

PEOPLE OF THE STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL
LABOR BUREAU

IN THE MATTER OF THE INVESTIGATION
OF LETITIA JAMES, ATTORNEY GENERAL
OF THE STATE OF NEW YORK,

OF

ALBANY MED HEALTH SYSTEM, f/k/a
ALBANY MEDICAL CENTER

ASSURANCE OF
DISCONTINUANCE
PURSUANT TO
EXECUTIVE LAW § 63(15)

AOD No. 21-040

ASSURANCE OF DISCONTINUANCE

The Office of the Attorney General of the State of New York (“OAG”) commenced an investigation of ALBANY MED HEALTH SYSTEM, f/k/a ALBANY MEDICAL CENTER (“Albany Med”) pursuant to New York Executive Law § 63(12) (the “Investigation”). The OAG examined whether Albany Med’s contract and enforcement of a provision mandating foreign-recruited nurses to pay a substantial fee upon failure to fulfill a three-year employment commitment is a violation of the Trafficking Victims Protection Act (“TVPA”) § 1589.

This Assurance of Discontinuance (“AOD” or “Assurance”) contains the findings of OAG’s investigation and the relief agreed to by OAG and Albany Med.

RELEVANT STATUTORY FRAMEWORK

1. The TVPA § 1589 prohibits providing or obtaining the labor or services of a person by using: force, threats of force, physical restraint, or threats of physical restraint; serious harm or threats of serious harm; the abuse or threatened abuse of law or legal process; or, any scheme, plan, or pattern intended to cause the person to believe that, if that person did not perform such labor or services, that person would suffer serious harm or physical restraint. 18 U.S.C. § 1589(a).

FINDINGS

2. Albany Med is a not-for-profit corporation that is affiliated with the 766-bed Albany Medical Center Hospital located at 43 New Scotland Avenue, Albany, New York 12208.

3. The OAG issued a subpoena pursuant to the Investigation on February 14, 2020. The Investigation concluded that since at least 2011, Albany Med recruited nurses from outside nations under a permanent visa arrangement.

4. The employment contract provided to these nurse recruits included a mandatory repayment provision which obligated a nurse to pay between \$10,000 to \$20,000 if they resigned or were fired for cause within the first three (3) years of employment. Such provision also threatened legal action and reporting to immigration authorities upon non-compliance, if Albany Med concluded the nurse's failure to repay amounts owed to them constituted fraud.

5. Since January 1, 2011, Albany Med has received "repayment" fees from seven formerly employed nurses, who paid \$82,000 combined, because they failed to fulfill their 3-year employment commitment.

6. Based on the foregoing, the OAG has concluded that Albany Med engaged in persistent and repeated activity in violation of Executive Law §63(12) and the TVPA § 1589.

7. The findings herein do not constitute admissions, and this AOD is not to be used by any third parties against Albany Med.

8. Albany Med does not admit to the findings made by the OAG, disputes them, and has agreed to the terms and conditions of this AOD solely to avoid the costs of future litigation.

9. For purposes of resolving the OAG's Investigation, Albany Med has agreed to enter into this AOD.

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

RELIEF

Entities Bound By Assurance

10. This Assurance binds Albany Med as an alleged perpetrator as defined by the TVPA §1595.

Removal of the Repayment Provision

11. Albany Med agrees to remove the repayment provision from all current and future employment contracts. Albany Med will provide written notice to all current and formerly employed nurses who have been party to the employment agreements in question within the past six (6) years. Such notice shall state the repayment provision has been removed and will not be enforced.

12. Albany Med will provide the notice described in paragraph 11 to all currently employed nurses subject to the repayment provision within 30 days of execution of this agreement. Albany Med will use reasonable efforts to ensure that such notice is acknowledged and signed by each currently employed nurse.

13. Albany Med will provide to all formerly employed nurses who have been party to the employment agreements in question within the past six (6) years the notice described in paragraph 11 within 45 days of execution of this agreement. Albany Med will provide written notice to the last known address of these nurses.

Reporting Requirements

14. Albany Med will submit to the OAG within 15 days of execution of this agreement, the draft notice that will be provided to all currently and formerly employed nurses as described in paragraph 11 above.

