

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

FILED  
AHCA  
AGENCY CLERK

2009 JUL -7 P 12: 34

STATE OF FLORIDA, AGENCY FOR HEALTH  
CARE ADMINISTRATION,

Petitioner,

vs.

MERCY PROFESSIONAL PHARMACY,

CASE NO. 08-6381MPI  
Audit No.: CI 09-8061-000  
Provider No.: 103854100  
RENDITION NO.: AHCA-09- **582** -S-MDO

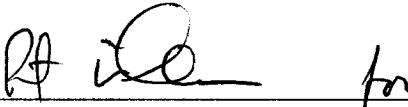
Respondent.

---

**FINAL ORDER**

THE PARTIES resolved all disputed issues and executed a Settlement Agreement. The parties are directed to comply with the terms of the attached settlement agreement. Based on the foregoing, this file is **CLOSED**.

DONE and ORDERED on this the 6<sup>th</sup> day of July, 2009, in Tallahassee, Florida.

  
\_\_\_\_\_  
HOLLY BENSON, SECRETARY  
Agency for Health Care Administration

A PARTY WHO IS ADVERSELY AFFECTED BY THIS FINAL ORDER IS ENTITLED TO A JUDICIAL REVIEW WHICH SHALL BE INSTITUTED BY FILING ONE COPY OF A NOTICE OF APPEAL WITH THE AGENCY CLERK OF AHCA, AND A SECOND COPY ALONG WITH FILING FEE AS PRESCRIBED BY LAW, WITH THE DISTRICT COURT OF APPEAL IN THE APPELLATE DISTRICT WHERE THE AGENCY MAINTAINS ITS HEADQUARTERS OR WHERE A PARTY RESIDES. REVIEW PROCEEDINGS SHALL BE CONDUCTED IN ACCORDANCE WITH THE FLORIDA APPELLATE RULES. THE NOTICE OF APPEAL MUST BE FILED WITHIN 30 DAYS OF RENDITION OF THE ORDER TO BE REVIEWED.

Copies furnished to:

L. William Porter II, Esquire  
Agency for Health Care  
Administration  
(Laserfiche)

Lewis W. Fishman, Esquire  
2 Datran Center  
9130 S. Dadeland Boulevard, Suite 1121  
Miami, Florida 33156-7848  
(U.S. Mail)

June C. McKinney  
Administrative Law Judge  
Division of Administrative Hearings  
The DeSoto Building  
1230 Apalachee Parkway  
Tallahassee, Florida 32399-3060

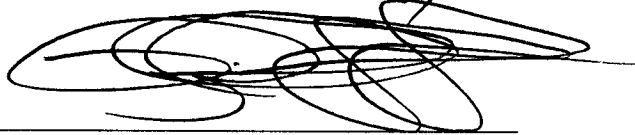
Ken Yon, Bureau Chief, Medicaid Program Integrity

Diana Coumbe, Medicaid Program Integrity

Finance and Accounting

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to the above named addressees by U.S. Mail on this the 7<sup>th</sup> day of July, 2009.



---

Richard Shoop, Esquire  
Agency Clerk  
State of Florida  
Agency for Health Care Administration  
2727 Mahan Drive, Building #3  
Tallahassee, Florida 32308-5403  
(850) 922-5873

**STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS**

AGENCY FOR HEALTH CARE  
ADMINISTRATION,

Petitioner,

vs.

Case No. 08-6381MPI

MERCY PROFESSIONAL  
PHARMACY,

Respondent.

---

**SETTLEMENT AGREEMENT**

STATE OF FLORIDA, AGENCY FOR HEALTH CARE ADMINISTRATION ("AHCA" or "the Agency"), and Mercy Professional Pharmacy ("PROVIDER"), by and through the undersigned, hereby stipulate and agree as follows:

1. The two parties enter into this agreement to memorialize the resolution to this matter.
2. PROVIDER is a Florida Medicaid provider, provider number 103854100 and was a provider during the audit period, January 1, 2005 to December 31, 2005.
3. In its Final Agency Audit Report (constituting final agency action) dated November 17, 2008, AHCA notified PROVIDER that review of Medicaid claims by Medicaid Program Integrity (MPI), Office of the AHCA Inspector General, indicated certain claims, in whole or in part, had been inappropriately paid. The Agency sought recoupment of this overpayment in the amount of \$37,574.54. In response, PROVIDER filed a petition for formal administrative hearing. It was assigned DOAH Case No. 08-6381MPI.

