

STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL LETITIA JAMES

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In the Matter of:

David DiMarco, M.D., D.B. DiMarco, M.D., P.C., and
DiMarco Vein Centers LLC.

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SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT (the “Agreement”) reached the 13th day of December, 2022, is by and among the State of New York (the “State”) by the Office of the Attorney General, through the Medicaid Fraud Control Unit (“MFCU”) and David DiMarco, M.D., D.B. DiMarco, M.D., P.C., DiMarco Vein Centers LLC, (collectively, “DiMarco”), through their authorized representatives. The State and DiMarco shall be collectively referred to as the “Parties.”

WHEREAS, David DiMarco, M.D., is the principal owner and operator of D.B. DiMarco, M.D., P.C. and of DiMarco Vein Centers LLC. David DiMarco, M.D. is enrolled as a provider in the New York State Medical Assistance Program (“Medicaid”), with a provider identification number of 00787348;

WHEREAS, D.B. DiMarco, M.D., P.C. is a Pennsylvania corporation, with its principal place of business and billing address at 109 Valentine Run Road, Russell, Pennsylvania, and has locations providing services at offices in New York and Pennsylvania. D.B. DiMarco, M.D., P.C. is an enrolled provider in Medicaid, with a provider identification number of 00787348;

WHEREAS, DiMarco Vein Centers LLC is a Pennsylvania corporation, with a registered address located at 109 Valentine Run Road, Russell, Pennsylvania.

WHEREAS, from March 25, 2015 through October 1, 2021 (hereinafter the “Relevant Period”), DiMarco submitted claims for Medicaid reimbursement under CPT code 37241, Vascular Embolization and Occlusion Procedures on Arteries and Veins, and received Medicaid reimbursement for such claims;

WHEREAS, MFCU conducted an investigation of the claims DiMarco submitted during the Relevant Period, and found that DiMarco submitted claims for payment for services that were not supported by sufficient documentation (hereinafter referred to as the “Covered Conduct”);

WHEREAS, pursuant to 18 NYCRR § 540.3(a), DiMarco must maintain contemporaneous records demonstrating the right to receive payment from Medicaid;

WHEREAS, as a result of the investigation, MFCU determined that during the Relevant Period, DiMarco received payments from Medicaid to which DiMarco was not entitled; and

WHEREAS, DiMarco wishes to resolve DiMarco’s liability for the Covered Conduct.

NOW, THEREFORE, in consideration of the mutual covenants and undertakings set forth herein, the Parties agree as follows:

1. In satisfaction of the State’s claims for the Covered Conduct, DiMarco shall pay the State the sum of \$2,139,037 (the “Settlement Amount”). Payment shall be made by electronic funds transfer pursuant to written instructions to be provided by MFCU within seven (7) days of the execution date of this Agreement.

2. **Default:** DiMarco shall be in default of this Agreement if DiMarco fails to comply with the terms and conditions as set forth herein in whole or in part (“Default”). In the event of Default, the State will provide written notice of any such Default, to be sent by email and first class mail to the undersigned attorney for DiMarco, who will then have seven (7) business days to cure the default (the “Cure Period”). If DiMarco fails to cure the Default within the Cure Period

(“Uncured Default”), any remaining unpaid portion of the Settlement Amount shall be immediately due and payable and interest shall accrue at the rate of nine percent (9%) per annum compounded daily on the remaining unpaid principal balance, beginning seven (7) business days after delivery of notice of default. In the event of an Uncured Default, the State, at its option, may: (a) rescind this Agreement or seek specific performance of the Agreement; (b) offset the remaining unpaid balance from any amounts due and owing DiMarco by any department, agency or agent of the State at the time of default; (c) file a civil action for the Covered Conduct; or (d) exercise any other rights granted by law or in equity, including referral of this matter for private collection. DiMarco shall not contest any offset imposed or any collection action undertaken by the State pursuant to this Paragraph, either administratively or in any State or Federal court. In addition, DiMarco shall pay the State all reasonable costs of collection and enforcement under this Paragraph, including attorneys’ fees and expenses. In the event that the State chooses to rescind this Agreement pursuant to this Paragraph, DiMarco shall not plead, argue or otherwise raise any defenses under the theories of statute of limitations, laches, estoppel, or similar theories, to any civil or administrative claims that relate to the covered conduct.

