

ATTORNEY GENERAL OF THE STATE OF NEW YORK  
HEALTH CARE BUREAU

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In the Matter of

**PATH MEDICAL, P.C.**

Assurance No.: 14-222

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**ASSURANCE OF DISCONTINUANCE  
UNDER EXECUTIVE LAW  
SECTION 63, SUBDIVISION 15**

As authorized by Article 22-A of the General Business Law and Executive Law § 63(12), Eric T. Schneiderman, Attorney General of the State of New York, caused an inquiry to be made into PATH Medical, P.C.'s ("PATH Medical") business and billing practices, including inaccurate representations regarding insurance coverage for the medical services provided. Based upon the results of that inquiry, PATH Medical has agreed to modify its practices, discontinue certain practices and assure its compliance with the following provisions of this Assurance of Discontinuance ("Assurance").

**I. BACKGROUND**

1. PATH Medical is a professional corporation that has been providing medical services to patients since 1996. Eric R. Braverman, M.D. is the owner and Chief Executive Officer of PATH Medical.

2. PATH Medical's principal place of business is 304 Park Avenue South, New York, NY 10010.

3. PATH Medical describes its practice as one that focuses on, among other things, early detection and treatment of disease.

4. To achieve these goals, PATH Medical typically conducts numerous expensive diagnostic tests for new patients, such as echocardiograms (\$1,900), “brain electrical activity mapping” tests (collectively, \$2,000), multiple ultrasounds (ranging from \$450 to \$750), as well as several psychological and cognitive assessments.

5. Each of the tests and professional consultations conducted during the initial office visit costs hundreds of dollars, such that the total fee for a first visit is often several thousand dollars. The threshold cost of the initial patient visit, alone, which consists of an exam by a Physician Assistant (“PA”) and some preliminary testing, is \$790.

6. PATH Medical and its practitioners do not participate in any health insurance plans, including Medicare and Medicaid plans. This means that all insured patients who receive testing and other services at PATH Medical must seek reimbursement either through their out-of-network benefit (if any), or shoulder the costs on their own.

7. Patients typically pay more for health care services rendered by an out-of-network provider because (a) health plans impose greater cost-sharing obligations (such as greater co-payments, co-insurance and deductibles) to encourage patients to stay in-network, and (b) patients are responsible for the difference between what the health plan agrees to pay for the out-of-network services and what the provider charges for those services.

## **II. THE ATTORNEY GENERAL'S INVESTIGATION**

8. The OAG initiated an investigation into PATH Medical after receiving consumer complaints concerning PATH Medical's practices, and it has continued to receive complaints during the course of its investigation. These complaints include claims that (i) PATH Medical's staff<sup>1</sup> made inaccurate representations that insurance would cover a substantial portion of the costs for PATH Medical's services, causing them to unexpectedly face high out-of-pocket costs for the medical services received, often amounting to thousands of dollars; (ii) that they experienced difficulty obtaining test results and/or medical records; and (iii) that they generally did not understand their full out-of-pocket financial liability for the care provided. As a result of its investigation into these practices, the OAG concluded that, in addition to engaging in deceptive and misleading billing practices, PATH Medical engaged in a number of other improper practices, including charging a flat fee for unlimited access to medical care in violation of New York's Insurance Law, routinely waiving patients' out-of-pocket obligations under their health plans, and using personal e-mail accounts to transmit patients' protected health information.

9. One representative complaint demonstrates many of PATH Medical's problematic billing practices. A consumer coming to PATH Medical for the first time claimed she was told by PATH Medical's billing representative that her recommended testing would cost approximately \$8,000. The consumer claimed that when she said she could not afford that amount, the billing representative advised that her insurance would cover eighty percent of the cost and offered to provide a fifty percent discount for the testing. The consumer claimed that

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<sup>1</sup> "Staff" as used in this Assurance shall mean all individuals who work in PATH Medical's office or otherwise work for PATH Medical, including employees and independent contractors.

she paid \$4,000 at the time of the visit, before any testing was conducted, and was not provided with an itemized invoice or receipt reflecting what she had purchased, what she had paid, and what discount, if any, was agreed to. As reported to the OAG, her understanding, based on the billing representative's statements, was that she had paid all she would owe for the services purchased, and that she would be partially reimbursed by her health plan. However, her health plan denied the submitted claims and she was advised that she was responsible for the full amount.

10. As a result of the OAG's investigation, the OAG concludes<sup>2</sup> that PATH Medical has been engaging in the following misleading, deceptive and otherwise improper practices:

**A. Misleading and Deceptive Billing Practices**

11. The OAG concludes that PATH Medical has been engaging in misleading and deceptive billing practices through its staff's representations regarding the likelihood of insurance coverage, failure to provide patients with accurate and timely statements, and lack of transparency concerning testing costs and other charges. As a result of these billing practices, some of PATH Medical's patients do not have accurate information regarding their financial liability for the services rendered and testing conducted, and they risk facing hundreds to thousands of dollars in unexpected costs and charges for just a single visit to PATH Medical.

**i. Insurance Coverage Misrepresentations**

12. After an initial physical examination with the PA, patients meet with PATH

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<sup>2</sup> The OAG's conclusions described herein reflect the OAG's factual and legal conclusions based on the information, documents, and testimony obtained and considered during the course of its investigation, including all documents produced by PATH Medical.

Medical's billing representative to review the recommended tests, including the costs for those tests, the amount the patient's health plan is likely to cover, and any discounts and packages that may be available to the patient.

13. During this meeting with the billing representative, PATH Medical charges patients either the full amount or a certain percentage of the fees for all of the tests and other services they agree to purchase. At this time, some patients pay hundreds to thousands of dollars, and sometimes even tens of thousands of dollars, based on the staff's representations that insurance will cover a significant portion of the charges.

