

8. All documents and/or communication generated by Small Smiles referring or relating to billing guidelines at any of the nationwide Small Smiles clinics, including SS Toledo.
9. All documents and/or communications generated by Small Smiles referring or relating to any type of quota or production goal, whether for treatment, billing or otherwise, at any of the nationwide Small Smiles clinics, including SS Toledo.
10. All documents and/or communications generated by Small Smiles referring or relating to the compensation, bonus and/or salary structure in place at any of the nationwide Small Smiles clinics, including SS Toledo.
11. All documents and/or communications generated by Small Smiles referring or relating to hiring practices at any of the nationwide Small Smiles clinics, including SS Toledo.
12. All documents and/or communications generated by Small Smiles referring or relating to the management of any of the nationwide Small Smiles clinics, including SS Toledo.
13. All documents and/or communications which indicate that, prior to the issuance of the National Union Policies, Small Smiles was not aware of the Medicaid Fraud Investigation or any of the *Qui Tam* Actions and/or that Small Smiles was aware of Medicaid Fraud Investigation or any of the *Qui Tam* Actions but disclosed them to National Union and/or to AIS.
14. All documents and/or communications produced and/or provided by Small Smiles to the DOJ, the HHS and/or any federal, state and/or local government and/or agency in the course of and/or in connection with the Medicaid Fraud Investigation.
15. All documents and/or communications exchanged between the plaintiffs in the *Qui Tam* Actions, the DOJ, the HHS and/or any federal, state or local government and/or agency, on one hand, and Small Smiles, on the other hand, referring to, relating to or and/or in connection with all settlement agreements reached concerning the allegations made in the *Qui Tam* Actions.
16. The civil settlement agreement (the "Settlement Agreement") that was entered into among FORBA Holdings; the United States of America, acting through the DOJ and on behalf of the Office of Inspector General of the Department of Health and Human Services; and Deborah McDaniel, Angela Crawford and John Haney, through their authorized representatives.
17. All documents and/or communication referring or relating to the Settlement Agreement and any exhibits thereto.
18. All documents and/or communications referring or relating to the Medicaid Fraud Settlement.

19. All written statements taken in the course of the Medicaid Fraud Investigation from any person.
20. All communications, correspondence and documents exchanged between the DOJ, the HHS and/or any other federal, state or local government and/or agency, on one hand, and Small Smiles, on the other hand, in connection with the Medicaid Fraud Investigation.
21. The names, addresses and telephone numbers of all current and/or former employees, officers, directors, contractors, subcontractors and/or agents of Small Smiles interviewed by the DOJ, the HHS and/or any federal, state or local government and/or agency in the course of or in connection with the Medicaid Fraud Investigation.
22. All documents and/or communications produced by any of the parties in any of the *Qui Tam* Actions.
23. All depositions transcripts and exhibits thereto, hearing transcripts, motions, pleadings, and orders in any of the *Qui Tam* Actions.
24. All interview notes and interview transcripts from all interviews of Small Smiles personnel, whether currently or formerly employed by Small Smiles, prepared and/or taken in connection with the Medicaid Fraud Investigation.
25. All electronic, video and/or audio recordings of all interviews of Small Smiles personnel, whether currently or formerly employed by Small Smiles, prepared and/or taken in connection with the Medicaid Fraud Investigation.
26. All reports generated by Small Smiles, or on its behalf, referring or relating to the Medicaid Fraud Investigation.
27. All documents and/or communications received by Small Smiles from and/or sent by Small Smiles to Affinity Insurance Services, Inc. referring or relating to and/or in connection with any policies of insurance issued or proposed to be issued to Small Smiles from January 1, 2005 to the present, including but not limited to the negotiation, placement and/or issuance of such insurance.
28. All documents and/or communications received by Small Smiles from and/or sent by Small Smiles to any of: (a) Affinity Insurance Services, Inc.; (b) Intercare Insurance Services, Inc.; and (c) National Union referring or relating to the Medicaid Fraud Investigation and/or the *Qui Tam* Actions.