3. Subject to the provisions of Paragraph 5 (concerning excluded claims), and Paragraph 12 (concerning bankruptcy filings) below, and conditioned upon the State’s receipt of the Settlement Amount, the State releases DiMarco and its predecessors, successors, assigns, and corporations under DiMarco’s control from any civil monetary cause of action that the State has for the Covered Conduct.

4. Subject to the provisions of Paragraph 5 (concerning excluded claims), and Paragraph 12 (concerning bankruptcy filings) below, and except in the event that DiMarco fails to

fulfill its obligations under this Agreement, the State agrees that it will not bring criminal charges against or criminally prosecute DiMarco for the Covered Conduct.

5. Notwithstanding the releases given in Paragraphs 3-4 above, the State specifically does not release DiMarco from any of the following liabilities:

- a) Any civil or administrative liability arising under New York Tax Law;
- b) Any civil liability that DiMarco has or may have under any state statute, regulation or rule not covered by this Agreement;
- c) Any administrative liability, including mandatory or permissive exclusion from the Medicaid program;
- d) Any liability pursuant to New York False Claims Act, New York State Finance Law § 187, *et seq.*; Executive Law § 63(12); Social Services Law § 145-b; and common law fraud;
- e) Any liability to the State (or its agencies) for any conduct other than the Covered Conduct;
- f) Any liability for express or implied warranty claims or other claims for defective or deficient products or services, including quality of goods and services;
- g) Any liability for failure to deliver goods or services due;
- h) Any liability for personal or property damage or for other consequential damages arising from the Covered Conduct;
- i) Any liability of individuals other than that of David DiMarco for the Covered Conduct;
- j) Any patient abuse or neglect;

- k) Any liability that may be asserted by or on behalf of any payor or insurer paid by the State's Medicaid Program on a capitated basis, other than liability of DiMarco to the State for the Covered Conduct; and
 - l) Any liability based on obligations created by this Agreement.
6. DiMarco fully and finally releases the State, and its agencies, current and former employees, officers, servants and agents from any claims (including attorneys' fees, costs and expenses of every kind and however denominated) that it has asserted, could have asserted, or may assert in the future against the State, or its agencies, current and former employees, officers, servants, and agents related to the matters arising from the State's investigation of the Covered Conduct, including the negotiation of this Agreement.
7. DiMarco agrees to voluntarily terminate DiMarco's participation in Medicaid by letter within 30 days of the date of this Agreement, pursuant to 18 NYCRR § 504.7(a). This is a voluntary agreement, not a voluntary exclusion from Medicaid under 42 C.F.R. Part 1002 or under 18 NYCRR §§ 504.7(b) or (d).
8. The Settlement Amount shall not be decreased as a result of the denial of claims for payment now being withheld from payment by Medicaid, or any State payor, related to the Covered Conduct; and DiMarco agrees not to resubmit to Medicaid or any State payor any previously denied claims related to the Covered Conduct, and agrees not to appeal any such denial of claims.
9. DiMarco agrees not to cause any further claim or adjustment to be submitted or resubmitted to any State payor related to the Covered Conduct.
10. DiMarco 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. §§ 1395-1395kkk and 1396-1396w-5; and the regulations and official program directives promulgated thereunder) incurred by or on behalf of DiMarco or any of DiMarco's present or former officers, directors, trustees, employees, shareholders, and agents in connection with:
- i. the matters covered by this Agreement;
 - ii. the State's audit(s) and civil and any criminal investigation(s) of the matters covered by this Agreement;
 - iii. DiMarco's investigation, defense, and corrective actions undertaken in response to the State's audit(s) and civil and any criminal investigation(s) in connection with the matters covered by this Agreement (including attorney's fees);
 - iv. the negotiation and performance of this Agreement; and
 - v. the payments DiMarco made relating to this Agreement including costs and attorney's fees, are unallowable costs for government contracting purposes and under the Medicaid Program (hereinafter referred to as "Unallowable Costs").
- b) Future Treatment of Unallowable Costs: Unallowable Costs shall be separately determined and accounted for in non-reimbursable cost centers by DiMarco and DiMarco 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 Consolidated Fiscal Report ("CFR"), cost

report, cost Statement, information statement, or payment request submitted by DiMarco, or any of DiMarco's affiliates to the Medicaid Programs.