15. Albany Med will submit to the OAG within 45 days of execution of this agreement,

a list of currently employed nurses who have received the notice described in paragraphs 11 and 12 above as well as the dates they received such notice. Albany Med will also produce a copy of any signed acknowledgments that it may receive for each currently employed nurse within sixty (60) days of its receipt of such acknowledgements.

16. Albany Med will submit to the OAG within 60 days of execution of this agreement, a list of formerly employed nurses who have received the notice described in paragraphs 11 and 13 above as well as the date each notice was delivered.

17. Albany Med will produce to the OAG within 6 months of execution of this agreement, any responses or complaints received by current or formerly employed nurses in response to the notice of removal referenced in Paragraphs 11 through 13 above.

18. Albany Med will submit to the OAG within one year of execution of this agreement, written confirmation that the repayment provision has not been reintroduced to any employment contracts.

No Retaliation

19. Albany Med agrees it will not in any manner discriminate or retaliate against any currently employed nurse who complains about the repayment provision after receiving notice of removal as described in Paragraph 11 above.

Monetary Payment

20. Albany Med agrees to pay \$90,229.32 in resolution of the Investigation, which will be paid directly to the OAG and will be used for distribution as restitution to formerly-employed nurses for the alleged violations of laws specified in Paragraphs 5 and 6 of this Assurance. Such amount consists of \$82,000.00 in principal owed plus interest calculated at a rate of 4.5% per annum from the date of collection.

21. The settlement amount shall be paid in full, one payment of \$90,229.32, within 30 days of execution of this agreement.

22. Payment from Albany Med to the OAG must be in the form of certified check, bank check, money order, wire transfer, or attorney's check made payable to "The New York State Department of Law," and forwarded to the New York State Attorney General's Office to the attention of:

Roya Aghanori
Assistant Attorney General
Labor Bureau
28 Liberty Street, 15th fl.
New York, NY 10005

The payment and all correspondence related to this Assurance must reference "Assurance #21-040."

23. The OAG has the sole discretion to determine which employees shall be eligible for restitution and damages and to determine the amount of such restitution and damages.

Affidavit in Support of Assurance

24. In further consideration of this settlement, Albany Med will execute and deliver, at the time of execution and delivery of this Assurance, the accompanying Affidavit (attached hereto as Exhibit A), attesting that it has not enforced or collected upon the repayment provision since at least January 2011, other than the payments collected and referenced in Paragraph 5.

Discontinuance of Investigation

25. Upon execution by the parties to this Assurance, the Attorney General will discontinue its investigation as against Albany Med with respect to the subject matter of this investigation.

MISCELLANEOUS

26. The OAG has agreed to the terms of this Assurance based on, among other things,

the representations made to the OAG by Albany Med and the OAG's own factual investigation as set forth in Findings, paragraphs 2 to 6 above. Albany Med represents and warrants that it has not made any material representations to the OAG that are inaccurate or misleading. If any material representations by Albany Med are later found to be inaccurate or misleading, as determined by a court of competent jurisdiction, this Assurance is voidable by the OAG in its sole discretion within six years of the effective date.

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

28. Albany Med represents and warrants, through the signature below, that the terms and conditions of this Assurance are duly approved, and execution of this Assurance is duly authorized.

General Principles

29. Unless a term limit for compliance is otherwise specified within this Assurance, Albany Med's obligations under this Assurance are enduring. Nothing in this Agreement shall relieve Albany Med of other obligations imposed by any applicable state or federal law or regulation or other applicable law.

30. Nothing contained herein shall be construed to limit the remedies available to the OAG in the event that Albany Med violates the Assurance after its effective date.

31. An alleged violation of the terms of this Assurance shall be considered a violation only after Albany Med has not cured the alleged violation within fifteen (15) days of its receipt of written notice of the alleged violation.

32. This Assurance may not be amended except by an instrument in writing signed on behalf of the parties to this Assurance.

33. In the event that any one or more of the provisions contained in this Assurance shall for any reason be held by a court of competent jurisdiction 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.

34. Albany Med acknowledges that it has entered this Assurance freely and voluntarily and upon due deliberation with the advice of counsel.

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

36. The Assurance and all its terms shall be construed as if mutually drafted with no presumption of any type against any party that may be found to have been the drafter.

