

OFFICE OF THE ATTORNEY GENERAL
OF THE STATE OF NEW YORK
CIVIL RIGHTS BUREAU

IN THE MATTER OF THE INVESTIGATION OF
ERIC T. SCHNEIDERMAN, ATTORNEY GENERAL OF
THE STATE OF NEW YORK,

OF

INTERIM HEALTHCARE INC. OF GREATER NEW
YORK (INTERIM HEALTHCARE)

AOD No. 16-062

ASSURANCE OF DISCONTINUANCE

In October 2015, the Office of the Attorney General of the State of New York (“OAG”) learned that Interim Healthcare of Greater New York (“Interim Healthcare”) had placed a newspaper advertisement for caregivers in which it specified “no Haitians” and requested only female applicants. In response, the OAG began an investigation pursuant to New York State Executive Law § 63(12) to determine whether Interim Healthcare had a practice of discriminating against applicants or potential applicants on the basis of national origin, gender, or other protected classes, in violation of Title VII of the Civil Rights Act, 42 U.S.C.S. § 2000e-3 *et. seq.* and the New York State Human Rights Law, New York Executive Law § 296(1)(d).

This Assurance of Discontinuance (“Assurance”) contains the OAG’s findings in connection with its investigation of Interim Healthcare and the relief agreed to by the OAG and Interim Healthcare (the “Parties”) with respect to its New York State locations.

PART ONE: DEFINITIONS

- I. As used throughout this Assurance, the terms set forth below shall have the following meanings.
 - a. “Advertisement” means advertisements for employment at Interim Healthcare that are published or otherwise distributed.
 - b. “Employee,” for purposes of this Assurance, means any person performing work for and compensated by Interim Healthcare within the State of New York.
 - c. “Applicant” means any person seeking to apply, applying for, or considered for employment as an Employee by Interim Healthcare within New York State.
 - d. “Effective Date” means the date this Assurance is executed by an authorized representative of the OAG.
 - e. “Interim Healthcare” means Interim Healthcare of Greater New York and all of its owners, officers, executives, directors, managers, representatives, employees and all individuals who act on its behalf, subsidiaries and affiliates.
 - f. Terms of construction:
 - i. “And” and “or” shall be construed conjunctively or disjunctively as necessary to make the meaning inclusive rather than exclusive.
 - ii. “All” means “any and all” and “any” means “any and all.”
 - iii. “Concerning” means relating to, referring to, describing, evidencing, regarding, reflecting, or constituting.

- iv. “Day” refers to a calendar day, not a business day.
- v. “Including” means without limitation.
- vi. The singular of any word includes the plural; the plural of any word includes the singular.

PART TWO: FINDINGS

- 2. Interim Healthcare of Greater New York is an independently owned and operated local franchise of the national organization, Interim Healthcare, Inc. Interim Healthcare has locations in Nanuet, Stony Brook and White Plains, New York.
- 3. Interim Healthcare employs caregivers to provide medical care and other related services according to patients’ needs. Interim Healthcare recruits caregivers in part through advertisements in local newspapers and online classified advertisement websites, such as Craigslist Inc.
- 4. In October 2015, the OAG learned that Interim Healthcare’s Nanuet location placed a discriminatory advertisement excluding Haitian applicants from a caregiver position. The advertisement stated that Interim Healthcare was seeking a “laid back nurse, no Haitians.”
- 5. The advertisement also excluded male applicants. The OAG learned that Interim Healthcare published numerous other advertisements that explicitly excluded applicants by gender.
- 6. In response, the OAG commenced an investigation of Interim Healthcare, which included reviewing policies relating to hiring, advertising and internal

complaints; anti-discrimination policies; copies of published advertisements for employment; and documents produced by Interim Healthcare relating directly to the advertisement excluding Haitian applicants. The OAG also spoke with representatives from Haitian-American professional and community organizations.

