**CROW & ASSOCIATES**
COUNSELLORS AT LAW

CHARLES S. CROW, III
DAVID P. CUSHING
RESHMA J. AMIN

MARK D. SCHORR
OF COUNSEL

33 STATE ROAD, SUITE F
PRINCETON, NEW JERSEY 08540
TELEPHONE (609) 252-9015
FAX (609) 252-9019

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The Honorable Anne Milgram
Attorney General of New Jersey
Office of the Attorney General
Post Office Box 080
Trenton, New Jersey 08625-0080

Re: Dental Services for Department of Corrections/Correctional Dental Associates

Dear Attorney General Milgram:

On behalf of our client, Correctional Dental Associates ("CDA"), we write to ask that you undertake an examination of issues which the Inspector General did not raise in the investigation leading to her December 9, 2008 Supplemental Report, Department of Corrections, Inmate Health Services (the "Report") and which are important to proper State administration of the State inmate dental program and other matters. (A copy of the Report is enclosed.)[1] Over the last several years, CDA has alerted various State agencies, including the Office of the Attorney General, about what it believes to be serious violations of New Jersey law and Board of Dentistry ("Board") regulations concerning the substandard inmate dental care program, the failure of the Board to regulate the practice of dentistry and the disparate treatment of the then largest minority owned firm doing business with the State.[2] The Report verifies many of the claims CDA made.

**The Board Abrogated Its Responsibility To Regulate The Practice Of Dentistry.**

AllCare Dental Group LLC ("AllCare") was, as we have been advising you, only a "staffing agency," which Correctional Medical Services, Inc. ("CMS"), the State's contractor for inmate dental services, created and utilized "to circumvent the regulatory

[1] The Report is also available on the Inspector General's website, http://www.nj.gov./oig/.

[2] We wrote to you on December 5, 2007 after attempting for several years to alert the Board to serious breaches of New Jersey law and the Board's own regulations in connection with New Jersey's inmate dental care program. A copy of our December 5, 2007 letter is attached for your ease of reference.

requirement prohibiting CMS from providing dental services directly to [the Department of Corrections], enabling CMS to retain a greater profit." Report at page 42. The Inspector General concluded that CMS's actions were in direct violation of the professional corporation laws and the regulations governing dental practice promulgated by the Board.

While preparing this letter, we received correspondence (copy enclosed) from the Director of the Division of Consumer Affairs advising us that the Board, no doubt spurred to action by the Report, "has decided to reopen this file and review the matter." We were unaware that there has been any meaningful review since we first brought the issue to the attention of the board, more than three and one-half years ago. While we are not sure what the Board intends to do after all this time, we welcome its review.

CDA has been asking the Board to review the conduct of CMS and AllCare's legal status for years, but the Board has simply refused to act and has done nothing but provide hollow excuses for its inaction. In any event, by its inaction, the Board enabled CMS, a general corporation, to control a professional dental staff and thereby influence the practice of dentistry, resulting in the provision of substandard dental care. The Inspector General found that the purpose of the improper arrangement CMS established was to make a profit, in which it succeeded, to the detriment of the dental care delivered. The very reason for our professional corporation laws is to prevent economic interests from trumping professional ones. As the Inspector General concluded, CMS was able to save "as much as $2.8 million" for the first two years of the inmate dental services contract alone. Report at page 46. (The contract would be extended for another 18 months.)

The Inspector General reports that CMS created AllCare, because CMS was aware that it could not hire practicing dentists as its employees or engage them as independent contractors. AllCare was a sham which, according to the Inspector General, "allowed CMS to adhere to its plan of directly providing dental services, with only the most minor of modifications." Report at page 46. CMS was then able to pass on the entire cost of employing AllCare dentists to the State.

New Jersey statutes prohibit the practice of dentistry by corporations, which are specifically not professional service corporations owned by licensed shareholders, and by corporate employees, such as CMS's Dental Directors. These laws provide the Board with authority to impose substantial fines—$300 per day for the first offense, $600 per day for each subsequent offense. See N.J.S.A. 45:6-12. We believe that every day of such corporate practice constitutes a separate violation. See N.J.S.A. 45:6-15.12. The scope of the program is vast. CMS's corporate dental practice and its inappropriate relationship with the licensed owners of AllCare and the CMS Dental Directors encompassed 24 clinics in 14 facilities where 26,000 patients were treated. CMS's

corporate practice and the inappropriate participation of the licencees continued for approximately 1,278 days, and the potential penalties are substantial.