**Mercy Professional Pharmacy  
Settlement Agreement**

4. In order to resolve this matter without further administrative proceedings, PROVIDER and the AHCA agree as follows:

- (1) AHCA agrees to accept the payment set forth herein in settlement of the overpayment issues arising from the captioned audit.
- (2) Within thirty days of entry of the final order, PROVIDER agrees to make a lump sum payment of thirty seven thousand five hundred seventy four dollars and fifty-four cents (\$37,574.54) in overpayment plus five thousand dollars (\$5,000) in fines for a total of forty two thousand five hundred seventy four dollars and fifty-four cents (\$42,574.54). This fully and completely settles all claims in these proceedings before the Division of Administrative Hearings (DOAH Case No. 08-6381MPI).
- (3) PROVIDER and AHCA agree that full payment, as set forth above, resolves and settles this case completely. It will release both parties from any administrative or civil liabilities or claims arising from the findings in audit C.I. 09-8061-000.
- (4) PROVIDER agrees that it will not rebill the Medicaid Program in any manner for claims that were determined not covered by Medicaid, which are the subject of the audit in this case.

5. Payment shall be made to:

**AGENCY FOR HEALTHCARE ADMINISTRATION  
Medicaid Accounts Receivable  
Post Office Box 13749  
Tallahassee, Florida 32317-3749**

Mercy Professional Pharmacy  
Settlement Agreement

6. PROVIDER agrees that failure to pay any monies due and owing under the terms of this Agreement shall constitute PROVIDER'S authorization for the Agency, without further notice, to withhold the total remaining amount due under the terms of this agreement from any monies due and owing to PROVIDER for any Medicaid claims.

7. AHCA reserves the right to enforce this Agreement under the laws of the State of Florida, the Rules of the Medicaid Program, and all other applicable rules and regulations.

8. PROVIDER acknowledges their obligation to adhere to state and federal Medicaid laws, rules, provisions, handbooks and policies.

9. This settlement does not constitute an admission of wrongdoing or error by either party with respect to this case or any other matter.

10. Each party shall bear its own attorneys' fees and costs, if any.

11. The signatories to this Agreement, acting in a representative capacity, represent that they are duly authorized to enter into this Agreement on behalf of the respective parties.

12. This Agreement shall be construed in accordance with the provisions of the laws of Florida. Venue for any action arising from this Agreement shall be in Circuit Court, Leon County, Florida.

13. This Agreement constitutes the entire agreement between PROVIDER and AHCA, including anyone acting for, associated with or employed by them, concerning all matters and supersedes any prior discussions, agreements or understandings; there are no promises, representations or agreements between PROVIDER and the AHCA other than as set forth herein. No modification or waiver of any provision shall be valid unless a written amendment to the Agreement is completed and properly executed by the parties.

Mercy Professional Pharmacy  
Settlement Agreement

14. This is an Agreement of settlement and compromise, made in recognition that the parties may have different or incorrect understandings, information and contentions, as to facts and law, and with each party compromising and settling any potential correctness or incorrectness of its understandings, information and contentions as to facts and law, so that no misunderstanding or misinformation shall be a ground for rescission hereof.

15. PROVIDER expressly waives in this matter its right to any hearing pursuant to sections 120.569 or 120.57, Florida Statutes, the making of findings of fact and conclusions of law by the Agency, and all further and other proceedings to which it may be entitled by law or rules of the Agency regarding this proceeding and any and all issues raised herein. PROVIDER further agrees that it shall not challenge or contest any Final Order entered in this matter which is consistent with the terms of this settlement agreement in any forum now or in the future available to it, including the right to any administrative proceeding, circuit or federal court action or any appeal.

16. This Agreement is and shall be deemed jointly drafted and written by all parties to it and shall not be construed or interpreted against the party originating or preparing it.

