

ATTORNEY GENERAL OF THE STATE OF NEW YORK
HEALTH CARE BUREAU

In the Matter of

DRAFT

GREENPORT RESCUE SQUAD, INC.

AOD Ref. No. 08-060

**ASSURANCE OF DISCONTINUANCE
PURSUANT TO EXECUTIVE LAW
SECTION 63, SUBDIVISION 15**

Pursuant to the provisions of Article 22-A of the New York State General Business Law and Executive Law § 63(12), Andrew M. Cuomo, Attorney General of the State of New York, caused an inquiry to be made into certain business practices of Greenport Rescue Squad, Incorporated (“Greenport Rescue”) and, based upon that inquiry, the Attorney General has made the following findings:

The Parties

1. Greenport Rescue is incorporated in the State of New York and is a registered New York State domestic not-for-profit corporation, with its principal office at P.O. Box 275, Hudson, New York, 12534.

2. In the regular course of business, Greenport Rescue provides non-airborne transportation services in the State of New York to hospitals within its service area of: Town of Greenport, Town of Stockport, Town of Claverack, Town of Livingston and City of Hudson. Additionally, through a comprehensive mutual aid plan, Greenport Rescue provides ambulance

service to other jurisdictions within New York State on an as-needed basis.

The Attorney General's Investigation

3. In June 2007, the Attorney General's Health Care Bureau ("HCB") received a complaint from a patient (the "Complainant") alleging that Greenport Rescue improperly billed him for ambulances services provided on December 2, 2006, as set forth in paragraphs 4 through 11 below.

4. According to the Complainant, his insurer, Oxford Health Plans, Inc., ("Oxford"), had already paid Greenport Rescue for those services pursuant to Complainant's "New York Small Metro Group Plan," a health insurance policy which provides major medical or similar comprehensive health care coverage.

5. On the date of service, Greenport Rescue required that the Complainant sign a form which, among other things, required that irrespective of the Complainant's insurance coverage, ". . . I hereby guarantee full payment to the Greenport Rescue Squad, Inc., for patient care services rendered."

6. Upon providing the ambulance services to the Complainant, Greenport Rescue submitted a claim to Oxford in the amount of \$797.50.

7. Greenport Rescue does not have a participating provider agreement with Oxford.

8. On January 19, 2007, Oxford sent Greenport Rescue a Remittance Advice along with payment in the amount of \$448.14, stating that the claim was paid according to the usual, customary and reasonable allowance and that the deductible and the co-payment amounts were zero.

9. After receiving the payment from Oxford, Greenport Rescue began sending invoices to the Complainant, requesting payment of \$349.36 - - the difference between Greenport Rescue's charge of \$797.50 and Oxford's payment of \$448.14.

10. Greenport Rescue's invoices stated that non-payment of the bill would result in the institution of collections proceedings against the Complainant and would adversely affect Complainant's credit ratings.

11. Within days of receipt of the bill from Greenport Rescue, the Complainant contacted a Greenport Rescue representative who incorrectly informed the Complainant that the Complainant was responsible for the balance of Greenport Rescue's charges that Oxford did not pay because Greenport Rescue does not have a participating provider agreement with Oxford.

12. The Attorney General notified Greenport Rescue by letter that the HCB received a complaint regarding Greenport Rescue's balance billing practices and requested that Greenport Rescue provide certain documents, including participating provider contracts as well as billing policies and claim information.

13. Greenport Rescue cooperated with the Attorney General's investigation.

14. The HCB reviewed Greenport Rescue's documentation and examined whether its billing practices violated laws prohibiting health care providers from improperly balance billing patients.

Applicable Law

15. New York State's "Ambulance Mandate," effective January 1, 2002, requires coverage of "prehospital emergency medical services" by policies providing major medical or

similar comprehensive health care coverage (Insurance Law §§ 3216[24][A], 3221[15][A] and 4303[aa][1]).

16. “Prehospital emergency medical services” include “prompt evaluation and treatment of an emergency medical condition, and/or non-airborne transportation to the hospital” (Insurance Law §§ 3216[24][E][I], 3221[15][E][I] and 4303[aa][5][A]).

