

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK**

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 PEOPLE OF THE STATE OF NEW YORK, by :
 ERIC T. SCHNEIDERMAN, Attorney General :
 of the State of New York, :
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 Petitioner, :
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 For an order pursuant to C.P.L.R 2308(b) :
 to compel compliance with a subpoena :
 issued by the Attorney General, :
 :
 — against — :
 :
 PATH Medical P.C. and :
 Eric R. Braverman, M.D. :
 :
 Respondents. :
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**AFFIRMATION OF
ELIZABETH R. CHESLER**

Index No.: _____/2013

RJI No.:

Assigned Judge:

Elizabeth R. Chesler, an attorney duly admitted to practice in the courts of the State of New York, affirms the following statements to be true under penalties of perjury:

INTRODUCTION

1. I am an Assistant Attorney General in the Health Care Bureau of the Office of Eric T. Schneiderman, Attorney General of the State of New York (“OAG”). I make this Affirmation in support of the application for an order pursuant to C.P.L.R 2308(b) compelling compliance with the subpoena *duces tecum* issued pursuant to Executive Law § 63(12) and General Business Law § 349, in connection with an investigation into the business practices of Respondents Eric R. Braverman, M.D. and his treatment facility, PATH Medical P.C. (“Path Medical”).

2. No previous application has been made for an order compelling compliance of this subpoena.

3. I am familiar with the facts and circumstances set forth in this affirmation, which are based upon information contained in the files of the Health Care Bureau of the OAG and its investigation of Eric Braverman, M.D. and PATH Medical.

4. Section 349 of Article 22-A of the General Business Law prohibits deceptive acts in the conduct of any business and authorizes the Attorney General to seek injunctive relief and restitution against any person or business that engages in such acts.

5. Section 63(12) of the Executive Law sets forth that the Attorney General is empowered to seek injunctive relief, restitution, and damages against any person or business that engages in persistent fraud or illegality in the conduct of business.

6. The Attorney General is specifically authorized pursuant to Executive Law § 63(12) and General Business Law § 349(f) “to take proof and make a determination of the relevant facts, and to issue subpoenas in accordance with the civil practice law and rules” whenever he believes a business is engaged in fraudulent, deceptive, or illegal business practices.

BASIS OF THE OAG’S INVESTIGATION

7. The OAG has received complaints from over twenty consumers concerning PATH Medical and/or Dr. Braverman.

8. As a result, the OAG began an investigation into (a) PATH Medical, which is, upon information and belief, a domestic professional corporation based in New York City that provides medical diagnosis and treatment to patients and (b) PATH Medical’s owner, Dr. Eric Braverman.

9. These complaints include claims that PATH Medical made inaccurate representations about the amount and likelihood of insurance coverage, causing consumers to face unexpectedly high out-of-pocket costs for the medical services received, often amounting to hundreds or thousands of dollars. For example, consumers assert that PATH Medical's employees have verbally represented that the consumers' health insurance plans would cover a substantial percentage of the charges, when in fact the health plan either denied the claims in full or covered significantly less than PATH represented.

10. The OAG has reviewed documents submitted by complainants showing that the total fees for the first patient visit alone can reach up to \$8,000 to \$10,000, and that the health plans reimbursed little, if any, of those charges.

11. Consumers also complain that they were pressured to undergo testing; were not told that they had to pay additional fees for such testing; were not provided with their testing results; and were billed for tests that were not performed.

12. Based upon the OAG's investigation of these complaints, the Attorney General believes that Respondents may be engaging in fraudulent and deceptive practices in violation of Executive Law § 63(12) and General Business Law § 349.

THE SUBPOENA

13. On June 21, 2013, the OAG served a subpoena *duces tecum* on Respondents, commanding that they produce specific business documents by July 12, 2013. A true and correct copy of the subpoena and affidavit of service is attached hereto as Exhibit A.

14. On June 28, 2013, Assistant Attorney General Carol J. Hunt and I spoke with Agnes I. Rymer, counsel for Respondents. During this call, our office agreed to limit the scope of the subpoena's first request and sent a revised subpoena to Ms. Rymer *via* email

that day. Ms. Rymer responded to this email, thereby confirming her receipt. A true and correct copy of the subpoena dated June 28, 2013 (“the subpoena”) is attached hereto as Exhibit B. A true and correct copy of Ms. Rymer’s June 28, 2013 email is attached hereto as Exhibit C.

15. On July 8, 2013, Elizabeth M. Johnson and Lawrence S. Goldman, who were also retained to represent Respondents, sent a letter posing numerous questions regarding the legal basis for the Attorney General’s subpoena and requesting a 10-day extension to respond. On July 10, 2013, Ms. Hunt sent a letter, on which I was copied, describing the nature of the investigation and the legal basis for issuing a subpoena, as well as agreeing to extend the return date to July 22nd. The OAG further permitted Respondents to produce the documents in solely electronic form due to the Respondents’ concern with the costs of complying with the subpoena. True and correct copies of these letters are attached hereto as Exhibit D and Exhibit E, respectively.