14. PATH Medical has made various written and verbal representations concerning the likelihood of insurance coverage to patients. Prior to the initial physical examination, patients are provided with several documents and forms. One form previously, but no longer, used by PATH Medical advised patients: "It has been our experience that [Executive Health Plan] patients receive about 30% reimbursement from Medicare and about 60% from most commercial insurance carriers." This form was used at least once in 2012, but PATH Medical has represented that it was used in error and has since been purged from its computers.

15. Another recently used form, which PATH Medical provided to some patients at least through part of 2013, advised: "If you have insurance other than an HMO, you will in most instances, be required to pay only a co-pay of approximately 20% to 40%, depending on your insurance carrier. In cases of GHI, Oxford, and out of state BCBS coverage, a co-pay of 50% is required at the time of visit." PATH Medical represents that this form is no longer in use.

16. PATH Medical staff continue to make inaccurate representations to patients about the percentage or amount of the total bill that their insurance is likely to cover, including verbally

representing that a certain percentage (e.g., up to eighty percent) of the charges will be covered by insurance. Staff make these representations to patients over the phone when scheduling their first appointment and when discussing billing during the first appointment.

17. Patients' health plans do not typically cover a substantial portion of the total charges for PATH Medical's tests and services, and indeed some health plans routinely deny claims submitted by PATH Medical.

18. Further, through patient complaints as well as health plan denials, PATH Medical *knows* that plans generally do not cover a significant portion of PATH Medical's charges and that some plans often deny the patients' claims in full.

19. PATH Medical also represents to patients, both directly and through public statements (such as on its Facebook page) that if they have insurance, their blood work will likely be covered by insurance. However, PATH Medical does not perform the blood work and has no control over the fees or billing for those services.

20. To the extent PATH Medical has provided written disclosures concerning patients' financial responsibility for the services provided, they have been inadequate. Until approximately September 2013, PATH Medical provided patients with a 25-page informed consent form at the beginning of the patient visit that purported to inform patients of their financial responsibility for the care provided. This consent form was densely worded, contained both medical and financial disclosures, and had a single signature line at the end for patients to agree to the terms of the entire document. While the consent form stated that PATH Medical does not guarantee reimbursement from insurance, this disclosure was found in the middle of the twelfth page without any special characteristics to prominently highlight this information.

Moreover, the consent form went on to claim that PATH Medical's fees "are generally considered to fall within the acceptable range by most insurance companies, and therefore are covered up to the maximum allowance determined by each carrier."

21. Similarly, PATH Medical's current consent form is a densely-worded, single-spaced, 13-page document that contains both medical and financial disclosures, and has a single signature line at the end for patients to agree with the terms of the entire document. In the middle of the tenth page, without any special characteristics to prominently highlight this information, the form sets forth that PATH Medical does not represent or guarantee health insurance reimbursement. By the signature line, it asks patients to agree that PATH Medical has not made verbal representations inconsistent with the statements in the consent form, including regarding insurance coverage, even though patients sign this form *before* meeting with the billing representative.

22. Moreover, PATH Medical's written disclosures regarding insurance coverage are contradicted and undercut by PATH Medical staff's verbal representations concerning insurance coverage (*see* Paragraphs 9 and 16), receipts reflecting estimated insurance coverage (*see* Paragraph 28), and, in previously, but no longer, used consent forms, representations within the very same forms (*see* Paragraphs 14-15, 20).

23. As a result of the foregoing, PATH Medical's written disclosure that it does not guarantee coverage is inadequate, and some of its patients are consequently led to believe that insurance is likely to cover a significant portion of the charges.

24. Due to PATH Medical's inaccurate representations concerning the likelihood of insurance coverage, some of its patients agree to undergo extensive and costly testing and other

services based on their understanding that a large portion of the charges will be covered by insurance, only to later find out that their claims were denied or were not covered in full, and they are responsible for much or all of the charges.

ii. **Patient Bills and Statements**

25. During the meeting with PATH Medical’s billing representative, when patients purchase hundreds to thousands of dollars, and sometimes tens of thousands of dollars, in medical services and testing, *see* Paragraphs 12-13, patients are not provided with any kind of documentation:

- a. Reflecting the list of services and testing purchased, and the associated cost for each item;
- b. Reflecting the total cost of the testing that they have purchased, the amount they have paid up-front, and the amount that remains outstanding; or
- c. Reflecting any discounts offered by PATH Medical.

26. Moreover, even after their appointments, patients do not automatically receive any itemized receipts or statements<sup>3</sup> from PATH Medical that set out the cost of services rendered and what the patient has paid. Statements are mailed once a month, and only if the patient has a balance owed to PATH Medical will it mail a statement to the patient.

27. Further, PATH Medical’s statements sometimes contain errors, such as incorrectly characterized adjustments to a patient’s account (e.g., attributing a “bad debt” write-

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<sup>3</sup> PATH Medical’s current billing software can prepare both “patient statements” and “patient receipts.” These documents are slightly different, as “patient statements” have the amount due clearly stated at the top right-hand corner along with a section on how to make a payment, and “patient receipts” do not. These documents are used interchangeably by PATH Medical. Unless otherwise indicated, this Assurance will refer to both documents as “statements.”



off adjustment to the patient's health plan), incorrect use of different types of adjustments in PATH Medical's billing system to alter a patient's balance (e.g., transferring charges to a health plan, thereby reducing the apparent amount the patient owes, rather than actually waiving certain charges from the patient's account), and charges for services that are significantly greater than PATH Medical's standard and established charges for those tests or services.

