

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

In the Matter of:

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

KPH HEALTHCARE SERVICES, INC.,
d/b/a KINNEY DRUGS

AOD No. 15-057

**ASSURANCE OF
DISCONTINUANCE
PURSUANT TO
EXECUTIVE LAW
63(15)**

ASSURANCE OF DISCONTINUANCE

In June 2013, the Office of the Attorney General of the State of New York (“OAG”) began to investigate, pursuant to New York Executive Law § 63(12), the policies, procedures and practices of KPH Healthcare Services, Inc., d/b/a Kinney Drugs (“Respondent”). Specifically, the OAG investigated whether Respondent complied with the New York State Human Rights Law, N.Y. Exec. Law § 290 *et seq.*, and Title III of the Americans with Disabilities Act (ADA), 42 U.S.C. § 12181 *et seq.*, in its provision of auxiliary aids and services to customers and their companions who are deaf or hard-of-hearing. This Assurance of Discontinuance contains the OAG’s findings in connection with its investigation of Respondent and the relief agreed to by the OAG and Respondent.

DEFINITIONS

1. As used throughout this Assurance, the terms set forth below shall mean as follows:
 - a. “Assurance” means this Assurance of Discontinuance.
 - b. “Effective Date” means the date that this Assurance is signed by an authorized representative of the OAG.
 - c. “OAG” means the Office of the Attorney General of the State of New York.

- d. “KPH” means KPH Healthcare Services, Inc.
- e. “Respondent” means KPH Healthcare Services, Inc. d/b/a Kinney Drugs.
- f. “Auxiliary aids and services” means qualified interpreters on-site or through video remote interpreting (VRI) services; notetakers; computer-aided transcription services; written materials; telephone handset amplifiers; assistive listening devices; assistive listening systems; telephones compatible with hearing aids; closed caption decoders; open and closed captioning, including real-time captioning; voice, text, and video-based telecommunications products and systems, including text telephones (TTYs), videophones, and captioned telephones, or equally effective telecommunications devices; videotext displays; accessible electronic and information technology; or other effective methods of making aurally delivered materials available to individuals who are deaf or hard-of-hearing.
- g. “Companion” means a family member, friend, or associate of an individual seeking access to, or participating in, the goods, services, facilities, privileges, advantages, or accommodations of a public accommodation, who, along with such individual, is an appropriate person with whom the public accommodation should communicate with respect to a Customer’s use of healthcare or pharmacy services at a Pharmacy.
- h. “Deaf” shall refer to persons who are deaf or late-deafened.
- i. “Hard-of-hearing” includes persons who have a hearing deficit and who may or may not primarily use visual aids for communication and may or may not use auxiliary aids.

- j. “Pharmacy” means any store owned or operated by Respondent that provides pharmacy or healthcare services.
- k. “Pharmacy Personnel” means all employees, independent contractors, and volunteers engaged by Respondent involved in the delivery of pharmacy or healthcare services at a Pharmacy, including, without limitation, pharmacists and their assistants.
- l. “Customer” includes any deaf or hard-of-hearing individual (or individual accompanied by a deaf or hard-of-hearing Companion) who is seeking or receiving pharmacy or healthcare services from a Pharmacy, as well as deaf or hard-of-hearing individuals seeking to use any other goods or services provided by a Pharmacy. The broad construction of this term also includes (but is not limited to) deaf or hard-of-hearing individuals seeking to communicate with representatives of a Pharmacy regarding past, present or future pharmacy or healthcare services, such as scheduling appointments, obtaining test results, and discussing billing issues.
- m. “Qualified interpreter” shall mean an interpreter who, via an on-site appearance or a video remote interpreting (VRI) service, is able to interpret competently, accurately, and impartially, both receptively and expressively, using any specialized terminology necessary for effective communication in a healthcare setting to a Customer or a Companion who is deaf or hard-of-hearing, given that individual’s language skills and history. Qualified interpreters include, for example, sign language interpreters, oral transliterators, and cued-language transliterators.