According to the report of the Inspector General, the owners of AllCare are Dr. Janice Bell, a licensed dentist who owns a 51% interest in AllCare, and Dr. Lionel Anisette, a licensed physician who owns 49%. Dr. Anisette was also CMS's Statewide Medical Director, and Dr. Bell is his spouse. CDA believes both took part in creating the illegal structure that permitted CMS to control AllCare and thus engage in the corporate practice of dentistry. Certainly, both profited from it. Dr. Bell's conduct is regulated by the Board of Dentistry and Dr. Anisette's by the Board of Medical Examiners.

The Board should also have investigated both CMS's corporate practice of dentistry and the complicity of two of its Dental Directors, Drs. Man Lee and Gerard Strathaus, who may be liable individually. As noted above, the laws governing dental practice prohibit dentists from practicing as employees or agents of a general corporation. N.J.S.A. 45:6-12. It appears from the Inspector General's report that the Dental Directors practiced as corporate employees of CMS and that AllCare dentists reported directly to them, not to AllCare's managers, who apparently had little to do with the program for which AllCare was supposedly the subcontractor. AllCare, according to the Inspector General, did little, if anything, to supervise dentists it nominally employed. The Dental Directors may be disciplined for such conduct.

This matter has involved numerous professional licensees of the State. The boards which license them should examine their actions and the impact those actions have on their licensure.

We will not repeat all of the Inspector General's findings in this connection. The most pertinent ones are on pages 42 through 46 of the Report. For present purposes, it suffices to say that the Inspector General concluded that CMS created and controlled AllCare to evade professional practice regulations so that it could pocket the cost of a bona fide subcontractor such as CDA, which the Inspector General described as "a qualified dental services provider."

**CDA, A New Jersey Based, Minority Business Organization, Was Discriminated Against Through A Series Of State Decisions Favoring CMS.**

CDA, a New Jersey based, minority-owned enterprise, is aggrieved because it was discriminated against and excluded from providing its services through a series of decisions inexplicably favoring CMS. CDA is not only a "qualified dental services provider," it is the only qualified correctional dental services provider in New Jersey. CDA was the largest minority-owned firm doing business with the State, and its

employees included numerous minority dentists and other professionals. CDA provided contractually compliant dental services to inmates as a subcontractor of CMS for nine years. During that time, CDA was held to the State's contractual standards by the Department of Corrections Health Services Unit. CDA always satisfied its contractual obligations to the letter. The same DOC officials who consistently demanded what the contract required of CDA were notably lax when it came to CMS. These officials include Dr. Ralph Woodward, Medical Director; Dr. Louis Colella, Director of Dental Services; Thomas Farrell, Supervisor; and Deborah Raab, Quality Assurance Supervisor. These individuals should have been aware that CMS's provision of dental services was deficient and that AllCare was an unqualified shell corporation through which CMS circumvented the law.

CDA was committed to the full compliance which DOC had every right to demand. CDA does not, however, understand how DOC officials could have ignored the established qualifications and performance requirements for CMS, a large, out of state corporation, which is not a local minority-owned enterprise, which had made an overly aggressive bid, and which could not deliver the promised performance.

The Inspector General has rightly criticized Peter Roselli, the former Assistant Commissioner of DOC. She could as well have examined the roles the other DOC employees named above played in permitting CMS to breach the contract, applying higher standards to the minority provider and putting the health of inmates at risk.[3]

**The Division Of Purchase And Property Breached Its Obligation By Choosing CMS To Provide Dental Care And Agreeing To Contract With AllCare Through CMS.**

The Division of Purchase and Property (the "Division") must bear its share of the blame. Its director, John Naiman, awarded the contract to provide dental services to inmates, which he should have known CMS could not fulfill. In fact, compelling evidence to that effect was presented during the bid process. Once CMS proposed to eliminate CDA as its dental subcontractor, CMS had no means to fulfill the dental services portion of the DOC contract, a circumstance of which Mr. Naiman had to be aware. As the Inspector General observed, at the time CMS signed a subcontract with AllCare, barely one month before the DOC contract was to begin, AllCare employed no dentists other than its majority owner, Dr. Bell. AllCare was "sorely understaffed" for months into the contract.

