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AAB LABORATORIES SCORE MAJOR VICTORY OVER NEW YORK STATE DEPARTMENT OF HEALTH

September 26, 2008 – For over nine years, a national laboratory organization, the American Association of Bioanalysts (AAB), has fought the New York State Department of Health (NYSDOH), claiming that the Department was intentionally overcharging clinical laboratories so that the Department could pay for its other activities. According to AAB’s Complaint, these fees, which have increased seven-fold on an industry-wide basis from \$2.4 million in 1984 to over \$17 million today, were supposed to be limited to reimbursing the New York State Department of Health 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 this special fund for salaries of persons, equipment, travel and supplies, that were completely unrelated to the regulation of New York licensed clinical laboratories.

After years of pre-trial litigation, discovery and appeals, the case finally went to trial on July 23, 2007, and did not conclude until December 14, 2007. AAB’s General Counsel, Jeffrey J. Sherrin, handled the case throughout, and conducted the entire trial for AAB.

In a stinging critique of the New York State Department of Health’s practices, on September 24, 2008, retired Supreme Court Justice Edward R. Sheridan, acting as a Judicial Hearing Officer and presiding over the entire trial, struck down what amounts to millions of dollars of fees charged each year to New York licensed clinical laboratories. Finding the Department’s evidence unreliable, their arguments unsupportable, and their practices arbitrary, Justice Sheridan concluded that “In effect, DOH [the New York State Department of Health] 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...”.

Mark S. Birenbaum, Ph.D., the Administrator of AAB, who has championed this challenge against the State, remarked: “It is tremendously gratifying after so many years of litigation that the Court has vindicated AAB’s efforts to prevent the New York State Department of Health

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from covertly inflating the fees it charges clinical laboratories. The New York State Department of Health has been clearly abusing its authority at the expense of AAB member laboratories.”

AAB’s General Counsel, Jeffrey Sherrin, who tried the case, says, “We have put a stop to a tremendous abuse that has been going on for years. AAB applauds the court for the extraordinary effort expended over this last year and the insightful decision rendered.”

The case goes back now to the New York State Department of Health to recalculate the fees that should have been charged to AAB’s member laboratories. It is anticipated that AAB member laboratories will recover several million dollars from the State.

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