29. All documents and/or communications received by Small Smiles from and/or sent by Small Smiles to Old FORBA⁷ referring or relating to the Medicaid Fraud Investigation and the *Qui Tam* Actions.
30. All documents and/or communications received by Small Smiles from and/or sent by Small Smiles to Old FORBA referring or relating to any demand or requests by Small Smiles to Old FORBA for indemnification in connection with the Medicaid Fraud Investigation and the *Qui Tam* Actions.
31. Copies of all insurance policies issued to American Capital that may potentially apply to provide coverage to the Defendants in the Parnell Class Action and a statement as to whether any such policies provide or may provide coverage to the Small Smiles Defendants for the Parnell Class Action and whether any of the insurers issuing such policies have agreed to and/or are defending the Small Smiles Defendants in that action.

Finally, please tell us whether Small Smiles has sought coverage, including defense and indemnity, from any other insurance carrier besides National Union with respect to the Parnell Class Action and whether or not any such other insurance carrier has agreed to provide and/or has actually provided coverage to Small Smiles with respect to that action. In connection with this, please produce all other potentially applicable insurance policies and any correspondences between Small Smiles and any other insurance carrier with respect to the Parnell Class Action.

Small Smiles, which is now seeking insurance coverage from National Union for the Underlying Actions, including the Parnell Class Action, is obligated to provide the above-requested information pursuant to the Duty of Cooperation described in Section VII.A of the National Union Policies. National Union has every expectation and hope that Small Smiles will comply with its duty to cooperate and provide the requested information.

RESERVATION OF RIGHTS/PARTIAL DISCLAIMER

As set forth above, National Union is continuing to investigate coverage with respect to the Amended Complaint in the Parnell Class Action under the Entities Policy and therefore reserves all of its rights under the same, at law and in equity. As discussed above, with respect to the Parnell Class Action, National Union disclaims coverage for the Small Smiles Defendants and for American Capital with respect to the Amended Complaint under the Individuals Policy and disclaims coverage for American Capital with respect to the Entities Policy.

National Union's coverage position is based on the information presently available to us. This letter is not, and should not be construed as, a waiver of any terms, conditions, exclusions or other provisions of

⁷ "Old FORBA", as used herein, means Licsac, LLC, DD Marketing, Inc., DeRose Management, LLC, Licsac NY, LLC, Danny E. DeRose, Edward J. DeRose, Michael A. DeRose, Michael W. Roumph, Richard B. Lane, William A. Mueller, Adolph R. Padula and Padula Family Partnership, LLLP and each of their current and former parents, subsidiaries, affiliates, predecessors, assigns, divisions, departments, members, managers, officers, directors, employees, contractors, subcontractors, attorneys managing general agents and/or agents.

Linda S. Zoeller
Small Smiles Holding Company
July 27, 2010
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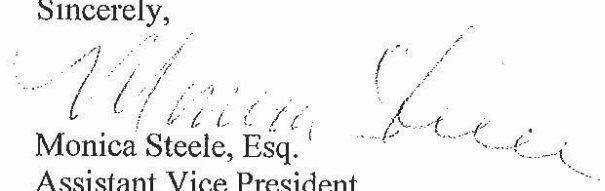
the Policies, or any other policies of insurance issued by National Union or any of its affiliates. National Union expressly reserves all of its rights under the Policies, including the right to assert additional defenses to any claims for coverage, if subsequent information indicates that such action is warranted.

Should you have any additional information that you feel would either cause us to review our position or would assist us in our investigation or determination, we ask that you advise us as soon as possible. Also, if you are served with any additional demands or other amended complaints or pleadings, please forward them to us immediately, so that we can review our coverage position. If you wish to have your own personal counsel become involved in this matter, at your own expense, please feel free to do so, and we will cooperate fully with such counsel.

If you have any other insurance policies, which may respond to this claim asserted, you should notify that carrier immediately.

In closing, allow me to reiterate that we value you as a customer and encourage you to contact us should you have any questions or concerns regarding the contents of this letter. Thank you for your cooperation in this matter.

Sincerely,



Monica Steele, Esq.
Assistant Vice President
Chartis Claims, Inc.

cc:

Small Smiles of Toledo
1520 Broadway Street
Toledo, Ohio 43609

American Capital, Ltd.
2 Bethesda Metro Center, 14th Floor
Bethesda, Maryland 20814

EXHIBIT 1

Pertinent Provisions of the Policies

DENTISTS LIABILITY

PROFESSIONAL LIABILITY COVERAGE PART

CLAIMS MADE

* * *

Throughout this Policy the words "you" and "your" refer to the Named Insured shown in the Declarations. The words "we", "us" and "our" refer to the company providing this insurance.

