

SETTLEMENT AGREEMENT AND MUTUAL RELEASE

THIS SETTLEMENT AGREEMENT AND MUTUAL RELEASE (“Settlement Agreement”) is entered into this 18th day of July, 2019 (“Effective Date”) by and between Amit Datwani, Brijendera Singh, Jaffer Shahid and Hoboken Drugs, d/b/a Hoboken Family Pharmacy (collectively, “Hoboken Pharmacy”), represented by Angelo J. Cifaldi, Esq. and Satish Poondi, Esq. of Wilentz Goldman and Spitzer, PA and the State of New Jersey, Office of the State Comptroller, Medicaid Fraud Division (“MFD”). Hoboken Pharmacy 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 during the period of review between February 1, 2012 and February 10, 2017, Hoboken Pharmacy was reimbursed by the Division of Medical Assistance and Health Services (“DMAHS”) and/or its fiscal agent and/or the Managed Care Organizations (“MCO”) for prescription claims which failed to have the necessary supporting documentation in violation of N.J.S.A. 30:4D-12(d) and N.J.A.C. 10:49-9.8, and in some instances, for claims which did not contain the National Drug Code (“NDC”) of the actual drug dispensed, in violation of N.J.A.C. 10:51-1.24(b)(2), and Medicaid MCO’s policies (this scope and period is hereafter referred to as “Covered Conduct”); and

WHEREAS, MFD determined that, based on the Covered Conduct, Hoboken Pharmacy received an overpayment from the Medicaid program; and

WHEREAS, MFD issued a Notice of Claim, Notice of 30% Withhold and Certificate of Debt in this matter; and

WHEREAS money has been withheld by the State’s Medicaid fiscal agent and the Managed Care Organizations (“Withheld Funds”) pursuant to the Notice of Withhold, which exceeds the Total Payment Amount set forth below; and

WHEREAS MFD has previously advised the Medicaid fiscal agent and the Managed Care Organizations to terminate the withholding of otherwise payable funds; and

WHEREAS, Hoboken Pharmacy requested a contested case hearing in the Office of Administrative Law; and

WHEREAS, this matter was transmitted to the Office of Administrative Law where the parties commenced an administrative hearing on May 17, 2019; and

WHEREAS, the parties desire to amicably resolve all disputes regarding 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) Hoboken Pharmacy agrees to pay the Medicaid program the total amount of \$85,888.80, (the "Total Payment Amount") in accordance with N.J.S.A. 30:4D-7(h) and N.J.S.A. 30:4D-17(e). This amount includes (a) the principal amount of \$81,027.17, plus (b) a payment of \$4,861.63, which constitutes 6% interest on the principal amount.

(2) Hoboken Pharmacy agrees to allow MFD to apply the Withheld Funds as part of the settlement of this matter, and MFD agrees that the Withheld Funds will be applied toward the Total Payment Amount set forth in paragraph (1). Within sixty (60) days of the execution of this settlement agreement, MFD agrees to provide Hoboken Pharmacy with an accounting of the withheld funds. Any Withheld Funds in excess of the Total Payment Amount set forth in paragraph (1) will be released to Hoboken Pharmacy as soon as practicable after the

accounting has been completed. In the event that the amount withheld turns out to be less than the Total Payment Amount, Hoboken Pharmacy agrees to pay the State the difference between the Total Payment Amount and the withheld amount.

(3) Nothing in this Settlement Agreement precludes Hoboken Pharmacy from disputing the amount of the Withheld Funds by any means permitted by law.

(4) MFD shall file a Warrant to Discharge with the Clerk of the Superior Court of New Jersey indicating that the Certificate of Debt filed against Hoboken Pharmacy is satisfied and should be removed from the Court's docketed list of judgments.

(5) Hoboken Pharmacy agrees to act in full compliance with all applicable state and federal rules and regulations, including but not limited to submitting only claims that accurately and completely reflect the services provided and medications purchased and dispensed by Hoboken Pharmacy, along with their corresponding NDC numbers. Hoboken Pharmacy specifically agrees that it will not bill Medicaid for a drug with one NDC number and dispense a drug with a different NDC number because that is impermissible. The owners of Hoboken Pharmacy who are signatories to this agreement agree that, from the date of this Settlement Agreement, every pharmacy in which any of them is a director/officer or possesses an ownership interest will only submit claims to Medicaid or a Medicaid MCO for drugs where the NDC number of the item dispensed is identical to the NDC number of the item for which the pharmacy is submitting a claim. Moreover, Hoboken Pharmacy agrees that it will only submit claims for goods/services provided for which it possesses sufficient documentation to support such claims and will implement policies to ensure that the underlying issues that caused or contributed to the Covered Conduct will be appropriately addressed and thereby not repeated.

(6) 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).

(7) 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 Hoboken Pharmacy 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.

(8) Subject to the express terms of this Settlement Agreement, by the signatures set forth below, the authorization of which is hereby affirmed, Hoboken Pharmacy 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 employees, representatives, officers and directors from liability, obligations and damages arising out of the Covered Conduct.

(9) The terms of this Settlement Agreement may be modified only by a subsequent written agreement signed by all Parties.

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

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

(12) This Settlement Agreement may be executed in counterparts.

(13) This Settlement Agreement is effective upon the Effective Date reflected on the first page of the Settlement Agreement.


(14) 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 understanding. 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, on the following page, have executed the foregoing Settlement Agreement:


FORM AND CONTENT ACCEPTED AND AGREED TO BY:

HOBOKEN PHARMACY

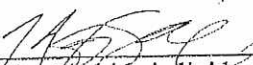
DATE:

By: 
Amit Datwani, individually and on behalf of Hoboken Pharmacy

DATE:

By: 
Brijendera Singh, individually and on behalf of Hoboken Pharmacy

DATE:

By: 
Jaffer Shahid, individually and on behalf of Hoboken Pharmacy

DATE:

By: Satish V. Poondi
Name: Gail V. Puri
Attorney for Hoboken Pharmacy

PHILIP JAMES DEGNAN
STATE COMPTROLLER

DATE:

By: _____
Josh Lichtblau, Director
Medicaid Fraud Division

DATE:

By: _____
Don Catinello, Supervising Regulatory Officer
Medicaid Fraud Division

DATE:

By: _____
Nina Galletto, Regulatory Officer
Medicaid Fraud Division

DATE:

By: _____

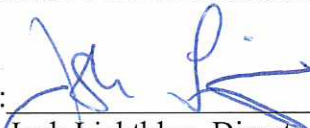
Name: _____
Attorney for Hoboken Pharmacy

PHILIP JAMES DEGNAN
STATE COMPTROLLER

DATE:

7/18/19

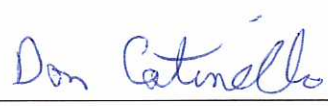
By:


Josh Lichtblau, Director
Medicaid Fraud Division

DATE:

7/18/19

By:


Don Catinello, Supervising Regulatory Officer
Medicaid Fraud Division

DATE:

7/18/19

By:


Nina Galletto, Regulatory Officer
Medicaid Fraud Division