

GENERAL RELEASE AND SETTLEMENT AGREEMENT

I. PARTIES

This General Release and Settlement Agreement (“Agreement”) is entered into by the Medicaid Fraud and Residential Abuse Unit (“MFRAU”) of the Office of the Vermont Attorney General on behalf of itself and the Department of Vermont Health Access (“DVHA”) (collectively, the “State”), and Frank Buggiani, D.P.M., (hereinafter the “Parties”), through their authorized representatives.

II. PREAMBLE

As a preamble to this Agreement, the Parties agree to the following:

A. Frank Buggiani, D.P.M. was a Vermont resident doing business in the state of Vermont as a licensed podiatrist at least during the time period from 2008-2013.

B. Dr. Buggiani was enrolled as a Vermont Medicaid provider during the time period from 2008 through 2013, offering podiatry services. As an enrolled Medicaid provider, pursuant to its executed Provider Enrollment Agreements, Dr. Buggiani has agreed to abide by applicable state and federal rules and regulations, including the Medicaid Covered Service Rules and Provider Manual issued by DVHA, governing the submission of claims to the Medicaid program.

C. MFRAU received a referral from DVHA’s Program Integrity Unit alleging that Buggiani was submitting claims to Medicaid for L3000 orthotic inserts that were upcoded, and that Dr. Buggiani was submitting claims to Medicaid for L3000 orthotic inserts with charges in excess of his “uniform charge” or “usual and customary charge”. Provider Enrollment Agreements and the Medicaid Provider Manual both require the provider to not bill in excess of their “uniform charge” or “usual and customary charge.” The terms are defined in the Provider

Manual as “the amount that the provider bills to insured and self-pay patients for the same service.” The definition also explains that if the provider charges more than one rate for a service then they are required to submit the lowest charge to Medicaid. The referral further alleged that Dr. Buggiani routinely billed Vermont Medicaid \$275 per L3000 orthotic inserts between 2008 and 2012. The referral stated that during the same time period Dr. Buggiani billed other payors between \$137.50 and \$147.50 for each L3000 orthotic insert.

D. DVHA notified Dr. Buggiani on January 21, 2013, that effective January 25, 2013 it would partially suspend Vermont Medicaid provider payments to Dr. Buggiani, pursuant to 42 C.F.R. § 455.23. The suspension took effect as noticed, and to date a total of \$8,678.97 has been held under the suspension by DVHA.

E. MFRAU’s investigation determined that Dr. Buggiani submitted incorrect claims to Medicaid as a result of the following “Covered Conduct.”

- a. Prior to May 2008, Buggiani generally billed Medicaid a single L3000 unit at \$275 per unit for each pair of L3000 orthotic inserts delivered to patients.
- b. Beginning in May 2008 through mid-May 2012, Buggiani routinely billed Medicaid for two units of service for L3000 orthotic inserts delivered to patients, at \$275 per unit of service, resulting in a claim of \$550 per pair of L3000 orthotic inserts. During this same time period, Buggiani billed other payors a rate as low as \$137.50 per unit of service or \$275 per pair.
- c. Beginning mid-May 2012 through November 2012, Buggiani billed Medicaid \$225 per unit of service for L3000 orthotics or \$450 per pair, while at the same time he billed other payors a rate as low as \$137.50-\$147.50 per unit of service or \$275-\$295 per pair.

d. As a result of the conduct in the preceding two paragraphs (b) and (c), Buggiani submitted claims to Medicaid seeking payment for amounts greater than which Buggiani was entitled under the Provider Enrollment Contract and/or DVHA regulations. Medicaid paid a total of \$213,251.50 on these these claims. Had the claims been properly filed, Medicaid would have only been responsible for payments of \$137,789.05, resulting in a Medicaid overpayment of \$75,462.45 to Dr. Buggiani.

e.

F. Dr. Buggiani cooperated with requests information and data related to the claims as part of the investigation.

G. The State filed a civil complaint on December 12, 2014, styled *State of Vermont v. Frank Buggiani, D.P.M.*, Cause No. 740-12-14 RDCV, in the Superior Court of Rutland County Vermont, Civil Division. In its Complaint, the State alleges that the Covered Conduct described above in subparagraphs E(a) – (d) constitute violations of Dr. Buggiani’s obligations under its Provider Enrollment Agreements and/or 33 V.S.A. § 141(d). The State also alleged that some or all of the orthotic services provided by Dr Buggiani were not medically necessary. The Complaint sought damages of \$67,643.46 for the time period of December 15, 2008 through the date of filing, as well as civil penalties and interest.

H. Dr. Buggiani does not dispute the facts regarding the Covered Conduct insofar as they are described above in subparagraphs (a)-(d),, but denies he has violated the Provider Enrollment Agreements, 33 V.S.A. 141(d), or any other state or federal law, and denies any other facts or allegations stated in the State’s Original Complaint filed in this matter.

1. To avoid the delay, expense, inconvenience, and uncertainty of litigation or administrative recoupment proceedings, the Parties reach a full and final settlement of the Covered Conduct pursuant to the Terms and Conditions below.

