

-ATTORNEY GENERAL OF THE STATE OF NEW YORK  
HEALTH CARE BUREAU

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In the Matter of

**ERIE COUNTY MEDICAL CENTER CORPORATION**

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

Pursuant to the provisions of Article 22-A of the 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 Erie County Medical Center Corporation ("ECMCC") and, based upon that inquiry, the Office of the Attorney General ("OAG") has made the following findings:

1. ECMCC is a public benefit corporation that operates a large health care network consisting of a medical center, a nursing home facility, and several clinics.

2. In the regular course of business, ECMCC operates a medical center that provides emergency medical services (trauma services) and skilled medical services.

3. ECMCC engages in extensive advertising in the State of New York of its medical and health care services.

4. The OAG's Health Care Bureau received a complaint regarding ECMCC's advertising of its trauma center and cardiovascular services. These services are provided by ECMCC's

medical center.

5. The OAG investigated the compliant, and by letter dated March 8, 2007, advised ECMCC of the OAG's investigation and requested that they provide numerous documents. ECMCC complied with the OAG's request.

6. By letter dated June 14, 2007, the OAG advised ECMCC of several areas of concern pertaining to ECMCC's advertising of their trauma center and cardiovascular services and requested that ECMCC provide additional information. Under cover of letter dated July 6, 2007, ECMCC provided the additional information.

7. After a thorough investigation, the OAG concluded that the following ECMCC advertisements violated General Business Law ("GBL") §349(a):

A. ECMCC advertisements stating that ECMCC's trauma center is "Western New York's only Level One trauma center."

(i) The State of New York designates which medical facilities are "trauma centers" and then classifies each trauma center as either a "Regional" trauma center or "Area" trauma center. ECMCC is a Regional trauma center.

(ii) The classification of a "Level" (Levels range from I to IV) trauma center is performed by the American College of Surgeons ("ACS"). The ACS' classification is based on a verification of the

presence of certain resources. For example, a Level I trauma center must have the capability of providing total care of an injury ranging from prevention to rehabilitation. Although the "Level I" trauma center designated is based on a center's resources and not on its quality of care, the "Level I" designation is the most familiar designation that consumers equate to quality trauma care.

(iii) No hospital in New York is an ACS verified "Level" trauma center. ECMCC is a Regional Trauma Center, not a Level I Trauma Center.

B. ECMCC advertisements stating that ECMCC is "Western New York's only trauma center."

(i) The Children's Hospital located in Buffalo, New York, is a Regional Pediatric Trauma Center.

C. ECMCC advertisements stating that ECMCC "has the top trauma care in the state" and citing the report of The New York State Trauma System: 1999 - 2002 (New York State Department of Health) ("Trauma Report").

(i) Nowhere in the Trauma Report does it state that ECMCC provides the top trauma care in the State of New York. As a matter of fact, the Trauma Report states that regarding "Levels of Care," "[t]here

were no significant differences among levels of care for any mechanism of injury or for all mechanisms combined, for either inpatient mortality or in-hospital mortality." (Trauma Report, p. iv.)

(ii) ECMCC arrived at the conclusion that it was "the" top trauma center in the State by asserting that one of the statistics in the report relating to mortality (Trauma Report, Table 31 (z-score), p. 64) was an equivalent way of comparing observed and expected mortality rate, and from that data, ECMCC concluded that it outperformed every other evaluated hospital in the State.

(iii) ECMCC's conclusion is erroneous in that the data used was evaluated and compared according to regions of the State and 5 hospitals (with ECMCC being one of them) had in-patient mortality rates that were significantly lower than the statewide mean. (*Id.*)

D. ECMCC's advertisements stating that it offers "[t]he top-ranked angioplasty survival rate in Buffalo and Rochester (Niagara Health Quality Coalition, 2006 report, nhqc.com)."

(i) Two other hospitals in Buffalo had the same ranking.

8. The Attorney General found that ECMCC's advertising practices violate GBL § 349(a), which provides 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 unlawful." Accordingly, Executive Law § 63(12) authorizes the OAG to commence a special proceeding for injunctive relief and restitution against this repeated and persistent deceptive business activity.

IT NOW APPEARS that ECMCC is willing to enter into this Assurance of Discontinuance ("Assurance") without admitting to or conceding the foregoing findings or violations of law, and the OAG is willing to accept this Assurance pursuant to Executive Law § 63(15) in lieu of commencing a statutory or other proceeding against ECMCC pursuant to Executive Law Article 63.

**I. PROSPECTIVE RELIEF - ADVERTISING**

9. ECMCC agrees that for all advertisements regarding any of its services provided by any of its facilities, ECMCC shall:

- a. only use advertisements that are factually accurate;
- b. always cite sources when making factual statements;
- c. only use sources that are competent and available to the public; and
- d. immediately stop using advertisements that do not meet all of the requirements of this Assurance.

**II. COSTS**

10. ECMCC agrees to pay \$5,000 to the OAG for costs incurred

during the investigation of this matter. This payment shall be made within 30 days after the effective date of this Assurance.

### **III. CORRESPONDENCE AND PAYMENTS**

11. All correspondence and payment submitted by ECMCC to the OAG pursuant to this Assurance shall be sent to the following:

Cathy Young Thomer  
Assistant Attorney General  
Office of the Attorney General  
Health Care Bureau  
The Capitol  
Albany, NY 12224

12. All checks issued pursuant to this Assurance should be made payable to "State of New York Department of Law."

### **IV. SUCCESSORS**

13. This Assurance, including, but not limited to, all obligations imposed on or undertaken by ECMCC herein, will be binding upon and enforceable on ECMCC regardless of any subsequent change in ownership or operator (whether by merger, transfer of control, or by any other means) of all or any substantial portion of ECMCC's operations.

### **V. MISCELLANEOUS PROVISIONS**

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

15. It is further understood and agreed that the acceptance of this Assurance by the OAG shall not be deemed or construed as an approval by the OAG of any of the activities of ECMCC or its successors, agents, or assigns and none of the aforementioned shall

make any representation to the contrary.

16. Pursuant to Executive Law §63(15), any evidence of a violation of this Assurance shall constitute prima facie proof of ECMCC's violation of GBL § 349(a) in any civil action or proceeding thereafter commenced by the Attorney General.

**VI. EFFECTIVE DATE**

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

IN WITNESS THEREOF, the undersigned subscribed their names.

Dated: Buffalo, New York  
October 29, 2007

Erie County Medial Center  
Corporation

By: 

CONSENTED TO:

Dated: Albany, New York  
~~October~~ 2, 2007  
*November*

ANDREW M. CUOMO

Attorney General of the State  
of New York

TIMOTHY A. CLUNE  
Bureau Chief  
Health Care Bureau

By:   
CATHY YOUNG THOMER  
Assistant Attorney General  
Health Care Bureau