

## SETTLEMENT AGREEMENT AND MUTUAL RELEASE

THIS SETTLEMENT AGREEMENT AND MUTUAL RELEASE (“Settlement Agreement”) is entered into this 23rd day of May, 2018, (“Effective Date”) by and between BERKENKOPF PHARMACY, INC. D/B/A EPISCOPO’S PHARMACY, its owners, directors, successors and assigns (hereinafter collectively referred to as “Episcopo’s” or “Pharmacy”), with a principal office located at 1125 Chambers Street, Trenton, NJ, represented by Jonathan E. Levitt, Esq., and the STATE OF NEW JERSEY, OFFICE OF THE STATE COMPTROLLER, MEDICAID FRAUD DIVISION (“MFD”). Episcopo’s and MFD may hereinafter collectively be referred to as the “Parties” and each individually as a “Party.”

WHEREAS, MFD conducted an investigation and found that between January 1, 2008 and May 30, 2009, Episcopo’s improperly billed the Division of Medical Assistance and Health Services (“DMAHS”), its fiscal agent, and/or Medicaid Managed Care Organizations (“MCOs”) for 787 claims that should not have been billed to Medicaid because they were either not submitted to Medicare or had been denied by Medicare, in violation of N.J.S.A. 30:4D-20, et. seq. (hereinafter this is referred to as the “Covered Conduct”);

WHEREAS, MFD determined that based on the Covered Conduct, Episcopo’s received overpayments from the Medicaid program totaling \$115,504.66;

WHEREAS, in addition to the identified overpayments, MFD assessed false claims penalties based on MFD’s belief that Episcopo’s provided false information to Medicaid, in the amount of \$1,035,000 and interest in the amount of \$10,395.42;

WHEREAS, MFD issued a Notice of Claim to Episcopo’s Pharmacy on June 4, 2013 in the total amount of \$1,160,900.08 along with a Certificate of Debt for this same amount;

WHEREAS, Episcopo’s did not respond to the Notice of Claim, and on September 25, 2013 MFD issued a Notice of Default Judgment and instituted a withhold of 30 percent of Medicaid payments that would otherwise have been paid to Episcopo’s;

WHEREAS, Episcopo’s denies any civil wrongdoing in connection with the Covered Conduct;

WHEREAS, as of May 14, 2018, as a result of the withhold, MFD possessed a total of \$560,712.47, and the withholding amount has continued to accrue to date;

WHEREAS, as of May 14, 2018, an MCO advised MFD that it has issued additional checks to MFD over the last several months pursuant to the withhold in amounts which in total exceed \$20,000, but MFD has not yet received those checks;

WHEREAS, in or about April 2018, Episcopo's contacted MFD requesting that MFD cease withholding its funds, arguing, among other things, that the total amount set forth in the Notice of Claim is significantly higher than what Episcopo's should have to pay based on the principal amount of the identified overpayment;

WHEREAS, Episcopo's advised MFD that it was considering filing an action to reopen this case and thereby recover funds that have been withheld;

WHEREAS, after assessing the amount of money withheld to date, the principal amount of overpayment identified, and after considering and weighing the litigation risk of continuing to withhold payments, MFD has decided that it is in the best interest of the Medicaid program to enter into this Settlement Agreement;

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) The parties agree to settle this matter for a total of Five Hundred Eighty Thousand Dollars (\$580,000).

(2) MFD will keep the \$560,712.47 withholding amount that has been accrued up to May 14, 2018 and will keep an additional \$19,287.53. MFD will provide Episcopo's with an accounting of such withheld funds as soon as practicable, broken down by Fee For Service and by each MCO. Any amounts received by MFD in excess of the total amount of \$580,000 will be returned or refunded to Episcopo's as soon as practicable.

(3) The parties agree that all funds withheld up to the amount of \$580,000 shall remain the property of MFD, and Episcopo's shall hereby relinquish any claim it may possess to same;

(4) Upon execution of the settlement agreement, MFD will direct the Medicaid program (Fee For Service) and the MCOs to terminate the withholding of Episcopo's Medicaid payments as soon as practicable. Within three business days of execution of the Settlement Agreement, MFD will file a Warrant to Discharge Certificate of Debt which has been filed against Episcopo's and John Berkenkopf with the New Jersey Superior Court;

(5) The Parties agree that this Settlement Agreement is intended to be the 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.

(6) Nothing in this Settlement Agreement waives the rights of any other State or Federal agency from continuing with a pending, if any, or beginning a future civil, administrative or criminal investigation or other action for alleged conduct concerning Episcopo'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 conduct outside the Covered Conduct for any claims or conduct not specifically covered by this Settlement Agreement, and to take any action it deems appropriate to address such conduct.

(7) Subject to adherence to the express terms of this Settlement Agreement as provided for in paragraphs 1-6 above, by signature set forth below, the authorization of which is hereby affirmed, Episcopo'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 any liability, obligations or damages arising out of the Covered Conduct.

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

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

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

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

(12) This Settlement Agreement sets forth the entire agreement between and among the Parties herein 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 forgoing Settlement Agreement:

FORM AND CONTENT ACCEPTED AND AGREED TO BY:

DATE:

By:

John Berkenkopf, on behalf of  
Berkenkopf Pharmacy, Inc., D/B/A  
Episcopo's Pharmacy

DATE:

5/23/18

By:


PHILIP JAMES DEGNAN  
STATE COMPTROLLER

  
Josh Lichtblau, Director  
Medicaid Fraud Division

DATE:

5/23/18

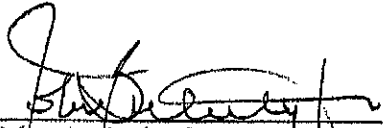
By:

  
Don Catinello  
Supervising Regulatory Officer  
Medicaid Fraud Division

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

FORM AND CONTENT ACCEPTED AND AGREED TO BY:

DATE: May 23, 2018

By:   
John Berkenkopf, on behalf of  
Berkenkopf Pharmacy, Inc., D/B/A  
Episcopo's Pharmacy

PHILIP JAMES DEGNAN  
STATE COMPTROLLER

DATE:

By: \_\_\_\_\_  
Josh Lichtblau, Director  
Medicaid Fraud Division

DATE:

By: \_\_\_\_\_  
Don Catinello  
Supervising Regulatory Officer  
Medicaid Fraud Division