28. Additionally, the statements PATH Medical prepares for patients with out-of-network insurance coverage often reflect the patient's health plan covering a significant percentage, and occasionally the entire amount, of the charges for the services rendered. The amount allocated to insurance in these statements is automatically populated in the statement once a patient's health plan is entered into the billing system, and can be overridden by PATH Medical staff to reflect a greater or lesser amount being covered by the health plan. For those patients who receive statements reflecting insurance coverage, they can reinforce inaccurate verbal representations by PATH Medical's staff that insurance is likely to cover a significant portion of the charges.

29. These discrepancies and errors can impact how much the patient ultimately owes PATH Medical and result in further patient confusion over their financial liability for services provided by PATH Medical.

30. Moreover, PATH Medical relies on these statements when patients file complaints challenging the charges, such as complaints filed with a credit card company. Since patients do not receive these statements, or any such similar documents, at the time of payment, PATH Medical is supporting its charges with statements that patients may have never seen or agreed to, and which may contain errors the patient has not had an opportunity to address.

iii. **Disclosure of Additional Fees and Process for Obtaining Test Results**

31. PATH Medical also fails to adequately inform patients of the additional fees they might incur, particularly with respect to obtaining test results, and the OAG concludes that some patients experience difficulty and confusion when attempting to obtain their test results, medical records, and treatment plans.

32. PATH Medical does not advise patients that they will incur additional charges in order to obtain their test results and discuss their treatment plan. Further, while the patient consent form contains some disclosures concerning fees for telephone consultations and medical evaluations – two ways in which patients can obtain their test results and a treatment plan – these disclosures are incomplete and require clarification. The consent form does not explain what constitutes a telephone consultation or chart review for which patients will be charged, or provide reasonable notice of how much they may be charged. The current consent form only says that the usual fee “varies from \$400 to \$800, depending on the complexity of the call.” Until September 2013, PATH Medical used a patient consent form that did not explain the costs of telephone consultations, setting out only that the fee was billable by “1/4 units which varies from \$400 to \$800 depending on the complexity of the call.” The consent form did not define the term “1/4 unit.”

33. Moreover, PATH Medical often automatically charges patients’ credit cards for these telephone consultations, without notifying patients of this practice on the consent form.

34. The consent form also offers “medical evaluations” (written summaries of a patient’s health status, test results, and treatment recommendations) for \$400, but does not explain whether patients will be able to obtain this critical information about their medical

condition without paying for a separate medical evaluation.

35. As a result of the foregoing, PATH does not adequately make patients aware of the additional costs that they may incur to obtain their test results and a treatment plan – the very purpose for which they underwent significant testing – or that they may be charged for any other communications with PATH Medical’s staff.

### **B. Offering Unlimited Access to Medical Care**

36. PATH Medical offers a number of different “Executive Health Program” (“EHP”) options, in which patients pay an up-front fixed fee, ranging from \$10,000 to \$100,000, for a defined set of medical tests and services, along with unlimited access for a set period of time to Dr. Braverman and unlimited visits and telephone consultations for a set period of time with other PATH Medical practitioners, which include board-certified neurologists and psychiatrists, and PAs.

37. One such lower mid-priced option is the “silver” EHP for \$15,000, which includes an initial office visit, a number of different ultrasounds and other diagnostic tests, specialized consultations, “priority” pre-authorizations, access to an-office “luxury suite,” a set of books, and four months of unlimited physician and PA visits and telephone consultations.

38. For a “half silver” plan, which costs \$10,000, patients are offered two months of unlimited visits, telephone consultations, and access to Dr. Braverman, and for the “platinum” plan, at \$30,000, patients are offered six months of unlimited access. There are also “rose diamond,” “diamond,” and “elite” plans, costing \$50,000, \$75,000 and \$100,000, respectively, and offering eight months, ten months, and twelve months of unlimited access, respectively.

39. The EHP descriptions provided to patients list the cost associated with unlimited

access to Dr. Braverman and unlimited physician and PA visits and phone calls in the various package options. These range from \$6,440 for the half silver plan to \$38,640 for the elite plan.

40. Charging a flat fee as payment for unlimited medical services dependent upon the happening of a fortuitous event over a set period of time constitutes an insurance business for which the entity must be licensed pursuant to New York Insurance Law § 1101. One of the benefits PATH Medical is offering in exchange for the EHP fee – unlimited access to medical care from its physicians and PAs for a set period of time – is dependent upon the fortuitous event of needing access to medical care. Conducting an insurance business without the required license constitutes a violation of New York Insurance Law § 1102.

41. Further, the descriptions for the tests and services included in the various EHP packages do not clearly delineate the tests that will be included in each of the packages and, in at least one instance, does not accurately reflect the associated cost for the test if it was purchased “a la carte.” Consequently, patients are not given accurate information to determine exactly what tests will be performed and whether there is a financial advantage to purchasing the package.

### **C. Failure to Provide Refunds**

42. PATH Medical does not systematically identify accounts that are overpaid by patients, and therefore does not always provide patients with the timely refunds to which they are entitled when their accounts are overpaid.

43. In the course of its investigation, the OAG identified several accounts that were overpaid by the patient, with refunds owed by PATH Medical for sixty days or longer. In some instances, overpayments occurred because PATH Medical improperly retained insurance payments after the patient already paid in full for the services. In other instances, the patient

paid more than was owed. For example, one patient paid over \$3,000 at the time of the initial visit, but only received \$2,290 in services. Nearly \$800 was overdue for over 120 days. Another patient paid \$7,000 to cover the cost for the services provided during the first visit in full, less some adjustments provided by PATH Medical. The patient's health plan covered approximately \$500 of the charges and sent the payment directly to PATH Medical. PATH Medical retained the payment, and the patient's account was overpaid for over 120 days.

