

ATTORNEY GENERAL OF THE STATE OF NEW YORK

In the Matter of

Michael T. Goldstein

Assurance No.: 13-460

**ASSURANCE OF DISCONTINUANCE
UNDER EXECUTIVE LAW
SECTION 63, SUBDIVISION 15**

As authorized by Article 22-A of the General Business Law and Section 63 of the Executive Law, Eric T. Schneiderman, Attorney General of the State of New York, caused an inquiry to be made into certain business practices of Michael T. Goldstein (“Goldstein”). The investigation concerned Nephrologica, a business operated by Goldstein that purported to provide services to persons seeking kidney donors.

This Assurance of Discontinuance (“Assurance”) contains the findings of the Office of the Attorney General (“OAG”) and the relief agreed to by the OAG and Goldstein.

THE ATTORNEY GENERAL’S INVESTIGATION AND FINDINGS

1. Goldstein is a resident of New York State.
2. Nephrologica Inc. (“Nephrologica”) was a business that claimed to provide services, including assistance in locating live kidney donors, to persons with kidney disease. Nephrologica was a registered New York corporation from 2003 to 2009. Goldstein was founder, owner, and CEO of Nephrologica. Nephrologica, as used herein, includes the World Kidney Network, another entity operated by Goldstein.

3. After Nephrologica was dissolved as a corporate entity in 2009, Goldstein continued to operate Nephrologica in New York State without registering the business. Goldstein represented to the public and potential and actual clients of Nephrologica that a certain address was Nephrologica's business address, failing to disclose that the address was actually a post office box. In fact, Goldstein operated Nephrologica out of his home in Nassau County, New York.

4. In July 2011, a consumer (the "complainant") posted a message on an Internet bulletin board seeking help finding a kidney donor for his parent. Goldstein, using a fake name, sent an email to the complainant, advising the complainant to contact Nephrologica. In the email, Goldstein falsely claimed that Nephrologica had been able to obtain a kidney donor for another client in just seven months, that Nephrologica had coordinated and/or assisted in the coordination of over 2000 transplants, that all of the transplant donors were living donors from over 20 countries, that the average pre-transplant wait time was approximately 8 months, and that Nephrologica had been successful with 100% of the people that had come to it for help in finding a compatible donor.

5. Nephrologica's website, which was operated by Goldstein, falsely claimed that Nephrologica provided: the quickest, most efficient process to locate a living compatible donor (in as little as two weeks); only "Healthy Living Compatible Donors"; patient consulting; thorough screening, evaluation, and matching of the donor; psychological evaluation for the donor and recipient; full coordination of transplant; legal services involved if any; travel and accommodations arrangement; pre-transplant

preparation; follow up care; and 24-hour call service during week of transplantation. (*See Exhibit A.*)

6. Nephrologica did not provide any of these services to the complainant, nor had it ever provided any of these services to anyone else. In fact, Nephrologica never located a kidney donor for anyone.

7. In addition to the complainant, Nephrologica had several other clients who paid Goldstein money for services related to locating kidney donors. Nephrologica maintained an Internet site, under Goldstein's control, that contained an online form into which consumers seeking Nephrologica's services could enter protected health information. The complainant, as well as other clients and potential clients of Nephrologica, entered such information into the form.

8. In July and August 2011, Goldstein posted solicitations on various Internet sites seeking kidney donors. The solicitations provided Goldstein's phone number and email address, and stated, "We will cover all travel expenses as well as missed work earnings (up to \$10,000)." Numerous individuals, from across the United States and around the world, responded to these solicitations by email. On July 18, 2011, one individual wrote to Goldstein by email: "Hi Mike, I'm waiting to hear from you." On July 29, 2011, a second individual wrote to Goldstein by email: "Goodday, before we deal, I got a questions to ask and I demand an answer: Will you be able and ready to take care of the responsibilities / logistics provisions that are involved?" On August 10, 2011, a third individual, from India, wrote to Goldstein by email: "I am willing to donate my kidney for my financial problems." Goldstein replied by email the next day, "What is

your phone number? Where are you located? What's your blood type?" These questions indicate that Goldstein was attempting to purchase a kidney from the third individual.