17. Additionally, the insurer is required to pay the ambulance claim at either the rate negotiated between the insurer and provider if a participating provider contract exists, or the usual and customary charge, which shall not be excessive or unreasonable, if no participating provider contract exists (Insurance Law §§ 3216[24][C], 3221[15][C] and 4303[aa][3]).

18. Finally, an insurer’s payment is considered payment in full for the services provided, thus prohibiting an ambulance service from seeking any additional reimbursement from the insured, except the collection of co-payments, co-insurance, or deductibles for which the insured is responsible (Insurance Law §§ 3216[24][B], 3221[15][B] and 4303[aa][2]).

19. The General Business Law states that “[d]eceptive acts or practices in the conduct of any business, trade or commerce or in the furnishing of any service in this state are hereby declared unlawful” (General Business Law § 349[a]).

20. Executive Law § 63(12) authorizes the Attorney General to commence a special proceeding for injunctive relief and restitution against any person engaged in a repeated or persistent fraudulent business activity.

21. Accordingly, an ambulance service provider cannot bill a patient who has comprehensive health care coverage for the difference between that provider’s charges and the

insurer's payment (other than for applicable co-payments, deductibles, or co-insurance).

22. Billing the patient for such difference constitutes improper balance billing under the New York State Ambulance Mandate.

23. Billing a patient for an amount not owed under law likewise constitutes a violation of the General Business Law and Executive Law prohibitions against deceptive and fraudulent business practices.

Findings of Attorney General's Investigation

24. Greenport Rescue improperly balance billed the above Complainant.

25. Additionally, Greenport Rescue had an unlawful policy and practice of billing patients with comprehensive health care coverage for the difference between insurance reimbursement rates for ambulance services and Greenport Rescue's charges.

26. Specifically, for the period January 1, 2002 through January 31, 2007, Greenport represents that it identified twenty-nine patients with comprehensive health care coverage who were incorrectly billed.

27. Greenport Rescue violated the Ambulance Mandate's prohibition against billing a patient with comprehensive health coverage for the difference between the provider's charges and the insurer's payment.

28. Greenport Rescue's balance billing practices likewise constitutes a deceptive and fraudulent business practice under General Business Law § 349 and Executive Law § 63(12), inasmuch as Greenport Rescue billed patients for an amount not legally owed.

29. IT NOW APPEARING that Greenport Rescue desires to settle and resolve the

Investigation without admitting or denying the Attorney General’s findings. The Attorney General and Greenport Rescue hereby enter into this Assurance of Discontinuance.

I. PROSPECTIVE RELIEF – REVISION OF BILLING PRACTICES

A. Promise of Future Compliance. Greenport Rescue agrees to cease billing patients with comprehensive health care coverage for the difference between Greenport Rescue’s charges and the insurers’ payment, in accordance with the Ambulance Mandate. Greenport Rescue also agrees to modify any written forms given to patients to read and/or sign to comply with the Ambulance Mandate.

B. Implementation of Future Compliance. To promote future compliance with the Ambulance Mandate, Greenport Rescue will adhere to the following billing practices.

1. Billing Insured Patients’ Insurers. If a Greenport Rescue patient presents reasonable proof of comprehensive health care coverage (“Insured”), Greenport Rescue will directly bill the Insured’s insurer.

2. Payment from Insurer.

a. If the insurer pays Greenport Rescue (whether directly or indirectly in the form of a check forwarded from the Insured), Greenport Rescue will accept the insurer’s payment as payment in full for services rendered and will not bill the Insured for the difference between Greenport Rescue’s charges and the insurer’s payment, with the exception that the Insured remains liable for any applicable deductibles, co-payments or co-insurance.

b. If Greenport Rescue disputes the insurer’s payment as not constituting the usual and customary rate, Greenport Rescue may raise the issue with the insurer

and/or the New York State Department of Insurance (as discussed below). However, Greenport Rescue will not bill, invoice or otherwise contact the Insured to seek payment for the difference between the insurer's payment and Greenport Rescue's charges, other than for any applicable deductibles, co-payments or co-insurance.

