

AAB Scores Yet Another Victory Over NY State Department Of Health

For over 12 years, the American Association of Bioanalysts (AAB) has fought a court battle with the New York State Department of Health (NYSDOH), claiming that the Department was intentionally overcharging clinical laboratories to subsidize other research programs that had no relation to regulating clinical laboratories.

According to AAB's lawsuit, these fees were supposed to be limited to reimbursing the Department for the necessary costs of regulating 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 the defendant's creativity"

The NYSDOH appealed the lower court's decision and on July

22, 2010, 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."

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— Retired NY Supreme Court Justice Edward R. Sheridan

In the July 22 ruling, the Court agreed with the lower court's finding that the fees charged to New York licensed 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 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 invited]; the costs of developing new assays for which NYSDOH scientists held patents and the

Department would receive royalties; and research into environmental pollution.

AAB Administrator Mark S. Birenbaum, Ph.D., 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

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Federal Mileage Rate Increases By 1 Cent

In mid-December the Internal Revenue Service (IRS) announced a one cent increase in the Federal Mileage rate for 2011, from 50 cents in 2010 to 51 cents in 2011, effective January 1, 2011.

AAB and NILA have contacted CMS to request that the Part B Travel Allowance [P9603 and P9604] be increased by at least one cent to reflect the increase in the Federal Mileage rate.

Clinical laboratories are eligible for a Part B travel allowance when they send a technician or technologist to a skilled nursing facility (SNF) or a home bound Medicare patient for the purpose of collecting a specimen for Part B covered testing procedures.



**Southeastern Region
ART Conference**
Preliminary Schedule of Events

Friday, March 4, 2011

- 6:30-7:30 p.m. "Meet-and-Greet"
7:30 p.m. Banquet
- Keynote Address: ***Ethics and Legal Issues Associated with Multi-Party Assisted Reproduction***
By: Susan Crockin, J.D.
Crockin Law & Policy Group, LLC

Saturday, March 5, 2011

- 8:30-8:45 a.m. Welcome
8:45-9:30 a.m. ***Ethics and Legal Issues Associated with Embryo and Gamete Cryostorage***
By: Susan Crockin, J.D.
9:30-10:15 a.m. Questions, Group Discussion
10:15 -10:45 a.m. Break
10:45-11:30 a.m. ***What is the Best Environment to Culture Embryos? Laboratory Design and Practical Issues***
By: William R. Boone, Ph.D., HCLD/ELD(ABB)
11:30 a.m.-Noon Questions, Group Discussion
Noon-1:00 p.m. Lunch
1:00-1:45 p.m. ***Optimizing Embryo Culture, How to Maximize Blastocyst Quality and Conversion***
By: Marius Meintjes, Ph.D., HCLD/ELD/TS(ABB)
1:45-2:00 p.m. Questions, Group Discussion
2:00-2:45 p.m. ***Vitrification, Taking the Plunge***
By: Juergen Liebermann, Ph.D., HCLD/TS(ABB)
2:45-3:00 p.m. Questions, Group Discussion
3:00-4:00 p.m. ***Elective Single Embryo Transfer, Experiences to Date***
By: Dr. Juergen Liebermann and Dr. Marius Meintjes
4:00-4:30 p.m. Questions, Group Discussion
4:30 p.m. Adjourn

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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 12 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 New York Legislature, used it as a slush fund, and then tried every maneuver imaginable to hide what it did.”

The NYSDOH has again appealed the ruling to the Court of Appeals, New York’s highest court. The Court of Appeals is expected to rule shortly on the Department’s request which, if denied, should end the litigation and force 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 laboratories paid between 1998 and 2006. The Department will also have to conform its future billings to the Court decision.