

## **SETTLEMENT AGREEMENT**

This Settlement Agreement (Agreement) is entered into among the United States of America, acting through the United States Attorney's Office for the Northern District of New York and on behalf of the Office of Inspector General (OIG-HHS) of the Department of Health and Human Services (HHS) and the Defense Health Agency (DHA) on behalf of the TRICARE Program (collectively, the "United States"), Dr. Fazeli and Dr. Broumand PLLC, d/b/a Dermatology Associates of Central New York, PLLC (Dermatology Associates), and Elaine Cretaro-Williams (Relator), through their authorized representatives. Collectively, all of the above will be referred to as "the Parties."

### **RECITALS**

A. Dermatology Associates is a medical practice based in Fayetteville, New York, which specializes in rendering dermatologic care to its patients. Dermatology Associates is owned and operated by Amin Fazeli, M.D. and Vajdista Broumand, M.D. and, at all times relevant to this Agreement, employed non-physician practitioners (NPPs) on its staff.

B. In certain circumstances, Medicare and TRICARE allow providers to submit claims for services furnished by NPPs, such as physician assistants and nurse practitioners, "incident to" the professional services personally rendered by physicians. These "incident to" services, even though not rendered by a physician, may be billed in a physician's name if certain requirements are met. One such requirement is that the physician directly supervise the NPP's services. Direct supervision is defined to mean that the physician must be present in the office suite and immediately available to furnish assistance and direction throughout the performance of the procedure; the physician need not be present in the room when the procedure is performed.

C. An NPP also may be licensed under State law to perform a specific medical procedure and have the service separately covered and paid for by Medicare and TRICARE at

the rate typically reimbursed for services rendered by a physician assistant or nurse practitioner. However, in order to have that same service covered as incident to the services of a physician, it must be performed under the direct supervision of the physician as an integral part of the physician's personal in-office service. NPP services that do not qualify for billing as "incident to" will be reimbursed by Medicare and TRICARE as no more than 85% of the amount set in the physician fee schedule.

D. The New York State Medicaid Program (Medicaid) does not allow for "incident to" billing. In order for an NPP to receive reimbursement for services provided to a Medicaid eligible client, at all times relevant to this Agreement, the NPP was required to be enrolled as a Medicaid provider with the New York State Department of Health.

E. On March 18, 2015, Relator filed a qui tam action in the United States District Court for the Northern District of New York captioned *United States of America and the State of New York ex rel. Elaine Cretaro-Williams v. Dr. Fazeli and Dr. Broumand, PLLC, et al.*, Case No. 5:15-cv-315, pursuant to the qui tam provisions of the False Claims Act, 31 U.S.C. § 3730(b) (the Civil Action). Relator alleges, among other things, that Dermatology Associates falsely billed Medicare and Medicaid for services rendered by NPPs as though the services had been personally rendered or supervised by Drs. Fazeli or Broumand. The United States intervened in part and declined to intervene in part of the Civil Action on December 3, 2018.

F. Dermatology Associates submitted or caused to be submitted claims for payment to the Medicare Program, Title XVIII of the Social Security Act, 42 U.S.C. §§ 1395-1395kkk-1 (Medicare), the TRICARE Program, 10 U.S.C. §§ 1071-1110b (TRICARE), and Medicaid, 42 U.S.C. §§ 1396-1396w-5.

G. The conduct set forth in this paragraph is referred to below as the “Covered Conduct”: From March 1, 2009 through February 28, 2015, Dermatology Associates generally operated six days a week for several hours each day, but a physician was physically present in the office suite on a more limited basis, and seldom on Fridays or Saturdays. During this period, Dermatology Associates retained the services of outside medical management and billing companies to handle various administrative functions for the practice, including provider credentialing and billing. Dermatology Associates caused its billing company to submit thousands of claims for payment to Medicare, Medicaid, and TRICARE that improperly identified Dr. Fazeli or Dr. Broumand as the rendering provider on days when neither they nor any other physician was in the office and available to treat or supervise the treatment of patients. Dermatology Associates admits, acknowledges, and accepts responsibility for inappropriately identifying these physicians as the rendering or supervising providers when, on at least 139 days (for Dr. Fazeli) and 93 days (for Dr. Broumand), the physician identified on the claim form was traveling outside of the State of New York and, often, outside of the Country. Dermatology Associates represents that all services billed in connection with the claims that it caused its billing company to submit during this period were rendered, even if by an NPP rather than the physician identified on the claim form. Dermatology Associates further recognizes and accepts responsibility for the fact that some of the NPPs who treated Medicaid clients during this period were not credentialed to do so in the State of New York and, in such circumstances, the uncredentialed providers were billed in a physician’s name. Dermatology Associates further accepts responsibility for not identifying billing and credentialing errors committed by its outside consultants.