FINDINGS

2. KPH is a national provider of pharmaceutical and health care services.
3. Kinney Drugs, a division of KPH, is a chain of approximately 100 full-service pharmacies located throughout New York and Vermont.
4. Pharmacies are places of public accommodation. The Americans with Disabilities Act (ADA) defines places of public accommodation to include “pharmacies.” 42 U.S.C. § 12181(7)(F). Similarly, the New York State Human Rights Law (NYSHRL) defines places of public accommodation to include “retail stores and establishments dealing with goods or services of any kind.” N.Y. Exec. Law § 292(9).
5. The ADA and NYSHRL prohibit public accommodations from discriminating against a person with a disability by denying such person access to goods or services on the basis of that disability.
6. Specifically, the ADA’s implementing regulations require that public accommodations “shall take those steps that may be necessary to ensure that no individual is excluded, denied services, segregated or otherwise treated differently than other individuals because of the absence of auxiliary aids and services, unless the public accommodation can demonstrate that taking those steps would fundamentally alter the nature of the goods, services, facilities, privileges, advantages, or accommodations being offered or would result in an undue burden, i.e., significant difficulty or expense.” 28 C.F.R. § 36.303(a).
7. “A public accommodation should consult with individuals with disabilities whenever possible to determine what type of auxiliary aid is needed to ensure effective

communication, but the ultimate decision as to what measures to take rests with the public accommodation, provided that the method chosen results in effective communication. § 36.303(c)(1)(ii).

8. The obligation to provide auxiliary aids and services “includes an obligation to provide effective communication to companions who are individuals with disabilities.” § 36.303(c)(1). In addition, a “public accommodation shall afford goods, services, facilities, privileges, advantages, and accommodations to an individual with a disability in the most integrated setting appropriate to the needs of the individual.” § 36.203(a).
9. Similarly, the NYSHRL requires public accommodations to ensure that “no individual with a disability is excluded or denied services because of the absence of auxiliary aids and services.” N.Y. Exec. Law § 296.2.
10. New York Executive Law § 63(12) prohibits repeated or persistent fraudulent or illegal acts in the transaction of business.
11. From June 2013 through November 2014, the OAG conducted an investigation into whether Respondent complied with the obligations of the NYSHRL and the ADA relating to auxiliary aids and services.
12. In its investigation of Respondent, the OAG found evidence that the policies and practices of Respondent concerning auxiliary aids and services for persons who are deaf or hard-of-hearing were deficient under the NYSHRL and the ADA.
13. Respondent does not have a formal policy in place governing the provision of effective communication and auxiliary aids and services to Customers or their Companions.

14. Respondent has not adopted formal procedures for the determination of communication needs and does not have public notices in place concerning the availability of auxiliary aids and services.
15. Respondent does not have a formal mechanism for collecting feedback relating to auxiliary aids and services or checking that NYSHRL and ADA requirements concerning auxiliary aids and services are being met.
16. Respondent does not provide sufficient training to Pharmacy Personnel who interact with persons who are deaf or hard-of-hearing regarding the evaluation and determination of communication needs and the provision of auxiliary aids and services.

PROSPECTIVE RELIEF

WHEREAS, Respondent is subject to New York State Executive Law § 296 *et seq.*, and Title III of the ADA, 42 U.S.C. § 12182 *et seq.*, which prohibit public accommodations from discriminating against persons with disabilities by denying them access to goods or services on the basis of their disability;

WHEREAS, New York State Executive Law § 63(12) prohibits repeated or persistent illegal acts in the transaction of business;

WHEREAS, the NYSHRL and the ADA were enacted to protect the rights of individuals with disabilities by eliminating barriers to their participation in major life activities, including equal access to pharmacies and other public accommodations;

WHEREAS, U.S. Census estimates indicate that more than 700,000 New Yorkers are either deaf or have serious difficulty hearing;

WHEREAS, removal of barriers in accessing healthcare-related services leads to better health outcomes for individuals who are deaf or hard-of-hearing;

WHEREAS, the OAG seeks to ensure that all individuals have equal access to goods and services provided by public accommodations regardless of their disabilities, including individuals who are deaf or hard-of-hearing;

WHEREAS, Respondent has demonstrated a commitment to providing service to persons with disabilities and a commitment to taking the additional steps necessary to achieve full compliance with the requirements of the NYSHRL and the ADA;

