

## **SETTLEMENT AGREEMENT**

This Settlement Agreement (“Agreement”) is entered into among the United States of America, acting through the United States Department of Justice and on behalf of the Office of Inspector General (OIG-HHS) of the Department of Health and Human Services (HHS); (collectively, the “United States”), the State of New Jersey, acting through the New Jersey State Attorney General, Medicaid Fraud Control Unit (“New Jersey”); and Pain Specialists, P.A. (“Pain Specialists”) (the “Defendant”) (hereafter collectively referred to as “the Parties”), through their authorized representatives.

### **RECITALS**

A. Pain Specialists, P.A. is a medical practice that provides medical services for the treatment of pain. During the relevant time period, Pain Specialists provided medical services at three separate locations in New Jersey.

B. Pain Specialists, P.A. will plead guilty to a one-count Information to be filed by the United States in *United States v. Pain Specialists, P.A.*, Criminal Action No. [to be determined] (D.N.J.) (the “Criminal Action”) on such date as may be determined by the U.S. District Court for the District of New Jersey. The Criminal Action will allege one count of health care fraud, in violation of 18 U.S.C. § 1347.

C. The United States contends that Pain Specialists submitted or caused to be submitted claims for payment to the Medicare Program, Title XVIII of the Social Security Act, 42 U.S.C. §§ 1395-1395lll (“Medicare”) and the Medicaid Program, 42 U.S.C. §§ 1396-1396w-5 (“Medicaid”).

D. The United States and the State of New Jersey contend that they have certain civil claims against Pain Specialists for engaging in the following conduct during the period from January 1, 2014 through November 9, 2020, specifically:

- Pain Specialists improperly listed a physician as the rendering provider for services that were provided by a non-physician practitioner when no physician was present in the office, in violation of Medicare’s “incident-to billing” requirements and in violation of Medicaid’s requirement that providers bill under their own NPI number.

That conduct is referred to below as the “Covered Conduct.”

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. Pain Specialists, P.A. shall pay the following sum, no later than sixty business days after the Effective Date of this Agreement (defined below) by electronic funds transfer pursuant to written instructions to be provided by the Office of the United States Attorney for the District of New Jersey, and by certified funds pursuant to written instructions to be provided by the Office of the Attorney General for the State of New Jersey: (a) to the United States (\$126,225) (“Settlement Amount”), of which is \$56,100 is restitution, and (b) to the State of New Jersey (\$113,775), of which \$50,550 is restitution. The total of these sums (\$240,000) shall hereafter be referred to as the “Settlement Amount.”

2. Subject to the exceptions in Paragraph 3 (concerning reserved claims) below, and upon the United States’ and New Jersey’s receipt of their part of the Settlement Amount, the United States and New Jersey release Pain Specialists from any civil or administrative monetary claim the United States or New Jersey have 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; the New Jersey False Claims Act, N.J. Stat.

Ann. § 2A:32C-1, et. seq.; or the common law theories of payment by mistake, unjust enrichment, and fraud.

3. Notwithstanding the release given in Paragraph 2 of this Agreement, or any other term of this Agreement, the following claims and rights of the United States and New Jersey are specifically reserved and are not released:

- a. Any liability arising under Title 26, U.S. Code (Internal Revenue Code) and New Jersey tax laws;
- b. Any criminal liability;
- c. Except as explicitly stated in this Agreement, any administrative liability or enforcement right, including mandatory or permissive exclusion from Federal and state health care programs;
- d. Any liability to the United States and New Jersey (or their 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;
- i. Any liability for personal injury or property damage or for other consequential damages arising from the Covered Conduct.

4. Defendant waives and shall not assert any defenses Defendant 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.

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

6. 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) or any state payer, related to the Covered Conduct; and Defendant agrees not to resubmit to any Medicare contractor 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.

7. Defendant 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. §§ 1395-1395lll and 1396-1396w-5; and the regulations and official program directives promulgated thereunder) incurred by or on behalf of Defendant, its present or former officers, directors, employees, shareholders, and agents in connection with:

- (1) the matters covered by this Agreement and any related plea agreement;
- (2) the United States' audit(s) and civil and any criminal investigation(s) of the matters covered by this Agreement;

- (3) Defendant's 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 attorneys' fees);
- (4) the negotiation and performance of this Agreement and any Plea Agreement;
- (5) the payment Defendant makes to the United States pursuant to this Agreement

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: Unallowable Costs shall be separately determined and accounted for in nonreimbursable cost centers by Defendant, and Defendant 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 Defendant or any of its subsidiaries or affiliates to the Medicare, Medicaid, TRICARE, or FEHBP Programs.

c. Treatment of Unallowable Costs Previously Submitted for Payment: Defendant 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 Defendant or any of its 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. Defendant agrees that the United States and New Jersey, at a minimum, shall be entitled to recoup from Defendant 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 and New Jersey pursuant to the direction of the Department of Justice and/or the affected agencies. The United States and New Jersey reserve their rights to disagree with any calculations submitted by Defendant or any of its subsidiaries or affiliates on the effect of inclusion of Unallowable Costs (as defined in this paragraph) on Defendant 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 and New Jersey to audit, examine, or re-examine Defendant's books and records to determine that no Unallowable Costs have been claimed in accordance with the provisions of this paragraph.

8. Defendant agrees to cooperate fully and truthfully with the United States' and New Jersey's investigation of individuals and entities not released in this Agreement. Upon reasonable notice, Defendant 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. Defendant further agrees to furnish to the United States and New Jersey, 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.

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 Paragraph 10 (waiver for beneficiaries paragraph), below.

10. Defendant 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.

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

12. Each Party and signatory to this Agreement represents that it freely and voluntarily enters into this Agreement without any degree of duress or compulsion.

13. This Agreement is governed by the laws of the United States. The exclusive venue for any dispute relating to this Agreement is the United States District Court for the District of New Jersey. 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.

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

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

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

17. This Agreement is binding on Defendant's successors, transferees, heirs, and assigns.

18. All Parties consent to the United States' and New Jersey's disclosure of this Agreement, and information about this Agreement, to the public.

19. 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.



**THE UNITED STATES OF AMERICA**

DATED: 1/31/2025

BY: *Susan J. Pappy*  
Susan J. Pappy  
Assistant United States Attorney  
District of New Jersey

DATED: 11/01/24

BY:

**SUSAN GILLIN**

Digitally signed by SUSAN  
GILLIN  
Date: 2024.11.01 17:28:11  
-04'00'

Susan E. Gillin

Assistant Inspector General for Legal Affairs

Office of Counsel to the Inspector General

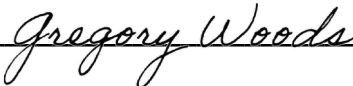
Office of Inspector General

United States Department of Health and Human Services

STATE OF NEW JERSEY

By:  Dated: 11/22/2024

**Al Garcia**  
Interim Insurance Fraud Prosecutor  
Office of the Attorney General  
State of New Jersey

By:  Dated: 11/27/2024

**Gregory Woods**  
Assistant Commissioner  
Division of Medical Assistance and  
Health Services  
Department of Human Services

**DEFENDANT**

DATED: 10/23/24

BY: E. Anta  
Pain Specialists, P.C.

DATED: 10/24/24

BY: Riza Dagli  
Brach Eichler  
Counsel for Pain Specialists, P.C.