7. During the course of the investigation, the OAG found that the advertisement excluding Haitian and male applicants stemmed from a patient's discriminatory request. In early 2015, a patient's family placed a request with Interim Healthcare's Nanuet location, specifically asking for a nurse who was not Haitian. In response, the Interim Healthcare Home Care Coordinator informed the patient that Interim Healthcare is an equal opportunity employer.
8. On October 7, 2015, the Home Care Coordinator copied and pasted the patient's request, including the discriminatory language, on a spreadsheet that matched patient needs with caregivers. The spreadsheet was sent to then Interim Healthcare Human Resources Manager and to other Interim Human Resources administrators. Two days later, the Human Resources Manager sent the patients' needs listed in the spreadsheet to be placed in advertisements for caregivers, without reviewing the spreadsheet or the ultimate advertisements for compliance with governing laws. On October 15, 2015, the discriminatory advertisement excluding Haitian and male applicants was published in the Rockland County Pennysaver (the "Pennysaver").
9. The OAG's investigation also revealed that, in addition to the advertisements that explicitly requested male or female applicants, Interim Healthcare placed

numerous advertisements that exclusively featured images of women, which may have discouraged male applicants from applying for the advertised positions.

10. The OAG found that Interim Healthcare failed to have a procedure to conduct an individualized analysis of each patient's request for a male or female caregiver to determine if there was a bona fide occupational qualification justifying a gender-specific request, as required by Title VII of the Civil Rights Act and New York State Executive Law § 296(1)(d).
11. Ultimately, the OAG's investigation found that Interim Healthcare had inadequate safeguards to prevent or remedy unlawful employment discrimination based on discriminatory requests of patients. Specifically, Interim Healthcare lacked (1) oversight and procedures to vet patients' requests for caregivers based on impermissible characteristics protected under the law, (2) anti-discrimination training related to processing new patients' requests for caregivers and recruiting and hiring caregivers to meet patients' needs, (3) policies to notify patients or potential patients about Interim Healthcare's equal employment opportunity policies at/or before the time of a patient's request for a caregiver, and (4) oversight and procedures to ensure that advertisements for employment complied with governing civil rights laws.
12. Based on the foregoing, the OAG has determined that Interim Healthcare has violated Title VII of the Civil Rights Act, 42 U.S.C.S. § 2000e-3, and New York State Executive Law § 296(1)(d).
13. Interim Healthcare has cooperated with the OAG's investigation and made initial remedial efforts. Interim Healthcare removed the discriminatory advertisement

from the Pennysaver the day after it was published, and published apologies on its website and in the Pennysaver. During the course of the investigation, Interim Healthcare revised its policies and procedures, conducted a worker sensitivity training at the Nanuet location, and restructured its Human Resources Department.

14. Following meetings and discussions between the Parties, Interim Healthcare expressed interest in further reforming its policies and practices, and both Parties sought to resolve the matter and agreed to enter into the instant Assurance for settlement purposes.

PART THREE: PROSPECTIVE RELIEF

WHEREAS, Interim Healthcare is subject to the New York State Executive Law § 290 *et seq.* and Title VII of the Civil Rights Act, 42 U.S.C. § 2000e-3 *et seq.*, which prohibits advertising that may indicate a preference, limitation, or discrimination based on race, color, religion, sex, or national origin;

WHEREAS, Title VII of the Civil Rights Act and the New York State Human Rights Law were enacted to protect the rights of individuals to employment regardless of race, color, sex, or national origin;

WHEREAS, the OAG seeks to ensure that all individuals have equal access to employment regardless of their race, color, sex, or national origin;

WHEREAS, the OAG's investigation included reviewing and analyzing documents responsive to a letter request and publicly available information; and speaking with community organizations;

WHEREAS, Interim Healthcare recognizes the importance of ensuring that all Applicants are treated equally regardless of their race and/or ethnicity; and

WHEREAS, robust anti-discrimination policies, procedures and training can help ensure that Applicants do not face disparate treatment;

WHEREAS, Interim Healthcare neither admits nor denies the OAG's Findings set forth in Paragraphs 2 – 14;

WHEREAS, the OAG is willing to accept the terms of this Assurance pursuant to New York State Executive Law § 63(15) and to discontinue its investigation of Interim Healthcare's non-compliance with the Civil Rights Act and New York State Human Rights Law; and

WHEREAS, the parties believe that the obligations imposed by this Assurance are prudent and appropriate;

IT IS HEREBY UNDERSTOOD AND AGREED, by and between Interim Healthcare and the OAG as follows:

PART FOUR: GENERAL COMPLIANCE WITH THE LAW

14. Interim Healthcare shall comply fully with the obligations, terms, and conditions of New York State Human Rights Law, New York State Executive Law § 296 *et seq.*; and Title VII, 42 U.S.C. § 2000e-3 *et seq.* to not discriminate against applicants or potential applicants on the basis of national origin, gender, or other protected classes.