17. To the extent that any provision of this Agreement is prohibited by law for any reason, such provision shall be effective to the extent not so prohibited, and such prohibition shall not affect any other provision of this Agreement.

18. This Agreement shall inure to the benefit of and be binding on each party's successors, assigns, heirs, administrators, representatives and trustees.

19. All times stated herein are of the essence of this Agreement.

20. This Agreement shall be in full force and effect upon execution by the respective parties in counterpart.

Mercy Professional Pharmacy  
Settlement Agreement

MERCY PROFESSIONAL PHARMACY

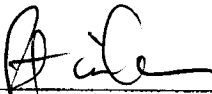


Dated: May 5, 2009


BY: LEWIS W FISHMAN  
(Print name)

ITS: Legal Counsel


**AGENCY FOR HEALTH CARE  
ADMINISTRATION**  
2727 Mahan Drive, Mail Stop #3  
Tallahassee, FL 32308-5403

  
\_\_\_\_\_  
Peter Williams  
Inspector General

Dated: 7/6, 2009

  
\_\_\_\_\_  
Justin Senior  
General Counsel

Dated: 6/25, 2009

  
\_\_\_\_\_  
L. William Porter II  
Assistant General Counsel

Dated: May 11,, 2009





CHARLIE CRIST  
GOVERNOR

**FILED**  
HOUSSEAU  
SECRETARY  
PH 3:59  
DIVISION OF  
ADMINISTRATIVE  
HEARINGS

**CERTIFIED MAIL – RETURN RECEIPT No. 7004 2510 0001 4443 8050**

November 17, 2008

Provider No.: 103854100  
License No.: PH6824

08-6381MPI

Isabel Vasquez, Pharmacy Manager  
Mercy Professional Pharmacy  
3661 S. Miami Avenue, Suite 110  
Miami, FL 33133

In Reply Refer to  
**FINAL AUDIT REPORT**  
C.I. No. 09-8061-000/P/DSC

Dear Ms. Vasquez:

The Agency for Health Care Administration (Agency), Office of Inspector General, Bureau of Medicaid Program Integrity, has completed a review of claims for Medicaid reimbursement for dates of service during the period January 1, 2005 through December 31, 2005. A preliminary audit report dated October 1, 2008 was sent to you indicating that we had determined you were overpaid \$151,217.38. Based upon a review of all documentation submitted, we have determined that you were overpaid \$37,574.54 for services that in whole or in part are not covered by Medicaid. A fine of \$5,000.00 has been applied. The total amount due is \$42,574.54.

Be advised of the following:

- (1) Pursuant to Section 409.913(23) (a), Florida Statutes (F.S.), the Agency is entitled to recover all investigative, legal, and expert witness costs.
- (2) In accordance with Sections 409.913(15), (16), and (17), F.S., and Rule 59G-9.070, Florida Administrative Code (F.A.C.), the Agency shall apply sanctions for violations of federal and state laws, including Medicaid policy. This letter shall serve as notice of the following sanction(s):
  - A fine of \$5,000.00 for violation(s) of Rule Section 59G-9.070(7)(n), F.A.C., for failure to demonstrate a sufficient quantity of goods available to support billings made to Medicaid

2727 Mahan Drive, MS# 6  
Tallahassee, Florida 32308



Visit AHCA online at  
<http://ahca.myflorida.com>

EXHIBIT D

This review and the determination of overpayment were made in accordance with the provisions of Section 409.913, F.S. In determining the appropriateness of Medicaid payment pursuant to Medicaid policy, the Medicaid program utilizes procedure codes, descriptions, policies, limitations and requirements found in the Medicaid provider handbooks and Section 409.913, F.S. In applying for Medicaid reimbursement, providers are required to follow the guidelines set forth in the applicable rules and Medicaid fee schedules, as promulgated in the Medicaid policy handbooks, billing bulletins, and the Medicaid provider agreement. Medicaid cannot pay for services that do not meet these guidelines.

Below is a discussion of the particular guidelines related to the review of your claims, and an explanation of why these claims do not meet Medicaid requirements. The audit work papers are enclosed, listing the claims that are affected by this determination.