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

From Albany Med to the OAG:
New York State Office of the Attorney General
Roya Aghanori, Assistant Attorney General
28 Liberty Street, New York, NY 10005 or
roya.aghanori@ag.ny.gov

From the OAG to Albany Med:
Albany Med Health System
Bond, Schoeneck & King, PLLC
Nicholas D'Ambrosio, Esq.
22 Corporate Woods Boulevard, Ste 501
Albany, NY 12211
dambrosio@bsk.com

with a copy to:

Albany Med Health System
43 New Scotland Avenue
MC-104
Albany, NY 12208
Attn: General Counsel

Any changes in the person to whom communications should be specifically directed shall be made in writing in advance of the change.

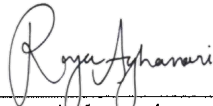
38. This Assurance and Affidavit may be electronically signed, and any electronic signatures are the same as handwritten signatures for the purposes of validity, enforceability, and admissibility.

39. This Assurance and the Release may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

IN WITNESS WHEREOF, this Assurance is executed by the parties hereto on this 11 day of June, 2021.

**LETTIA JAMES
ATTORNEY GENERAL OF THE
STATE OF NEW YORK**

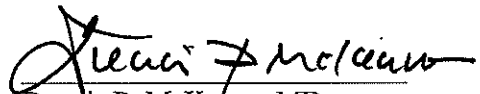
By:



Roya Aghanori
Assistant Attorney General
28 Liberty Street, 15th Fl.
New York, NY 10005
Phone: (212) 416-6132
Roya.aghanori@ag.ny.gov

**ALBANY MED HEALTH SYSTEM
f/k/a ALBANY MEDICAL CENTER**

By:



Dennis P. McKenna, MD
President and Chief Executive Officer
43 New Scotland Avenue
Albany, NY 12208
(518) 262-3830
McKennDP@amc.edu

PEOPLE OF THE STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL
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IN THE MATTER OF THE INVESTIGATION OF
LETITIA JAMES, ATTORNEY GENERAL OF
THE STATE OF NEW YORK,

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ALBANY MED HEALTH SYSTEM, *f/k/a*
ALBANY MEDICAL CENTER

AFFIDAVIT IN
SUPPORT OF
ASSURANCE OF
DISCONTINUANCE
AOD No. 21-040

SANDRA CASTILLA, being duly sworn, deposes and says the following:

1. I am a Vice President and Chief Human Resources Officer of ALBANY MED HEALTH SYSTEM, *f/k/a* ALBANY MEDICAL CENTER (“Albany Med”) and have authority to sign on behalf of Albany Med.
2. My business address is: Human Resources Office, 43 New Scotland Avenue, Albany, New York 12208.
3. Albany Med is a not-for-profit corporation that is affiliated with the 766-bed Albany Medical Center Hospital located at 43 New Scotland Avenue, Albany, New York 12208.
4. Since at least 2011 Albany Med has recruited nurses from foreign nations under an employment arrangement and contract that included a mandatory “repayment” provision. This repayment provision obligated a nurse to pay between \$10,000 to \$20,000 if they resign or are fired with cause within the first three (3) years of employment. Such provision also threatened legal action and reporting to immigration authorities upon non-compliance, if Albany Med found the nurse’s failure to repay amounts owed to them constituted fraud.

5. Since January 1, 2011 Albany Med has received "repayment" fees through non-legal means, from seven formerly employed nurses because they failed to fulfill their 3-year employment commitment. The amounts are as follows:

- a. \$2,000 collected from a nurse on or about October 16, 2014 for terminating their contract approximately 2 months prior to the end of their 3-year commitment;
- b. \$20,000 collected from a nurse on or about October 15, 2018 for terminating their contract approximately 2 years and 5 months prior to the end of their 3-year commitment;
- c. \$15,000 collected from a nurse on or about October 19, 2018 for terminating their contract approximately 1 year and 10 months prior to the end of their 3-year commitment;
- d. \$10,000 collected from a nurse on or about February 7, 2019 for terminating their contract approximately 2 years and 1 month prior to the end of their 3-year commitment;
- e. \$10,000 collected from a nurse on or about April 6, 2019 for terminating their contract approximately 1 year and 2 months prior to the end of their 3-year commitment;
- f. \$10,000 collected from a nurse on or about November 26, 2019 for terminating their contract approximately 15 months prior to the end of their 3-year commitment;
- g. \$10,000 collected from a nurse on or about December 11, 2020 for terminating their contract approximately 1 year prior to the end of their 3-year commitment.