PART FIVE: POLICIES AND PROCEDURES

15. Interim Healthcare shall adopt a written Caregiver Placement Equal Employment Opportunity Policy (“Caregiver Placement EEO Policy”) regarding prohibited conduct in processing patients’ requests for caregivers, hiring and advertising for employment under federal, state and local anti-discrimination laws, and in accordance with this Assurance.
16. Interim Healthcare’s Vice President of Human Resources (“Human Resources VP”) shall oversee the processing of patients’ requests for caregivers, advertising and hiring process to ensure compliance with this Assurance, Interim Healthcare’s Equal Employment Opportunity Policy, and all federal, state, and local anti-discrimination laws.
17. Within thirty days of the Effective Date, Interim Healthcare shall provide the Caregiver Placement EEO Policy to the OAG for approval. Within thirty days of the OAG’s approval, Interim Healthcare shall adopt and implement the Caregiver Placement EEO Policy. The Human Resources VP will ensure that all in-office Employees are provided with copies of the Caregiver Placement EEO Policy.
18. The Caregiver Placement EEO Policy shall include the following provisions:
 - a. An Anti-Discrimination Statement setting forth Interim Healthcare’s Equal Employment Opportunity Policy as it pertains to patients’ requests for caregivers, hiring and advertising;
 - b. A Patient Notification Equal Employment Opportunity Policy requiring that patients and/or their family members be notified about Interim

Healthcare's Equal Employment Opportunity Policy, orally and in writing at the start of care, with every effort to make the notification accessible to all patients, regardless of language needs or disability status. The Human Resources VP shall create a standardized Patient Notification Equal Employment Opportunity Policy Form for the use of all Employees conducting intake.

- c. An Assignment of Cases Policy that provides a consistent approach in responding to patients and/or family members when specific requests are made regarding caregiver qualifications. This Policy shall comply with this Assurance, Interim Healthcare's Equal Employment Opportunity Policy, and all federal, state, and local anti-discrimination laws. The Policy should include:
 - i. Guidelines on addressing requests for caregivers based on any category protected by federal, state or local law, and
 - ii. Guidelines for addressing gender-specific requests and instructions on completing the Patient Request For Gender-Specific Or Other Bona Fide Occupational Qualification Caregiver form;
- d. The Human Resources VP shall review all Patient Request For Gender-Specific Or Other Bona Fide Occupational Qualification Caregiver forms to ensure compliance with this Assurance, Interim Healthcare's Equal Employment Opportunity Policy, and all federal, state, and local anti-discrimination laws.

- e. The Director of Recruitment shall review all advertisements for employment, prior to submission for publication to ensure compliance with this Assurance, Interim Healthcare's Equal Employment Opportunity Policy, and all federal, state, and local anti-discrimination laws.

PART SIX: TRAINING

19. Within thirty days of the OAG's approval of the Caregiver Placement EEO Policy, Interim Healthcare shall develop a training program ("Anti-Discrimination Training Program"), subject to the OAG's approval, which shall include training on (a) Equal Employment and Anti-Discrimination Policies and (b) the Caregiver Placement EEO Policy. The training should include hypotheticals and illustrative examples of prohibited conduct. The training topics should include discrimination based on gender, national origin, and race.
20. Within sixty days of the OAG's approval of the Anti-Discrimination Training Program, Interim Healthcare's employees whose responsibilities involve patients' requests for caregivers, recruitment, advertisement, and hiring, shall participate in the Anti-Discrimination Training Program. Interim Healthcare shall continue to administer the Training Program on an annual basis.
21. Interim Healthcare shall also administer the Anti-Discrimination Training Program to all new employees whose responsibilities involve patients' requests for caregivers, recruitment, advertisement, and hiring, within thirty days of their date of hire.

