, DDS, Fireberg Family Dental, PLLC (collectively referred to as "Fireberg") and Great Lakes Family Dental, PC ("Great Lakes") through its principal, C. Patrick Gray, DDS, all collectively referred to as the "Parties."

### II. Preamble

As a preamble to this Agreement, the State alleges the following:

A. That David Fireberg, DDS provided health care services as an employee of Great Lakes at Great Lakes' office located at 2811 East Court Street, Flint, Michigan. That David Fireberg, DDS provided dental services to Medicaid recipients and Great Lakes billed those services to Medicaid in violation of established guidelines (hereafter referred to as the "Covered Conduct").

B. That Great Lakes owned and operated a Michigan corporation at all times relevant to this Settlement Agreement, located at 2811 East Court Street, Flint Michigan. That Great Lakes employed Dr Fireberg and Great Lakes employees allegedly submitted improper claims to the Medicaid program for dental services provided by Dr. Fireberg (i.e , the "Covered Conduct").

C. That the claims which these allegations are based upon arose between calendar year January 1997 through December 31, 2001 (hereafter referred to as the "Time Period")

D. That the State, in reliance on the alleged fraudulent claims, false statements, misrepresentations of material fact, knowing concealment of material facts and fraud through the Medicaid Program, paid the claims submitted by or on behalf of Great Lakes.

E. Great Lakes received money from Medicaid based upon services performed by Dr. Fireberg which it did not properly earn and, without the knowledge that it was not entitled to such money, used it for their own purposes in violation of MCL 400.601, *et seq*

F. That Great Lakes has pled *nolo contendere* to one count of attempting to violate the Medicaid False Claims Act.

G. The State Medicaid Program audited claims (hereafter referred to as the Medicaid Audit) submitted by Great Lakes for dental services provided by Dr. Fireberg relating to the covered conduct for the Time Period and as of the date of this Agreement, Dr. Fireberg has paid ~~\$75,000.00~~ <sup># \$0,000.00 AR</sup> into an escrow account held by the State Medicaid Program pending a final resolution of all the State's claims relating to the covered conduct for the Time Period

H. In order to avoid the delay, uncertainty, inconvenience and expense of protracted civil and/or administrative litigation of these claims, the Parties have reached a full and final settlement as set forth below. Execution of this Settlement Agreement and payment of monies shall be construed as a comprehensive resolution of the issues between the Parties. By way of illustration and not limitation, execution of this Settlement Agreement is in full satisfaction of any claims or demands for refunds that potentially could have been asserted by the State Medicaid Program as outlined in the preamble to this agreement.

### III. Terms and Conditions

Now, therefore, in consideration of the mutual promises, covenants, and obligations set forth below and for good and valuable consideration, the Parties agree as follows:

A. The Parties agree to settle this civil dispute and pending Medicaid Audit for \$140,000.00 in full satisfaction of all claims and all amounts alleged, and all claims and all amounts which could have been alleged, by the State against Fireberg and Great Lakes to be due and owing with respect to the covered conduct which occurred between January 1997 and December 31, 2001. The Parties agree that the execution of this Settlement Agreement and payment of the settlement amount shall be construed as a compromise of all disputed claims, including but not limited to the Medicaid Audit, relating to the covered conduct for the time period and not as an admission of liability or wrong doing as Dr Fireberg and Great Lakes expressly deny any wrong doing or liability to the State for any claims relating to the covered conduct for the time period. Further, the State represents that it neither has commenced, nor does it intend to commence any investigation, audit or proceeding relating to any conduct of Dr. Fireberg or Great Lakes (other than the covered conduct addressed through this Agreement).

B. That Fireberg has agreed to pay the sum of \$100,000.00 to the State

1. Fireberg is to be credited in the amount of <sup>\$0,000.00 M/</sup> ~~\$25,000.00~~ for payments that were made prior to the execution of this Agreement
2. Fireberg is to pay \$2,500.00 monthly until the remaining debt of \$25,000.00 is paid. No interest shall accrue on such principal.