WHEREAS, Respondent has cooperated in the OAG's investigation and has indicated that it will work cooperatively with the OAG to improve accessibility for deaf and hard-of-hearing Customers and their Companions in its Pharmacies;

WHEREAS, Respondent neither admits nor denies the OAG's Findings set forth in Paragraphs 2–16;

WHEREAS, Respondent desires to obviate the need for further investigation or litigation, and it is expressly understood that, with respect to the investigation of the OAG, Respondent seeks to avoid the expense and inconvenience of further investigation and litigation;

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 Respondent; 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 Respondent and the OAG as follows:

I.
COMPLIANCE WITH THE LAW

17. Respondent agrees to comply fully with the obligations and conditions of the New York State Human Rights Law, N.Y. Exec. Law § 296 *et seq.*, and Title III of the Americans with Disabilities Act, 42 U.S.C. § 12182 *et seq.*
18. Respondent will provide auxiliary aids and services, including assistive listening systems and qualified interpreters, where such aids and services are necessary to ensure effective communication with Customers and Companions and do not impose an undue burden on Respondent or fundamentally alter its services.
19. Respondent will also provide Customers and Companions with the full and equal enjoyment of its services, privileges, facilities, advantages, and accommodations. Respondent shall not deny or otherwise limit access to its services, privileges, facilities, advantages, and accommodations to anyone based on the fact that the person is deaf or hard-of-hearing or is associated with someone known to be deaf or hard-of-hearing.

II.
ASSISTIVE LISTENING SYSTEMS

20. Within 60 days of the Effective Date, Respondent shall purchase and maintain an assistive listening system in each Pharmacy.
21. The assistive listening system in each Pharmacy shall include at least one countertop or portable induction loop compatible with telecoil-equipped hearing aids and cochlear implants, and one loop listener with a headset.

III.
QUALIFIED INTERPRETERS

22. Within 30 days of the Effective Date, Respondent will establish and maintain a list of qualified interpreters or agencies that employ or arrange the services of qualified interpreters.
23. Within 30 days of the Effective Date, Respondent will submit to the OAG its list of qualified interpreters and a copy of its contract(s) with one or more qualified interpreters or agencies.
24. Respondent may utilize video remote interpreting (VRI) services if such services provide effective communication for a particular Customer or Companion. If it elects to utilize VRI services at any Pharmacy, Respondent shall ensure that it provides: (1) real-time, full-motion video and audio over a dedicated high-speed, wide-bandwidth video connection or wireless connection that delivers high-quality video images that do not produce lags, choppy, blurry, or grainy images, or irregular pauses in communication; (2) a sharply delineated image that is large enough to display the interpreter's face, arms, hands, and fingers, and the participating individual's face, arms, hands, and fingers, regardless of his or her body position; and (3) a clear, audible transmission of voices.
25. Respondent will not rely on an adult friend or family member of the Customer or Companion to interpret except: (1) where the Customer or Companion specifically requests that the adult friend or family member interpret, the accompanying adult agrees to provide such assistance, and reliance on that adult for such assistance is appropriate under the circumstances; or (2) in an emergency involving an imminent threat to the safety of an individual or the public where there is no interpreter

available. Respondent will not rely on a minor child to interpret except in an emergency involving an imminent threat to the safety of an individual or the public where there is no interpreter available.

IV.
POLICIES AND PROCEDURES

26. No more than 30 days after the Effective Date, Respondent shall submit to the OAG for review and approval a formal, written policy for providing effective communication to Customers and Companions who are deaf or hard-of-hearing (“New Policy”). The New Policy shall:
- a. State that Respondent will provide appropriate auxiliary aids and services, including assistive listening systems and qualified interpreters, where such aids or services are necessary to ensure effective communication with Customers or Companions and do not fundamentally alter the nature of the goods, services, facilities, privileges, advantages, or accommodations being offered, or impose an undue burden on Respondent, in accordance with applicable laws;
 - b. Identify the Pharmacy Personnel responsible for determining whether auxiliary aids or services are necessary;
 - c. Require such Pharmacy Personnel to consider all of the following factors in determining whether and which auxiliary aids or services are necessary:
 - i. the method of communication used by the Customer and/or Companion, including but not limited to consideration of the Customer’s and/or Companion’s communication skills; the Customer’s and/or Companion’s request for or statement of need for

