

## **SETTLEMENT AGREEMENT**

This Settlement Agreement is entered into by the State of North Carolina, acting on relation of its Attorney General, Roy Cooper (“the State”), and Dr. Ervin Batchelor, PhD (“Dr. Batchelor”) and Ervin Batchelor, P.A. d/b/a/ Carolina Center for Development and Rehabilitation (“CCDR”), a North Carolina professional corporation.

### **Introduction**

The State learned that documents containing personal identifying information, as defined in N.C. Gen. Stat. § 75-61 and § 14-113.20(b), had been dumped at the West Mecklenburg Recycling Center. Pursuant to the provisions of the North Carolina Identity Theft Protection Act (hereinafter “the Act”), the State contacted Dr. Batchelor and advised him that the dumping of documents containing personal information constituted a violation of N.C. Gen. Stat. § 75-64.

### **Contentions and Basis for Agreement**

1. Dr. Batchelor owns and operates CCDR, a psychological testing and treatment facility located at 6813 Fairview Rd Ste D, Charlotte, N.C.
2. In operating CCDR, Dr. Batchelor came into possession of personal information of people coming to the facility for psychological testing or treatment. The personal information collected by Dr. Batchelor included names, addresses, dates of birth, Social Security numbers, drivers’ license numbers, and insurance account numbers, as well as personal health information.
3. Dr. Batchelor moved CCDR to a different office location and transported certain medical records to his own residence. These medical records were then transported to the West Mecklenburg Recycling Center.
4. A local TV station learned that medical records had been dumped at the West Mecklenburg Recycling Center and alerted county officials to the presence of medical records at

the West Mecklenburg Recycling Center.

5. Mecklenburg County mental health officials went to the recycling center and collected the dumped medical records. The mental health officials also contacted the Attorney General's Office about the dumped medical records.

6. Personnel within the Attorney General's Office traveled to Mecklenburg County to review the medical records collected.

7. The recovered medical records were released to Dr. Batchelor to inventory and catalog the medical records recovered. Approximately 1,000 files were recovered and they contained personal information for 1,600 people.

8. Dr. Batchelor and CCDR caused potential harm to consumers by exposing his patients to the risk of identity theft.

9. Dr. Batchelor's alleged actions with regard to the medical records of CCDR is a violation of N.C. Gen. Stat. § 75-64.

10. The medical records recovered are in Dr. Batchelor's possession.

#### **Undertakings of the Parties**

11. The State, by and through the Attorney General, and Dr. Batchelor and CCDR have agreed to resolve the State's concerns about the dumping of personal information through the execution of this Settlement Agreement. In order to resolve the State's inquiry without having to expend the time and resources necessary to litigate the foregoing issues and contentions, and because of Dr. Batchelor's cooperation, the parties hereto bind themselves as follows:

(A) Dr. Batchelor and CCDR agree not to dispose of or destroy documents in violation of N.C. Gen. Stat. § 75-64 or the Health Insurance Portability and Accountability Act (HIPPA), 45 C.F.R. Parts 160, 162, and 164.

(B) Dr. Batchelor and CCDR agree to pay a total of \$40,000.00 to the North Carolina Attorney General's Office upon execution of this Agreement. Said payment shall be used by the North Carolina Attorney General's Office for consumer protection purposes, including but not limited to consumer protection enforcement, litigation, consumer aid, defraying the costs of the Investigation leading to this settlement, for consumer education, or for other uses permitted by state law at the sole discretion of the North Carolina Attorney General.

(C) Dr. Batchelor and CCDR shall pay the amount set forth above to the North Carolina Attorney General via certified check payable to the "North Carolina Department of Justice." The check shall be due upon execution of this Agreement and shall be forwarded to the N.C. Department of Justice – Attorney General's Office, c/o Kim D'Arruda, Assistant Attorney General, Consumer Protection Division, 114 West Edenton Street, Raleigh, North Carolina 27603, or if being mailed via U.S. Mail it should be sent to P.O. Box 629, Raleigh N.C. 27602.

(D) Dr. Batchelor and CCDR voluntarily agree to this Settlement Agreement without trial or adjudication of any issue of fact or law.

(E) This Settlement Agreement shall not affect the rights of any private party to pursue any remedy or remedies allowed pursuant to the laws of the State of North Carolina.

(F) This Settlement Agreement shall not bind any other offices, boards, commissions or agencies of the State of North Carolina.

(G) Nothing contained in this Settlement Agreement shall be construed as approval, sanction or authorization of any act, practice, or conduct of Dr. Batchelor or CCDR.

(H) The State reserves the right to bring any action necessary to secure compliance with the terms of this agreement.

Executed this the 7<sup>th</sup> day of September 2011.

DR. ERVIN BATCHELOR, PhD



Dr. Ervin R. Batchelor, PhD

ERVIN BATCHELOR, P.A. dba  
CAROLINA CENTER FOR DEVELOPMENT AND REHABILITATION

By Ervin R. Batchelor, President of CCDR dba  
Name: Ervin Batchelor, P.A.  
Title:

ROY COOPER,  
Attorney General

By Kim D'Arruda

Kim D'Arruda  
Assistant Attorney General  
Consumer Protection Division  
North Carolina Department of Justice