C. Great Lakes agrees to pay the sum of \$40,000 00 with such payments to commence as of October 1, 2005. No interest shall accrue on such principal.

1. Great Lakes will make an initial payment of \$10,000.00 which will be due and owing as of October 1, 2005.
2. Great Lakes will make a payment of \$1,250.00 per month commencing November 1, 2005 and continuing monthly until September 1, 2007.

D. The State agrees to release Great Lakes and Fireberg and their officers, directors, shareholders, employees, affiliates, successors and assigns from any civil or administrative claim the State has or may have under the Medicaid False Claims Act, MCL 400.601 *et seq.*, or under common law theories of breach of contract, unjust enrichment, or fraud or any other civil statute through common law theories for the covered conduct and time period set forth in II.A - G of this Agreement.

E. The Parties agree that, if payment of any check or down payment of the settlement amount is not honored at the time of presentment at the bank on which it is drawn, or is otherwise found to be unpayable, this Agreement may be null and void at the option of the State who may at its option pursue other legal and/or administrative remedies

F. Notwithstanding any terms of this Agreement, specifically reserved and excluded from the scope and terms of this Agreement as to any entity or person are all of the following:

1. Any liability to the State (or its agencies) for any conduct other than the covered conduct as described in Paragraphs II A-G of this Agreement (subject to the final sentence of paragraph III. A);
2. Any criminal liability other than that arising directly or indirectly from the covered conduct described in Paragraphs II. A-G of this Agreement (subject to the final sentence of Paragraph III A); and
3. Any administrative action for any conduct, other than that arising directly or indirectly from the Covered Conduct for the Time Period described in Paragraphs II. A-G of this Agreement (other than recovery of the above monies) by any State or Federal agency as a result of entering into this Agreement or the results of any other legal action (subject to the final sentence of paragraph III. A).

G. Fireberg fully releases the State, its agencies, employees, servants and agents from any claims (including attorneys' fees, costs, and expenses of every kind and however denominated), that Fireberg asserted, could have asserted, or may assert in the future against the State, its agencies, employees, servants, and agents, related to the Covered Conduct as described in Paragraph II. A-G of this Agreement and the State's investigation and prosecution thereof.

H. Great Lakes fully releases the State, its agencies, employees, servants and agents from any claims (including attorneys' fees, costs and expenses of every kind and however denominated) that Great Lakes asserted, could have asserted, or may assert in the future against the State, its agencies, employees, servants, and agents, related to the Covered Conduct as described in Paragraphs II. A-G of this Agreement and the State's investigation and prosecution thereof.

I. This Agreement is intended to be for the benefit of the Parties only and by this instrument the Parties do not release any claims against any other person or entity.

J. Fireberg expressly warrants that it has reviewed its financial situation and that it is currently solvent and expressly warrants that it can satisfy the financial obligations required under this Agreement.

K. Great Lakes expressly warrants that it has reviewed its financial situation and that it is currently solvent and expressly warrants that it can satisfy the financial obligations required under this Agreement.

L. The effective date of the Agreement shall be when the final signatory signs the Agreement.

M. In the event that Great Lakes commences or a third party commences, before the obligations under this Agreement are satisfied, any case, proceeding or other action (a) under any

law relating to bankruptcy, insolvency, reorganization or relief of debtors, seeking to have any order for relief of Great Lakes debts, or (b), seeking appointment of a receiver, trustee, custodian or similar official for Great Lakes, Great Lakes agrees as follows:

1. C. Patrick Gray, DDS, shall not be responsible for any debt remaining as a result of the failure or inability of Great Lakes to make full payment under the terms of this Agreement;

2. Great Lakes' obligations under this Agreement may not be avoided pursuant to 11 USC § 547 and Great Lakes will not argue or otherwise take the position in any such case, proceeding or action that:

a. Great Lakes' obligations under this Agreement may be avoided under 11 USC § 547;

b. Great Lakes was insolvent at the time this Agreement was entered into, or became insolvent as a result of the payment made to the State hereunder; or

c. The mutual promises, covenants and obligations set forth in this Agreement do not constitute a contemporaneous exchange for new value given to Great Lakes.