#### **D. Routine Waiver of Patients' Cost-Sharing Obligations**

44. PATH Medical often writes off portions of patients' balances, including waiving patients' cost-sharing obligations under their health plans, on the basis of financial hardship. However, PATH Medical does not have an official hardship policy that delineates the qualification criteria and the financial relief that may be provided. The decisions to waive patients' out-of-pocket financial obligations on the basis of financial hardship are instead *ad hoc* determinations by PATH Medical staff made within vague and broad guidelines, if any.

45. PATH Medical frequently advertises that such discounts are available for individuals experiencing financial difficulties and who have coverage through HMOs, Medicare or Medicaid, and/or who have private insurance but "cannot afford their %" (this phrase is not explained, but implies the patient's cost-sharing obligations under their health plan).

46. New York Penal Law § 176.05(1)(a) prohibits providers from presenting a claim for payment to a health plan that is known to contain materially false information, including with respect to the provider's actual charge for the services for which the claims were submitted. If PATH Medical knowingly and with intent to defraud presents false information concerning its charges for the services provided to certain health plans, then PATH Medical

may be in violation of New York Penal Law § 176.05(1)(a).

47. PATH Medical's array of *ad hoc* discounts can also result in patient confusion as to whether and when the patient is in fact responsible for the amount that insurance does not cover. PATH Medical's "hardship" discount for patients with private insurance appears to mean that the patients pay nothing or a small percentage of the charges at the time the services are rendered, but there are no firm, written guarantees about how much of the total charges the patient will ultimately be responsible for paying. Therefore, if a patient's health plan denies the submitted claims, that patient is still ultimately responsible for the charges unless and until PATH Medical later writes off the balance owed.

#### **E. PATH Medical's E-Mail Practices**

48. PATH Medical's staff communicate patients' Protected Health Information ("PHI"), as that term is defined in 45 C.F.R. § 160.103, with patients and each other, using personal e-mail addresses not controlled by PATH Medical and that are hosted by a variety of different e-mail providers, including Gmail, AOL, Yahoo, and Hotmail.

49. For example, PATH Medical staff have conveyed test results to patients using such accounts. Additionally, PATH Medical staff have sent e-mails containing information regarding patients' prescriptions and diagnoses to each other and to patients using these accounts.

#### **F. Consent to HIV Testing**

50. PATH Medical's current general consent form states that by signing the form, the patient is consenting to testing for Human Immunodeficiency Virus ("HIV"). This form does not

contain the seven pieces of information concerning HIV that must be disclosed to patients pursuant to New York State Public Health Law § 2781(3) and 10 NYCRR § 63.3(b), nor does this form contain “a clearly marked place adjacent to the signature where the subject of the HIV-related test . . . shall be given an opportunity to decline in writing such testing.” 10 NYCRR § 63.3(c).

### **G. Summary of Conclusions**

51. The OAG has concluded that PATH Medical’s business practices described in this Assurance violate General Business Law §349(a), Executive Law §63(12), and New York Insurance Law §§ 1101 – 1102. The OAG’s conclusions relate only to PATH Medical’s business practices and not to the quality of medical care provided by PATH Medical.

**NOW, WHEREAS,** PATH Medical is subject to New York Executive Law § 63(12) and New York General Business Law Article 22-A, § 349, which prohibit fraudulent and deceptive business practices, New York Insurance Law §§ 1101 – 1102, and the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191, 45 C.F.R. Parts 160, 162, and 164 (“HIPAA”);

**WHEREAS,** PATH Medical desires to settle and resolve this investigation;

**WHEREAS,** PATH Medical neither admits nor denies the OAG’s conclusions;

**WHEREAS,** PATH Medical has already revised certain of its business practices and informed consent forms to respond to the OAG’s concerns;

**WHEREAS,** the Attorney General is willing to accept the terms of this Assurance under Executive Law § 63(15) and discontinue his investigation into PATH Medical’s business

practices addressed during the investigation; and

**WHEREAS**, the parties each believe that the obligations imposed by this Assurance are prudent and appropriate;

**IT IS HEREBY UNDERSTOOD AND AGREED**, by and between the parties that:



### **III. PROSPECTIVE RELIEF**

#### **A. Price Transparency**

##### **i. Insurance Coverage and Cost of Services**

##### **52. No Written or Verbal Statements Guaranteeing or Implying Insurance Coverage:**

PATH Medical shall not state, suggest, or otherwise indicate to patients or their representatives in the consent forms prepared pursuant to Paragraphs 58 and 59 of this Assurance, in any other documents provided to patients, or verbally through its staff, that:

- a. Health insurance plans may cover the costs for the testing and services provided at PATH Medical; or
- b. PATH Medical's fees generally fall within the acceptable range for most insurance companies or that its claims are covered up to health plans' maximum allowable rate.

PATH Medical shall not contact patients' health plans on the patients' behalf to determine the details of their out-of-network coverage or discuss with patients the details of any out-of-network coverage the patients may have, but may direct patients to discuss the details of such coverage independently with a representative from their health plan. The foregoing does not preclude PATH Medical from contacting a patient's health plan on the patient's behalf to determine whether the patient has out-of-network coverage or from communicating with a patient's health plan with respect to pre-authorization for services or claims that have been submitted on the patient's behalf.

53. Initial Visit and Examination: Within thirty (30) days of the Effective Date, PATH Medical shall have in place a process to notify all patients prior to their initial appointment at PATH Medical: (a) of the cost of the initial examination/appointment pursuant to which additional testing may be recommended and (b) what services are covered for that cost.

