

SETTLEMENT AGREEMENT AND MUTUAL RELEASE

THIS SETTLEMENT AGREEMENT AND MUTUAL RELEASE (“Settlement Agreement”) is entered into this 12th day of May, 2020 (“Effective Date”) by and between Edison Drugs & Surgical Inc. D/B/A Town Drugs & Surgical and Padmesh Patel (hereinafter collectively referred to as “Town Drugs”), represented by Angelo Cifaldi, R.Ph., Esq. of Wilentz, Goldman & Spitzer, P.A. and the State of New Jersey, Office of the State Comptroller, Medicaid Fraud Division (“MFD”). Town Drugs 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 June 26, 2013 and March 1, 2018, Town Drugs 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 prescription claims which failed to have necessary supporting documentation, in violation of N.J.A.C. 10:49-9.8(b) and N.J.S.A. 30:4D-12(d) (“Covered Conduct”); and

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

WHEREAS, MFD issued a Notice of Claim, Amended Notice of Claim, Notice of Withhold 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 Fund”); 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) Town Drugs agrees to pay the total sum of Twenty Thousand Five Hundred Eighty Dollars and Seventy-Six Cents (\$20,580.76) (“Total Payment Amount”) to MFD as follows: Town Drugs agrees to release \$20,580.76 of Withheld Funds to MFD and MFD agrees that this \$20,580.76 of Withheld Funds will be applied in full satisfaction of the Total Payment Amount. Town Drugs waives and relinquishes all rights or claims to \$20,580.76 of the Withheld Funds.

(2) Within five (5) days of execution of this Settlement Agreement, MFD shall notify DMAHS and each MCO immediately to take the necessary steps to terminate withholding of otherwise payable 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 Town Drugs an accounting of Withheld Funds no later than ninety (90) days after the effective date of this Settlement Agreement. Given the current challenges brought about by COVID 19, the accounting may take longer than ninety (90) days, but will be provided as soon as practicable.

(3) In the event that the Withheld Funds are greater than the Total Payment Amount, MFD agrees to remit payment to Town Drugs the amount of Withheld Funds that exceeds the Total Payment Amount within 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, Town Drugs agrees to repay such shortage (i.e. the difference between the Total Payment Amount (\$20,580.76) and the Withheld Funds) to MFD within thirty (30) days of receipt of the accounting of Withheld Funds.

(4) Nothing in this Settlement Agreement precludes Town Drugs from disputing the amount of the Withheld Funds by any means permitted by law.

(5) 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

“Edison Drugs & Surgical Inc. D/B/A Town Drugs & Surgical – OSC/MFD [REDACTED]” must be included in the memo line so that payment is properly credited.

(6) As soon as practicable after receipt of the Total Payment Amount from Town Drugs, 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 Town Drugs is satisfied and should be removed from the Court’s docketed list of judgments. Due to the current COVID 19 challenges, including court closings, the steps outlined in this paragraph may take more time than usual to complete.

(7) If the payment provided for in this Settlement Agreement is more than ten (10) days late, Town Drugs will be in default of this Settlement Agreement and the outstanding and unpaid balance plus interest (the “Default Amount”), accruing from the date of default will immediately become due and collected through any means available to MFD as provided by law, and Town Drugs agrees to release the Withheld Funds to MFD up to the Default Amount.

(8) Town Drugs 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. To that end, Town Drugs 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.

(9) 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).

(10) 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 Town Drugs 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.

(11) Subject to the express terms of this Settlement Agreement as provided for in paragraphs **1-10** above, by the signatures set forth below, the authorization of which is hereby affirmed, Town Drugs 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.

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

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

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

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

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

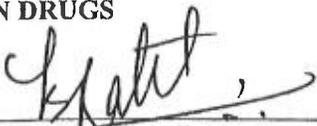
(17) This Settlement Agreement sets forth the entire agreement between and among the parties hereto with respect to the claims described herein and supersedes any other written or oral understanding. This Settlement Agreement does not reflect any other terms or conditions or agreements between or among 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:

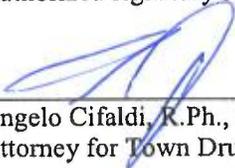
FORM AND CONTENT ACCEPTED AND AGREED TO BY:

TOWN DRUGS

DATE:

By: 
Padmesh Patel, individually and as
authorized signatory for Town Drugs

DATE:

By: 
Angelo Cifaldi, R.Ph., Esq.
Attorney for Town Drugs

**KEVIN D. WALSH
ACTING STATE COMPTROLLER**

DATE: 5/12/20

By: *Josh Lichtblau*
Josh Lichtblau, Director
Medicaid Fraud Division

DATE: 5/12/20

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

DATE: 5/12/20

By: *Nina Galletto*
Nina Galletto, Regulatory Officer
Medicaid Fraud Division