

SETTLEMENT AGREEMENT AND RELEASE

I. PARTIES

The parties to this Settlement Agreement and Release (“Agreement”) are (i) the State of Texas (the “STATE”), and (ii) Grzegorz R. Matusiak a/k/a Greg Matusiak (“MATUSIAK”). In this Agreement, the STATE and MATUSIAK are each individually referred to as a “Party” and collectively referred to as the “Parties.” The Parties enter into this Agreement as of the “Effective Date” defined in paragraph A.

II. PREAMBLE

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

A. The Effective Date of this Agreement shall be the date of signature of the last signatory to this Agreement (“Effective Date”).

B. The Texas Office of the Attorney General (“OAG”) initiated an investigation of MATUSIAK and others, and has incurred costs and fees associated therewith (“Investigation Costs”).

C. On or about November 12, 2015, the STATE filed its Original Petition against MATUSIAK and others in *State of Texas v. DSM Healthcare Ventures, LLC d/b/a Tritrax Rehabilitation f/k/a Advanced Therapy Services of Arlington, et al.*; Cause No. D-1-GV-15-005227 pending in the 419th Judicial District Court of Travis County, Texas (the “Lawsuit”). In the Lawsuit, the STATE seeks recovery from MATUSIAK of: (i) the value of all payments or monetary or in-kind benefits that the STATE and/or the Texas Medicaid Program (“Texas Medicaid”) provided to MATUSIAK and/or the other defendants as a result of the alleged unlawful acts therein, which the STATE contends exceed \$2.7 million; together with (ii) pre-judgment and post-judgment interest; (iii) an additional two times the value of such payments and/or benefits;

(iv) statutory civil penalties of not less than \$1,000.00 or more than \$10,000.00 for each alleged unlawful act committed by MATUSIAK; and (v) fees, expenses, and costs incurred by the STATE pursuant to statute.

D. In the Lawsuit, the STATE further contends that between 2004 and 2006, MATUSIAK made or caused to be made false statements and/or misrepresentations to the STATE and/or Texas Medicaid when MATUSIAK (i) knowingly made or caused to be made false, fraudulent, and/or misleading statements concerning information (including information regarding ownership, chain affiliation, and the identity of subcontractors) in the Provider Enrollment Application (“Application”) submitted by or on behalf of a Comprehensive Outpatient Rehabilitation Facility (“CORF”) owned by MATUSIAK and others named Progressive Pediatric Therapy LLC (“PPT”); (ii) knowingly made or caused to be made false, fraudulent, and/or misleading statements concerning the amounts due and owing to PPT on claims billed to Texas Medicaid by or on behalf of PPT; and (iii) knowingly or intentionally entered into an agreement, combination, or conspiracy with PPT and/or others to defraud the STATE by obtaining or aiding PPT in obtaining unauthorized payments or benefits from Texas Medicaid. The STATE contends in the Lawsuit that these false statements and/or misrepresentations, independently or in combination, resulted in payments made to PPT or benefits received by PPT from Texas Medicaid for which PPT was not entitled. The STATE further contends in the Lawsuit that MATUSIAK committed unlawful acts under the Texas Medicaid Fraud Prevention Act, as defined by TEX. HUM. RES. CODE § 36.002, in connection with these false statements and/or misrepresentations. In this Agreement, the conduct described in this paragraph is referred to as the “Covered Conduct.”

E. MATUSIAK maintains that he has a number of defenses to the STATE's claims in the Lawsuit and has denied and continues to deny the STATE's allegations or that any wrongdoing occurred.

F. This Agreement is the result of a compromise of disputed issues of law and fact concerning the Covered Conduct and is neither an admission of facts or liability by MATUSIAK, nor a concession by the STATE that the STATE's allegations and claims are not well-founded.

G. As a result of a mutual desire to settle their disputes and to avoid the delay, expense, inconvenience, and uncertainty of protracted investigation or litigation of the STATE's claims, the Parties have reached a full and final settlement of the STATE's claims, as set forth in this Agreement; and

H. The STATE has concluded that this settlement is in the public interest and is fair, adequate, and reasonable under the circumstances.