3. In the event that Great Lakes' obligations under this Agreement are avoided for any reason, including but not limited to, the exercise of a trustee's avoidance powers under the Bankruptcy Code, the State of Michigan, at its sole option, may rescind the releases in this Agreement, and bring any civil and/or administrative claim, action or proceeding against Great Lakes. If the State chooses to do so Great Lakes agrees that:

a. Any such claims, actions or proceedings brought by the State (including any proceedings to exclude Great Lakes from participation in the Medicaid Program) are not subject to an automatic stay pursuant to 11 USC § 362(a) as a result of the action, case or

proceeding described in the first clause of this paragraph, and that Great Lakes will not argue or otherwise contend that the State's claims, actions or proceedings are subject to an automatic stay;

b. Great Lakes will 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 proceedings which are brought by the State within ten calendar days of written notification to Great Lakes, that the releases under this Agreement have been rescinded pursuant to this paragraph; and

4. Great Lakes acknowledges its agreement in this paragraph as provided in exchange for valuable consideration provided in this Agreement.

N. In the event that Fireberg commences or a third party commences, before the obligations under this Agreement are satisfied, any case, proceeding or other action (a) under any law relating to bankruptcy, insolvency, reorganization or relief of debtors, seeking to have any order for relief of Fireberg's debts, or (b), seeking appointment of a receiver, trustee, custodian or similar official for Fireberg, Fireberg agrees as follows:

1. C. Patrick Gray, DDS, shall not be responsible for any debt remaining as a result of the failure or inability of Fireberg to make full payment under the terms of this Agreement;

2. Fireberg's obligations under this Agreement may not be avoided pursuant to 11 USC § 547 and Fireberg will not argue or otherwise take the position in any such case, proceeding or action that:

a. Fireberg's obligations under this Agreement may be avoided under 11 USC § 547;

b. Fireberg was insolvent at the time this Agreement was entered into, or became insolvent as a result of the payment made to the State hereunder; or

c. The mutual promises, covenants and obligations set forth in this Agreement do not constitute a contemporaneous exchange for new value given to Fireberg.

3. In the event that Fireberg's obligations under this Agreement are avoided for any reason, including but not limited to, the exercise of a trustee's avoidance powers under the Bankruptcy Code, the State of Michigan, at its sole option, may rescind the releases in this Agreement, and bring any civil and/or administrative claim, action or proceeding against Fireberg. If the State chooses to do so Fireberg agrees that:

a. Any such claims, actions or proceedings brought by the State (including any proceedings to exclude Fireberg from participation in the Medicaid Program) are not subject to an automatic stay pursuant to 11 USC § 362(a) as a result of the action, case or proceeding described in the first clause of this paragraph, and that Fireberg will not argue or otherwise contend that the State's claims, actions or proceedings are subject to an automatic stay;

b. Fireberg will 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 proceedings which are brought by the State within ten calendar days of written notification to Fireberg, that the releases under this Agreement have been rescinded pursuant to this paragraph; and

4. Fireberg acknowledges its agreement in this paragraph as provided in exchange for valuable consideration provided in this Agreement.

O. This Agreement contains the full and complete agreement between the parties and shall not be modified in any manner except by written instrument executed by the Parties.

P. The undersigned individuals signing this Agreement on behalf of Great Lakes and Fireberg represent and warrant that they are authorized to execute this Agreement. The undersigned State signatory represents that he signs this Agreement in his official capacity and that he is authorized to execute this Agreement.

State of Michigan, Department of Attorney General

By: Donald G. Allen Jr.

Date: 8-12-05

Great Lakes Family Dental, PC

By: [Signature]

C. Patrick Gray, DDS

Its: President

Date: 6/23/05

Fireberg Family Dental, PLLC

By: [Signature]

David Fireberg, DDS

Its: Authorized Member

Date: 7/6/05

David Fireberg, DDS

By: [Signature]

David Fireberg, DDS

Date: 7/6/05