

## **SETTLEMENT AGREEMENT AND MUTUAL RELEASE**

### **I. PARTIES**

This Settlement Agreement and Mutual Release (Agreement) is entered into between the Parties: the State of Washington (State); and Defendants CareOne Dental Corporation, Liem Do, DDS, PLLC, and Liem Duy Do, D.D.S, and Phuong-Oanh Tran, D.D.S. a marital community, (collectively “Defendants”).

### **II. PREAMBLE**

As a preamble to this Agreement, the Parties agree to the following:

A. Liem Do, DDS, PLLC, is a Washington Professional Limited Liability Company, with its principal address at 5409 NE. St. Johns Rd., Vancouver, WA 98661. CareOne Dental Corporation, is a Washington for Profit Corporation, with its principal address at 5409 NE. St. Johns Rd., Vancouver, WA 98661. Liem Duy Do is the sole governor of CareOne Dental Corporation, and was the sole governor of Liem Do, DDS, PLLC through 2018. Liem Duy Do and Phoung-Oanh Tran are currently governors of Liem Do, DDS, PLLC. Defendants operated four dental clinics in Clark County, Washington, and two dental clinics in Oregon.

B. Liem Do, DDS, PLLC was the business entity used to bill Medicaid for dental services prior to approximately July 2012, when a new entity, CareOne Dental Corporation, was used.

C. At all relevant times covered in Section II F, Phuong-Oanh Tran was married to Liem Duy Do and a registered D.D.S. employed by Liem Duy Do.

D. On September 10, 2015, the State filed a Complaint for Damages and Civil Penalties for Medicaid Fraud, in Clark County Washington, captioned *State of Washington v. CareOne Dental Corporation, Liem Do, DDS, PLLC, Liem Duy Do, Phuong Oanh Thuy Tran, and their marital community*, Case # 15-2-002514-1. The State alleged Defendants violated the Medicaid Fraud False Claims Act, Chapter 74.66 RCW, the Medicaid Provider Fraudulent Practices Statute, RCW 74.09.210, and the common law.

E. The State alleges that Defendants caused claims for payment to be submitted to the State's Medicaid program (42 U.S.C. Chapter 7 Subchapter XIX).

F. The defendants CareOne Dental Corporation, Liem Duy Do, DDS, PLLC, and Liem Duy Do, admit that the State has evidence sufficient to prove certain civil and administrative causes of action pursuant to RCWs 74.66 and 74.09 against Defendants for engaging in the following conduct (the "Covered Conduct"):

Defendants, wrongfully, knowingly, and willfully submitted and caused to be submitted claims for reimbursement to Washington's Medicaid program for providing certain dental care services from 2011 through 2015 ("the relevant time") that were not Medicaid covered services causing Medicaid to pay Defendants at least \$1,000,000 in U.S. Currency to which they were not entitled

For example, Defendants repeatedly submitted and caused to be submitted claims for reimbursement to the Medicaid program for services not covered by the Medicaid program such as: Sealants (CDT 1351) and Preventive Resin Restorations (CDT Code D1352), which they then wrongfully billed as a "covered service" such as: Restorations (CDT codes D2000-2999). Defendants also submitted and caused to be submitted claims for reimbursement to for surgical tooth extractions (CDT 7210), where no documentation supported anything other than a routine non-surgical extraction service (CDT 7140); for Limited Oral Evaluations (CDT D9110), where the patient had no new dental issue or emergency to warrant the evaluation; for scaling and root planning (CDT codes D4341-4342), where only a prophylaxis was performed; and for a multitude of patient encounters and other dental procedures, for which necessary documentation does not exist to support the claims. See WAC 246-817-310.