H. Dermatology Associates cooperated with the government throughout its investigation.

I. Relator claims entitlement under 31 U.S.C. § 3730(d) to a share of the proceeds of this Settlement Agreement and to Relator's reasonable expenses, attorneys' fees and costs.

To avoid the delay, uncertainty, inconvenience, and expense of protracted litigation of the above claims, and in consideration of the mutual promises and obligations of this Settlement Agreement, the Parties agree and covenant as follows:

### **TERMS AND CONDITIONS**

1. Dermatology Associates shall pay to the United States and the State of New York the total sum of \$811,196.88 (Settlement Amount), which shall be paid as follows:

a. Dermatology Associates shall pay to the United States \$714,867.09 (Federal Settlement Amount), of which \$357,433.54 is restitution, no later than 10 days after the Effective Date of this Agreement by electronic funds transfer pursuant to written instructions to be provided by the United States Attorney's Office for the Northern District of New York.

b. Dermatology Associates shall pay to the State of New York the sum of \$96,329.79 pursuant to the terms of a settlement agreement that Dermatology Associates has entered into or will enter into with the State of New York.

2. Conditioned upon the United States receiving the Federal Settlement Amount from Dermatology Associates and as soon as feasible after receipt, the United States shall pay \$121,612.47 to Relator by electronic funds transfer.

3. Dermatology Associates shall pay to Relator \$27,500 in full satisfaction of her claims for expenses, attorneys' fees, and costs under 31 U.S.C. § 3730(d), no later than

December 31, 2018, in the form of a check made payable to the order of Bousquet Holstein, PLLC.

4. Subject to the exceptions in Paragraph 6 (concerning excluded claims) below, and conditioned upon Dermatology Associates' full payment of the Settlement Amount, the United States releases Dermatology Associates from any civil or administrative monetary claim the United States has for the Covered Conduct under the False Claims Act, 31 U.S.C. §§ 3729-3733; the Civil Monetary Penalties Law, 42 U.S.C. § 1320a-7a; the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801-3812; or the common law theories of payment by mistake, unjust enrichment, and fraud.

5. Subject to the exceptions in Paragraph 6 below, and conditioned upon Dermatology Associates' full payment of the Settlement Amount, Relator, for herself and for her heirs, successors, attorneys, agents, and assigns, releases Dermatology Associates, together with its current and former owners, members, shareholders, officers, employees, directors and agents, and the successors and assigns of any of them, from any civil monetary claim the relator has on behalf of the United States for the Covered Conduct under the False Claims Act, 31 U.S.C. §§ 3729-3733.

6. Notwithstanding the releases given in Paragraphs 4 and 5 of this Agreement, or any other term of this Agreement, the following claims of the United States are specifically reserved and are not released:

- a. Any liability arising under Title 26, U.S. Code (Internal Revenue Code);
- b. Any criminal liability;

- c. Except as explicitly stated in this Agreement, any administrative liability, including mandatory or permissive exclusion from Federal health care programs;
- d. Any liability to the United States (or its agencies) for any conduct other than the Covered Conduct;
- e. Any liability based upon obligations created by this Agreement;
- f. Any liability of individuals;
- g. Any liability for express or implied warranty claims or other claims for defective or deficient products or services, including quality of goods and services;
- h. Any liability for failure to deliver goods or services due; and
- i. Any liability for personal injury or property damage or for other consequential damages arising from the Covered Conduct.