- a qualified interpreter or other specific auxiliary aid or service, including any prior requests or statements of need; the effectiveness of any auxiliary aid or service provided to the Customer and/or Companion during previous communications; and any preferences or feedback provided by the Customer and/or Companion;
- ii. the nature, length, and complexity of the communication at issue, bearing in mind that auxiliary aids or services may be particularly appropriate when confidential personal information, complex medical or prescription information, or information with potentially significant health consequences is being discussed; and
 - iii. the context in which the communication is taking place, including but not limited to consideration of the Customer's health status or changes thereto; the reasonably foreseeable health care activities of the Customer; and the availability of auxiliary aids and services.
 - iv. Examples of circumstances when it may be necessary to provide a qualified interpreter or an assistive listening device, and where reliance on less comprehensive auxiliary aids or services (e.g., notes, pictograms, TTY calls) may be insufficient to provide effective communication, include, but are not limited to:
 - 1. Determination of a Customer's medical history or description of ailment or injury;
 - 2. Provision of a Customer's rights, informed consent or permission for treatment;

3. Explanation of medications prescribed (such as dosage, instructions for how and when the medication is to be taken, and side effects or food or drug interactions);
 4. Counseling or consultation regarding medications, therapeutic devices, treatments, therapies, vaccines, or other pharmacy products or service relating to health care;
 5. Explanation of complex billing or insurance issues;
 6. Filing of complaints concerning Pharmacy accessibility; and
 7. Any circumstance where necessary to ensure a Customer's privacy, confidentiality, or other rights provided by federal, state, or local law.
- d. Require Pharmacy Personnel to document the determination on the Communication Determination Form described in Paragraph 30.
 - e. Require Pharmacy Personnel to collect feedback from Customers and Companions regarding the provision of auxiliary aids and services, and document that feedback on the Communication Determination Form described in Paragraph 30.
27. Within 30 days of the OAG's approval, which shall not be unreasonably withheld, Respondent shall adopt and implement the New Policy, and distribute it to Pharmacy Personnel. After approval of the New Policy, Respondent will provide the Policy to all new employed Pharmacy Personnel within 14 days of their hire date.
 28. During the term of the Assurance, Respondent may revise the New Policy, subject to the approval of the OAG.

29. Within 60 days of the Effective Date, Respondent will identify one or more positions (“Program Administrator(s)”) who will be responsible for ensuring that all requests for auxiliary aids and services at Respondent’s Pharmacies are handled in accordance with the New Policy and Respondent’s obligations under applicable law; developing the training materials required by this Agreement; and conducting or facilitating training of Pharmacy Personnel. The Program Administrators will be available to answer questions and provide appropriate assistance regarding access to and proper use of auxiliary aids and services.
30. Within 60 days of the Effective Date, Respondent will create a Communication Determination Form, subject to the reasonable approval of the OAG, for Pharmacy Personnel to collect the following information in connection with each request made by Customers or Companions for auxiliary aids or services:
 - a. The type of auxiliary aid or service requested;
 - b. The time and date the request is made;
 - c. The name of the Customer (and Companion, if applicable);
 - d. The name of the Pharmacy Personnel who performed any communication determination or redetermination;
 - e. The name of any Pharmacy Personnel responsible for determining whether or not to provide the requested appropriate auxiliary aid or service;
 - f. The nature of any auxiliary aid or service provided; and
 - g. The time and date the appropriate auxiliary aid or service was provided, or a statement that the appropriate auxiliary aid or service was not provided and the reason why the aid or service was not provided.

31. Pharmacy Personnel completing the Communication Determination Form will submit the form to a Program Administrator after the auxiliary aid or service has been provided and the Customer or Companion has had an opportunity to provide feedback. The Communications Determination Form will be stored in the Customer's file in Respondent's electronic information management system.