The claims Defendants' submitted and caused to be submitted for reimbursement to during the relevant time, caused the State's Medicaid Program to pay Defendants funds to which they were not entitled for non-covered, upcoded, and undelivered services.,

G. 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:

### **III. TERMS AND CONDITIONS**

NOW, THEREFORE, in reliance on the representations contained herein and in consideration of the mutual promises, covenants and obligations set forth in this Agreement, and for good and valuable consideration as stated herein, the Parties agree as follows:

1. Defendants agree to pay to the State of Washington One Million Dollars (\$1,000,000) (Settlement Amount and FULL PAYMENT).
2. Phuong-Oanh Tran agrees to release any claim to FULL PAYMENT as being part of marital property and to seek no tax benefit from the FULL PAYMENT. Phuong-Oanh Tran in all other respects will act in conformity with and be subject to the terms set out in Section III of this Agreement, unless a term is specifically limited to Defendant Liem Duy Do.
3. Following the State's investigation, on September 17, 2015, the Washington State Heath Care Authority (HCA) suspended payments for some claims made by Defendants, holding them in abeyance pursuant to 42 CFR §455.23. These suspended claims have not been processed for payment. Therefore, the State agrees to offset Forty-six Thousand Dollars (\$46,000) from the Settlement Amount. Defendants agree to waive all claims to any amounts held in abeyance, or to any dental claims denied, by the HCA, and will not seek payment for any of the suspended amounts, or denied claims, from any health care

beneficiaries or their parents, sponsors, legally responsible individuals, or third-party payors.

4. Defendants will pay the FULL PAYMENT, less the payment offset of \$46,000, upon execution of this agreement by wire order, for \$954,000.00 (nine hundred and fifty-four thousand dollars) payable to the Washington State Attorney General c/o Medicaid Fraud Control Division.

5. Defendants payment of \$1,000,000, pursuant to the terms of this Agreement, constitutes restitution to the State of Washington.

6. The Settlement Amount shall constitute a debt due and owing to the State of Washington on the "effective date" of this Agreement, as defined therein and subject to the terms of this Agreement. The debt shall forever be discharged by the FULL PAYMENT to the State of Washington under the terms of this Agreement.

7. Defendant Liem Duy Do further agrees not to provide, or be employed, in any setting that involves any services to the State of Washington Department of Social and Health Services or the State of Washington Health Care Authority clients under either the Medicaid or Medicare programs.

8. Defendant Liem Duy Do understands and agrees that the United States Department of Health and Human Services – Office of Inspector General (HHS–OIG) may exclude him pursuant to 42 USC 1320a-7(b)(5). Defendant Liem Duy Do agrees to waive any right to contest or appeal any sanction or exclusion imposed by HHS–OIG because Defendants agree that this sanction and this exclusion are appropriate remedies for his covered conduct.

9. Subject to the exceptions in Paragraph 11 below, in consideration of the obligations of Defendants set forth in this Agreement, and conditioned upon Defendants' FULL PAYMENT

upon execution of this agreement, the State agrees after 91 days to release Defendants from any civil or criminal cause of action that the Washington State Medicaid Fraud Control Division has for any claims submitted or caused to be submitted to the State's Medicaid Program as a result of the Covered Conduct, and to dismiss with prejudice any state law claims, which the State has filed in Clark County Superior Court Case Number 15-2-02514-1. However, no release shall be given, nor dismissal of claims shall occur, if an order for relief has been entered or an involuntary petition for relief has been filed within 91 days of the tender of the initial payment against Defendants, pursuant to Title 11 of the United States Code.

10. In the event an order for relief is entered or an involuntary petition for relief is filed within 91 days of the tender and of the FULL PAYMENT, pursuant to Title 11 of the United States Code, the State reserves all underlying causes of actions and claims the State may have against Defendants for the Covered Conduct, and this Agreement shall not constitute a contract or novation.