7. Relator and her heirs, successors, attorneys, agents, and assigns shall not object to this Agreement but agree and confirm that this Agreement is fair, adequate, and reasonable under all the circumstances, pursuant to 31 U.S.C. § 3730(c)(2)(B). Conditioned upon Relator's receipt of the payment described in Paragraph 2, Relator and her heirs, successors, attorneys, agents, and assigns fully and finally release, waive, and forever discharge the United States, its agencies, officers, agents, employees, and servants, from any claims arising from the filing of the Civil Action or under 31 U.S.C. § 3730, and from any claims to a share of the proceeds of this Agreement and/or the Civil Action.

8. Relator, for herself, and for her heirs, successors, attorneys, agents, and assigns, releases Dermatology Associates, and its officers, agents, and employees, from any liability to

Relator arising from the filing of the Civil Action, or under 31 U.S.C. § 3730(d) for expenses or attorney's fees and costs.

9. Dermatology Associates waives and shall not assert any defenses Dermatology Associates may have to any criminal prosecution or administrative action relating to the Covered Conduct that may be based in whole or in part on a contention that, under the Double Jeopardy Clause in the Fifth Amendment of the Constitution, or under the Excessive Fines Clause in the Eighth Amendment of the Constitution, this Agreement bars a remedy sought in such criminal prosecution or administrative action.

10. Dermatology Associates fully and finally releases the United States, its agencies, officers, agents, employees, and servants, from any claims (including attorney's fees, costs, and expenses of every kind and however denominated) that Dermatology Associates have asserted, could have asserted, or may assert in the future against the United States, its agencies, officers, agents, employees, and servants, related to the Covered Conduct and the United States' investigation and prosecution thereof.

11. Dermatology Associates fully and finally release the Relator from any claims (including attorney's fees, costs, and expenses of every kind and however denominated) that Dermatology Associates has asserted, could have asserted, or may assert in the future against the Relator, related to the filing of the Civil Action and the Relator's investigation and prosecution thereof.

12. The Settlement Amount shall not be decreased as a result of the denial of claims for payment now being withheld from payment by any Medicare contractor (e.g., Medicare Administrative Contractor, fiscal intermediary, carrier), TRICARE, or any state payer, related to the Covered Conduct; and Dermatology Associates agrees not to resubmit to any Medicare

contractor, TRICARE, or any state payer any previously denied claims related to the Covered Conduct, agrees not to appeal any such denials of claims, and agrees to withdraw any such pending appeals.

13. Dermatology Associates agrees to the following:

a. Unallowable Costs Defined: All costs (as defined in the Federal Acquisition Regulation, 48 C.F.R. § 31.205-47; and in Titles XVIII and XIX of the Social Security Act, 42 U.S.C. Subchapter XVIII – Health Insurance for the Aged and Disabled; and the regulations and official program directives promulgated thereunder) incurred by or on behalf of Dermatology Associates, its present or former officers, directors, employees, shareholders, and agents in connection with:

- (1) the matters covered by this Agreement;
- (2) the United States' audit(s) and civil and any criminal investigation(s) of the matters covered by this Agreement;
- (3) Dermatology Associates' investigation, defense, and corrective actions undertaken in response to the United States' audit(s) and civil and any criminal investigation(s) in connection with the matters covered by this Agreement (including attorney's fees);
- (4) the negotiation and performance of this Agreement; and
- (5) the payment Dermatology Associates makes to the United States pursuant to this Agreement and any payments that Dermatology Associates may make to Relator, including costs and attorneys fees; and



are unallowable costs for government contracting purposes and under the Medicare Program, Medicaid Program, TRICARE Program, and Federal Employees Health Benefits Program (FEHBP) (hereinafter referred to as Unallowable Costs).

b. Future Treatment of Unallowable Costs: If applicable, Unallowable Costs shall be separately determined and accounted for by Dermatology Associates, and Dermatology Associates shall not charge such Unallowable Costs directly or indirectly to any contracts with the United States or any State Medicaid program, or seek payment for such Unallowable Costs through any cost report, cost statement, information statement, or payment request submitted by Dermatology Associates or any of its subsidiaries or affiliates to the Medicare, Medicaid, TRICARE, or FEHBP Programs.