[3] CDA also focused the Inspector General on the performance of CMS and, in particular, that the DOC had passed up opportunities to collect liquidated damages on account of that performance. By way of example, we are enclosing a copy of CDA's August 14, 2008 letter on the subject.

The contract called for a dental subcontractor with relevant correctional experience and which had performed contracts of a "similar size and scope." Mr. Naiman approved a subcontractor with no correctional experience and indeed with no experience of any kind and no employees. As the Inspector General noted, "AllCare was not a qualified provider of dental services, but simply provided dentists to CMS." The documents we furnished to the Board of Dentistry and the Division over the years amply demonstrate that the Division was lax in accepting CMS's bid on the contract, which contained no evidence that it could provide the required dental services, and in later approving the AllCare subcontract, which blatantly violated CMS's obligations to the State.

By contrast, CDA employed a team of dentists and dental assistants, who have extensive correctional experience—many had been DOC employees before privatization—and who, unlike the inexperienced dentists CMS employed, reflect the diversity of the inmate population. Sixty-three of CDA's experienced dentists and dental assistants lost their jobs because of this contractual impropriety. The entire CDA staff collectively and appropriately refused to work for CMS because CMS was not qualified, was not experienced, had an insufficient dental staffing and management plan and was not legally authorized to provide dental services directly. This information was submitted to the State prior to the initiation of the contract and throughout the term of the contract.

By accepting the facially deficient bid of CMS, the Division of Purchase and Property in effect rejected CDA, which had a proven record, staff and administrative structure, in favor of CMS, which had a deficient administrative structure, a poorly designed staffing plan and inexperienced staff and was therefore noncompliant with core elements of the bid specifications. The Division placed significant dental staffing increases in the RFP. CDA, the minority provider, had consistently been held to all dental contract requirements over the previous nine years and submitted its bid accordingly. As reported by the Inspector General, CMS was not held to the contract's must relieve staffing or performance requirements. This discriminatory double standard of contract management made it impossible for CDA to compete with CMS on a purely cost basis. This is precisely the type of racially discriminatory treatment documented in the report on State contracts, entitled State of New Jersey Disparity Study of Procurement in Professional Services, Other Services, and Goods and Commodities, dated January 13, 2005.

The Division and Mr. Naiman even erred by combining dental services with medical services. This was inexplicable since, for the New Jersey Juvenile Justice Commission, the Division bid dental services separately. Many states and local jurisdictions bid correctional dental services separately. The rationale for doing so

applied equally to the Department of Corrections. It is apparent that the Division did not do the required due diligence

This matter also raises a related issue of the utmost immediate concern: whether it is even appropriate for the State or other governmental subdivision to award a contract to provide professional services to a general corporation, which is barred by statute from the practice of dentistry. It is clear that CMS, or any other general corporation, would act illegally if it provides dental services, either through its employees or its control of a professional corporation. That being so, there is no legal way for a general corporation to compete as a bidder and administer a professional services contract. In fact, New York has reached this very conclusion. The Division therefore needs to change the way it bids such contracts.

As a result, by CDA's calculation, the State received less than 50% of the contracted for level of dental services. We think it also significant that the Division, and Mr. Naiman, rejected a bid which included a New Jersey based minority business, CDA, in favor of one involving only a corporation located in Missouri, CMS.