54. Itemized Invoices at Time of Service: PATH Medical shall provide patients with a dated, itemized invoice on the day of service and before any testing is conducted or services rendered, with the exception of the initial examination and tests that were disclosed pursuant to Paragraph 53. Patients will not be charged for services or tests scheduled to take place that day until they have received and signed the itemized invoice reflecting those tests and services. The patient will be given a copy of the signed invoice, and PATH will retain the original(s) in the patient's chart. The invoice:

- a. Will not reflect any estimated insurance coverage; and
- b. Will reflect the charges and CPT codes associated with each service or test being purchased that day and/or already performed that day, and the specific discounts, if any, that are being applied.

55. Proof of Payment: PATH Medical shall provide patients with written proof of payment at the time the patient pays, if during an office visit.

56. Sending Patient Statements: PATH Medical shall send statements to patients:

- a. Within thirty (30) days after each office visit if there is a balance owed to or from PATH Medical, including any amounts paid by the patient for tests not yet conducted.

- b. Within thirty (30) days of any charge or adjustment to the patient's account not reflected on the invoice or statement prepared pursuant to Paragraphs 54 or 56(a), such as charges for phone consultations and adjustments for payments received, regardless of whether a balance is owed.
- c. No less than once a month for so long as there is a balance owed to or from PATH Medical.

57. Content of Patient Statements: The statements sent pursuant to Paragraph 56:

- a. Will not reflect any estimated insurance coverage;
- b. Will clearly indicate the exact amount the patient owes to PATH Medical for services already rendered;
- c. Will clearly reflect the amount already paid by the patient; and
- d. Will clearly indicate any amount owed *to* the patient.

58. Written Notification of Patients' Financial Obligations: Within thirty (30) days of the Effective Date, PATH Medical shall submit to the OAG, for review of PATH Medical's adherence to the provisions herein, a patient financial obligation consent form ("Financial Obligation Consent"), which must be provided to patients at or before their first visit and before any services have been rendered or monies paid. Current patients will receive a copy of this form at their next visit to PATH Medical. This consent form, or the information contained therein, must also be made available on PATH Medical's website. This consent form must include the following information:

- a. PATH Medical does not participate in any health insurance plans and does not represent that patients' health insurance claims will be reimbursed. [This language is to be at the top of the form, in bold, 16-point font]
- b. PATH Medical orders tests that are often not covered by health plans.
- c. Even if claims are covered by a health plan as an out-of-network benefit, the payment may be significantly less than the amount charged by PATH Medical.
- d. After being evaluated by a Physician Assistant, the patient will meet with a billing manager. The billing manager will review with the patient the costs of the tests and services recommended by the PA. The billing manager *will not* discuss the medical necessity of those tests/services or any other aspect of the patient's treatment. All such questions should be referred to a doctor or PA.
- e. The billing manager will provide patients with an invoice that itemizes each of the tests and services agreed to by the patient, along with the associated charges, before the patient is charged.
- f. The patient is responsible for paying all charges delineated in the signed invoice to the extent those services are provided, except when a financial hardship exception is granted by PATH Medical.
- g. PATH Medical may order extensive laboratory tests as part of the patient evaluation. This lab work is not performed by PATH Medical, and PATH Medical has no control over the charges assessed by the laboratory.

This consent form shall also provide detailed descriptions of PATH Medical’s policy concerning refunds, charges (if any) for missed appointments and for calling in prescriptions, as well as any other penalties or fees that may be assessed for reasons other than the provision of professional medical services.

ii. **Phone Calls, Chart Reviews, and Obtaining Test Results and Records**

59. **Written Notification of Charges:** Within thirty (30) days of the Effective Date, PATH Medical shall submit to the OAG, for review of PATH Medical’s adherence to the provisions herein, a consent form that specifically sets forth the process for obtaining test results, treatment plans, and medical records, and the associated costs for each (“Consent to Test Results and Pricing Policy”). The Consent to Test Results and Pricing Policy will be provided to patients at or before their first visit and before any services have been rendered or monies paid. Current patients will receive a copy of this form at their next visit to PATH Medical. This consent form, or the information contained therein, must also be made available on PATH Medical’s website. This consent form will:

- a. Contain a detailed description of what patients can expect to receive by the end of the first day of testing, including what test results will be available that day and a brief description of the consultation(s), if any, that will take place that day with PATH Medical physicians to review their results and medical condition.
- b. Provide a reasonable time frame within which test results not available during the patient visit will be communicated to patients and advise how patients will be notified that those results are available.

- c. Specifically state that patients will be charged for receiving and discussing test results not available during the initial appointment.
- d. Define the terms “telephone consultation,” “chart review,” and/or “medical evaluations” if such services are being offered to patients, and provide definitions for any other service(s) for which patients may be charged by PATH Medical when discussing or otherwise receiving information about their medical condition or test results.
- e. Provide the separate cost information for each method by which patients may obtain their test results or discuss their medical condition, including, to the extent they are offered to patients, telephone consultations, chart reviews, subsequent patient visits, and written “medical evaluations” that summarize their health status and test results, and treatment recommendations.
- f. Specify whether any of the above charges are pro-rated or otherwise variable (e.g., if telephone conversation charges are pro-rated based on the length of the conversation), and if so, a detailed description of how charges are determined.
- g. Provide the name and phone number of a PATH Medical staff member who will serve as the contact person for providing patients with their medical records.
- h. Include the charge for copying medical records and the timeframe within which the records will be provided, providing that it may be shortened if there are extenuating circumstances requiring that they be immediately produced.

60. Verbal Notification of Charges: Effective immediately, patients will be notified at the beginning of any phone call with a PATH Medical practitioner who intends to bill for the call that the call constitutes a consultation, chart review, or other service for which they will be charged. The patient will be given an opportunity to decline the call and associated charges.