9. Goldstein operated Nephrologica in a fraudulent manner from approximately 2009 through January 2013.

10. In 2012, the OAG's Health Care Bureau received a complaint from the complainant, who had paid \$6,000 to Nephrologica for assistance in locating a kidney donor for his parent, who was suffering from kidney disease. Goldstein failed to provide such assistance, despite many attempts by the complainant to secure such assistance over a six month period. Goldstein then delayed refunding the complainant's money for six months, doing so only after the OAG's intervention.

11. The more than 8,000 people waiting for kidney donors in New York State comprise a vulnerable population. Moreover, State and national kidney donor networks depend on trust in order to succeed in their mission of helping people with serious illness. Thus, it is imperative that businesses that provide services to these individuals be conducted with transparency and integrity.

APPLICABLE LAW

12. The New York General Business Law prohibits “[d]eceptive acts or practices in the conduct of any business, trade or commerce or in the furnishing of any service in this state. . . .” N.Y. G.B.L. § 349(a).

13. The New York General Business Law prohibits “[f]alse advertising in the conduct of any business, trade or commerce or in the furnishing of any service in this state. . . .” N.Y. G.B.L. § 350. False advertising is defined as advertising that is “misleading in a material respect.” N.Y. G.B.L. § 350-a(1).

14. The New York General Business Law prohibits a person from conducting business in New York under any name other than his real name unless, if the business is other than a corporation or a partnership, he files a certificate with the clerk of the county in which the business is being conducted. N.Y. G.B.L. § 130.

15. The New York General Business Law prohibits a person or firm from using, for the purposes of trade, any address which may mislead the public as to the true address or location of such person or firm. N.Y. G.B.L. § 133.

16. The New York Penal Law provides that a person is guilty of false advertising when, with intent to promote the sale of services, he makes or causes to be made a false or misleading statement in any advertisement, addressed to the public. N.Y. Penal Law § 190.20.

17. The New York Penal Law provides that a person is guilty of scheme to defraud in the second degree when he engages in a scheme constituting a systematic ongoing course of conduct with intent to obtain property from more than one person by

false pretenses, and so obtains property from one or more of such persons. N.Y. Penal Law § 190.60.

18. The New York Public Health Law provides that it is unlawful for “any person to knowingly acquire, receive, or otherwise transfer for valuable consideration any human organ for use in human transplantation.” N.Y. Pub. Health Law § 4307.

19. The National Organ Transplant Act provides that “[i]t shall be unlawful for any person to knowingly acquire, receive, or otherwise transfer any human organ for valuable consideration for use in human transplantation if the transfer affects interstate commerce.” 42 U.S.C. § 274e(a).

20. The New York State Executive Law authorizes the Attorney General, where there are “repeated fraudulent or illegal acts” or “persistent fraud or illegality in the carrying on, conducting or transaction of business,” to seek relief, including enjoining the continuance of such business activity or of any fraudulent or illegal acts, as well as restitution and damages. N.Y. Exec. Law § 63(12).

21. Based on the findings of the Attorney General's investigation, the Attorney General has determined that Goldstein’s conduct has resulted in violations of N.Y. Executive Law Section 63(12).

NOW, WHEREAS, Goldstein neither admits nor denies the Attorney General’s findings in Paragraphs 1 through 11; and

WHEREAS, the Attorney General is willing to accept the terms of this Assurance under Executive Law § 63(15) and to discontinue his investigation; the parties each believe that the obligations imposed by this Assurance are prudent and appropriate; and the Attorney General has determined that this Assurance is in the public interest.