PART SEVEN: COMPLAINTS

22. Interim Healthcare shall investigate all complaints, written or oral, alleging discriminatory treatment on the basis of any protected status. Investigation of a complaint shall begin as soon as practicable and shall include, to the extent possible, an interview of the complainant, interviews of the Interim Healthcare Employees involved, and any other necessary steps. Interim Healthcare shall promptly notify the complainant of any action taken in response to the complaint.
23. Interim Healthcare shall provide the OAG with reports describing all complaints alleging discrimination relating to race, national origin or gender and the complaint dispositions as described in Part Eight of this Assurance.

PART EIGHT: RECORD KEEPING AND REPORTING

24. Interim Healthcare agrees to maintain all records sufficient to show compliance with this Assurance, including the following:
 - a. Records sufficient to show revisions to Interim Healthcare's policies and practices related to hiring and the processing of patients' requests for caregivers in compliance with this Assurance, including but not limited to the Caregiver Placement EEO Policy and Anti-Discrimination Training materials;
 - b. Acknowledgement forms indicating that all Employees have received the Anti-Discrimination Training and Caregiver Placement EEO Policy; and

- c. Records sufficient to show all complaints alleging discrimination, including the underlying facts; individuals involved; and the disposition of the complaint and other documents concerning complaints pursuant to Part Seven of this Assurance.
- 25. Interim Healthcare shall prepare monitoring reports and provide them to the OAG at the close of each six-month period (the “Reporting Periods”). The first Reporting Period shall begin on the Effective Date and end six months thereafter. The remaining Reporting Periods shall begin at the close of the prior Reporting Period and end six months thereafter. The reports shall demonstrate Interim Healthcare’s compliance with this Assurance, and shall include, at a minimum:
 - a. Acknowledgement forms indicating that all Employees have received the Anti-Discrimination training;
 - b. Evidence that a copy of the Caregiver Placement EEO Policy has been distributed to every Employee; and
 - c. Complaint reports pursuant to Part Seven of this Assurance.
- 26. Within thirty days after receiving a written request from the OAG, Interim Healthcare shall provide to the OAG any documents it is required to maintain under the terms of this Assurance or that relate to obligations under this Assurance, and representatives of the OAG shall be permitted to inspect such records and the covered Interim franchises at any reasonable time.
- 27. This Assurance does not in any way impair or affect the right of the OAG to seek to obtain documents from Interim Healthcare pursuant to a subpoena.

PART NINE: COSTS, EXPENSES AND FEES

28. Within ninety days of the Effective Date of this Assurance, Interim Healthcare agrees that it will pay by wire transfer, payable to the State of New York, \$100,000 in penalties, fees and costs in connection with the investigation.
29. Any payments and all correspondence related to this Assurance must reference Assurance #16-062.

**PART TEN: SCOPE OF THE ASSURANCE, JURISDICTION,
AND ENFORCEMENT PROVISIONS**

30. This Assurance shall be effective on the date that it is signed by an authorized representative of the OAG.
31. This Assurance shall expire three years after the Effective Date, except that the OAG may, in its sole discretion, and prior to the expiration of the three-year period, extend the Assurance term to four years upon a good-faith determination that Interim Healthcare has not complied with this Assurance, which non-compliance the OAG will discuss and attempt to resolve with Interim Healthcare in good faith before making such determination. The OAG shall give Interim Healthcare written notice of the specific provision(s) he contends that Interim Healthcare has not complied with and fourteen days to cure the non-compliance prior to extending the Assurance term to four years.
32. Notwithstanding any provisions of this Assurance to the contrary, the OAG may, in its sole discretion, grant written extensions of time for Interim Healthcare to comply with any provision of this Assurance. The OAG will grant reasonable extensions of time where good cause is shown.