**iii. Additional Consent Form Revisions**

61. Separate Financial Consent Forms: The consent forms PATH Medical prepares pursuant to Paragraphs 58 and 59 of this Assurance will each be separate forms with their own signature and date lines.

62. Separate Medical Consent Form: PATH Medical shall use separate informed consent form(s) for the medical (non-financial) disclosures in its current general informed consent form. All disclosures that provide particular patients with information regarding the patient's financial obligation to PATH Medical will be made in one of the two separate consent forms prepared pursuant to Paragraphs 58 and 59 of this Assurance, or in a separate form or forms if PATH Medical determines that will result in improved transparency for the patient (also to be produced to the OAG for review within thirty (30) days of the Effective Date).

63. No Patient Acknowledgement of Compliance: On its informed consent forms or any other forms routinely completed by PATH Medical patients, PATH Medical shall not ask patients to acknowledge or agree that its staff have not made any promises or statements concerning insurance coverage or that were otherwise inconsistent with or different from the content of any consent form.

64. Consent to HIV Testing: PATH Medical shall revise its HIV testing consent form to be compliant with New York State law, including but not limited to, New York State Public Health Law Section 2781 and 2781-a, and 10 NYCRR 63.3.

65. Subsequent Revisions to Financial Consent Forms: For so long as this Assurance is in effect, PATH Medical shall not make any revisions to its financial consent forms prepared pursuant to Paragraphs 58 and 59, or to any other documents that provide patients with information regarding their financial obligation to PATH Medical, until it has submitted those proposed revisions to the OAG for review.

#### **B. Executive Health Program Descriptions**

66. PATH Medical shall revise the descriptions of its Executive Health Programs and other packages of services so that they clearly list:

- a. The test or service included;
- b. The cost associated with that particular test or service if purchased on its own;  
and
- c. The number of times each test or service is provided as part of the package, if more than once.

67. Each test included as part of a package will be listed separately with its associated charge. If a choice of one out of two or more tests is being offered in the package, this will be clearly indicated, and the associated cost for each test will be listed.



68. Effective immediately, PATH Medical shall stop offering unlimited access to Dr. Braverman and unlimited office visits and telephone consultations with other PATH Medical practitioners for a defined period of time for a pre-set flat fee.

### **C. Providing Timely Refunds to Patients**

69. Within thirty (30) days of the Effective Date, PATH Medical shall provide the OAG with a written policy (the “Refund Policy”) for systematically identifying all patients to whom PATH Medical owes a refund, as specifically set out in Paragraph 70. Such policy shall ensure that patients who purchase an Executive Health Plan but who do not receive the full set of tests and services included in the plan are identified as being owed a refund for the cost of tests and services not performed upon: (a) notifying PATH Medical that they do not want to receive those tests or services; or (b) the expiration of the timeframe allotted to use the services, as specifically identified in the EHP purchased by the patient, but in no circumstances to exceed one (1) year. All negative account balances for reasons other than the prepayment of services through an EHP shall be identified in the Refund Policy as the basis for a refund being owed to the patient by PATH Medical.

70. Under the Refund Policy, PATH Medical must have a process in place to systematically: (a) provide EHP patients with full refunds for prepayment of tests and services not provided, as set forth in Paragraph 69, within thirty (30) days of the refunds being owed; (b) identify all accounts in which a refund is owed to the patient for over thirty (30) days (for reasons other than prepayment for EHP services) and provide full refunds to such patients within seventy (70) days of when an overpayment was made, and (c) provide patients receiving refunds with a statement reflecting their updated balance. Patients who affirmatively request a refund for

any overpayments made or prepayment of services or tests that will not be conducted (i.e., those patients who are not identified through PATH Medical's systematic process) shall have their refunds processed as expeditiously as possible, and all such refunds owed shall be made within thirty (30) days of the request or as otherwise required by law.

#### **D. No Routine Waiver of Patients' Cost-Sharing Obligations**

71. Effective immediately, PATH Medical shall not offer its patients discounts or waive their cost-sharing obligations under their health plans until a formal hardship policy is in place, per Paragraph 72.

72. PATH Medical shall develop a formal, written hardship policy that includes the bases upon which it will make a determination of financial hardship, the documentation it expects patients to submit to qualify for a hardship exception, what types of financial relief will be made available to patients, and under what circumstances. The criteria will ensure it does not result in the routine waiver of patients' out-of-pocket costs under their health plans and that PATH Medical does not knowingly, and with intent to defraud, present false information concerning its charges to health plans.

73. PATH Medical will provide the OAG with a copy of this hardship policy and all subsequent hardship policies, including all revisions to the original policy, for as long as this Assurance is in effect.

#### **E. Staff Training**

74. Within fifteen (15) days of the Effective Date, PATH Medical shall provide all staff who interact with patients, including any written or verbal communications, with a written

notification that they are prohibited from stating, suggesting, or otherwise indicating to patients or their representatives that their health plan may cover any portion of the costs for the testing and services provided at PATH Medical. Once the Financial Obligation Consent required by Paragraph 58 is finalized, these staff members shall be instructed to refer patients who inquire about insurance coverage to that consent form. All newly hired staff who will interact with patients shall receive this written notification prior to interacting with patients.

75. Within thirty (30) days of the Effective Date, PATH Medical shall provide all staff responsible for preparing patient bills, receipts, invoices, statements, or any other financial documents, with a written manual and in-person training on how to use the billing software. Dr. Braverman will select the PATH Medical staff member most knowledgeable with PATH Medical's billing software and practices to prepare this manual and training, under his direction. This training and manual will include instruction on how and when to use all adjustments, transfers, discounts, and other write-offs available in the billing system, including how to properly reflect adjustments or discounts provided pursuant to its Financial Hardship policy, if any.

