

## **SETTLEMENT AGREEMENT AND MUTUAL RELEASE**

THIS SETTLEMENT AGREEMENT AND MUTUAL RELEASE ("Settlement Agreement") is entered into this 28<sup>th</sup> day of April, 2023 ("Effective Date") by and between Mercer-Bucks Orthopaedics P.C., d/b/a Mercer Bucks Orthopaedics, and owners, Edward Armbruster, D.O., Thomas Bills, M.D., David Eingorn, M.D., John Nolan Jr., M.D., Frank Colarusso, M.D., Paul Codjoe, M.D., Fredric Kleinbart M.D., David Hardeski, Rudolf Zak, and Stephen Cairone (hereinafter collectively referred to as "Mercer Bucks"), represented by Darren Gelber, Esq., and Jason Krisza, Esq., of Wilentz, Goldman & Spitzer, P.A., and the State of New Jersey, Office of the State Comptroller, Medicaid Fraud Division ("MFD"). Mercer Bucks and MFD are hereinafter collectively referred to as the "Parties" and each individually as a "Party."

WHEREAS, MFD, conducted an investigation and found that between January 1, 2015 through March 30, 2019, Mercer Bucks was reimbursed by the Department of Human Services, Division of Medical Assistance and Health Services (DMAHS) and/or its fiscal agent and/or the Managed Care Organizations (MCO) for claims which failed to have necessary supporting documentation for American Medical Association's Current Procedural Terminology (CPT) code(s) 99202 through 99215, 99242 through 99245, 20600 through 20610, and 98926 through 98928, in violation of N.J.A.C. 10:49-9.8(b), N.J.A.C. 10:49-5.5(a)(13), N.J.A.C. 10:54-9.1 and N.J.S.A. 30:4D-12(d) ("Covered Conduct"); and

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

WHEREAS, MFD issued an Amended Notice of Claim, Notice of Withholding and Certificate of Debt in this matter and money has been withheld pursuant to the Notice of Withhold by DMAHS and/or its fiscal agent and/or one or more MCO (these funds are hereinafter referred to as "Withheld Funds"); and

WHEREAS, Mercer Bucks contested the findings and provided MFD with additional supporting documentation, facts and information that it maintained would reduce the overpayment amount; and

WHEREAS, MFD took into consideration the additional documentation, facts, and information that Mercer Bucks provided and reduced the alleged overpayment demand; and

WHEREAS, Mercer Bucks requested a hearing before the Office of Administrative Law (the “OAL”) to contest the remaining overpayment demand; and

WHEREAS, as of the date of this Agreement, the matter remains pending before the OAL and has not been adjudicated; 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) Mercer Bucks agrees to pay the total sum of One Hundred Two Thousand Nine Hundred Eighty-Seven dollars and fourteen cents (\$102,987.14) (“Total Payment Amount”) in the following manner:

a. Mercer Bucks agrees to release \$102,987.14 of Withheld Funds to MFD and MFD agrees that this \$102,987.14 of Withheld Funds will be applied in full satisfaction of the Total Payment Amount. Mercer Bucks waives and relinquishes all rights or claims to \$102,987.14 of the Withheld Funds. The parties understand that the Withheld Funds cannot be determined until MFD has completed an accounting of such funds. MFD shall make all reasonable efforts to provide to Mercer Bucks an accounting of Withheld

Funds no later than sixty (60) days after the Effective Date of this Settlement Agreement.

(2) In the event that the Withheld Funds are greater than the Total Payment Amount, MFD agrees to remit payment to Mercer Bucks the amount of Withheld Funds that exceeds the Total Payment Amount within thirty (30) days of an accounting of the Withheld Funds by MFD. In the event that the Withheld Funds are less than the Total Payment Amount, Mercer Bucks agrees to repay such shortage (i.e. the difference between the Total Payment Amount (\$102,987.14) and the Withheld Funds to MFD within thirty (30) days of receipt of the accounting of Withheld Funds (“the Shortage Payment”).

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

(4) For any payments that may be necessary under the terms of this settlement agreement, payment to MFD 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

“Mercer Bucks Orthopaedics– [REDACTED]” must be included in the memo line so that payment is properly credited.

(5) If the Shortage Payment provided for in this Settlement Agreement is more than ten (10) days late, Mercer Bucks will be in default of this Settlement Agreement and the total outstanding and unpaid balance, plus interest (the “Default Amount”), accruing from the date of default will immediately become due. Should Mercer Bucks not cure the Default Amount within

ten (10) business days of receiving notice of default, the Default Amount will immediately be collected through any means available to MFD, as provided by law.