V.
TRAINING

32. Within 90 days of the OAG's approval of the New Policy, the Program Administrator shall supervise the provision of training on the New Policy to all Pharmacy Personnel responsible for determining whether and which auxiliary aids and services are necessary to provide meaningful access to Customers and Companions. The training shall include, but not be limited to:
- a. Guidance on how to communicate effectively with individuals who are deaf or hard of hearing;
 - b. Guidance on how to promptly evaluate and continually reevaluate the communication needs and preferences of deaf or hard-of-hearing persons, including the various degrees and types of hearing-related disabilities;
 - c. Guidance on how, under the New Policy, to determine and continually redetermine whether a Customer or Companion needs auxiliary aids or services, and which auxiliary aids or services to provide;
 - d. Guidance on the documentation requirements of the New Policy;
 - e. Guidance on how to secure qualified interpreter services;
 - f. Instruction and technical guidance concerning how to use the assistive listening system, VRI services, making and receiving calls through TTYs and

the relay service, and any other auxiliary aid or service, so as to ensure the prompt and effective use of such aids and services; and

g. Instruction that Pharmacy Personnel should consult Program Administrators for all questions, concerns or issues concerning the New Policy and its implementation.

33. All new Pharmacy Personnel responsible for making decisions about the provision of auxiliary aids and services must receive training on the New Policy within 14 days of their date of hire.

34. Respondent shall maintain attendance records for all training sessions.

VI. **PUBLIC NOTICE**

35. Within 60 days of the Effective Date, Respondent shall post a notice near the pharmacy counter in each Pharmacy, and on its website, notifying persons with difficulty hearing to ask a staff member for help and that free auxiliary aids and services, including assistive listening systems and qualified interpreters, are available to Customers and Companions.

36. The notice should also inform Customers or Companions of their right to file complaints with Respondent, include contact information for the Program Administrator and the OAG, and display the International Symbols of Access for Hearing Loss and Sign Language Interpretation.

37. Within 90 days of the Effective Date, Respondent shall send a short statement providing notification of the availability of auxiliary aids and services in its Pharmacies and summarizing its policies relating to such aids and services to no less than ten non-profit organizations that provide services to individuals who are deaf or

hard of hearing in New York State. The OAG shall provide Respondent with a list of such organizations to facilitate Respondent's compliance with the requirements of this paragraph.

VII. **COMPLAINTS**

38. Program Administrators shall receive and ensure an investigation takes place of all complaints from Customers and Companions alleging improper denial of auxiliary aids and services, or ineffective auxiliary aids and services. 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 Pharmacy Personnel involved, and any other necessary steps. A written report of findings ("Complaint Report") shall be prepared. The Complaint Report shall include, to the extent known:
- a. The name of the person who conducted the investigation;
 - b. The date of the complaint, and the date and approximate time of the event leading to investigation;
 - c. The name, address and contact number of the complainant;
 - d. The name(s) of the Pharmacy Personnel involved;
 - e. A description of the complaint;
 - f. A summary of the investigative steps taken and any findings made; and
 - g. Any recommendation regarding further investigation or disciplinary action.

VIII. **MONETARY RELIEF**

39. Respondent agrees to pay \$30,000 directly to Onondaga County no later than 30 days after the Effective Date to support current or future programs and activities that

benefit individuals who are deaf, hard-of-hearing, or disabled, including, without limitation, programs and activities administered by the Health Department, Community Development Division, Department of Adult and Long Term Care Services, and other County Departments, Divisions, or Authorized Agencies.

IX.
REPORTING AND MONITORING

40. For the duration of the Assurance, Respondent shall maintain:
 - a. All Communication Determination Forms referenced in Part IV;
 - b. All training attendance records referenced in Part V; and
 - c. All Complaint Reports referenced in Part VII.

41. Respondent shall prepare and provide reports to the OAG at the close of each of three 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 twelve months thereafter. The reports shall contain the following information:
 - a. Complaint Reports completed during the Reporting Period; and
 - b. Communication Determination Forms completed during the Reporting Period.
 - c. Attendance records for any training sessions held during the Reporting Period;

42. Within 15 days after receiving a written request from the OAG, Respondent 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 at any reasonable time.

43. Should a review of the documents produced by Respondent indicate that Respondent has materially violated this Assurance, the OAG shall notify Respondent of such violation in writing after which Respondent shall have thirty (30) days to cure the violation. The parties shall make reasonable efforts to resolve any disputes prior to the commencement of any action to enforce the Assurance.
44. This Assurance does not in any way impair or affect the right of the OAG to seek or obtain documents from Respondent pursuant to a subpoena.

