ATTORNEY GENERAL OF THE STATE OF NEW YORK

In the Matter of

WorkFitMedical, LLC

Assurance No. 15-339

ASSURANCE OF DISCONTINUANCE
UNDER EXECUTIVE LAW
SECTION 63, SUBDIVISION 15

Pursuant to the provisions of Executive Law § 63(12) and Article 22-A of the General Business Law, Eric T. Schneiderman, Attorney General of the State of New York, caused an inquiry to be made into certain business practices of WorkFitMedical, LLC ("WorkFit") relating to representations that WorkFit made to its patients after it took over operations of an urgent care center located at 1971 Western Avenue, Albany, New York on September 20, 2013. Based upon the inquiry, the New York State Office of the Attorney General ("OAG") has made the following findings, and WorkFit has agreed to modify and/or discontinue certain practices and assure compliance with the following provisions of this Assurance of Discontinuance ("Assurance").

I. BACKGROUND

1. On September 20, 2013, WorkFit, a limited liability company owned by Doctor C. Jay Ellie, Jr., completed the acquisition of Concentra Urgent Care Center in Albany, New York.

2. WorkFit has been in existence since 2002 as an occupational health services provider in Rochester, New York. "Occupational health" encompasses all of the health services that an employer provides to its employees, such as drug testing and pre-employment physicals, and also includes treatment of work-related injuries and illnesses.

3. WorkFit currently has three locations, two of which serve western New York. In Rochester and Batavia, WorkFit provides predominately occupational health services. In Albany, WorkFit provides both occupational health services as well as urgent care.

II. THE OAG'S INVESTIGATION AND FINDINGS

4. In September 2013, after finalizing its acquisition of Concentra Urgent Care Center in Albany, WorkFit continued to serve UnitedHealthcare Empire Plan ("Empire Plan") members while concurrently pursuing "in-network" status with the Empire Plan. During this time period, employees of WorkFit represented to prospective and current patients that WorkFit was in Empire's network at a time when WorkFit did not have a contract with the Empire Plan, and so was "out-of-network." Concentra had previously contracted with the Empire Plan as an "in-network" provider.

5. WorkFit apparently first became aware of consumer confusion regarding WorkFit's status with the Empire Plan in October 2013 when consumers who were Empire Plan members complained to WorkFit that they were being billed for an out-of-network service, when the consumers believed that WorkFit was in-network. WorkFit then began to make adjustments to consumer bills for those consumers in the Empire Plan who complained to WorkFit.

6. Nevertheless, even after WorkFit was on notice of this problem, WorkFit continued until December 2014 to serve Empire Plan members without notifying these members of its "out-of-network" status, and consequently billed 325 Empire Plan members at the "out-of-network" rate.

7. The Office of the Attorney General contacted WorkFit in January 2015 at which time WorkFit agreed to hold all bills of Empire Plan members pending resolution. WorkFit represents that billing of Empire Plan members for the identified time period had ceased by January 2015, with one exception when a statement was released in error.

8. From September 2013 until December 2014, WorkFit charged Empire Plan members approximately $196,336.00 more than the member responsibility would have been if WorkFit had actually been in-network.

9. During this time period, and continuing thereafter, WorkFit adjusted many patient bills after having been contacted by patients with complaints, ultimately adjusting approximately $145,174.22 in patient bills. However, these adjustments did not cover all Empire members who were improperly billed.

10. As a result of analysis of the data, WorkFit asserts that as of the date of this agreement, Empire Plan members are entitled to (1) refunds in the amount of $16,972.72 and (2) adjustments to zero of outstanding bills for those members whose accounts reflect a current outstanding balance.

11. The OAG finds that WorkFit (1) engaged in continued and repeated representations of in-network status at a time when WorkFit was not in-network, but rather was pursuing in-network status with Empire Plan; (2) failed to correct these misrepresentations in a reasonable time, in that a review of data shows that Empire Plan members continued to contact WorkFit with billing complaints governing dates of service from September 2013 through December 2014; and (3) billed Empire Plan members for charges arising from medical care that were not covered by insurance because of WorkFit's out-of-network status with Empire Plan even after WorkFit became aware of consumer confusion regarding its status with the Empire Plan.