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

PROSPECTIVE RELIEF – WINDING DOWN NEPHROLOGICA

22. Within 30 (thirty) days of the Effective Date, Goldstein will wind down and cease all of Nephrologica's business operations in the State of New York, and shall take the following actions:

a. Goldstein will deactivate any Internet site for Nephrologica under his possession, custody, or control, and will remove from any Internet sites or pages under his possession, custody, or control, all references to Nephrologica.

b. Goldstein will inform each Nephrologica client in writing that the entity has ceased operations.

c. Goldstein will destroy or return to any Nephrologica client all protected health information relating to such client in his possession, custody, or control.

d. Goldstein will post notices stating that Nephrologica has ceased operations on websites that contain information about Nephrologica, including, but not limited to Facebook.com, Myspace.com, LinkedIn.com, Causes.com, Renalfellow.blogspot.com, Transplantcafe.com, Nephrologica.blogspot.com, nephrologica-medichat.blogspot.com, and any web home page for the World Kidney Network.

23. For a period of six (6) years following the Effective Date, Goldstein agrees not to conduct or operate, in New York State, any business that provides for a fee, or claims to provide for a fee, direct services, including assistance in locating live kidney donors, to persons with health conditions.

RETROSPECTIVE RELIEF - CONSUMER RESTITUTION

24. Goldstein will provide to the OAG the name, address, phone number, email address, and payment information for each of Nephrologica's clients.

25. Within thirty (30) days of the Effective Date, Goldstein will refund to each Nephrologica client all monies he or she paid for Nephrologica's services.

COSTS

26. Goldstein shall pay \$5,000 to OAG for costs incurred by the OAG in its investigation of this matter. Such sum shall be payable in installments, provided that the entire amount is paid within one (1) year of the Effective Date.

MISCELLANEOUS

Compliance

27. Goldstein shall submit to the OAG, within sixty (60) days of the completion of the winding down activities and restitution set forth in paragraphs 22, 24 and 25, a letter certifying and setting forth his compliance with this Assurance (the "Compliance Letter"), providing copies of his notices notifying the public that Nephrologica has ceased operations.

28. The Compliance Letter shall include details of the winding down and restitution processes, including: names of individuals who received refunds, refund letters, the refund amount, and the steps taken to comply with all aspects of the Prospective Relief requirements set forth in paragraphs 22 and 23 above.

29. If, after submission of the Compliance Letter, the OAG determines that Goldstein received payment from additional individuals for services rendered by Nephrologica, but has not refunded such payments, Goldstein will be subject to penalties,

in addition to an obligation to refund such payments.

Goldstein's Representations

30. The OAG has agreed to the terms of this Assurance based on, among other things, the representations made to the OAG by Goldstein and its counsel and the OAG's own factual investigation as set forth in the above Findings. To the extent that any material representations are later found to be inaccurate or misleading, this Assurance is voidable by the OAG in its sole discretion.

Communications

31. All communications, reports, correspondence, and payments that Goldstein submits to the OAG concerning this Assurance or any related issues is to be sent to the attention of the person identified below:

Michael D. Reisman, Esq.
Assistant Attorney General
Health Care Bureau
Office of the New York Attorney General
120 Broadway
New York, New York 10271
Michael.reisman@ag.ny.gov

32. All checks issued pursuant to this Assurance shall be made payable to "State of New York Department of Law," and all payments and correspondence related to this Assurance must reference "Assurance 13-460."

33. Receipt by the OAG of materials referenced in this Assurance, with or without comment, shall not be deemed or construed as approval by the OAG of any of the materials, and Goldstein shall not make any representations to the contrary.

34. All notices, correspondence, and requests to Goldstein shall be directed as follows:

Michael Goldstein
2 Ann Drive
Freeport, NY 11520

Valid Grounds and Waiver

35. Goldstein hereby accepts the terms and conditions of this Assurance and waives any rights to challenge it in a proceeding under Article 78 of the Civil Practice Law and Rules or in any other action or proceeding.

No Deprivation of the Public's Rights

36. Nothing herein shall be construed to deprive any member or other person or entity of any private right under law or equity.

No Blanket Approval by the Attorney General of Goldstein's Practices

37. Acceptance of this Assurance by the OAG shall not be deemed or construed as approval by the OAG of any of Goldstein's acts or practices, or those of his agents or assigns, and none of them shall make any representation to the contrary.

