

## **FOR IMMEDIATE RELEASE**

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### **AAB LABORATORIES SCORE YET ANOTHER VICTORY OVER NEW YORK STATE DEPARTMENT OF HEALTH**

**July 22, 2010** – For over 11 years, the American Association of Bioanalysts (AAB), a national laboratory organization, has fought a court battle with the New York State Department of Health (NYSDOH), claiming that the Department was intentionally overcharging clinical laboratories so that the Department could subsidize its many other research programs that had no relation to regulating clinical laboratories. According to AAB’s Complaint in this action, these fees, which have increased seven-fold on an industry-wide basis from \$2.4 million per year in 1984 to over \$17 million per year today, were supposed to be limited to reimbursing the Department for the necessary costs of the regulation of clinical laboratories and blood banks. AAB commenced this lawsuit when it learned that expenditures were being made from these fees for salaries of persons whose jobs had nothing to do with the regulation of New York licensed clinical laboratories, and in some cases who did not even work for the NYSDOH. Monies were also used to pay for trips to California and Europe, and cars for the New York Commissioner of Health.

After years of pre-trial litigation, discovery and appeals, the case finally went to trial in 2007, where AAB scored a major victory over NYSDOH. Retired Supreme Court Justice Edward R. Sheridan, who acted as a Judicial Hearing Officer and presided over the entire 30-day trial, issued a stinging critique of the Department’s practices in his September 24, 2008, Decision, which concluded that, “In effect, [NYSDOH] has turned the clinical laboratory reference system special revenue account into an unauthorized and unsupervised revenue stream that is limited only by the bounds of defendant’s creativity . . . .”

The Department appealed the lower court’s decision and, today, the Appellate Division, Third Department, affirmed every part of Justice Sheridan’s Decision, giving AAB yet another victory over NYSDOH in what AAB’s General Counsel, Jeffrey Sherrin, calls “an example of state government at its worst.” In today’s ruling, the Court agreed with the lower court’s finding that the fees charged to the labs were “arbitrary and capricious,” and that the Department’s “bald estimates” of the actual costs of the laboratory regulation program could not support the fees charged when the Department failed to either keep accurate, contemporaneous financial records or even disclose those documents cited in support of the 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 had

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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 things like \$1,000 of baked goods for Health Department meetings [to which the laboratories were not even invited]; the costs of developing new assays for which DOH scientists held patents and the Department would receive royalties; research into environmental pollution; and many other activities amounting to millions of dollars that did not support clinical laboratory regulation.

Mark S. Birenbaum, the Administrator of AAB, who has championed this litigation against the State, remarked: “Once again, a New York State Court has vindicated AAB’s efforts to prevent the New York State Department of Health from covertly inflating the fees it charges clinical laboratories. In affirming the lower court’s Decision, the Appellate Division has recognized that the New York State Department of Health clearly abused its authority for years at the expense of clinical laboratories. All laboratories will now benefit from the fight AAB has waged for 11 years.”

Sherrin, who both tried the case and successfully argued the appeal, said: “The New York State Department of Health abused a program properly established by the Legislature, used it as a slush fund, and then tried every maneuver imaginable to hide what it did. Fortunately, the trial court and now the Appellate Division saw through the charade. Hopefully, the New York State Department of Health will now conform its practices to the law.”

The case now goes back to the New York State Department of Health to recalculate the fees that should have been charged to AAB’s member laboratories. According to the Department, it is anticipated that AAB member laboratories will recover 75% of the money that the labs paid between 1998 and 2006. The Department will also have to conform its future billings to the Court decision.

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