III. RELEVANT LAW

12. The New York General Business Law prohibits "deceptive acts or practices in the conduct of any business, trade or commerce or in the furnishing of any service" in New York State. N.Y. Gen. Bus. Law § 349.

13. The New York Executive Law prohibits "illegal or fraudulent acts" in the conduct of any business, trade or commerce, and allows the OAG to institute a special proceeding for restitution, damages, and/or injunctive relief against any party which has committed such acts. N.Y. Exec. Law § 63(12).

14. The OAG finds that the practices described above constitute violations of New York General Business Law§ 349 and Executive Law § 63(12).

NOW, WHEREAS, WorkFit neither admits nor denies the OAG's findings above and the OAG is willing to accept the terms of this Assurance under Executive Law § 63(15) and to discontinue this investigation; the parties each believe that the obligations imposed by this Assurance are prudent and appropriate; and the OAG has determined that this Assurance is in the public interest.

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

IV. PROSPECTIVE RELIEF

15. WorkFit agrees to train employees and agents and modify its practices, procedures, and policies in accordance with the provisions of this Assurance.

16. WorkFit agrees to provide a written list of health care plans to all patients at the time of registration that WorkFit has contracted with as an in-network participating provider.

17. WorkFit agrees to post a sign at the registration desk that informs patients of the availability of the health plan list.

18. On its website WorkFit agrees to identify all health plans with which it has contracted to be an in-network participating provider, such that a member receiving care at WorkFit will have only in-network cost sharing responsibilities. If WorkFit does not participate with all

products that the health plan offers, WorkFit shall identify with specificity those insurance products for which it is an in-network participating provider.

19. WorkFit agrees to cease using the term "accept" in relation to a health care plan. Instead, WorkFit shall describe its affiliation with health care plans as an "in-network participating provider" or "out-of-network." WorkFit shall also explain that "out-of-network" will lead to higher charges than in-network services.

20. If WorkFit does not provide a patient with accurate information regarding its participation status with a health care plan, WorkFit shall work with the health plan to ensure that the patient does not incur greater out-of-pocket costs than the patient would have incurred in accordance with in-network obligations and shall take immediate corrective action, no later than five (5) business days, and such corrective action shall include retraining of staff.

21. With respect to its provision of urgent care services, WorkFit agrees to require that all health care providers providing these services are in-network participating providers with all health care plans with which WorkFit contracts as an in-network participating provider.

22. WorkFit agrees to update any changes to network participation status on its written disclosures immediately and no later than five (5) business days from notice of the change in status.

23. WorkFit agrees to disclose to patients the availability of fee information, and, upon request, disclose to the patient the total cost for services that WorkFit will bill the patient.

24. WorkFit agrees to continue to cooperate with the OAG and promptly resolve all consumer complaints that the OAG submits to WorkFit, or otherwise come to the attention of WorkFit.

25. Within 90 days from the Effective Date, WorkFit agrees to send a written certification to the OAG that it has completed and/or is complying with each of the above

requirements, with documentation demonstrating compliance. WorkFit shall then, on an annual basis for three years, certify its continuing compliance with the provisions of this Assurance in paragraphs 15 through 23.

V. CONSUMER RESTITUTION

26. Within 30 days of the Effective Date of this Assurance, WorkFit shall issue restitution to all members of Empire Plan who were seen as patients at WorkFit from September 2013 through December 2014 and paid for services rendered in excess of the amount of "co-payment" required for seeing an in-network participating provider. In addition to restitution (a) WorkFit shall adjust the accounts and issue statements to all members of Empire Plan who were seen as patients at WorkFit from September 2013 through December 2014 and whose accounts reflect a current outstanding balance, so that the accounts reflect a zero balance; and (b) WorkFit represents that no collection activity has been initiated as to any of those accounts.

27. The individuals described in paragraph 26 above will be identified as "Eligible Group."

28. Within 30 days of the Effective Date of this Assurance, WorkFit agrees to issue a restitution check to Empire Plan Members it has identified and shared with the OAG, totaling $16,972.72. The restitution check shall also include twelve (12) percent interest per annum from the date WorkFit received the payment to the date of refund. WorkFit shall send the restitution checks by regular mail to the last known address of the Eligible Member. WorkFit shall make reasonable efforts to ensure the restitution checks are received, which shall include but not be limited to contacting the United States Post Office for a possible forwarding address.