The word "insured" means any person or organization qualifying as such under Section **III. WHO IS AN INSURED.**

* * *

I. COVERAGE AGREEMENTS

- A. We will pay on behalf of the insured those sums that the insured becomes legally obligated to pay as "damages" because of a "dental incident", provided that:
1. The "dental incident" occurs on or after the Retroactive Date shown in the Declarations and prior to the end of the "policy period"; and
 2. The "claim" for "damages" is first made against any insured, in writing, during the "policy period" or any Extended Reporting Period we provide under Section VIII. Extended Reporting Period.
- B. We have the right and duty to defend the insured against any "claim" to which this insurance applies, even if the allegations in such "claim" are groundless, false, or fraudulent. However, we have no duty to defend the insured against any "claim" to which this insurance does not apply.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Section **V. SUPPLEMENTARY PAYMENTS.**

* * *

- D. The amount we will pay for "damages" is limited as described in Section **IV. LIMITS OF INSURANCE.** We will not be obligated to defend any "claim" after the Limits of Insurance have been exhausted by the payment of judgments or settlements.
- E. This insurance applies to "damages" arising out of a "dental incident" that occurs anywhere in the world, provided that the "claim" is brought within the United States of America, its territories or possessions, Puerto Rico, or Canada.

II. EXCLUSIONS

This insurance does not apply:

- A. To a "dental incident" which occurred prior to the inception date of this policy if an insured knew or reasonably should have known, that the "dental incident" could result in, or had already resulted in, a "claim".
- B. To a "dental incident" arising out of any dishonest, fraudulent, criminal, or knowingly wrongful act, error, or omission committed by or at the direction of any insured.

* * *

- I. To a "dental incident" which involves the use of intravenous or intramuscular injections or "general anesthesia".

This exclusion does not apply:

- 1. When the intravenous or intramuscular injections or "general anesthesia" are administered by a licensed provider of anesthetic services, or
- 2. To the use of intravenous or intramuscular injections to render "conscious sedation" in emergency situations where a life threatening or potential permanent injury exists.¹
- J. To a "dental incident" which occurs while an insured's professional license as required by law is suspended, expired, canceled, revoked, or otherwise invalid.
- K. To a "dental incident" arising out of the prescribing or dispensing of any drugs, pharmaceuticals, or controlled substances:
 - 1. By anyone without the appropriate license, registration or certification; or
 - 2. That are not approved for use in the treatment of human beings by the United States Food and Drug Administration.

* * *

- O. To a "dental incident" expected or intended by any insured or by any person for whose acts, errors or omissions an insured may be held liable.

* * *

III. WHO IS AN INSURED

- A. If you are shown in the Declarations as:

¹ As amended by the General Anesthesia Endorsement contained in each of the Policies.

1. An individual dentist, you and your spouse are insureds, but only with respect to the conduct of your "dental business";
2. A partnership or joint venture, you, your members and your partners and their spouses are insureds, but only with respect to the conduct of your "dental business";
3. A limited liability company, you and your members are insureds, but only with respect to the conduct of your dental business;
4. A "dental corporation" or an organization other than a partnership, joint venture, or limited liability company, you are an insured but only with respect to the conduct of your "dental business". Your executive officers, directors and shareholders are insureds, but only with respect to the conduct of your "dental business".

* * *

No person, "dental corporation" or organization is an insured with respect to the conduct of any current or past partnership, joint venture or limited liability company that is not shown as a Named Insured in the Declarations.

IV. LIMITS OF INSURANCE

- A. Subject to **B.** below, and regardless of the number of "claims" made or "suits" brought, the most we will pay for "damages" arising out of any one "dental incident" is the Limit of Insurance stated in the Declarations. This limit shall apply separately:
 1. To each individual dentist shown as a Named Insured in the Declarations as stated in Subparagraph **A.1.** of **Section III., WHO IS AN INSURED;** and
 2. To all Named Insureds and all additional insureds collectively, other than those subject to paragraph **1.**, above. This limit applies regardless of the number of insureds under the policy.
- B. The most we will pay for the sum of all "damages" to which this insurance applies is the Limit of Insurance shown in the Declarations as Aggregate.