16. On July 22, 2013, the last day by which Respondents were to respond to the subpoena under the extended deadline, their counsel sent a letter stating that Dr. Braverman has “no legal obligation whatsoever to respond” to the subpoena and that he “declines” to comply with its demands. A true and correct copy of this letter is attached hereto as Exhibit F.

17. On July 29, 2013, Ms. Hunt and I called Ms. Johnson to again set out the basis for the subpoena, including providing additional information regarding the nature of the complaints received by the OAG concerning PATH Medical. During this call Ms. Johnson advised that she would speak with her co-counsel and then advise whether PATH Medical would be providing responsive documents.

18. On August 1, 2013, I sent an email to Ms. Johnson confirming our mutual understanding from a call earlier that day that by the close of business the following day she would advise whether Respondents would produce documents responsive to the subpoena by August 9th. Ms. Johnson confirmed that this was accurate. A true and correct copy of this correspondence is attached hereto as Exhibit G.

19. On August 2, 2013, I received an email from Ms. Johnson asking to meet to discuss “possible resolution of this matter,” but without stating whether Respondents would be producing any documents responsive to the subpoena. In my reply letter, I advised Respondents’ counsel that while the OAG is willing to discuss any specific questions or concerns they may have regarding the subpoena and its document requests, it was premature to discuss resolution of this matter before we received the subpoenaed documents. True and correct copies of Ms. Johnson’s email and my letter in response are attached hereto as Exhibits H and I, respectively.

20. Following this exchange, Ms. Johnson sent an email stating Respondents would make a written submission that would “include documents which are called for by your subpoena.” A true and correct copy of this email is attached hereto as Exhibit J.

21. On August 9, 2013, the OAG received a letter from Respondents’ counsel, along with three brochures concerning PATH Medical’s “Executive Health Program” and a copy of correspondence between the Health Care Bureau and Dr. Braverman (and his counsel) regarding a consumer complaint made to a hotline maintained by the Health Care Bureau for consumer complaints. The letter states that other than the letter and the documents enclosed, “Dr. Braverman declines to respond to the subpoena.” A true and correct copy of this letter, without enclosures, is attached hereto as Exhibit K.

22. On August 9, 2013, I sent a letter *via* email to Respondents' counsel advising that their production was inadequate and that the OAG would be moving forward to ensure compliance with the subpoena. A true and correct copy of this letter is attached hereto as Exhibit L.

23. On August 14, 2013, we received a letter from Respondents' counsel enclosing documents partially responsive to one of the twelve subpoena requests (a draft informed consent form for the Executive Health Program, the Respondents' current informed consent statement, and the medical history form patients are asked to complete before their first visit). Respondents' August 14 letter states that while Respondents have been providing information and documents to address our concerns, they are not attempting to comply with the subpoena because they believe it to be defective. A true and correct copy of this letter, without enclosures, is attached hereto as Exhibit M.

24. Given the Respondents' repeated statements that they would not comply with the subpoena, and OAG's previous assertion that we would be filing a motion to compel, the OAG did not respond to Respondents' August 14, 2013 correspondence and instead is filing the instant motion to compel.

25. The documents requested in the subpoena are narrowly tailored to the Attorney General's investigation of whether Respondents made (and are continuing to make) false, misleading, or otherwise deceptive statements to patients regarding their financial liability for the testing and treatment provided, as well as the other billing irregularities identified in consumers' complaints to the Health Care Bureau. Accordingly, each of the documents requested in the subpoena bear a direct and reasonable relationship to the subject matter under investigation.

26. Ms. Hunt and I spoke with Respondents' counsel over the phone concerning the June 28, 2013 subpoena on July 3rd, July 29th, and August 1st. At no point during these conversations did Respondents' counsel make any effort to raise or discuss any specific questions or concerns they may have about the document requests, nor have they requested or proposed any changes or limitations.

27. The costs incurred by the OAG in preparing the instant Order to Show Cause in order to secure Respondents' compliance with the subpoena greatly exceeds \$50.

CONCLUSION

28. For the reasons set forth herein and in the Memorandum of Law, the Petitioner respectfully requests that the Court enter an Order directing Respondents to comply fully with the June 28, 2013 subpoena served by the Attorney General and such other relief as the Court deems just and proper.

Dated: New York, NY
September 14, 2013



Elizabeth R. Chesler
Assistant Attorney General
Health Care Bureau
New York State Attorney General's Office
120 Broadway, 26th Floor
New York, NY 10271
Phone: (212) 416-8487
Fax: (212) 416-8034
Elizabeth.Chesler@ag.ny.gov