III. TERMS AND CONDITIONS

NOW, THEREFORE, in consideration of the mutual promises, covenants, and obligations set forth below, and for good and valuable consideration as stated herein, the Parties agree as follows:

1. Dr. Buggiani shall pay to the State of Vermont a total sum of eighty-three thousand, six hundred and seventy-eight dollars and ninety-seven cents (**\$83,678.97**) (the "Settlement Amount"). The Settlement Amount shall be made in two installments as follows: (1) a payment of \$75,000 in the form of a cashier's check to be made payable to the State of Vermont; and (2) a payment of \$8,678.97 at the time that DVHA releases the monies on adjudicated claims it has been holding in suspension under 42 CFR § 455.23, as described below in paragraph 4, by reducing the monies released by that same amount (\$8,678.97). Payment shall be made no later than sixty (60) days after this Agreement is fully executed by the parties. The Settlement Amount provides for recovery of Medicaid funds to the State of \$67,643.46, and \$16,035.51 in additional recoveries to the State.

2. Dr. Buggiani fully and finally releases the State, its agencies, employees, servants, and agents from any claims (including attorney's fees, costs, and expenses of every kind and however denominated) that Dr. Buggiani has asserted, could have asserted, or may assert in the future against the State, its agencies, employees, servants, and agents, related to the Covered Conduct, the State's investigation thereof, and the suspension of Vermont Medicaid provider payments to Dr. Buggiani under 42 CFR § 455.23.

3. Subject to the exceptions in Paragraph 5 below, in consideration of the obligations of Dr. Buggiani set forth in this Agreement, and conditioned upon Dr. Buggiani's payment in full of the Settlement Amount, the State (on behalf of itself, its officers, agents, agencies, and departments) agrees to release Dr. Buggiani, his predecessors, successors, assigns, and affiliates from any civil, criminal, or administrative claim the State has or may have for the Covered Conduct or any allegation contained in the State's Complaint.

4. DVHA shall instruct HP Enterprise Services ("HP"), the fiscal intermediary for the Vermont Medicaid program, to release all monies that have been held in suspension for Dr. Buggiani since January 25, 2013, in the earliest possible remittance advice following the effective date of this Agreement. As of the date of this Agreement suspended payments totaled \$8,678.97. As a result of the deduction for the Settlement Amount, described in Paragraph 1 above, no funds will be distributed to Dr. Buggiani, though DVHA records will indicate payment to Dr. Buggiani in the amount of \$8,678.97.

5. Notwithstanding any terms of this Agreement, specifically reserved and excluded from the scope and terms of this Agreement as to any entity or person (including Dr. Buggiani) are any and all of the following:

- (a) Any criminal, civil or administrative liability to the State (or its departments or agencies) for any conduct other than the Covered Conduct or any allegation contained in the State's Complaint;
- (b) Any liability based upon such obligations as are created by this Agreement;

6. Without limitation of the foregoing, immediately following execution of this Agreement, MFRAU and DVHA shall terminate all current administrative, civil and criminal

investigations and proceedings against Dr. Buggiani relating to the Covered Conduct, and have no intent to pursue any further or additional claims or litigation against Dr. Buggiani relating to the same. MFRAU will file an Agreed Motion to Dismiss the pending civil case styled *State of Vermont v. Frank Buggiani, D.P.M.*, Cause No. 740-12-14 RDCV, in the Superior Court of Rutland County Vermont, Civil Division within seven days of the later of: (1) execution of this Agreement; or (2) the payment of the Settlement Amount by Dr. Buggiani.

7. Nothing in this Agreement constitutes an agreement by the State concerning the characterization of the Settlement Amount for purposes of state or federal tax laws, and Dr. Buggiani will rely on his own counsel or experts regarding the effect of this Agreement under any state or federal tax laws.

8. Dr. Buggiani shall not resubmit to any Vermont Medicaid carrier or intermediary any previously denied claims for the Covered Conduct or L3000 orthotic inserts, and shall not appeal any such denials of claims, but may do so for non-Covered Conduct.

9. This Agreement is intended to be for the benefit of the Parties only. The Parties do not release any claims against any other person or entity, except to the extent provided for in Paragraphs 2 and 3 above.

10. Each party to this Agreement will bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

11. Dr. Buggiani represents that this Agreement is freely and voluntarily entered into with the advice of counsel and without any degree of duress or compulsion whatsoever.

12. This Agreement constitutes the complete agreement between the Parties. This Agreement may not be amended except by written consent of the Parties.

13. Dr. Buggiani represents and warrants that he is authorized to execute this Agreement and that he has not assigned any claims, rights, or liabilities subject to this Agreement to any other party. The undersigned signatories for the State of Vermont represent that they are signing this Agreement in their official capacity and that they are authorized to execute this Agreement.

14. This Agreement may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same agreement. Facsimiles of signatures shall constitute acceptable, binding signatures for purposes of this Agreement.

15. This Agreement is binding on successors, transferees, and assigns.

16. This Agreement is effective on the date of the signature of the last signatory to the Agreement ("Effective Date").

DATED: 10/2/15

BY:

STATE OF VERMONT

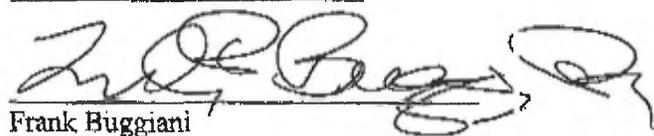


Jason M. Turner
Assistant Attorney General

DATED: 10/5/15

BY:

FRANK BUGGIANI, D.P.M.

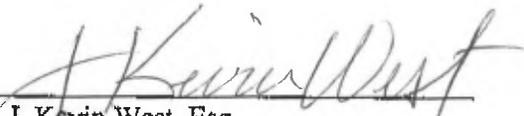


Frank Buggiani

ACKNOWLEDGED:

DATED: 10/5/15

BY:



J. Kevin West, Esq.
Parson Behle & Latimer
Counsel for Frank Buggiani, D.P.M.