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FOR IMMEDIATE RELEASE

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Over \$5 Million Returned by New York to AAB Laboratories

April 5, 2011 – Over \$5 million is being refunded by the New York State Department of Health (NYSDOH) to 35 laboratories resulting from a lawsuit brought by the American Association of Bioanalysts (AAB) alleging that the NYSDOH massively overcharged the 35 laboratories for their New York State inspection and reference fees between 1998 and 2006.

On February 17, 2011, after 12 years of litigation, the NYSDOH lost its last appeal of lower court rulings favoring AAB. On July 22, 2010, a New York Appellate Court stated that the inspection and reference fees charged by the NYSDOH were “arbitrary and capricious” and that the NYSDOH’s “bald estimates” of the actual costs of New York’s laboratory regulation program could not support the fees charged when the NYSDOH failed to either keep accurate, contemporaneous financial records or even disclose those documents cited in support of the Department’s cost estimates.

Justice Robert S. Rose, writing for the Appeals Court, noted that “The Department's intention to shift as many costs as possible onto the clinical laboratories was further revealed in the testimony that the Director (of the NYSDOH) had once boasted that he had been able to transfer 17 percent of the Wadsworth Center's budget to the clinical laboratories.”

Testimony at the trial showed that laboratories were being charged for many things unrelated to regulating clinical laboratories, such as \$1,000 of baked goods for Health Department meetings [to which the laboratories were not invited]; the costs of developing new assays for which NYSDOH scientists held patents and the Department would receive royalties; and research into environmental pollution.

The court rulings directed the NYSDOH to recalculate the inspection and reference fees for the eight-year period covered by the lawsuit. The NYSDOH subsequently determined that 78% of the fees should be refunded, an amount equal to \$5,041,377 for the 35 laboratories.

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The refund checks were dated March 28 and March 30, 2011.

A second lawsuit challenging the NYSDOH's permit and inspection fees from 2007 to the present is still pending. Over 100 laboratories are named plaintiffs in that lawsuit.

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The American Association of Bioanalysts (AAB), founded in 1956, is a professional association representing bioanalysts (clinical laboratory directors, owners, managers and supervisors), medical technologists, medical laboratory technicians, and physician office laboratory technicians. AAB is committed to the pursuit of excellence in clinical laboratory testing by enhancing the professional skills of each of its members; promoting more efficient and productive operations; and representing the interests of its members. AAB's specialized membership sections include the AAB Associate Member Section (AMS), College of Reproductive Biology (CRB), Environmental Biology and Public Health (EBPH) Section, and the National Independent Laboratory Association (NILA). AAB provides a broad range of services, including representation before federal and state legislative and regulatory agencies, educational programs and publications. AAB's Proficiency Testing Service is approved under the federal CLIA regulations and is one of the largest PT providers in the United States.