III. AGREEMENT

NOW, THEREFORE, in reliance on the representations contained herein and in consideration of the mutual promises, covenants, and obligations set forth in this Agreement, and for good and valuable consideration as stated herein, the Parties agree as follows:

1. The foregoing Preamble is incorporated herein.
2. MATUSIAK shall make payment in full to the STATE the total sum of TWO HUNDRED SEVENTY-FIVE THOUSAND DOLLARS (\$275,000.00) (the "Settlement Amount") within five business days of the Effective Date. MATUSIAK shall pay the Settlement Amount in accordance with wiring instructions provided by Raymond Winter, Chief of the Civil Medicaid Fraud Division at the Office of the Attorney General of Texas.

a. The Parties understand and agree that no portion of the Settlement Amount shall be allocated, attributed to, or characterized as the payment of fines, penalties, or other punitive assessments. In all other respects, MATUSIAK expressly acknowledges and agrees that he is not entitled to direct or influence the manner in which the STATE allocates the Settlement Amount. The STATE will allocate and distribute to the United States Government a pro rata share of the Settlement Amount in accordance with state and federal law. The Parties understand and agree that the Settlement Amount includes payment of the STATE's Investigation Costs attributable solely to the STATE's claims against MATUSIAK alone.

b. MATUSIAK agrees to submit to the jurisdiction of Texas courts in any proceeding to enforce this Agreement.

c. MATUSIAK further agrees that he will testify at trial or hearings in Travis County in the Lawsuit if called as a witness by Texas, upon reasonable notice, notwithstanding the limitations of TEX. R. CIV. P. 176. MATUSIAK agrees that his counsel identified in Paragraph 17(b) below is authorized to accept service on MATUSIAK's behalf of any subpoena or notice that may be required by this Paragraph.

d. MATUSIAK further agrees that, upon reasonable notice, he will testify at deposition in the Lawsuit if requested by Texas, and that he will cooperate with the State in scheduling same.

e. MATUSIAK further agrees to make himself available upon reasonable notice to meet with attorneys for Texas prior to testifying at trial or deposition in the Lawsuit to prepare for same, if requested by the State, and to cooperate with Texas in scheduling same.

f. MATUSIAK further agrees to preserve any documents or data in his possession, custody, or control that may be relevant to the Lawsuit, if any.

g. MATUSIAK further agrees to answer any questions that the attorneys for Texas may have regarding the facts and issues in the Lawsuit, and to make himself available to do so upon reasonable notice.

h. MATUSIAK further agrees that he is not a prevailing party and is not entitled to attorney fees or any other costs from the State in the Lawsuit.

3. Subject to Paragraph 5 below and in exchange for the consideration described herein (including payment in full of the Settlement Amount), the STATE (on behalf of (i) itself, its past and present officers, agents, entities, divisions, agencies, commissions, and departments, including all of their respective predecessors, successors, and assigns, and (ii) any insurers and reinsurers of those identified in sub-clause (i)), as of the date of payment in full of the Settlement Amount, fully and finally, and to the greatest extent allowed by law, releases, discharges, and covenants not to sue MATUSIAK and each of MATUSIAK's respective past and present insurers and attorneys (collectively, the "Released Parties") for any civil, regulatory, and/or administrative claim, action, suit, demand, right, cause of action, liability, judgment, damage, or proceeding, direct or indirect, known or unknown (including claims for damages, attorneys' fees, penalties, costs, and expenses of every kind and however denominated) the STATE has, may have, has asserted, or could assert in the future under any source of law, contract, in equity or other right, for the Covered Conduct. In addition, the Parties agree that the payment of the Settlement Amount fully discharges the Released Parties from any obligation to the STATE to pay restitution, damages, penalties, or fines to the STATE for the Covered Conduct. In addition, the STATE agrees that it will not initiate, prosecute, direct, recommend, or maintain any action or other

proceeding, including by way of example and not limitation, civil investigative demands, against the Released Parties arising from the Covered Conduct on behalf of itself or the United States. In addition, the STATE agrees that it will not initiate, prosecute, direct, recommend, or maintain any action or proceeding against the Released Parties seeking exclusion from the Texas Medicaid Program or any other administrative action or sanction arising from the Covered Conduct. This Agreement does not prevent the STATE from discussing, communicating, or sharing information with other states or federal agencies or any other person or entity as permitted by the Texas Medicaid Fraud Prevention Act, TEX. HUM. RES. CODE §§ 36.001, *et seq.* (“TMFPA”). This Agreement only releases claims or causes of action that arise from the Covered Conduct.