- c) Treatment of Unallowable Costs Previously Submitted for Payment: DiMarco further agrees that within 90 days of the Effective Date of this Agreement, DiMarco shall identify to applicable Medicaid fiscal agents, any Unallowable Costs (as defined in Paragraph 10(a)) included in payments previously sought from 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 DiMarco or any 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. DiMarco agrees that the State, at a minimum, shall be entitled to recoup from DiMarco 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, appeals, or requests for payment. Any payments due after the adjustments have been made shall be paid to the State. The State reserves its rights to disagree with any calculations submitted by DiMarco or any of DiMarco's affiliates on the effect of inclusion of Unallowable Costs (as defined in this Paragraph) on DiMarco's or any of DiMarco's affiliates' CFRs, cost reports, cost statements, or information reports, appeals, or other payment requests.
- d) Nothing in this Agreement shall constitute a waiver of the rights of the State to audit, examine, or re-examine the books and records of DiMarco to determine that

no Unallowable Costs have been claimed in accordance with the provisions of this Paragraph.

11. David DiMarco, M.D., expressly warrants that he has reviewed the financial situations of D.B. DiMarco M.D., P.C., and DiMarco Vein Centers LLC, and that each is currently solvent within the meaning of 11 U.S.C. § 547 (b)(3), and that he currently believes each will remain solvent following the payment to the State of the Settlement Amount. Further, the Parties warrant that, in evaluating whether to execute this Agreement, they (a) have intended that the mutual promises, covenants, and obligations set forth constitute a contemporaneous exchange for new value given to D.B. DiMarco, M.D., P.C. and DiMarco Vein Centers LLC within the meaning of 11 U.S.C. § 547 (c)(1), and (b) have concluded that these mutual promises, covenants, and obligations do, in fact, constitute such contemporaneous exchange. Further, the Parties warrant that the mutual promises, covenants, and obligations set forth herein are intended to and do, in fact, represent a reasonably equivalent exchange of value that is not intended to hinder, delay, or defraud any entity to which D.B. DiMarco, M.D., P.C. and DiMarco Vein Centers LLC was or became indebted to on or after the date of this transfer, all within the meaning of 11 U.S.C. § 548 (a)(1).

12. If within ninety-one (91) days of the Effective Date of this Agreement or of any payment made under this Agreement, DiMarco commences, or a third party commences, any case, proceeding, or other action under any law relating to bankruptcy, insolvency, reorganization, or relief of debtors (a) seeking to have any order for relief of DiMarco's debts, or seeking to adjudicate DiMarco as bankrupt or insolvent; or (b) seeking appointment of a receiver, trustee, custodian, or other similar official for DiMarco or for all or any substantial part of DiMarco's assets, DiMarco agrees as follows:

- a) DiMarco shall provide the MFCU Director immediate notice by hand delivery, express courier followed by postage-prepaid mail at the address contained in Paragraph 30 herein.
- b) DiMarco's obligations under this Agreement may not be avoided pursuant to 11 U.S.C. § 547, and DiMarco shall not argue or otherwise take the position in any such case, proceeding, or action that (i) DiMarco's obligations under this Agreement may be avoided under 11 U.S.C. § 547; (ii) D.B. DiMarco, M.D., P.C. or DiMarco Vein Centers LLC was insolvent at the time this Agreement was entered into, or became insolvent as a result of the payments made to the State; or (iii) the mutual promises, covenants and obligations set forth in this Agreement do not constitute a contemporaneous exchange for new value given to D.B. DiMarco, M.D., P.C. or DiMarco Vein Centers LLC.
- c) If any of DiMarco's obligations hereunder are avoided for any reason, including, but not limited to, through the exercise of a trustee's avoidance powers under the Bankruptcy Code, the State, at its sole option, may initiate a proceeding against DiMarco for the monetary claims that would otherwise be covered by the releases provided in Paragraphs 3 and 4 above. DiMarco agrees that (i) any such claims, actions, or proceedings brought by the State are not subject to an "automatic stay" pursuant to 11 U.S.C. § 362(a) as a result of the action, case, or proceedings described in the first clause of this Paragraph, and DiMarco shall not argue or otherwise contend that the State's claims, actions, or proceedings are subject to an automatic stay; (ii) DiMarco shall not plead, argue, or otherwise raise any defenses under the theories of statute of limitations, laches, estoppel, or similar theories, to