29. Within 45 days of the Effective Date of this Assurance, WorkFit shall submit to the OAG a letter, with supporting documentation, certifying its compliance with Paragraphs 26 through 28 of this Assurance.

30. WorkFit further agrees that it will not attempt to collect "co-payments" from Empire Plan members who did not pay at the time of service during the identified time period.

31. Auditor: WorkFit shall appoint an auditor (the "Auditor"). The auditor shall be an independent individual or entity selected by WorkFit and paid for and contracted by WorkFit as follows:

a. Within 30 days of the Effective Date, WorkFit shall select the Auditor, subject to OAG approval.

b. The Auditor shall review WorkFit's business records in order to verify that all members of the representative group identified by WorkFit (described in paragraph 26) were properly identified, and that WorkFit's identification of charges, payments and refunds due are consistent with the terms of this Assurance.

c. The Auditor shall present its findings in a written report (the "Auditor's Report") to the OAG and WorkFit three months after the Effective Date. If the auditor identifies additional refunds that are due to members under the terms of the Assurance, WorkFit shall issue such refunds within 15 (fifteen) days of the Auditor's Report.

VI. PENALTIES, FEES AND/OR COSTS

32. Within thirty days of the Effective Date of this Assurance, WorkFit shall pay $12,500.00 (twelve thousand five hundred dollars) by check to the "State of New York Department of Law."

VII. GENERAL PROVISIONS

33. WorkFit's Representations: The OAG has agreed to the terms of this Assurance based on, among other things, the representations made to the OAG by WorkFit 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.

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

Adrienne Lawston
Assistant Attorney General
Office of the Attorney General
Health Care Bureau
The Capitol
Albany, New York 12224

32. All notices, correspondence, and requests to WorkFit shall be directed as follows:

Matt Huntington
Corporate Director of Operations
1160 Chili Avenue, Suite 200
Rochester, New York 14624

35. Valid Grounds and Waiver: WorkFit 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.

36. No Deprivation of the Public's Rights: Nothing herein shall be construed to deprive any member or other person or entity of any private right under law or equity.

37. No Blanket Approval by the Attorney General of WorkFit's Practices: Acceptance of this Assurance by the OAG shall not be deemed or construed as approval by the

OAG of any of WorkFit's acts or practices, or those of its agents or assigns, and none of them shall make any representation to the contrary.

38. Monitoring by the OAG: To the extent not already provided under this Assurance, WorkFit shall, upon request by the OAG, provide all documentation and information necessary for the OAG to verify compliance with this Assurance. WorkFit may request an extension of particular deadlines under this Assurance, but OAG need not grant any such request. 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.

39. No Limitation on the Attorney General's Authority: Nothing in this Assurance in any way limits the OAG's ability to investigate or take other action with respect to any noncompliance at any time by WorkFit with respect to this Assurance, or WorkFit's noncompliance with any applicable law with respect to any matters.

40. No Undercutting of Assurance: WorkFit 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 WorkFit's testimonial obligations, or right to take legal or factual positions in defense of litigation or other legal proceedings to which the OAG is not a party.

41. It is the parties' intention that none of the provisions in this Assurance may be used as evidence in any litigation or other legal proceedings to which the OAG is not a party. None of the legal and factual statements in this Assurance shall operate as an admission by WorkFit in any litigation or other legal proceeding to which the OAG is not a party and WorkFit reserves the right to deny, challenge or refute any such legal or factual assertions in any litigation or other legal proceeding to which the OAG is not a party.

42. Under Executive Law Section 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.

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

44. If a court of competent jurisdiction determines that WorkFit has breached this Assurance, WorkFit 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.

45. 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 no reliance was placed on any representation other than those contained in this Assurance.

46. 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.

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

48. 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 WorkFit regarding the subject matter of this Assurance.

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

50. 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.

51. Binding Effect: 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.

52. Effective Date: 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: December 23rd, 2015

WorkFitMedical, LLC

By: _____
Brian Banas
Chief Operating Officer
WorkFitMedical, LLC

Dated: Albany, New York

December 23, 2015

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

LISA LANDAU
Health Care Bureau Chief

By: _____
Adrienne L. Lawston
Assistant Attorney General
Health Care Bureau