3. Non-Payment from Insurer. If the insurer fails to pay any portion of the billed charges to Greenport Rescue after at least forty five (45) days from the claim submission date, Greenport Rescue may bill the Insured. Any bill to the Insured must include notice that the Insured will not be liable (except for applicable deductibles, co-payments or co-insurance), if the insurer pays in whole or in part for the ambulance services.

4. Payment from Insured. This provision applies to payments in whole or in part from Insureds (other than payment made by forwarding a check from the insurer). Where an insured makes payment and an "Explanation of Benefits" ("EOB") is not included, Greenport Rescue shall request a copy of the Insured's EOB directly from the Insured and/or from the insurer.

a. Receipt of EOB. If upon receipt of the Insured's EOB, Greenport Rescue determines that the Insured paid any amount above the payment that the insurer has approved for the service (minus applicable deductibles, co-payments or co-insurance), Greenport Rescue shall issue a refund of that amount to the Insured. Greenport Rescue will send the refund within ten (10) days of receipt of the Insured's overpayment or EOB, whichever is later. If, however, upon receipt of the EOB the Insured's payment is for an amount less than the insurer has approved for the service as reflected on the EOB, Greenport Rescue may bill the Insured for

the difference between the amount approved by the insurer and the payment from the Insured.

b. Non-Receipt of EOB. Providers of ambulance services in New York that do not participate with an insurer are entitled to payment for their services subject to the provisions of the Ambulance Mandate. However, it can be difficult for a non-participating provider to determine the amount to which it is entitled on any individual claim, as New York State Insurance Law § 3234 does not require that an insurer send an EOB to a non-participating provider. Section 3234 does require, however, that all insurers send EOBs to its Insureds whenever a claim involves a service rendered by a non-participating provider. Therefore, in order to determine: 1) the usual and customary charge approved by the Insurer; 2) any amount owed by the Insured for co-payments, deductibles and co-insurance; and 3) the amount of any payments the Insured received from the insurer, Greenport Rescue shall send a letter to the Insured requesting a copy of the EOB whenever it receives payment from the Insured which does not include an EOB. If the Insured does not respond within thirty (30) days of the request date, Greenport Rescue will send the Insured a second and final written request for the EOB (“Final Request”). The Final Request shall state in bold-face, fifteen-point or larger type, that if the Insured does not respond to the Final Request within thirty (30) days, Greenport Rescue may bill the Insured for the difference between Greenport Rescue’s billed charges and the amount paid by the Insured. If Greenport Rescue receives an EOB at any time after payments are made by the Insured, any over-payments or under-payments shall be handled as set forth in paragraph I.B.4.a. above.

II. RESTITUTION

A. 1. Retrospective Claims Review. Greenport Rescue manually reviewed its billing files of all patient claims and compared the amounts billed the insurer and the Insured, the amount of payment received and any available EOBs. Greenport Rescue represents that it has identified twenty-nine (29) Insureds whom it improperly balance billed from the effective date of the Ambulance Mandate (January 1, 2002) through January 1, 2007.

2. Notification of Insureds. Within ninety (90) days of the effective date of the Assurance of Discontinuance, Greenport Rescue shall send a letter (“Notification Letter”) to all Insureds (including the twenty-nine Insureds it identified as having been improperly balance billed) for whom it provided ambulance services between January 1, 2002 and the effective date of this Assurance of Discontinuance. The Notification Letter shall inform the Insureds of: 1) the settlement of billing practices with the Attorney General’s Office; 2) the possibility that the Insured may have been charged in excess of what the Ambulance Mandate permits; and 3) the procedures for submitting complaints (as set forth in paragraph II.B. below), documenting the amount due (as set forth in paragraph II.B.1. below), and granting or denying refunds (as set forth in paragraphs II.B.1. and II.B.2. respectively). Greenport shall so notify any additional Insureds it identifies at any time subsequent to the Retrospective Claims Review (set forth in paragraph II.A.1. above) as improperly balance billed.