33. The signatories to this Assurance warrant and represent that they are duly authorized to execute this Assurance and that they have the authority to take all appropriate action required or permitted to be taken pursuant to the Assurance to effectuate its terms.
34. The OAG may seek to enforce this Assurance through administrative or judicial enforcement proceedings, including a civil action in federal or state court, as appropriate, seeking specific performance of the provisions of this Assurance. Pursuant to New York State Executive Law § 63(15), evidence of a violation of this Assurance will constitute *prima facie* proof of a violation of New York State Executive Law § 63(12) in any civil action or proceeding hereafter commenced by the OAG in connection with this Assurance. If a court of competent jurisdiction determines that Interim Healthcare has breached this Assurance, Interim Healthcare agrees to pay to the OAG the costs, if any, tied to such determination and costs tied to enforcement of this Assurance, including without limitation reasonable legal fees, expenses and reasonable court costs. However, in the event of a dispute among the parties regarding any issue arising hereunder, the parties shall attempt in good faith to resolve the dispute before seeking administrative or judicial intervention. The AOG shall give Interim Healthcare written notice of the specific provision(s) he contends that Interim Healthcare has not complied with and fourteen days to cure the non-compliance prior to seeking administrative or judicial intervention.
35. The failure by the OAG to enforce this entire Assurance or any provision thereof with respect to any deadline or any other provision herein shall not be construed

as a waiver of the OAG's right to enforce other deadlines and provisions of this Assurance.

36. If any provisions, terms, or clauses of this Assurance are declared illegal, unenforceable, or ineffective in a legal forum, those provisions, terms, and clauses shall be deemed severable, such that all other provisions, terms, and clauses of this Assurance shall remain valid and binding on the parties.
37. If the Assurance is voided or breached, Interim Healthcare agrees that any statute of limitations or other time-related defenses applicable to the subject of the Assurance and any claims arising from or relating thereto are tolled from and after the date of this Assurance. In the event the Assurance is voided or breached, Interim Healthcare expressly agrees and acknowledges that this Assurance shall in no way bar or otherwise preclude the OAG from commencing, conducting or prosecuting any investigation, action or proceeding, however denominated, related to the Assurance, against Interim Healthcare, or from using in any way any statements, documents or other materials produced or provided by Interim Healthcare prior to or after the date of this Assurance.
38. No representation, inducement, promise, understanding, condition, or warranty not set forth in this Assurance has been made to or relied upon by Interim Healthcare in agreeing to this Assurance.
39. This Assurance may be executed in multiple counterparts, each of which shall be deemed a duplicate original.
40. This Assurance is final and binding on the parties, including principals, agents, representatives, successors in interest, assigns, and legal representatives thereof,

provided that no party, other than the OAG, may assign, delegate, or otherwise transfer any of its rights or obligations under this Assurance. No assignment by any party hereto, other than the OAG, shall operate to relieve such party of its obligations herewith.

41. All communications and notices regarding this Assurance shall be sent by first class mail and by facsimile or electronic mail, if twenty-five pages or less in length, to:

Office of the Attorney General
Diane Lucas
Assistant Attorney General
Civil Rights Bureau
Office of the New York State Attorney General
120 Broadway, 23rd Floor
New York, NY 10271
Tel.: (212) 416-8149
Fax: (212) 416-8074
Email: Civil.Rights@ag.ny.gov

Interim Healthcare
James Watson
508 Airport Executive Drive
Nanuet, NY 11790
Tel.: (845) 425-1884
Fax: (845) 371-6463
Email: Jwatson@interimhealthcare.com

42. Nothing in this Assurance is intended to confer any right, remedy, obligation, or liability upon any person or entity other than the parties hereto.

43. Nothing in this Assurance is intended to, nor shall, limit the OAG's investigatory compliance review powers otherwise provided by law.

IN WITNESS THEREOF, the undersigned subscribe their names:

Dated: New York, New York
March 1, 2016

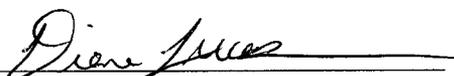
Interim Healthcare of Greater New York

By: 

CONSENTED TO:

Dated: New York, New York
March 3rd, 2016

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

By: 
Diane Lucas
Assistant Attorney General

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