* * *

- D. Subject to Paragraphs **A.**, **B.**, and **C.** above, all "claims" arising from one "medical incident" or a series of related "medical incidents" to any one person shall be deemed to have occurred at the time of the first "medical incident" regardless of the number of claimants, or the number of insureds against whom such claims are made.

* * *

VI. DEFINITIONS

* * *

- B. "Claim" means a "suit" or demand made by or for the injured person for "damages" to which this insurance applies.

* * *

- D. "Damages" means all the sums that the insured becomes legally obligated to pay. Damages do not include:

1. Administrative, civil or criminal penalties, fines or sanctions;
2. Payment for "professional services", including the waiver, return, withdrawal or reduction of fees paid to the insured or payment by the insured of fees for "professional services" provided by others.²

- E. "Dental Business" means operations or activities on premises used by you in the practice of your dental profession. "Dental business" includes operations necessary or incidental to those premises.

- F. "Dental corporation" means a professional service corporation organized under the corporation law of your state for the purpose of performing "professional services".

- G. "Dental incident" means any act, error or omission in the rendering of or failure to render "professional services" by:

1. An insured; or
2. Any person for whose acts, errors or omissions you are held legally liable.

- H. "General anesthesia" includes deep sedation and means a controlled state of depressed consciousness or unconsciousness, accompanied by partial or complete loss of protective reflexes, including inability to independently maintain an airway and respond purposefully to physical stimulation or verbal command, produced by a pharmacologic or non-pharmacologic method, or combination thereof.

- I. "Policy period" means the period starting on the effective date of this policy as shown in the Declarations. This period ends on the earlier of the expiration date shown in the Declarations or on the effective date of cancellation of this policy.

* * *

² As amended by the Tennessee Amendatory Endorsement contained in each of the Policies.

K. "Professional services" means dental services provided to others by a person trained and qualified to perform those services pursuant to a valid and unrestricted dental, dental hygiene, or dental assisting certificate or license. Such services include service as:

1. An officer or member of any committee of the American Dental Association or any of its committees or societies;
2. An officer or member of a formal accreditation, standards review or other professional board or committee related to a professional dental society or a hospital;
3. A consultant, including a consultant to an organization which provides or administers dental service payment plans.
4. An expert witness while giving testimony under oath.
5. The performance of or failure to perform autopsies.

"Professional Services" also include the writing of books, papers and articles on the technical aspects of a professional dentistry practice, if they are published or distributed by a recognized technical or professional publisher.

* * *

M. "Suit" means a civil proceeding in which "damages" to which this insurance applies are alleged. "Suit" includes:

1. An arbitration proceeding in which such "damages" are claimed and to which the insured must submit or does submit with our consent; or
2. Any other alternative dispute resolution proceeding in which such "damages" are claimed and to which the insured submits with our consent.

* * *

VII. CONDITIONS

* * *

C. Other Insurance

1. If other valid and collectible insurance is available to an insured for "damages" we cover under this insurance, then this insurance is excess over any other such insurance. When this insurance is excess over other insurance, we will have no duty to defend against any "suit" if any other insurer has a duty to defend against that "suit". If no other insurer defends, we will undertake to do so, but we will be entitled to the rights of the individual dentist against all those other insurers.

When this insurance is excess over other insurance, we will pay, up to the applicable limits of insurance, the amount of the loss that exceeds the sum of the total amount that all such other insurance would pay for the loss in the absence of this insurance.

If other insurance is also excess, we will share the remaining loss with that other insurance.

2. If all the other insurance permits contribution by equal shares, we will follow this method also. Under this approach, each insurer contributes equal amounts until it has paid its applicable limit of insurance or none of the loss remains, whichever comes first. If any of the other insurance does not permit contribution by equal shares, we will contribute by limits. Under this method, each insurer's share is based on the ratio of its applicable limit of insurance to the total applicable limits of insurance of all insurers.