**The Same Officials Responsible For Overseeing The Deficient Services Provided By CMS For DOC Are Currently Overseeing The Inmate Dental Program Through The Contract With the University of Medicine And Dentistry. UMDNJ Has Hired the CMS Dental Director and Most of the CMS Dental Staff. This Combination Clearly Failed to Provide the Required Level of Dental Care Over the Previous 3 ½ Years.**

The Inspector General's findings about the DOC's oversight of the inmate dental care program operated by CMS are still pertinent. The new service provider, the University of Medicine and Dentistry of New Jersey ("UMDNJ"), hired CMS's Dental Director and most of CMS's dentists and dental assistants. Thus, the same persons who supervised, who provided dental services for and who were primarily responsible for the problematic and deficient dental program are still attempting to provide the same services to the State. CDA has demonstrated that proficient management and the attraction and retention of an experienced, qualified, productive and diverse dental staff is the most cost effective manner in which to provide contractually compliant inmate dental services. Studies indicate that diverse provider staffs are consistently more effective in providing care to diverse patient populations. CDA recorded 61,342 patient visits in 2004 versus 30,534 patient visits recorded by the CMS/UMDNJ staff in 2007.

Furthermore, the same officials in the DOC Health Services Unit (listed above), who were charged with supervision of the CMS performance, which the Inspector General found was obviously "poor" and "inconsistent," are responsible for oversight of the correctional dental services UMDNJ has promised to provide. It is unclear why

these officials have been permitted to remain in their same roles despite the Inspector General's finding that DOC's oversight was deficient for so many years.

CDA has also discovered that UMDNJ has contracted to deliver the dental services required by increasing the dental provider staff by some 60%, in spite of the recent decrease in the contractually required level of preventive care. CDA estimates that UMDNJ will increase inmate dental care costs, in 2009, by approximately 40% and still fall far short of the 95% compliance required in each contract. UMDNJ, like CMS previously, is thus being rewarded for its inefficiency.[4]

By contrast, CDA was able to consistently perform at 99% compliance and exceed the State's specifications with a much leaner and more efficient staff that was appropriately trained and regionally deployed. Using this model, CDA has provided cost effective, contractually compliant dental services for the New Jersey Juvenile Justice Commission for the last 13 years, and CDA has recently been able to reduce annual costs by 1.4%.

## CONCLUSION

In summation, CDA believes the Inspector General's report confirms that the conduct detailed above resulted in the denial and substandard delivery of dental care to the State's inmate population, installment of an unquestionably unqualified entity as dental service provider, termination of the State's largest minority business relationship, and the wrongful termination from State service of a group of 63 uniquely qualified and dedicated dentists and dental assistants, who have extensive experience in corrections.

CDA was instrumental in urging the Inspector General to undertake her investigation, which will undoubtedly result in the recovery by the State of substantial sums and, hopefully, an improvement in the provision of inmate dental care. CDA has also kept the matter in the Administration's eye to ensure that this situation never recurs, for the sake of the public and the profession.

The Inspector General has exposed numerous flaws in the process leading up to the State contract and in the administration of that contract. We ask that you undertake an investigation of the related issues we have identified. We would appreciate the opportunity to discuss these issues with you. We are extremely concerned about what corrective action the State intends as a timely and substantive response to what CDA

[4] It should also be noted that the DOC dental services are being delivered by University Behavioral Health Care ("UBHC"), not UMDNJ's Dental School. While UBHC is a respected provider of behavioral health care, it has no apparent experience in designing, providing or managing dental services.

and other knowledgeable persons believe to be the State administered discrimination against the State's largest minority vendor and the illegal delivery of dental services by CMS, which led to the disruption of the livelihoods of 63 career professionals, who had committed themselves to the contractually compliant delivery of the DOC dental services through a bona fide, experienced, and qualified professional services corporation.

Yours very truly,

CROW & ASSOCIATES

Mark D. Schorr

MDS:bn
Enclosures
cc: The Honorable Jon S. Corzine, Governor
The Honorable Douglas H. Palmer, Mayor
David Rousseau, Treasurer
Edward McBride, Chief of Staff, Office of the Governor
George W. Hayman, Commissioner
Mary Jane Cooper, Inspector General
Matthew Boxer, Comptroller
Bonnie Watson Coleman, Assembly Majority Leader
Ronald L. Rice, State Senator
David Szuchman, Director
Nancy Costello Miller, Esquire
James Harris, President, New Jersey Conference of the NAACP
Nathan Fletcher, D.D.S., President, National Dental Association
Arthur Meisel, Executive Director, New Jersey Dental Association
Joel H. Sterns, Esquire
Leslie A. Hayling, Jr., D.D.S., President, Correctional Dental Associates