76. Both the in-person training and written manual will instruct PATH Medical staff that they are prohibited from preparing patient bills, receipts, invoices, statements, or any other financial documents to reflect any estimated or anticipated insurance coverage for the services and tests.

77. All PATH Medical staff hired after the effective date of this Assurance who are responsible for preparing patient bills, receipts, invoices, statements, or any other financial documents shall be provided with a written manual and in-person training on how to use the

billing software pursuant to Paragraphs 75 and 76 of this Assurance. This training will take place before the staff member prepares any patient bills, receipts, invoices, statements, or other financial documents for patients.

78. PATH Medical shall obtain a written certification from all current or new staff members that they have: (1) been notified that they are prohibited from stating, suggesting, or otherwise indicating to patients or their representatives that their health insurance plan may cover any portion of the costs for the testing and services provided at PATH Medical; and (2) completed the training required pursuant to Paragraphs 74-77 of this Assurance. PATH Medical shall provide the OAG with copies of all signed certifications within sixty (60) days of this Assurance and shall retain a copy of the certifications for four (4) years from the date they are signed.

#### **F. Implementing HIPAA-Complaint E-mail Policies and Procedures**

79. Effective immediately, PATH Medical staff will no longer utilize their personal e-mail accounts or any other e-mail accounts not controlled by PATH Medical to communicate PHI. "Control" by PATH Medical includes, but is not limited to, the ability and authority to: terminate the staff's access to the e-mail accounts at any time, access the staff's e-mail accounts at any time, and impose any and all security measures and protocols deemed reasonable and necessary.

80. In addition to its ongoing duties under HIPAA, within sixty (60) days of the Effective Date, PATH Medical will perform a risk analysis pursuant to 45 C.F.R. § 164.308(a)(1)(ii)(A) with respect to its e-mail communications and policies, and develop a risk

management plan to implement administrative, physical, and/or technical safeguards sufficient to reduce risks and vulnerability to a reasonable and appropriate level, pursuant to 45 C.F.R. § 164.308(a)(1)(ii)(B). The risk management plan must include a plan to remedy any privacy and security risks identified as a result of staff members' previous use of personal e-mail accounts to communicate PHI.

81. PATH Medical shall adopt all security measures identified in the risk management plan. Within one hundred and twenty (120) days of the Effective Date, Dr. Eric Braverman shall provide the OAG with a certification that PATH Medical has implemented all identified security measures and has developed an internal policy that governs staff's e-mail communications.

#### **IV. RETROSPECTIVE RELIEF**

##### **A. Patient Refunds for Overpayments**

82. Within thirty (30) days of the Effective Date, PATH Medical will identify all patient accounts for which refunds have been due for over thirty (30) days. PATH Medical will provide all patients identified with a full refund for the amount overpaid.

83. Within (60) days of the Effective Date, PATH Medical will submit to the OAG:
- a. The number of individuals to whom refunds have been provided;
  - b. The amount of each individual refund and the total amount refunded; and

- c. The number of individuals to whom refunds are still owed, along with an explanation for each account that has not yet been refunded and the amount to be refunded.
- d. A certification signed by Dr. Braverman stating that all accounts with a refund owed to a patient for over thirty days, if any, have been identified and refunded in full, except for those accounts identified pursuant to Paragraph 83(c).

#### **V. AFFIDAVITS OF COMPLIANCE**

84. PATH Medical shall submit to the OAG within ninety (90) days of the Effective Date, an affidavit subscribed to by Dr. Eric Braverman setting forth PATH Medical's compliance with the provisions of this Assurance, with the exception of the provisions of Section III, Paragraph F, which will be certified separately within one hundred and twenty (120) days of the Effective Date.

#### **VI. PENALTIES**

85. PATH Medical shall pay \$15,000 to the OAG as a civil penalty, in lieu of any other action which could be taken by the OAG in consequence of the foregoing. Such sum shall be payable by check to "State of New York Department of Law." Such sum shall be payable in installments of \$5,000, with the first installment of \$5,000 paid within thirty (30) days of the Effective Date, the second installment of \$5,000 paid within six (6) months of the Effective Date, and the third installment of \$5,000 paid within one (1) year of the Effective Date.

## **VII. MISCELLANEOUS**

### **A. Cooperation**

86. PATH Medical shall cooperate fully and promptly with the OAG with regard to any investigations, proceedings and actions related to the content of this Assurance, including but not limited to its patient and insurance billing and claims practices. Cooperation shall include, without limitation, production, within thirty (30) days, of any information and all documents or other tangible evidence related to the content of this Assurance requested by the OAG, and any compilations or summaries of information or data that exist that the OAG requests. PATH Medical may request extensions of time to produce this information, which shall not be unreasonably denied by the OAG.

### **B. Communications**

87. All notices, reports, payments, requests and other communications to any party pursuant to this Assurance shall be in writing and shall be directed as follows:

If to the OAG to:

Elizabeth Chesler  
Assistant Attorney General  
Office of the Attorney General  
Health Care Bureau  
120 Broadway, 26<sup>th</sup> Floor  
New York, NY 10271

If to PATH Medical to:

Diana Mohyi, Esq.  
PATH Medical

304 Park Avenue South – 6<sup>th</sup> Floor  
New York, NY 10010

88. All payments and correspondence related to this Assurance must reference “Assurance # 14-222.”

**C. Successors In Interest**

89. This Assurance and all obligations imposed on or undertaken by PATH Medical herein, will be binding upon and enforceable against PATH Medical and its officers, directors, agents, employees, other staff and assignees for so long as it is in business, as well as any and all other medical practices in New York State that are owned in whole or in part by Dr. Eric Braverman.