c. Treatment of Unallowable Costs Previously Submitted for Payment: If applicable, Dermatology Associates further agrees that within 90 days of the Effective Date of this Agreement it shall identify to applicable Medicare and TRICARE fiscal intermediaries, carriers, and/or contractors, and Medicaid and FEHBP fiscal agents, any Unallowable Costs (as defined in this Paragraph) included in payments previously sought from the United States, or any State Medicaid program, including, but not limited to, payments sought in any cost reports, cost statements, information reports, or payment requests already submitted by Dermatology Associates or any of their subsidiaries or affiliates, and shall request, and agree, that such cost reports, cost statements, information reports, or payment requests, even if already settled, be adjusted to account for the effect of the inclusion of the Unallowable Costs. Dermatology Associates agrees that the United States, at a minimum, shall be entitled to recoup from Dermatology Associates any overpayment plus applicable interest and penalties as a result of the

inclusion of such Unallowable Costs on previously-submitted cost reports, information reports, cost statements, or requests for payment.

Any payments due after the adjustments have been made shall be paid to the United States pursuant to the direction of the Department of Justice and/or the affected agencies. The United States reserves its rights to disagree with any calculations submitted by Dermatology Associates or any of their subsidiaries or affiliates on the effect of inclusion of Unallowable Costs (as defined in this Paragraph) on Dermatology Associates or any of its subsidiaries or affiliates' cost reports, cost statements, or information reports.

d. Nothing in this Agreement shall constitute a waiver of the rights of the United States to audit, examine, or re-examine Dermatology Associates' books and records to determine that no Unallowable Costs have been claimed in accordance with the provisions of this Paragraph.

14. Dermatology Associates agrees to cooperate fully and truthfully with the United States' investigation of individuals and entities not released in this Agreement. Upon reasonable notice, Dermatology Associates shall encourage, and agrees not to impair, the cooperation of its directors, officers, and employees, and shall use its best efforts to make available, and encourage, the cooperation of former directors, officers, and employees for interviews and testimony, consistent with the rights and privileges of such individuals. Dermatology Associates further agrees to furnish to the United States, upon request, complete and unredacted copies of all non-privileged documents, reports, memoranda of interviews, and records in its possession, custody, or control concerning any investigation of the Covered Conduct that it has undertaken, or that has been performed by another on its behalf.

15. This Agreement is intended to be for the benefit of the Parties only. The Parties do not release any claims that any Party may have against any other person or entity, except to the extent provided for in Paragraph 16 (waiver for beneficiaries paragraph), below.

16. Dermatology Associates agrees that it waives and shall not seek payment for any of the health care billings covered by this Agreement from any health care beneficiaries or their parents, sponsors, legally responsible individuals, or third party payors based upon the claims defined as Covered Conduct.

17. Upon receipt of the payment described in Paragraph 1, above, the United States, the State of New York, and the Relator shall promptly sign and file in the Civil Action a Joint Stipulation of Dismissal of the Civil Action pursuant to Rule 41(a)(1).

18. Each Party shall bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

19. Each party and signatory to this Agreement represents that it freely and voluntarily enters in to this Agreement without any degree of duress or compulsion.

20. This Agreement is governed by the laws of the United States. The exclusive jurisdiction and venue for any dispute relating to this Agreement is the United States District Court for the Northern District of New York. For purposes of construing this Agreement, this Agreement shall be deemed to have been drafted by all Parties to this Agreement and shall not, therefore, be construed against any Party for that reason in any subsequent dispute.

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

22. The undersigned represent and warrant that they are fully authorized to execute this Agreement on behalf of the persons and entities indicated below.

23. This Agreement may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same Agreement.

24. This Agreement is binding on Dermatology Associates' successors, transferees, heirs, and assigns.

25. This Agreement is binding on Relator's successors, transferees, heirs, and assigns.

26. All parties consent to the United States' disclosure of this Agreement, and information about this Agreement, to the public.

27. This Agreement is effective on the date of signature of the last signatory to the Agreement (Effective Date of this Agreement). Facsimiles and electronic transmissions of signatures shall constitute acceptable, binding signatures for purposes of this Agreement.