B. Complaint Procedure. Within sixty (60) days of receipt of the Notification Letter, Insureds may submit complaints to Greenport Rescue that they were improperly balance billed by Greenport Rescue and did not receive a refund (“Complaints”). Within sixty (60) days of receipt,

Greenport Rescue will review all submitted Complaints and determine whether or not a refund is due in accordance with the terms of this Assurance of Discontinuance.

1. Refund Granted. Insureds who can substantiate their Complaints with proper documentation will be entitled to a refund. Proper documentation may include, but need not be limited to, copies of bills from Greenport Rescue, proof of payments made to Greenport Rescue (such as cancelled checks or credit card statements), and an EOB from the insurer. Upon determining that a refund (in whole or in part) is due the Insured, Greenport Rescue will send a refund check to the Insured within five (5) business days of the determination.

2. Refund Denied. If Greenport Rescue determines that the Complaint and the accompanying documentation do not substantiate a claim for a refund (in whole or in part), Greenport Rescue shall provide the Insured with notice thereof, including a statement of the reasons for Greenport Rescue's determination. In addition, the notice will advise Insureds that they may contact the Attorney General's Health Care Bureau consumer helpline phone number (1-800-428-9071) for assistance.

C. Report to the Attorney General. Within one hundred eighty (180) days of the effective date of this Assurance of Discontinuance, Greenport Rescue shall submit to the Attorney General a report documenting all of the Complaints submitted by affected Insureds, including: an identifier number for each such person; the amount sought in the Complaint; the amount reimbursed for each Complaint; and the reasons for any denials of a refund in whole or in part.

III. CORRESPONDENCE

All correspondence submitted by Greenport Rescue to the Office of the Attorney General pursuant to this Assurance of Discontinuance shall reference AOD # 08-060 and shall be sent to the attention of:

Assistant Attorney General Susan Kirchheimer
Office of the Attorney General
Health Care Bureau
The Capitol
Albany, NY 12224

IV. MODIFICATIONS

This Assurance of Discontinuance does not preclude Greenport Rescue from modifying its bills, billing forms, computer systems, or any other matter agreed to in Section I of this Assurance of Discontinuance, provided any modifications comply with this Assurance of Discontinuance and all applicable Federal and New York State laws.

V. ATTORNEY GENERAL'S AUTHORITY

Nothing in this Assurance of Discontinuance shall limit in any way the ability of the Attorney General to investigate or take other action with respect to any non-compliance at any time by Greenport Rescue with respect to any other applicable laws.

VI. SUCCESSORS

This Assurance of Discontinuance, including but not limited to all obligations imposed on or undertaken by Greenport Rescue herein, will be binding upon and enforceable against any subsequent owner or operator (whether by merger, transfer of control or other means) of all or any substantial portion of Greenport Rescue's operations in New York State.

VII. PRIVATE RIGHT OF ACTION

Nothing herein shall be construed to deprive any consumer or other person or entity of any private right under the law.

VIII. VALID GROUNDS AND WAIVER

Greenport Rescue hereby accepts the terms and conditions of this Assurance of Discontinuance and waives any right to challenge it in a proceeding pursuant to Article 78 of the Civil Practice Law and Rules or in any other action or proceeding.

Greenport Rescue agrees not to take any action or to make or permit to be made any public statement denying, directly or indirectly, any finding in this Assurance of Discontinuance or creating the impression that this Assurance of Discontinuance is without factual basis. Nothing in this paragraph affects Greenport Rescue's: a) testimonial obligations; or b) right to take legal or factual positions in defense of litigation or other legal proceedings to which the Attorney General is not a party.

IX. EFFECTIVE DATE

This Assurance of Discontinuance is effective upon the date of the last signature to the Assurance of Discontinuance.

IN WITNESS THEREOF, the undersigned subscribe their names:

Dated: Hudson, New York
July __, 2008

GREENPORT RESCUE SQUAD, INC.

By: _____
JOHN ONUFRYCHUK
President and CEO
Greenport Rescue Squad Incorporated

CONSENTED TO:

Dated: Albany, New York
July __, 2008

ANDREW M. CUOMO
Attorney General of the State of New York

TIMOTHY A. CLUNE
Bureau Chief

By: _____
SUSAN KIRCHHEIMER
Assistant Attorney General