any such civil or administrative claims, actions, or proceedings that are brought by the State within sixty (60) calendar days of written notification to DiMarco that the releases have been rescinded pursuant to this Paragraph, except to the extent such defenses were available on the Effective Date of this Agreement; and (iii) the State has a valid claim against DiMarco in the amount of the Settlement Amount, and the State may pursue its claim in the case, action or proceeding referenced in the first clause of this Paragraph, as well as any other case, action or proceeding, including but not limited to by filing a claim in any bankruptcy proceeding.

- d) DiMarco acknowledges that its agreements in this Paragraph are provided in exchange for valuable consideration provided in this Agreement.

13. Source of Settlement Amount Payment: DiMarco warrants that the Settlement Amount is being paid by Anna DiMarco, also known as Joyceanna DiMarco, Joyce Anna DiMarco, and J. Anna DiMarco (hereinafter “Anna DiMarco”). DiMarco further warrants that the source of these funds is in an account at Northwest Savings Bank in Warren, PA, account number ending in 5450, that is under the sole control of Anna DiMarco and in which David DiMarco, M.D., has no interest.

14. Anna DiMarco has executed a guaranty agreement (the “Guaranty”) with the State guaranteeing the Settlement Amount owed to the State by DiMarco, a copy of which is attached hereto as Exhibit A. In the event that Anna DiMarco rescinds her obligation as guarantor under the terms of the Guaranty Agreement in Exhibit A, DiMarco shall obtain a new qualified guarantor within 30 days of the date of the rescission. If DiMarco fails to obtain a new qualified guarantor within 30 days of the date of the rescission, DiMarco shall be in default of this Agreement, in which case the State may take any of the actions set forth in Paragraph 2 above.

15. Except as expressly provided in this Agreement, this Agreement is intended to be for the benefit of the Parties only and does not release any claims against any other person or entity.

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

17. The entire Settlement Amount constitutes Restitution as that term is defined in Section 162(f)(2)(A) of the Internal Revenue Code.

18. DiMarco waives and shall not assert any defenses DiMarco may have to administrative action for the Covered Conduct, which defenses may be based in whole or in part upon a contention under the Double Jeopardy Clause of the Fifth Amendment of the Constitution or the Excessive Fines Clause of the Eighth Amendment of the Constitution that this Agreement bars a remedy sought in such administrative action.

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

20. DiMarco represents that DiMarco freely and voluntarily enters into this Agreement without any duress or coercion.

21. Any failure by the State to insist upon the strict performance of any of the provisions of this Agreement shall not be deemed a waiver of any of the provisions hereof, and the State, notwithstanding that failure, shall have the right thereafter to insist upon strict performance of any and all of the provisions of this Agreement.

22. This Agreement is governed by, and construed in accordance with, the laws of the State of New York without regard to choice of law or conflict of laws principles. The Parties

consent to the jurisdiction of the Supreme Court of the State of New York, Erie County, in any action to enforce or interpret this Agreement.

23. This Agreement shall be deemed to have been mutually prepared by the Parties hereto and shall not be construed against either of them solely by reason of authorship.

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

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

26. This Agreement is binding on DiMarco's successors, transferees, heirs, and assigns.

27. DiMarco agrees not to take any action or to make or permit to be made any public statement denying, directly or indirectly, any finding in this Agreement or creating the impression that this Agreement is without factual basis. Nothing in this Paragraph affects DiMarco's: (a) testimonial obligations; or (b) right to take legal or factual positions in defense of litigation, arbitration, or other legal proceedings to which the State is not a party.

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

29. The Effective Date of this Agreement shall be the date of signature of the last signatory to this Agreement ("Effective Date").