4. MATUSIAK, on behalf of himself and each of his respective past and present insurers and attorneys, fully and finally, and to the greatest extent allowed by law, releases and discharges from liability and covenants not to sue the STATE, its agents, agencies, employees, servants, attorneys, and departments from any claims based on events occurring prior to the Effective Date (including attorneys’ fees, costs, and expenses of every kind and however denominated) which MATUSIAK has asserted, could assert, or may assert in the future against the STATE, its agents, agencies, divisions, employees, servants, attorneys, departments, past and present commissioners or officers, and insurers arising from the Covered Conduct and the STATE’s investigation and prosecution thereof.

5. Notwithstanding any other terms of this Agreement, including the releases in Paragraphs 3 and 4 above, any and all of the following are specifically reserved and excluded from the scope and terms of this Agreement, and from the scope and terms of the Releases, as to any entity or person, including the Parties:

- a. Any claim based upon an obligation created by the Agreement;

b. Any claim against any defendant or potential defendant in the Lawsuit, other than MATUSIAK.

c. Any claim based upon an express or implied product or service warranty or for defective or deficient products or services, including quality of goods and services, provided by MATUSIAK;

d. Any claim based on liability that any person or entity has or may have to the STATE or to individual consumers or state program payors, other than liability relating to Texas Medicaid for the Covered Conduct, involving unfair and/or deceptive acts and practices and/or violations of consumer protection laws;

e. Any claim for state or federal antitrust violations;

f. Any claim that any person or entity, other than the STATE, has or may have regarding inducement of healthcare providers to retain CORF services;

g. The subrogation rights to claims for personal injury or property damage arising from usage of MATUSIAK'S products or services by a participant in the Medicaid Program;

h. Any claim based on a failure to deliver products or services due;

i. Any claim arising from MATUSIAK'S obligation to pay rebates to the STATE under any law or contract, to the extent that such obligation exists; and

j. Any civil, criminal, or administrative liability arising under Title 26, U.S. Code (Internal Revenue Code) or any state tax or revenue law.

6. The STATE hereby agrees to file a non-suit with prejudice dismissing MATUSIAK from the Lawsuit within ten (10) business days of the STATE'S receipt in full of the Settlement Amount. The Parties agree that the non-suit shall apply only as to claims asserted by the STATE

against MATUSIAK, and shall not be applicable to claims the STATE has or may have against any other person or entity. The form of non-suit to be filed pursuant to this paragraph is attached to this Agreement as Exhibit A, which the Parties agree is mutually acceptable.

7. The STATE hereby agrees that this Agreement, and any and all negotiations, documents and discussions associated with this Agreement, shall be without prejudice to the rights of any Party, shall not be deemed or construed to be an admission or evidence of any violation of any statute or law, of any liability or wrongdoing by the Released Parties or of the truth or the infirmity of any of the claims or allegations of the STATE, and evidence thereof shall not be discoverable or used directly or indirectly by the STATE in any way (except that the provisions of this Agreement may be used by the Parties to enforce its terms), whether in Texas or in any other forum. The STATE agrees it will not urge or seek to admit this Agreement as evidence of any fault or liability of the Released Parties (other than to enforce its terms) in any investigation, administrative claim, action, suit or proceeding, or federal or state court or arbitration proceeding unless ordered to do so by a state court, federal court, or arbitration panel.

8. The STATE represents to MATUSIAK, subject only to the rights possessed by the United States and any other assignment occurring by operation of law, that no interest in any claim herein released has been assigned by it to any third party.

9. Nothing in this Agreement shall be construed to create a waiver of the STATE's Sovereign Immunity, except that the STATE waives such immunity for the purpose of any action to enforce this Agreement.

10. Any Party shall be entitled to enforce the terms of this Agreement in the District Courts of Travis County, Texas, which shall have exclusive jurisdiction and venue over any such

action. MATUSIAK agrees to submit to the jurisdiction of the Texas courts and venue in Travis County in any proceeding to enforce this Agreement.

11. This Agreement, including all exhibits, constitutes the complete agreement between the Parties with regard to the settlement of the Covered Conduct as defined herein. This Agreement may not be amended or modified in any respect except by a writing signed by all Parties.