11. Notwithstanding the releases given in Paragraph 9 of this Agreement, or any other term of this Agreement, the following claims of the State are specifically reserved and are not released:

- (a) any criminal, civil, or administrative liability arising under state or federal revenue codes;
- (b) any criminal liability not specifically released by this Agreement in Paragraph 7 above;
- (c) any civil or administrative liability that any person or entity, including Defendants, has or may have to the State or to individual consumers or state program payors under any statute, regulation, or rule not expressly covered by the release in Paragraph 7 above, including, but not limited to, any and all of the following claims: (i) State or federal antitrust violations; and (ii) claims involving unfair and/or deceptive acts and practices and/or violations of consumer protection laws;
- (d) any liability to the State for any conduct other than the Covered Conduct;
- (e) any liability to the State arising from claims submitted or caused to be submitted to any "managed care entities" as defined by 42 U.S.C. § 1396u-2;
- (f) any liability based upon obligations created by this Agreement;

- (g) except as explicitly stated in this Agreement, any administrative liability, including mandatory exclusions from the State's Medicaid Program;
- (h) any liability for expressed or implied warranty claims or other claims for defective or deficient products and services, including quality of goods and services;
- (i) any liability for personal injury or property damage or for other consequential damages arising from the Covered Conduct;
- (j) any liability for failure to deliver goods or services due; or
- (k) any liability of individuals, other than Defendants.

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

13. Defendants expressly warrant he/she is currently solvent, meaning that a fair valuation of Defendants' property (exclusive of exempt property) exceeds the sum of his/her debts.

14. The Parties each represent that this Agreement is freely and voluntarily entered into without any degree of duress or compulsion whatsoever.

15. Defendants stipulate, represent, and warrant this Settlement Agreement represents a fair compromise and was negotiated at arm's length and without any duress. Defendants further stipulate, represent, and warrant that the payment made to the State pursuant to the Settlement Agreement were made with no intent to hinder, delay, or defraud any other entity and that the payment was reasonably equivalent in value to the releases provided.

16. Except as otherwise stated in this Agreement, this Agreement is intended to be for the benefit of the Parties only, and by this instrument the Parties do not release any liability as to any other person or entity.

17. Except as identified in Paragraph 4, nothing in this Agreement constitutes an agreement by the State concerning the characterization of the amounts paid hereunder for purposes of the State's revenue code.

18. Except as expressly provided to the contrary in this Agreement, each Party to this Agreement shall bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

19. This Agreement is governed by the laws of the State, and venue for addressing and resolving all disputes relating to this Agreement shall be Clark County Superior Court.

20. The undersigned signatures of Defendants represent and warrant that he/she is authorized to execute this Agreement. The undersigned State signatories represent that they are signing this Agreement in their official capacities and that they are authorized to execute this Agreement on behalf of the State through their respective agencies and departments.

21. The Effective Date of this Agreement shall be the date of signature of the last signatory to this Agreement. Facsimiles of signatures shall constitute acceptable binding signatures for purposes of this Agreement.

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

23. This Agreement constitutes the complete agreement between the Parties with respect to this matter and shall not be amended except by written consent of the Parties.

24. For purposes of construing this Agreement, this Agreement shall be deemed to have been drafted by the Parties to this Agreement and shall not be construed against any of the Parties for that reason.

## **STATE OF WASHINGTON**

Care One

Case #15-2-02514-1

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By:

  
LARISSA PAYNE, WSBA # 31461  
Director Medicaid Fraud Control Division  
Washington Attorney General's Office

Dated: 3/20/19

By:

  
MaryAnne Lindeblad  
Medicaid Director  
Washington State Health Care Authority

Dated: 3-20-19

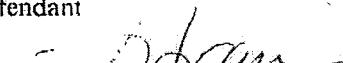
#### DEFENDANT

By:

  
LIEM DUY DO, DDS  
As an Individual and Owner of Liem Do, DDS, PLLC and CareOne Dental Corp.  
Defendant

Dated: 3/15/19

By:

  
Phuong-Danh Tran, DDS  
As an Individual and Owner of Liem Do, DDS, PLLC and CareOne Dental Corp.  
Defendant

Dated: 03/15/19