30. Any notices pursuant to this Agreement shall be in writing and shall, unless expressly provided otherwise herein, be given by hand delivery or express courier, followed by postage-prepaid mail, and shall be addressed as follows:

a) IF TO THE ATTORNEY GENERAL and the STATE:

New York State Attorney General
Medicaid Fraud Control Unit

Attn: Director of Medicaid Fraud Control
28 Liberty Street
New York, NY 10005
MFCUNotices@ag.ny.gov

b) IF TO DIMARCO:

Tina O. Miller, Reisinger Comber Miller LLC, Suite 300 Koppers Building,
436 Seventh Avenue Pittsburgh, PA 15219
tmiller@reisingercomber.com

and

Parrish Law Offices
788 Washington Road
Pittsburgh PA 15228
debbie@dparrishlaw.com

Integrity Obligations

31. The Parties acknowledge that a primary purpose of this Agreement is to promote compliance with the statutes, regulations, and written directives of the Medicaid program. To further that objective, DiMarco agrees to the follow integrity obligations:

(a) If DiMarco elects to re-enroll in Medicaid, prior to a submission of an application to participate in Medicaid, DiMarco shall ensure that a plan of supervision of DiMarco's claim submission process is established.

(b) The plan of supervision shall be designed to ensure that DiMarco shall appropriately document all services rendered in a timely manner for which reimbursement is sought from Medicaid. Such documentation shall accurately reflect the evaluation and treatment of the patient and shall be sufficient to establish the medical necessity of those services rendered pursuant to 18 NYCRR §§ 540.7(a)(1), 504.3, and 515.2 (b)(6).

(c) DiMarco agrees to maintain responsibility for compliance with the plan of supervision.

(d) The plan of supervision must include a review by an individual who is familiar with the documentation standards for the services provided by a New York Medicaid Provider (“Reviewer”). No less than 30 days before retaining such Reviewer, DiMarco shall submit the proposed Reviewer’s name and Curriculum Vitae to MFCU. MFCU shall have sole discretion to approve or reject such individual. DiMarco may not submit an application to participate in Medicaid unless MFCU has approved a Reviewer pursuant to this Paragraph.

(e) The Reviewer, once approved by MFCU, must review on at least a monthly basis, DiMarco’s documentation related to claims for Medicaid beneficiaries, to ensure that DiMarco’s documentation supports the services provided by DiMarco. Such plan of supervision shall review a sample of claims and associated documentation for a period of five years from the implementation of the plan of supervision, or August 31, 2032, whichever is later.

(f) DiMarco shall have sole responsibility for paying for the services of the Reviewer.

(g) DiMarco agrees that the plan of supervision is a material term of this Agreement and that any violation of this provision, constitutes sufficient cause for exclusion from New York Medicaid.

(h) **Compliance Review Period:** For a term of five (5) years from any re-enrollment in Medicaid, DiMarco shall cooperate fully and promptly with any and all audits and/or investigations by MFCU concerning DiMarco’s compliance with Medicaid’s rules and regulations. DiMarco shall use DiMarco’s best efforts to ensure that DiMarco’s officers, directors, employees, trustees, members and agents fully and promptly cooperate with any such investigation and related proceedings and actions. This five (5) year period shall be referred to as the “Compliance Review Period.”

(i) **Immediate Access:** DiMarco's cooperation during the Compliance Review Period shall include, without limitation (1) granting MFCU immediate access to information and all documents or other tangible evidence requested by MFCU (except where prohibited by statute or regulation), which shall include any and all computerized and electronically stored records, without the need for subpoena or search warrant; (2) without the necessity of a subpoena, directing officers, directors, employees and agents to attend any proceedings at which the presence of any such persons is requested by the MFCU and directing such persons to answer any and all non-privileged inquiries that may be put by the MFCU to any of them at any proceedings or otherwise ("proceedings" include, but are not limited to, any meetings, interviews, depositions, hearings, grand jury sessions, trial or other proceedings); (3) fully, fairly and truthfully disclosing all information and producing all records and other evidence in DiMarco's possession relevant to all inquiries regarding the Covered Conduct and MFCU's investigations concerning any fraudulent or criminal conduct whatsoever about which DiMarco has any knowledge or information; and (4) DiMarco shall not jeopardize the safety of any investigator or the confidentiality of any aspect of MFCU's investigation, or any other investigation by the Attorney General (including sharing or disclosing evidence, documents, or other information with others during the course of the investigation without the consent of the Attorney General). Nothing herein shall prevent DiMarco from providing information to other government agencies or as otherwise required by law.