12. Except as otherwise provided herein, each Party will bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

13. This Agreement shall be governed by the laws of the State of Texas.

14. This Agreement shall be construed and interpreted to effectuate the Parties' intent, which is to resolve completely the STATE's allegations and claims in connection with the Covered Conduct with respect to MATUSIAK. This Agreement expressly does not resolve or affect the claims and actions reserved by and excluded from the release in paragraph 5.

15. None of the Parties to this Agreement shall be considered the drafter of this Agreement or of any included provision for the purpose of any statute, case law, or rule of construction that would or might cause any provision to be construed against the drafter.

16. The Parties each represent that this Agreement is freely and voluntarily entered into without any degree of duress whatsoever and with the advice of counsel of their own respective choosing.

17. Unless otherwise stated in writing subsequent to the Effective Date, all notifications and communications made pursuant to this Agreement shall be submitted to the persons or entities listed below:

- a. The STATE of Texas, for all purposes:

Office of the Attorney General of Texas
Raymond C. Winter
Chief, Civil Medicaid Fraud Division
P.O. Box 12548
Austin, Texas 78711-2548
Phone: (512) 936-1709
Fax: (512) 499-0712
Email: raymond.winter@texasattorneygeneral.gov

- b. MATUSIAK, for all purposes:

Mr. Jason M. Ross, Esq.
DYKEMA GOSSETT PLLC
Comerica Bank Tower
1717 Main Street, Suite 4200
Dallas, Texas 75201
Phone: (214) 462-6417
Email: JRoss@dykema.com

18. The Parties have read the Agreement and accept and agree to the provisions contained herein and have caused this Agreement to be signed as of the day and date adjacent to their respective signatures. MATUSIAK represents and warrants that he is of sound mind, over the age of twenty-one (21) years old, has consulted with legal counsel of his choosing regarding the terms, rights, and obligations of this Agreement, and is authorized to execute this Agreement. The undersigned STATE signatories represent that they are signing this Agreement in their official capacities and that they are authorized to execute this Agreement and to compromise the claims of the STATE. The Texas Health and Human Services Commission (“HHSC”) Executive Commissioner concurs with the aspects of the agreement that are within his authority.

19. The Parties represent and acknowledge that in entering into this Agreement they are not relying on any promises or representations other than those expressly set forth in this Agreement and its exhibits. The Parties understand, acknowledge, and agree that (i) they have each performed an independent investigation of the allegations of fact and law made in connection

with the Covered Conduct; and (ii) they each may hereafter discover facts, claims, or defenses in addition to, or different from, those that they now know or believe to be true with respect to the Covered Conduct or the subject matter of this Agreement. Nevertheless, it is the Parties' intention to resolve their disputes pursuant to the terms of this Agreement and thus, in furtherance of their intentions, the Agreement shall remain in full force and effect notwithstanding the discovery of any additional facts or law, or changes in law, and the Agreement shall not be subject to rescission or modification by reason of any change or difference in facts or law.

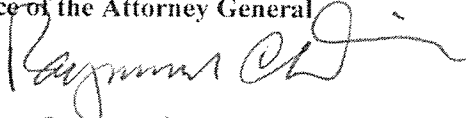
20. The waiver of any rights conferred by this Agreement shall be effective only if made in writing by the waiving Party. The waiver by any Party of any breach of this Agreement shall not be deemed or construed as a waiver of any other breach, whether prior to, subsequent to, or contemporaneously with this Agreement.

21. 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. Faxed and/or portable document format ("PDF") signatures will suffice.

22. Each Party agrees to perform such further acts and to execute and to deliver such further documents as may reasonably be necessary to carry out this Agreement.

STATE of TEXAS
Office of the Attorney General

By:

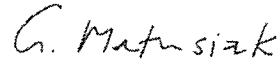


Date: 3.23.16

Raymond C. Winter
Chief, Civil Medicaid Fraud Division
Assistant Attorney General
Office of the Attorney General of Texas
P.O. Box 12548
Austin, Texas 78711-2548

Grzegorz R. Matusiak a/k/a Greg Matusiak

By:



Date: February 26 2016

Name Grzegorz R Matusiak
Position
Address 6009 ENGLISHOAK DR
City, State ZIP ARLINGTON, TX 76016

Texas Health & Human Services Commission

By:



Date: 3-22-16

Chris Traylor
Executive Commissioner
Texas Health & Human Services Commission
Brown-Heatly Building
4900 N. Lamar Blvd.
Austin, Texas 78751-2316