

SETTLEMENT AGREEMENT AND MUTUAL RELEASE

THIS SETTLEMENT AGREEMENT AND MUTUAL RELEASE (“Settlement Agreement”) is entered into this 8th day of December, 2016 (“Effective Date”) by and between HERBERT’S DRUG & SURG, its owners, officers, directors, successors, and assigns (hereinafter collectively referred to as “HERBERT’S”) represented by Jason M. McLaren, Esq., PharmD, RPh of Frier Levitt Attorneys at Law and STATE OF NEW JERSEY, OFFICE OF THE STATE COMPTROLLER, MEDICAID FRAUD DIVISION (“MFD”). Herbert’s and MFD are hereinafter collectively referred to as the “Parties” and each individually as a “Party.”

WHEREAS, MFD conducted a pharmacy inventory analysis and found that between February 1, 2009 and March 31, 2014, Herbert’s was reimbursed by the Division of Medical Assistance and Health Services (DMAHS) and/or its fiscal agent and/or the Managed Care Organizations for prescription claims that failed to have necessary supporting documentation in violation of N.J.A.C. 10:49-9.8, and N.J.S.A. 30:4D-12(d) (“Covered Conduct”); and

WHEREAS, MFD determined that, based on the Covered Conduct, Herbert’s received overpayments from the Medicaid Program; and

WHEREAS, Herbert’s disputed MFD’s determination and denied any civil wrongdoing in connection with the Covered Conduct; and

WHEREAS, the parties desire to amicably resolve all disputes between them giving rise to the Covered Conduct and have reached a mutually acceptable resolution of the controversies that exist between them;

NOW THEREFORE, in consideration of the mutual promises contained herein, as well as for other good and valuable consideration, the receipt and sufficiency of which is hereby

acknowledged, the parties agree to settle their dispute on the following terms:

(1) Herbert's agrees to pay to MFD the sum of Eight Hundred Twenty-Five Thousand, Three Hundred Dollars (\$825,300.00) in twelve (12) equal monthly payments of \$68,775. Herbert's agrees to pay to MFD consecutive monthly payments of \$68,775 on or before the 1st of each month starting January 1, 2017.

(2) Payment shall be by certified check, bank check, or attorney trust check made payable to "Treasurer, State of New Jersey," and shall be mailed or delivered as follows:

Attention: Processing Bureau
Treasurer, State of New Jersey
Division of Revenue
200 Woolverton Street, Building 20
Lockbox 656
Trenton, New Jersey 08646

"Herbert's Drug and Surg – OSC-MFD" must be included in the memo line so that payment is properly credited.

(3) If the payment arrangement as provided for in this Settlement Agreement is more than ten (10) days late, Herbert's will be in default of this Settlement Agreement and the outstanding and unpaid balance will immediately become due and collected through any means available to MFD as provided by law.

(4) The parties agree that this Settlement Agreement is intended to be a final resolution of all issues arising out of the Covered Conduct and is intended by each party to release the other party and its representatives from liability arising out of the Covered Conduct unless MFD is mandated to act by federal or State law; or mandated by order or judgment of a court or administrative agency (other than MFD).

(5) Nothing in this Settlement Agreement waives the rights of any other State or federal agency, including, among others, the New Jersey Division of Criminal Justice, from continuing with a pending or beginning a future civil, administrative or criminal investigation or other action for alleged conduct concerning Herbert's or from taking any action for such conduct. Nothing in this Settlement Agreement waives the rights of MFD to conduct an audit or investigation of prior or future years for the improper submission of any claims or conduct not specifically covered by this Settlement Agreement, and to take any action civilly or criminally for such conduct.

(6) Subject to the express terms of this Settlement Agreement as provided for in paragraphs 1-5 above, by the signatures set forth below, the authorization of which is hereby affirmed, Herbert's and MFD agree to the following Release: in consideration of the provision hereof including this release, each party agrees to release the other party and its representatives from liability, obligations and damages arising out of the Covered Conduct.

(7) Nothing herein shall constitute an admission, concession or finding of liability by any party.

(8) This Settlement Agreement shall be construed, enforced and governed by the laws of the State of New Jersey.

(9) This Settlement Agreement may be executed in Counterparts.

(10) This Settlement Agreement is effective upon the last date it is executed by the parties hereto.

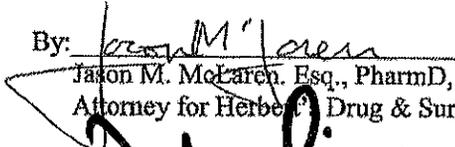
(11) This Settlement Agreement sets forth the entire agreement between and among the parties hereto with respect to the claims described herein and supersedes any other

written or oral understandings. This Settlement Agreement does not reflect any other terms or conditions or agreements between or among the parties with respect to any other matter.

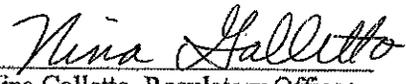
IN WITNESS WHEREOF, and intending to be legally bound, the parties hereto have executed the foregoing Settlement Agreement:

FORM AND CONTENT ACCEPTED AND AGREED TO BY:

DATE: 12/5/16 By: 
John Chong-Man Kim
Herbert's Drug & Surg

DATE: 12/8/16 By: 
Jason M. McLaren, Esq., PharmD, RPh
Attorney for Herbert's Drug & Surg

DATE: 12/8/16 By: 
Josh Lichtblau, Director
Office of the State Comptroller
Medicaid Fraud Division

DATE: 12/8/16 By: 
Nina Galletto, Regulatory Officer
Office of the State Comptroller
Medicaid Fraud Division