32. **Default and Penalties:** DiMarco is expected to fully and timely comply with all of the Integrity Obligations under this Agreement. As a contractual remedy, the Parties hereby agree that DiMarco's failure to comply with the Integrity Obligations set forth in this Agreement

will lead to the imposition of the following monetary penalties (hereinafter referred to as “Stipulated Penalties”) in accordance with the following provisions:

(a) A Stipulated Penalty of One Thousand Dollars (\$1,000.00) for each day DiMarco fails to grant access to DiMarco’s records and personnel as required in Paragraphs 31(i)(1) and (2). These Stipulated Penalties shall begin to accrue on the date DiMarco fails to grant access.

(b) A Stipulated Penalty of One Thousand dollars (\$1,000.00) for each day DiMarco fails to furnish accurate and complete records to MFCU as required in Paragraph 31(i)(3). These Stipulated Penalties shall begin to accrue on the date CSEDNY fails to furnish said records.

33. Payment of Stipulated Penalties.

(a) *Demand Letter.* Upon a finding that DiMarco has failed to comply with any of the Integrity Obligations described in Paragraph 31 above, and after determining Stipulated Penalties are appropriate, MFCU shall notify DiMarco by written demand of: (a) DiMarco’s failure to comply; and (b) MFCU’s exercise of its contractual right to demand payment of the Stipulated Penalties. (This notification shall be referred to as the “Demand Letter”).

(b) *Response to Demand Letter.* Within ten (10) days after receipt of the Demand Letter, DiMarco shall cure the breach to MFCU’s satisfaction and pay the applicable Stipulated Penalties.

(c) *Form of Payment.* Payment of the Stipulated Penalties shall be made by electronic funds transfer pursuant to instructions provided by MFCU in the Demand Letter.

34. Nothing in this Agreement constitutes an agreement by the State concerning the characterization of any relevant statutes or regulations, and the Agreement shall not be construed as an admission by the State as to any contested issue encompassed by the State’s investigation.

WHEREFORE, the Parties have read the foregoing Agreement and accept and agree to the

provisions contained therein and hereby have caused this Agreement to be signed as of the dates set forth below.

STIPULATED AND AGREED TO:

THE STATE OF NEW YORK

LETITIA JAMES

Attorney General of the State of New York

By: _____
Logan J. Gowdey
Special Assistant Attorney General
28 Liberty Street, 13th Floor
New York, NY 10005
(212) 417-5393
logan.gowdey@ag.ny.gov

Dated: _____

DAVID DIMARCO, M.D., individually and on behalf of D.B. DIMARCO, M.D., P.C. and DIMARCO VEIN CENTERS LLC

By: 
David DiMarco, M.D.

Dated: 12/15/2022

Approved as to Form

By: _____

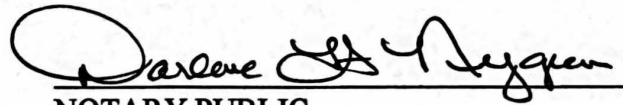
Dated: _____

Counsel for David DiMarco, M.D., D.B. DiMarco, M.D. P.C., and DiMarco Vein Centers LLC

State of New York)
)ss:
County of Chautauque

On the 15th day of December, in the year 2022, before me, the undersigned, a Notary Public in and for said State, personally appeared **David DiMarco**, personally known to me or

proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument, and acknowledged to me that he executed the same in his capacity *as owner of* D.B. DiMarco, M.D., P.C. and DiMarco Vein Centers LLC, and that by his signature on the instrument, the individual or the entity upon behalf of which the individual acted, executed the instrument.


NOTARY PUBLIC

DARLENE H. NYGREN
Notary Public, State of New York
No. 01NY6291841
Qualified in Chautauqua County
Commission Expires October 28 2025

provisions contained therein and hereby have caused this Agreement to be signed as of the dates set forth below.

STIPULATED AND AGREED TO:

THE STATE OF NEW YORK

LETITIA JAMES

Attorney General of the State of New York

By: _____
Logan J. Gowdey
Special Assistant Attorney General
28 Liberty Street, 13th Floor
New York, NY 10005
(212) 417-5393
logan.gowdey@ag.ny.gov

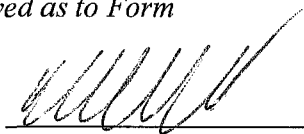
Dated: _____

DAVID DIMARCO, M.D., individually and on behalf of D.B. DIMARCO, M.D., P.C. and DIMARCO VEIN CENTERS LLC

By: _____
David DiMarco, M.D.