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***Signature pages follow***

**THE UNITED STATES OF AMERICA**

GRANT C. JAQUITH  
United States Attorney  
Northern District of New York

DATED: 11/24/2018

BY:



Adam J. Katz  
Assistant United States Attorney

DATED: 11/29/2018

BY:



LISA M. RE  
Assistant Inspector General for Legal Affairs  
Office of Counsel to the Inspector General  
Office of Inspector General  
United States Department of Health and Human Services

DATED: \_\_\_\_\_

BY:

LEIGH A. BRADLEY  
General Counsel  
Defense Health Agency  
United States Department of Defense


United States Department of Health and Human Services

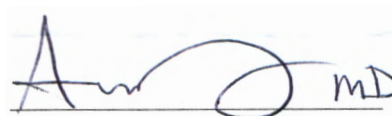
DATED: \_\_\_\_\_

BY: \_\_\_\_\_

LEIGH A. BRADLEY  
General Counsel  
Defense Health Agency  
United States Department of Defense

**DERMATOLOGY ASSOCIATES OF CENTRAL NEW YORK**

DATED: 11/21/18  


BY:   
Amin Fazeli, M.D.

DATED: \_\_\_\_\_

SUGARMAN LAW FIRM, LLP

BY: \_\_\_\_\_

Danielle Mikalajunas Fogel

**ELAINE CRETARO-WILLIAMS**

DATED: \_\_\_\_\_

BY: \_\_\_\_\_

Elaine Cretaro-Williams

BOUSQUET HOLSTEIN, PLLC

DATED: \_\_\_\_\_

BY: \_\_\_\_\_

John L. Valentino  
Lawrence M. Ordway, Jr.  
Counsel for Relator

**THE UNITED STATES OF AMERICA**

GRANT C. JAQUITH  
United States Attorney  
Northern District of New York

DATED: \_\_\_\_\_

BY: \_\_\_\_\_  
Adam J. Katz  
Assistant United States Attorney

DATED: \_\_\_\_\_

BY: \_\_\_\_\_  
LISA M. RE  
Assistant Inspector General for Legal Affairs  
Office of Counsel to the Inspector General  
Office of Inspector General  
United States Department of Health and Human Services

DATED: 11/27/2018

BY: BLEY.PAUL.NICHOLAS.1099873821  
AS.1099873821  
LEIGH A. BRADLEY  
General Counsel  
Defense Health Agency  
United States Department of Defense

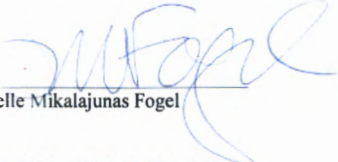
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Date: 2018.11.27 12:30:30 -05'00'

for

**DERMATOLOGY ASSOCIATES OF CENTRAL  
NEW YORK**

DATED: \_\_\_\_\_ BY: \_\_\_\_\_  
Amin Fazeli, M.D.

**SUGARMAN LAW FIRM, LLP**

DATED: 11/23/18 BY:   
Danielle Mikalajunas Fogel

**ELAINE CRETARO-WILLIAMS**

DATED: \_\_\_\_\_ BY: \_\_\_\_\_  
Elaine Cretaro-Williams

**BOUSQUET HOLSTEIN, PLLC**

DATED: \_\_\_\_\_ BY: \_\_\_\_\_  
John L. Valentino  
Lawrence M. Ordway, Jr.  
Counsel for Relator



DERMATOLOGY ASSOCIATES OF CENTRAL NEW  
YORK

DATED: \_\_\_\_\_ BY: \_\_\_\_\_  
Amin Fazeli, M.D.

SU.GARMAN LAW FIRM, LLP

DATED: \_\_\_\_\_ BY: \_\_\_\_\_  
Danielle Mikulajunas Fogel

ELAINE CRETARO-WILLIAMS

DATED: 11/23/18 BY: Elaine Cretaro Williams  
Elaine Cretaro-Williams

BOUSQUET HOLSTEIN, PLLC

DATED: 11/26/18 BY: John L. Valentino  
John L. Valentino  
Lawrence M. Ordway, Jr.  
Counsel for Plaintiff