### **REVIEW DETERMINATION(S)**

The audit included a comparison of your lawful documented product acquisitions with your paid Medicaid claims. Only product acquisitions from Florida licensed wholesalers were included in the audit. The audit period for this review was from January 1, 2005 through December 31, 2005. The drug quantity paid for by Medicaid for the drugs reviewed exceeded the quantity available to dispense to Medicaid recipients. This review identified an overpayment of \$37,574.54. Enclosed for this review are the overpayment calculations which include the summary sheet(s), the paid claims data, and acquisition data.

If you are currently involved in a bankruptcy, you should notify your attorney immediately and provide a copy of this letter for them. Please advise your attorney that we need the following information immediately: (1) the date of filing of the bankruptcy petition; (2) the case number; (3) the court name and the division in which the petition was filed (e.g., Northern District of Florida, Tallahassee Division); and, (4) the name, address, and telephone number of your attorney.

If you are not in bankruptcy and you concur with our findings, remit by certified check in the amount of \$42,574.54 which includes the overpayment amount as well as any fines imposed. The check must be payable to the **Florida Agency for Health Care Administration**. Questions regarding procedures for submitting payment should be directed to Medicaid Accounts Receivable, (850) 488-5869. To ensure proper credit, be certain you legibly record on your check your Medicaid provider number and the C.I. number listed on the first page of this audit report. Please mail payment to:

**Agency for Health Care Administration**  
Medicaid Accounts Receivable  
P.O. Box 13749  
Tallahassee, Florida 32317-3749

If payment is not **received, or arranged for, within thirty (30) days of receipt of this letter**, the Agency may withhold Medicaid payments in accordance with the provisions of Section 409.913(27), F.S. Furthermore, pursuant to Sections 409.913(25) and 409.913(15), F.S., failure to pay in full, or enter into and abide by the terms of any repayment schedule set forth by the Agency may result in termination from the Medicaid Program. Likewise, failure to comply with all sanctions applied or due dates may result in additional sanctions being imposed.

You have the right to request a formal or informal hearing pursuant to Section 120.569, F.S. If a request for a formal hearing is made, the petition must be made in compliance with Section 28-106.201, F.A.C. and mediation may be available. If a request for an informal hearing is made, the petition must be made in compliance with rule Section 28-106.301, F.A.C. Additionally, you are hereby informed that if a request for a hearing is made, the petition must be **received by the Agency** within twenty-one (21) days of receipt of this letter. **For more information regarding your hearing and mediation rights, please see the attached Notice of Administrative Hearing and Mediation Rights.**

Any questions you may have about this matter should be directed to: Diana Coumbe, Senior Pharmacist, **Agency for Health Care Administration, Office of Inspector General, Medicaid Program Integrity, 2727 Mahan Drive, Mail Stop #6, Tallahassee, Florida 32308-5403, telephone (850) 921-1802, facsimile (850) 410-1972.**

Sincerely,



Ramona D. Stewart, RPh  
AHCA Administrator  
Office of Inspector General  
Medicaid Program Integrity

RDS/ DSC

Enclosure(s)

cc: Medicaid Accounts Receivable  
Diana Coumbe  
Lewis W. Fishman, Attorney and Counselors At Law, Two Datan Center, Suite 1121,  
9130 South Dadeland Boulevard, Miami, FL 33156

Provider Name: Mercy Professional Pharmacy  
 Provider Number: 103854100  
 Review Period: 1/1/05-12/31/05