Dated: _____

Approved as to Form

By:  _____

Dated: 12-15-22

Counsel for David DiMarco, M.D., D.B. DiMarco, M.D. P.C., and DiMarco Vein Centers LLC

State of New York)
)ss:
County of _____)

On the ____ day of _____, in the year 2022, before me, the undersigned, a Notary Public in and for said State, personally appeared **David DiMarco**, personally known to me or

provisions contained therein and hereby have caused this Agreement to be signed as of the dates set forth below.

STIPULATED AND AGREED TO:

THE STATE OF NEW YORK

LETITIA JAMES

Attorney General of the State of New York

By: 

Logan J. Gowdey
Special Assistant Attorney General
28 Liberty Street, 13th Floor
New York, NY 10005
(212) 417-5393
logan.gowdey@ag.ny.gov

Dated: 12/15/22

DAVID DIMARCO, M.D., individually and on behalf of D.B. DIMARCO, M.D., P.C. and DIMARCO VEIN CENTERS LLC

By: _____
David DiMarco, M.D.

Dated: _____

Approved as to Form

By: _____

Dated: _____

Counsel for David DiMarco, M.D., D.B. DiMarco, M.D. P.C., and DiMarco Vein Centers LLC

State of New York)
)ss:
County of _____)

On the ____ day of _____, in the year 2022, before me, the undersigned, a Notary Public in and for said State, personally appeared **David DiMarco**, personally known to me or

EXHIBIT A

GUARANTY AGREEMENT

This Guaranty Agreement is entered into by and among Anna DiMarco, also known as Joyceanna DiMarco, Joyce Anna DiMarco, and J. Anna DiMarco (“Guarantor”) and New York State (the “State”), (collectively the “Parties”).

WHEREAS, the State is executing a settlement agreement which states, *inter alia*, that David DiMarco, M.D., D.B. DiMarco, M.D., P.C., and DiMarco Vein Centers LLC (collectively, “DiMarco”) submitted claims for payment for services that the State found were not supported by sufficient documentation;

WHEREAS the State and DiMarco wish to settle allegations through the execution of a Settlement Agreement, dated December 13, 2022 (the “Settlement Agreement”), and the Exhibit thereto, this Guaranty Agreement;

WHEREAS, DiMarco has executed the Settlement Agreement, incorporated by reference herein, wherein DiMarco promises to pay the State \$2,139,037 (the “Settlement Amount”) as set forth in Paragraph 1 of the Settlement Agreement;

WHEREAS, Guarantor is not a party to the Settlement Agreement;

IT IS HEREBY AGREED that, in exchange for adequate consideration, the Parties shall undertake the following obligations:

TERMS AND CONDITIONS

1. Statement of Guaranty. Guarantor unconditionally and personally guarantees the prompt payment of the full Settlement Amount as set forth in Paragraph 1 of the Settlement Agreement, up to the total amount of \$2,139,037 (two million one hundred thirty nine thousand thirty seven dollars).
2. Nature of Guaranty. In the event that payment of the Settlement Amount by Guarantor, or any portion thereof, is rescinded or must otherwise be returned by virtue of any action by any bankruptcy court, Guarantor shall remain liable hereunder with respect to such payment or portion of such payment. Guarantor agrees that the State may resort to Guarantor for payment of any of rescinded portion of the Settlement Amount without regard to whether the State shall have proceeded against any other person or entity primarily or secondarily obligated with respect to any of the Settlement Amount.
3. No Waiver; Cumulative Rights. No failure on the part of the State to exercise, and no delay in exercising, any right, remedy, or power hereunder shall operate as a waiver thereof, nor shall any single or partial exercise by the States of any right, remedy, or power hereunder preclude any other or future exercise of any right, remedy, or power. Each and every right, remedy, and power hereby granted to the State or allowed by


law or other agreement shall be cumulative and not exclusive of any other, and may be exercised by the State from time to time.