X.
SCOPE OF THE ASSURANCE, JURISDICTION, AND
ENFORCEMENT PROVISIONS

45. The OAG has agreed to the terms of this Assurance based on, among other things, the representations that Respondent made to the OAG and the OAG's own findings from the factual investigation as set forth in Paragraphs 2–16 above. 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.
46. This Assurance shall expire three years after the Effective Date, except that the OAG may, in its sole discretion, extend the Assurance term upon a good-faith determination that Respondent has not complied with this Assurance, which non-compliance the OAG shall discuss and attempt to resolve with Respondent in good faith before making such determination.
47. No representation, inducement, promise, understanding, condition, or warranty not set forth in this Assurance has been made to or relied upon by Respondent in agreeing to this Assurance.

48. Upon execution by the Parties to this Assurance, the OAG shall discontinue the instant investigation except as otherwise related to the enforcement of the terms of this Assurance.
49. This Assurance binds Respondent and its principals, directors, beneficial owners, officers, shareholders, successors, assigns, “d/b/a” companies, subsidiaries, affiliates, and any other business entities whom any such individuals may hereafter form or control.
50. Respondent represents and warrants, through the signatures below, that the terms and conditions of this Assurance are duly approved, and execution of this Assurance is duly authorized. Respondent agrees not to 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 Respondent’s (i) testimonial obligations or (ii) right to take legal or factual positions in defense of litigation or other legal proceedings to which the OAG is not a party. This Assurance is not intended for use by any third party in any other proceeding and is not intended, and should not be construed, as an admission of liability by Respondent.
51. This Assurance may not be amended except by an instrument in writing signed on behalf of all the Parties to this Assurance.
52. This Assurance shall be binding on and inure 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 the prior written consent of the OAG.

53. 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.
54. To the extent not already provided under this Assurance, Respondent agrees to, upon request by the OAG, provide all documentation and information necessary for the OAG to verify compliance with this Assurance.
55. All notices, reports, requests, and other communications to any party pursuant to this Assurance shall be in writing and shall be directed as follows:

Office of the Attorney General

Mayur Saxena
Assistant Attorney General
Civil Rights Bureau
Office of the New York State Attorney General
120 Broadway, 23rd Floor
New York, New York 10271
Tel.: (212) 416-8250
Fax: (212) 416-8074
Email: Civil.Rights@ag.ny.gov

KPH Healthcare Services, Inc., d/b/a Kinney Drugs

Ms. Shannon Miller
KPH Healthcare Services, Inc.
6333 Route 298
East Syracuse, NY 13057

Any changes in the person to whom communications should be specifically directed shall be made in advance of the change.

56. Acceptance of this Assurance by the OAG shall not be deemed approval by the OAG of any of the practices or procedures referenced herein, and Respondent shall make no representation to the contrary.

57. Pursuant to New York State Executive Law § 63(15), evidence of a violation of this Assurance shall constitute prima facie proof of violation of the applicable law in any action or proceeding thereafter commenced by the OAG.
58. If a court of competent jurisdiction determines that Respondent has breached this Assurance, Respondent 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.
59. If the Assurance is voided or breached, Respondent 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, Respondent 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 Respondent, or from using in any way any statements, documents or other materials produced or provided by Respondent prior to or after the date of this Assurance.
60. The OAG finds the relief and agreements contained in this Assurance appropriate and in the public interest. The OAG is willing to accept this Assurance pursuant to New York State Executive Law § 63(15), in lieu of commencing a statutory proceeding. This Assurance shall be governed by the laws of the State of New York without regard to any conflict of laws principles.

61. Nothing contained herein shall be construed so as to deprive any person of any private right under the law.

IN WITNESS THEREOF, this Assurance is executed by the Parties hereto on March 3, 2015:

**KPH HEALTHCARE SERVICES, INC.,
d/b/a KINNEY DRUGS**

By: Waven D. Wolfson, Sec.

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

By: Kristen Clarke
Kristen Clarke
Bureau Chief

By: Mayur Saxena
Mayur Saxena
Assistant Attorney General

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