Invoice Analysis Results \*

Drug Name / Strength	Dollars Paid by Medicaid	Units Paid by Medicaid	Total Units Disp. by Pharmacy	Medicaid as a % of Total Purchased	Total Units Purchased	Available Purchases	Purchase Shortage	Average Paid/Unit	Total Overcharge
GEMZAR 1 GRAM VIAL	\$45,387.19	76	76	100.00%	70	70	(6)	\$ 597.20	\$ 3,583.20
LEXIVA 700 MG TABLET	\$134,684.37	14,580	27,060	53.88%	26,520	14,289	(291)	\$ 9.24	\$ 2,688.84
NORVIR 100 MG SOFTGEL CAP	\$158,890.28	17,340	39,750	43.62%	37,682	16,437	(903)	\$ 9.16	\$ 8,271.93
PLAVIX 75 MG TABLET	\$32,817.40	8,026	12,988	61.80%	12,673	7,832	(194)	\$ 4.09	\$ 79,213.50
PREVACID 30 MG CAPSULE DR	\$90,662.26	20,658	24,207	85.34%	23,968	20,454	(204)	\$ 4.39	\$ 895.56
REYATAZ 150 MG CAPSULE	\$181,620.78	14,430	27,272	52.91%	26,820	14,190	(240)	\$ 12.59	\$ 3,021.60
THALOMID 50 MG CAPSULE	\$35,829.62	896	896	100.00%	560	560	(336)	\$ 39.99	\$ 13,436.64
TRUVADA TABLET	\$236,674.19	9,885	22,919	43.13%	22,445	9,681	(204)	\$ 23.94	\$ 4,883.76
TOTAL									\$ 37,574.54

Does not include any 340B purchases or 340B DUR  
 Includes Purchases/Claims from December, 2004

B,C data from Florida Medicaid Information System  
 D,F data from provider  
 E=D/C  
 G=F-C  
 I=B/C  
 J=IH

### **NOTICE OF ADMINISTRATIVE HEARING AND MEDIATION RIGHTS**

You have the right to request an administrative hearing pursuant to Sections 120.569 and 120.57, Florida Statutes. If you disagree with the facts stated in the foregoing Final Audit Report (hereinafter FAR), you may request a formal administrative hearing pursuant to Section 120.57(1), Florida Statutes. If you do not dispute the facts stated in the FAR, but believe there are additional reasons to grant the relief you seek, you may request an informal administrative hearing pursuant to Section 120.57(2), Florida Statutes. Additionally, pursuant to Section 120.573, Florida Statutes, mediation may be available if you have chosen a formal administrative hearing, as discussed more fully below.

The written request for an administrative hearing must conform to the requirements of either Rule 28-106.201(2) or Rule 28-106.301(2), Florida Administrative Code, and must be received by the Case Management Manager by 5:00 P.M. no later than 21 days after you received the FAR. The address for filing the written request for an administrative hearing is:

**Case Management Manager  
Office of Inspector General  
Medicaid Program Integrity  
Agency for Health Care Administration  
2727 Mahan Drive, Mail Stop #6  
Tallahassee, Florida 32308 - 5403**

The request must be legible, on 8 ½ by 11-inch white paper, and contain:

1. Your name, address, telephone number, any Agency identifying number on the FAR, if known, and name, address, and telephone number of your representative, if any;
2. An explanation of how your substantial interests will be affected by the action described in the FAR;
3. A statement of when and how you received the FAR;
4. For a request for formal hearing, a statement of all disputed issues of material fact;
5. For a request for formal hearing, a concise statement of the ultimate facts alleged, as well as the rules and statutes which entitle you to relief;
6. For a request for formal hearing, whether you request mediation, if it is available;
7. For a request for informal hearing, what bases support an adjustment to the amount owed to the Agency; and
8. A demand for relief.

A formal hearing will be held if there are disputed issues of material fact. Additionally, mediation may be available in conjunction with a formal hearing. Mediation is a way to use a neutral third party to assist the parties in a legal or administrative proceeding to reach a settlement of their case. If you and the Agency agree to mediation, it does not mean that you give up the right to a hearing. Rather, you and the Agency will try to settle your case first with mediation.

If you request mediation, and the Agency agrees to it, you will be contacted by the Agency to set up a time for the mediation and to enter into a mediation agreement. If a mediation agreement is not reached within 10 days following the request for mediation, the matter will proceed without mediation. The mediation must be concluded within 60 days of having entered into the agreement, unless you and the Agency agree to a different time period. The mediation agreement between you and the Agency will include provisions for selecting the mediator, the allocation of costs and fees associated with the mediation, and the confidentiality of discussions and documents involved in the mediation. Mediators charge hourly fees that must be shared equally by you and the Agency.

If a written request for an administrative hearing is not timely received you will have waived your right to have the intended action reviewed pursuant to Chapter 120, Florida Statutes, and the action set forth in the FAR shall be conclusive and final.