4. Effective Date. This Guaranty Agreement shall become effective on the Effective Date, as defined in Paragraph 29 of the Settlement Agreement.
5. Subrogation. Guarantor shall not exercise any subrogation rights it may acquire against DiMarco as a result of this Guaranty Agreement until all of the Settlement Amount owed to the State has been paid in full.
6. Waiver of Notice. Guarantor waives notice of the acceptance of this Guaranty, presentment, demand, notice of dishonor, protest, and all other notices whatsoever.
7. Duration. This Guaranty shall continue in full force and effect until after the State's receipt of the Settlement Amount.
8. Solvency. Guarantor expressly warrants that she has reviewed her financial situation and she is currently solvent within the meaning of 11 U.S.C. § 547 (b)(3), and that she currently believes she will remain solvent if Guarantor pays the Settlement Amount to the State pursuant to this Guaranty. Further, the Parties warrant that, in evaluating whether to execute this Agreement, they (a) have intended that the mutual promises, covenants, and obligations set forth constitute a contemporaneous exchange for new value given to Guarantor, within the meaning of 11 U.S.C. § 547 (c)(1), and (b) have concluded that these mutual promises, covenants, and obligations do, in fact, constitute such contemporaneous exchange. Further, the Parties warrant that the mutual promises, covenants, and obligations set forth herein are intended to and do, in fact, represent a reasonably equivalent exchange of value that is not intended to hinder, delay, or defraud any entity to which Guarantor was or became indebted to on or after the date of this transfer, all within the meaning of 11 U.S.C. § 548 (a)(1).
9. Source of Settlement Amount Payment. Guarantor warrants that the Settlement Amount is being paid by Anna DiMarco. Guarantor further warrants that the source of these funds is in an account at Northwest Savings Bank in Warren, PA, account number ending in 5450, that is under the sole control of Anna DiMarco and in which David DiMarco, M.D., has no interest.
10. Entire Agreement. Each Party hereto represents and warrants that this Agreement constitutes a valid and binding agreement enforceable against each Party in accordance with its terms. This Agreement embodies the entire guaranty agreement between the Parties. There are no promises, terms, conditions, or obligations other than those contained in this Agreement. This Agreement supersedes all previous communications, representations, or agreements either verbal or written between Guarantors and the State.
11. Severability. Should any one or more provisions of this Agreement be determined to be illegal, unenforceable, void, or voidable, all other provisions shall remain in effect.

12. Assignment. No Party hereto may assign its rights, interest, or obligations hereunder to any other person or entity without prior written consent of the other Party. The provisions of this Agreement shall be binding on the Parties hereto and their successors and assigns. This Agreement is to continue in full force and effect notwithstanding a change in the composition, ownership, or corporate structure of D.B. DiMarco, M.D., P.C., or of DiMarco Vein Centers LLC.
13. Miscellaneous. This Agreement shall not be amended except in a writing signed by all Parties. Each signatory hereto represents and warrants that he or she is authorized to execute and deliver this Agreement on behalf of the Party for whom he or she is purporting to act. This Agreement may be executed in counterparts, each of which shall constitute an original and all of which shall constitute one and the same agreement.
14. Governing Law; Consent to Jurisdiction. This Agreement shall be governed by and construed in accordance with New York law. The Parties consent to the jurisdiction of the Supreme Court of the State of New York, Erie County, in any action to enforce any term of this Agreement.

GUARANTOR

ANNA DIMARCO (aka JOYCEANNA DIMARCO, JOYCE ANNA DIMARCO, and J. ANNA DIMARCO), individually

By: 
Anna DiMarco

Dated: 12/15/22

Approved as to Form

By: _____

Dated: _____

Counsel for Guarantor

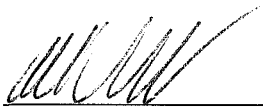
GUARANTOR

ANNA DIMARCO (aka JOYCEANNA DIMARCO, JOYCE ANNA DIMARCO, and J. ANNA DIMARCO), individually

By: _____
Anna DiMarco

Dated: _____

Approved as to Form

By:  _____

Dated: 12-15-22

Counsel for Guarantor

THE STATE OF NEW YORK

THE STATE OF NEW YORK

LETITIA JAMES

Attorney General of the State of New York

By:



Logan L. Gowdey
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(212) 417-5393
logan.gowdey@ag.ny.gov

Dated: 12/15/22