**D. Valid Grounds and Waiver**

90. PATH Medical hereby accepts the terms and conditions of this Assurance and waives any rights to challenge it in a proceeding under Article 78 of the Civil Practice Law and Rules or in any other action or proceeding.

**E. PATH Medical’s Representations**

91. OAG has agreed to the terms of this Assurance based on, among other things, the representations made to the OAG by PATH Medical and its counsel and the OAG’s own factual investigation as set forth above. To the extent that any material representations are later found to be inaccurate or misleading, this Assurance is voidable by the OAG in its sole discretion.



#### **F. No Deprivation of the Public's Rights**

92. Nothing herein shall be construed to deprive any person of any private right under law or equity.

#### **G. No Blanket Approval by the Attorney General of PATH Medical's Practices**

93. Acceptance of this Assurance by the OAG shall not be deemed or construed as approval by the OAG of any of PATH Medical's acts or practices, and PATH Medical shall make no representations to the contrary.

#### **H. Monitoring by the OAG**

94. To the extent not already provided under this Assurance, PATH Medical shall, upon request by the OAG, provide all documentation and information necessary for the OAG to verify compliance with this Assurance, at PATH Medical's expense. This Assurance does not in any way limit the OAG's right to obtain, by subpoena or by any other means permitted by law, documents, testimony, or other information.

#### **I. No Limitation on the Attorney General's Authority**

95. Nothing in this Assurance in any way limits the OAG's ability to investigate or take other action with respect to any non-compliance at any time by PATH Medical with respect to this Assurance, or PATH Medical's future non-compliance with any applicable law with respect to any matters.

## **J. Non-disparagement of Assurance**

96. PATH shall not take any action or make any statement denying, directly or indirectly, the propriety of this Assurance or expressing the view that this Assurance is without factual basis. Nothing in this paragraph affects PATH Medical's (i) testimonial obligations or (ii) right to take legal or factual positions in defense of litigation or other legal proceedings to which OAG is not a party. This Assurance is not intended for use by any third party in any other proceedings and is not intended, and should not be construed, as an admission of liability by PATH Medical.

## **K. Governing Law; Effect of Violation of Assurance of Discontinuance**

97. Under Executive Law § 63(15), evidence of a violation of this Assurance shall constitute prima facie proof of a violation of the applicable law in any action or proceeding thereafter commenced by the OAG.

98. This Assurance shall be governed by the laws of the State of New York without regard to any conflict of laws principles.

99. If a court of competent jurisdiction determines that PATH Medical has breached this Assurance, PATH Medical shall pay to the OAG the cost, if any, of such determination and enforcing this Agreement.

100. Any failure by the OAG to enforce this entire Assurance or any provision thereof with respect to any deadline or any other provision herein shall not be construed a waiver of the OAG's right to enforce other deadlines and provisions of this Assurance.

**L. No Presumption Against Drafter; Effect of Any Invalid Provision**

101. None of the parties shall be considered to be the drafter of this Assurance or any provision for the purpose of any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafter hereof. This Assurance was drafted with input by all parties and their counsel, and no reliance was placed on any representation other than those contained in this Assurance.

102. In the event that any one or more of the provisions contained in this Assurance shall for any reason be held to be invalid, illegal, or unenforceable in any respect, in the sole discretion of the OAG such invalidity, illegality, or unenforceability shall not affect any other provision of this Assurance.

**M. Entire Agreement; Amendment**

103. No representation, inducement, promise, understanding, condition, or warranty not set forth in this Assurance has been made to or relied upon by PATH Medical in agreeing to this Assurance.

104. This Assurance contains an entire, complete, and integrated statement of each and every term and provision agreed to by and among the parties, and the Assurance is not subject to any condition not provided for herein. This Assurance supersedes any prior agreements or understandings, whether written or oral, between the OAG and PATH Medical regarding the subject matter of this Assurance.

105. This Assurance may not be amended or modified except in an instrument in writing signed on behalf of all the parties to this Assurance.

106. The division of this Assurance into sections and subsections and the use of captions and headings in connection herewith are solely for convenience and shall have no legal effect in construing the provisions of this Assurance.

**N. Binding Effect**

107. This Assurance is binding on and inures to the benefit of the parties to this Assurance and their respective successors and assigns, provided that no party, other than the OAG, may assign, delegate, or otherwise transfer any of its rights or obligations under this Assurance without prior written consent of the OAG.

**O. Effective Date**

108. This assurance is effective on the date that it is signed by the Attorney General or his authorized representative (the “Effective Date”), and the document may be executed in counterparts, which shall be deemed an original for all purposes.

109. The Terms of this Assurance shall be in effect for four (4) years from the Effective Date.

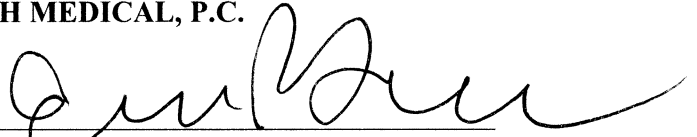
**AGREED TO BY THE PARTIES:**

Dated: New York, New York

11/25, 2014

**PATH MEDICAL, P.C.**

By:



**ERIC R. BRAVERMAN**

Owner and Chief Executive Officer

Dated: New York, New York

December 1, 2014

**ERIC T. SCHNEIDERMAN**

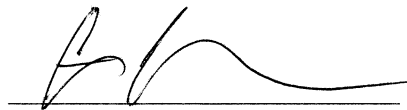
Attorney General of the State of New York

LISA LANDAU

Bureau Chief

Health Care Bureau

By:



**ELIZABETH R. CHESLER**

Assistant Attorney General

Health Care Bureau