Monitoring by the OAG

38. To the extent not already provided under this Assurance, Goldstein shall, upon request by the OAG, provide all documentation and information necessary for the OAG to verify compliance with this Assurance. This Assurance does not in any way limit the OAG's right to obtain, by subpoena or by any other means permitted by law, documents, testimony, or other information.

No Limitation on the Attorney General's Authority

39. Nothing in this Assurance in any way limits the OAG's ability to investigate or take other action with respect to any non-compliance at any time by Goldstein with respect to this Assurance, or Goldstein's noncompliance with any

applicable law with respect to any matters.

No Undercutting of Assurance

40. Goldstein shall not take any action or make any statement denying, directly or indirectly, the propriety of this Assurance or expressing the view that this Assurance is without factual basis. Nothing in this paragraph affects Goldstein's (a) testimonial obligations or (b) right to take legal or factual positions in defense of litigation or other legal proceedings to which the OAG is not a party.

Governing Law; Effect of Violation of Assurance of Discontinuance

41. Under Executive Law § 63(15), evidence of a violation of this Assurance shall constitute prima facie proof of a violation of the applicable law in any action or proceeding thereafter commenced by the OAG.

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

43. If a court of competent jurisdiction determines that Goldstein has breached this Assurance, Goldstein shall pay to the OAG the cost, if any, of such determination and of enforcing this Assurance, including without limitation legal fees, expenses, and court costs.

No Presumption Against Drafter; Effect of any Invalid Provision

44. None of the parties shall be considered to be the drafter of this Assurance or any provision for the purpose of any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafter hereof. This Assurance was drafted with substantial input by all parties and their counsel, and no reliance was placed on any representation other than those contained in this

Assurance.

45. In the event that any one or more of the provisions contained in this Assurance shall for any reason be held 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.

Entire Agreement; Amendment

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

47. This Assurance contains an entire, complete, and integrated statement of each and every term and provision agreed to by and among the parties, and the Assurance is not subject to any condition not provided for herein. This Assurance supersedes any prior agreements or understandings, whether written or oral, between and among the OAG and Goldstein regarding the subject matter of this Assurance.

48. This Assurance may not be amended or modified except in an instrument in writing signed on behalf of all the parties to this Assurance.

49. The division of this Assurance into sections and subsections and the use of captions and headings in connection herewith are solely for convenience and shall have no legal effect in construing the provisions of this Assurance.

Binding Effect

50. This Assurance is binding on and inures to the benefit of the parties to this Assurance and their respective successors and assigns, provided that no party, other than the OAG, may assign, delegate, or otherwise transfer any of its rights or obligations

under this Assurance without prior written consent of the OAG.

Effective Date

51. This Assurance is effective on the date that it is signed by the Attorney General or his authorized representative (the “Effective Date”), and the document may be executed in counterparts, which shall all be deemed an original for all purposes.

AGREED TO BY THE PARTIES:

Dated: _____, New York
November 15, 2013



MICHAEL GOLDSTEIN

Dated: New York, New York
November 18, 2013

ERIC T. SCHNEIDERMAN
Attorney General of the State of New York

By 

Michael D. Reisman, Esq.
Assistant Attorney General
Health Care Bureau

EXHIBIT A



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Nephrologica Inc. provides the best consulting and international coordination for kidney transplant operations in the world. With our services patients receive the most efficient and professional care. Our program includes the following services:

- * The quickest, most efficient process to locate a living compatible donor (As little as two weeks in extreme cases)
- * We only provide "Healthy Living Compatible Donors"
- * Patient Consulting
- * Thorough screening, evaluation, and matching of the donor
- * Psychological evaluation for the donor and recipient
- * Full Coordination of Transplant
- * Legal Services involved if any
- * Travel and Accommodations arrangement
- * Pre-transplant preparation
- * Follow up care
- * 24 hr. call service during week of transplantation

Traveling? We can set up dialysis for you. To obtain more information about our kidney transplant program and how you can become eligible to receive a kidney from a living donor please fill out our recipient form.

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