(6) As soon as practicable after receipt of the Total Payment Amount from Mercer Bucks, 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 Mercer Bucks, Drs. Rikin Patel and Keith Crivello, is satisfied and should be removed from the Court's docketed list of judgments.

(7) Mercer Bucks agrees to act in full compliance with all applicable state and federal rules and regulations, including but not limited to only submitting claims that accurately and completely reflect the services provided. To that end, Mercer Bucks, agrees to only submit claims for services provided for which Mercer Bucks 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.

(8) 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).

(9) 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 Mercer Bucks 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.

(10) Subject to the express terms of this Settlement Agreement as provided for in paragraphs 1-9 above, by the signatures set forth below, the authorization of which is hereby affirmed, Mercer Bucks 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, directors, and insurers from liability, obligations and damages arising out of the Covered Conduct.

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

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

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

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

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

(16) 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:

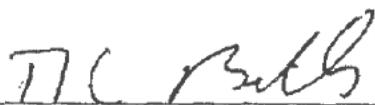
FORM AND CONTENT ACCEPTED AND AGREED TO BY:

**Mercer-Bucks Orthopaedics, P.C., d/b/a Mercer Bucks Orthopaedics**

DATE: 4/7/2023

By:   
Edward Armbruster, D.O., individually and as authorized signatory for Mercer-Bucks Orthopaedics, P.C.

DATE:

By:   
Thomas Bills, M.D., individually and as authorized signatory for Mercer-Bucks Orthopaedics, P.C.

DATE:

By:   
David Eingorn, M.D., individually and as authorized signatory for Mercer-Bucks Orthopaedics, P.C.

DATE:

By:   
John Nolan Jr., M.D., individually and as authorized signatory for Mercer-Bucks Orthopaedics, P.C.

DATE:

By:   
Frank Colarusso, M.D., individually and as authorized signatory for Mercer-Bucks Orthopaedics, P.C.

DATE:

By:   
Paul Codjoe, M.D., individually and as authorized signatory for Mercer-Bucks Orthopaedics, P.C.

DATE:

By: 

Fredric Kleinbart, D.O., individually and as authorized signatory for Mercer-Bucks Orthopaedics, P.C.

DATE:

By: 

David Hardeski, M.D., individually and as authorized signatory for Mercer-Bucks Orthopaedics, P.C.

DATE:

By: 

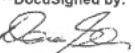
Rudolf Zak, D.P.M., individually and as authorized signatory for Mercer-Bucks Orthopaedics, P.C.

DATE:

By: 

Stephen Cairone, D.O., individually and as authorized signatory for Mercer-Bucks Orthopaedics, P.C.

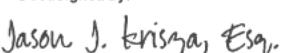
DATE:

By: 

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Darren M. Gelber Esq.

Counsel for Mercer-Bucks Orthopaedics, P.C.

DATE:

By: 

8697A4B9C0F244C  
Jason Krisza, Esq.

Counsel for Mercer-Bucks Orthopaedics, P.C.

**KEVIN D. WALSH  
ACTING STATE COMPTROLLER**

DATE:

By: 

Josh Lichtblau, Director  
Medicaid Fraud Division

Fredric Kleinbart, D.O., individually and as authorized signatory for Mercer-Bucks Orthopaedics, P.C.

DATE: By: \_\_\_\_\_  
David Hardeski, M.D., individually and as authorized signatory for Mercer-Bucks Orthopaedics, P.C.

DATE: By: \_\_\_\_\_  
Rudolf Zak, D.P.M., individually and as authorized signatory for Mercer-Bucks Orthopaedics, P.C.

DATE: By: \_\_\_\_\_  
Stephen Cairone, D.O., individually and as authorized signatory for Mercer-Bucks Orthopaedics, P.C.

DATE: By: \_\_\_\_\_  
Darren M. Gelber Esq.  
Counsel for Mercer-Bucks Orthopaedics, P.C.

DATE: By: \_\_\_\_\_  
Jason Krisza, Esq.  
Counsel for Mercer-Bucks Orthopaedics, P.C.

**KEVIN D. WALSH  
ACTING STATE COMPTROLLER**

DATE: 4/28/2023 By: Josh Lichtblau  
Josh Lichtblau, Director  
Medicaid Fraud Division

DATE: 4/28/2023

By: Justin Berardo  
Justin Berardo, Supervising Regulatory Officer  
Medicaid Fraud Division

DATE: 4/28/2023

By: Telge Peiris  
Telge N. Peiris, Regulatory Officer  
Medicaid Fraud Division