

SETTLEMENT AGREEMENT AND MUTUAL RELEASE

THIS SETTLEMENT AGREEMENT AND MUTUAL RELEASE (“Settlement Agreement”) is entered into this 22nd day of March 2022 (“Effective Date”) by and between Gordian and Florence Ndubizu (hereinafter collectively “the Ndubizus”), the former shareholders of Health Care Pharmacy, Inc. (hereinafter “Health Care Pharmacy”), represented by the law firm of Frier Levitt, LLC, and the State of New Jersey, Office of the State Comptroller, Medicaid Fraud Division (“MFD”). The Ndubizus and MFD are hereinafter collectively referred to as the “Parties” and each individually as a “Party.”

WHEREAS, MFD conducted a pharmacy inventory analysis of Health Care Pharmacy and determined that between February 11, 2012 and September 30, 2016 Health Care 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 in a manner which violated N.J.A.C. 10:49-9.8(b) and N.J.S.A. 30:4D-12(d) because Health Care Pharmacy was not able to provide necessary supporting documentation (“Covered Conduct”); and

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

WHEREAS, MFD issued an Amended Notice of Claim, and Certificate of Debt in this matter;
and

WHEREAS, Health Care Pharmacy and/or the Ndubizus denied MFD’s determinations that formed the basis for the Covered Conduct;

WHEREAS, the parties desire to amicably resolve the dispute regarding the alleged overpayment and have reached a mutually acceptable resolution of the controversies that exist between them; and

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 Ndubizus agree to pay the total sum of Two Hundred Eighty-One Thousand Eight Hundred Eight Dollars and Fourteen Cents (\$281,808.14) (“Total Payment Amount”) to MFD as follows:

- a. \$46,968.14 shall be due by April 1, 2022.
- b. \$46,968.00 shall be due by May 1, 2022.
- c. \$46,968.00 shall be due by June 1, 2022.
- d. \$46,968.00 shall be due by July 1, 2022.
- e. \$46,968.00 shall be due by August 1, 2022.
- f. \$46,968.00 shall be due by September 1, 2022.

(2) 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

“The Ndubizus, former shareholders of Health Care Pharmacy, Inc. – OSC/MFD- MFD-

██████████ must be included in the memo line so that payment is properly credited.

(3) There shall be no penalties for early payment of the Total Payment and the Ndubizus are expressly permitted to make the Total Payment prior to the final payment date contained in paragraph 1 above. Within sixty (60) days after receipt of the Total Payment Amount

from the Ndubizus, 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 the Ndubizus is satisfied and should be removed from the Court's docketed list of judgments, with a copy of such filing sent to the Ndubizus.

(4) If payment as provided for in this Settlement Agreement is more than ten (10) days late, the Ndubizus will be in default of this Settlement Agreement, and the total remaining unpaid balance plus interest accruing from the date of default will immediately become due ("the Default Amount"). Should the Ndubizus not cure the default within five (5) business days of receiving notice of default, the Default Amount immediately will be collected through any means available to MFD as provided by law. Any notice related to a possible default shall be sent to both Gordian Ndubizu and Florence Ndubizu via regular mail to P.O. Box 91, Princeton Junction, New Jersey 08550 and by email to ndubizga@yahoo.com and fdubizga@yahoo.com with a copy to the Ndubizus legal counsel via email, Lucas W. Morgan, Esq. (lmorgan@frierlevitt.com) and Dae Lee, Esq. (dlee@frierlevitt.com).

(5) In the event the Ndubizus own or operate another Medicaid provider in the future, the Ndubizus agree 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, the Ndubizus, agree to only submit claims for services provided for which the Ndubizus possess 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, referenced above, including MFD's investigation,

and is intended by each party to release the other party and its representatives from liability arising out of the Covered Conduct, including MFD's investigation, 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). In the event 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, the Ndubizus expressly reserve all rights in connection with such mandated action including the right to present and rely on this Settlement Agreement and Mutual Release to show that the issues related to this matter and/or the Covered Conduct were mutually and amicably resolved by the parties.

(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 or criminal investigation or other action for alleged conduct concerning the Ndubizus 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, subject to and as limited by applicable law. In the event any other state or federal agency, including, among others, the New Jersey Division of Criminal Justice continues or begins a civil or criminal investigation or other action for alleged conduct concerning the Ndubizus and/or the Ndubizus prior status as shareholders of Health Care Pharmacy, the Ndubizus expressly reserve all rights in connection with such civil or criminal investigation or other action for any alleged conduct including the right to present and rely on this Settlement Agreement and Mutual Release to show that the issues related to this matter and/or the Covered Conduct were mutually and amicably resolved by the parties. The Ndubizus further reserve all rights in the event MFD conducts an audit or investigation of prior or

future years' claims submissions not specifically covered by the Settlement Agreement and Mutual Release.

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

(9) Subject to the express terms of this Settlement Agreement as provided for in paragraphs **1-8** above, by the signatures set forth below, the authorization of which is hereby affirmed, the Ndubizus 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 and MFD's investigation.

(10) Nothing herein shall constitute an admission, concession, waiver or finding of wrongdoing or liability 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:

**FORMER SHAREHOLDERS OF
HEALTH CARE PHARMACY, INC.**

DATE: By: *Ndubizu*
Gordian Ndubizu, former shareholder of
HealthCare Pharmacy, Inc.

DATE: By: *Ndubizu*
Florence Ndubizu, former shareholder of
HealthCare Pharmacy, Inc.

DATE: 3-21-2022 By: *Lucas W. Morgan*
Lucas W. Morgan, Esq.
Attorney for Gordian and Florence
Ndubizu, former shareholders of Health
CarePharmacy, Inc.

**KEVIN D. WALSH
ACTING STATE COMPTROLLER**

DATE: 3/22/2022 By: *Josh Lichtblau*
Josh Lichtblau, Director
Medicaid Fraud Division

DATE: 3/22/2022 By: *Don Catinello*
Don Catinello, Supervising Regulatory Officer
Medicaid Fraud Division

DATE: 3/22/2022 By: *Nina Galletto*
Nina Galletto, Regulatory Officer
Medicaid Fraud Division