* * *

F. Representations

By accepting this policy, you agree that the statements and representations made in the application are true and are the basis for acceptance of the risk assumed by us. In the event that any material statement or representation made in the application is untrue, this policy in its entirety will be void at inception.

* * *

SCHEDULE OF NAMED INSUREDS

This endorsement modifies insurance provided under the following:

DECLARATIONS

Item 1. Of the Declarations is amended to include the following:

SCHEDULE

Named Insured

Retroactive Date

Per schedule on file with agent

Per schedule on file with agent

* * *

ADDITIONAL INSURED ENDORSEMENT³

This endorsement modifies insurance provided under the following:

³ This endorsement is contained only in the Entities Policy.

PROFESSIONAL LIABILITY COVERAGE PART

COMMERCIAL GENERAL LIABILITY COVERAGE FORM

EMPLOYMENT – RELATED PRACTICES LIABILITY COVERAGE FORM

MEDICAL WASTE DEFENSE EXPENSES REIMBURSEMENT COVERAGE PART

ERISA FIDUCIARY LIABILITY COVERAGE PART

The **WHO IS AN INSURED** section is amended to include as an insured the person or entity shown in the Schedule below, but only with respect to their liability arising out of the conduct of your business

Schedule

Per Schedule on File with Agent

* * *

BILLING ERRORS AND OMISSIONS COVERAGE ENDORSEMENT⁴

NOTICE: THE LIMIT OF INSURANCE PROVIDED HEREIN IS IN ADDITION TO THE LIMITS OF INSURANCE FOR ALL OTHER COVERAGE UNDER THIS POLICY. HOWEVER, "BILLING DAMAGES" AND "CLAIM EXPENSES" REDUCE THE LIMITS OF INSURANCE PROVIDED HEREIN.

This Endorsement modifies insurance provided under the following:

DENTISTS PROFESSIONAL LIABILITY COVERAGE PART

I. The following is added to Section **I COVERAGE AGREEMENTS**

A. We will pay those sums the insured becomes legally obligated to pay as "billing damages" resulting from a "wrongful act" to which this insurance applies. We will have the right and duty to defend the insured against any "billing claim" seeking those "billing damages". However, we will have no duty to defend the insured against any "billing claim" seeking "billing damages" because of a "wrongful act" to which this insurance does not apply. We may, at our discretion, investigate any incident that may result from a "wrongful act". We may, with your written consent, settle any "billing claim" that may result. But:

1. The amount we will pay for "billing damages" and "claim expenses" is limited as described in Section **IV – Limit of Insurance**;

⁴ This endorsement is contained only in the Entities Policy.

2. The coverage and duty to defend provided by this policy will end when we have used up the applicable limit insurance for "claim expenses" or the payment of judgments or settlements.

* * *

II. The following is added to Section **II. EXCLUSIONS**:

This coverage provided by this endorsement does not apply to any "billing claim":

- A. Relating to a "dental incident".
- B. Arising out of any intentional, dishonest, fraudulent, criminal or malicious act, error or omission, committed by any insured, including the willful or reckless violation of any statute.

* * *

IV. For the purposes of the coverage provided by this endorsement, the following definitions are added to Section **VI. Definitions**.

A. "Billing Claim" means:

1. a demand for money or services, brought by or on behalf of any "government entity" or commercial payor against the insured seeking "billing damages" for a "wrongful act";
2. commencing an audit or investigation of a "wrongful act"; or
3. seeking injunctive relief on account of a "wrongful act".

"Billing Claim" does not include:

1. any customary or routine audit/reconciliation conducted by or at the behest of a "government entity" or commercial payor; or
2. any criminal proceeding against an insured.

* * *

- C. "Billing damages" means any monetary amount not exceeding the limit of liability applicable to this endorsement which the insured is legally obligated to pay as a result of a "billing claim", including sums paid as awards, judgments, settlements and civil fines and penalties imposed by a "government entity".

"Billing damages" does not include the return or restitution of fees, profits, charges or benefit payments to any commercial payor or governmental health benefit payor or program.

“Government entity” means:

1. any department, agency, task force or other organization created by any federal, state or local law, executive order, ordinance or rule; or
2. any department, agency, task force or other organization operated, funded or staffed, in whole or in part, by the federal or any state, county or local government.