

ATTORNEY GENERAL OF THE STATE OF NEW YORK  
BUREAU OF INTERNET & TECHNOLOGY

---

In the Matter of

Assurance No. 23-066

**Investigation by  
LETTIA JAMES,  
Attorney General of the State of New York, of**

**THE NEW YORK AND PRESBYTERIAN HOSPITAL,**

Respondent.

---

**ASSURANCE OF DISCONTINUANCE**

The Office of the Attorney General of the State of New York (“NYAG”) commenced an investigation pursuant to Executive Law § 63(12) into the potential unauthorized disclosure of patient personal information on websites owned or controlled by The New York and Presbyterian Hospital (“NYP”). This Assurance of Discontinuance (“Assurance”) contains the findings of the investigation and the relief agreed to by the NYAG and Respondent NYP, whether acting through its respective directors, officers, employees, representatives, agents, affiliates, or subsidiaries (collectively, the “Parties”).

**NYAG FINDINGS**

1. NYP is a not-for-profit New York-based healthcare provider. The company operates ten hospitals across New York City and the surrounding metropolitan area, and is affiliated with a variety of other healthcare facilities and medical groups in the area. NYP hospitals receive more than 2 million visits each year.

2. NYP operates a website at [www.nyp.org](http://www.nyp.org). The website enables visitors to learn

about NYP's services, review patient testimonials, research information about diseases and various medical conditions, and search for doctors. The website also contains links to separate, user-authenticated websites and a patient portal ("Patient Portal") where visitors can log in to book an appointment online and conduct virtual appointments.

3. From June 2016 until they were disabled by NYP in June 2022, NYP deployed several third-party tools on its website to track visitors for marketing purposes ("tools").<sup>1</sup> These tools typically used snippets of code, known as tracking pixels or tags, that send information to a third party when a webpage loads or a user takes some pre-defined action. The NYP website used tracking pixels and tags from several third parties, including Bing, DoubleClick, Meta/Facebook, Google, iHeartMedia, TikTok,<sup>2</sup> The Trade Desk, and Twitter.

4. The tracking pixels and tags on the NYP website were configured to trigger on certain user "events." Most pixels and tags were configured to send information (i.e. "fire") when a webpage loaded; several tracking pixels also fired when certain links were clicked, a form was submitted, or a search was run using the site's search functionality.

5. Each time a third-party pixel or tag fired, certain information about the user and the user's interaction with the NYP website was shared with the third party. Most third parties received the user's IP address and information about the event that had triggered the pixel, including the URL of the webpage that had loaded or link that was clicked. Several third parties, including Meta, Google, and The Trade Desk, received unique identifiers that had been stored in cookies on users' devices, allowing third parties to recognize users they had previously interacted

---

<sup>1</sup> Tools were not deployed in the Patient Portal portion of the NYP website.

<sup>2</sup> NYP did not ultimately launch any marketing campaigns on TikTok.

with. One of the third parties, Meta, also may have received first and last name, email address, mailing address, and gender information, if that information was entered by a visitor on a page where the Meta pixel was loaded.

6. In some cases, the event information the third parties received revealed information about the user's health. If a user searched for a doctor by specialist or condition, researched a health condition, or scheduled an appointment, information about the user's doctor or health condition were sometimes reflected in the URL. For example, if a user had conducted a search using the words "spine surgery," the URL of the search result page would include "spine-surgery." Similarly, when visitors clicked on a link to schedule an appointment with a doctor, the URL of the webpage the visitor was on may have reflected information about the doctor.

7. NYP used the tracking tools from Meta, Google and Trade Desk, and the information those tools collected from visitors to the NYP website, to help serve targeted ads. In some cases, ads were targeted based on information from the webpage that reflected health information. This information was used to target ads in two ways.

- a. First, the tracking tools were used to categorize visitors to the NYP website based on specific pages of the NYP website they visited ("custom audiences"), and then target ads to those custom audiences on other websites. For example, NYP used the Meta tool to identify individuals who had visited pages on the NYP website related to orthopedics, and then targeted ads to those same individuals on other websites using Meta's digital advertising tools.
- b. Second, the tracking tools were used to categorize visitors to the NYP based on specific pages of the NYP website they visited, identify other individuals with similar

characteristics (“lookalike audiences”), and then target ads to those lookalike audiences. For example, NYP and its digital marketing firm used the Meta tool to identify individuals who had visited pages on the NYP website related to prostate cancer, and then targeted ads to other individuals with similar characteristics on other websites using Meta’s digital advertising tool.

8. NYP did not enter into Business Associate agreements with the above-referenced third parties to limit how user health information could be used. Certain of the third parties’ standard terms of service permitted the companies to use the health information expansively, including for advertising, or for their own internal business purposes. NYP also did not enter into a Business Associate agreement with its digital marketing firm, although it placed some contractual limitations on the firm’s use of patient data.

9. In addition, although NYP maintained policies and training related to patient privacy and HIPAA compliance, it did not have appropriate internal policies or procedures for vetting third-party tracking tools. NYP also did not review or vet third-party tracking tools for violations of policy or law prior to their deployment.

10. In early June 2022, a journalist from the Markup contacted NYP regarding tracking tools that were present on the NYP website. On June 16, 2022, the Markup published an article revealing that a tracking tool from Meta installed on the websites of many hospitals, including NYP, was collecting patients’ sensitive health information.

11. As of June 16, 2022, NYP had taken steps to disable tracking tools that had been deployed on its website. NYP subsequently engaged a forensic consultant to conduct a review of all third-party tools in use on its website.

12. On December 1, 2022, the United States Department of Health and Human Services (“HHS”) Office for Civil Rights (“OCR”) issued a Bulletin entitled, *Use of Online Tracking Technologies by HIPAA Covered Entities and Business Associates*, which “provides a general overview of how HIPAA Rules apply to regulated entities’ use of tracking technologies” (the “December 2022 HHS OCR Guidance”).<sup>3</sup> HHS had not previously issued guidance related to use of online tracking technologies by HIPAA covered entities.

13. On March 20, 2023, NYP filed a breach notification with the Office of Civil Rights at the Department of Health and Human Services and posted a notice regarding the breach on its website.

14. NYP has fully cooperated with the NYAG in the course of its investigation.

15. NYP is a “covered entity” under the Health Insurance Portability and Accountability Act (HIPAA) subject to the HIPAA Privacy Rule, 45 C.F.R. Part 164 Subpart E. The information NYP shared with third parties included HIPAA protected health information (“PHI”). NYP’s conduct violated the HIPAA Privacy Rule, including:

- a. § 164.502(a), which prohibits disclosure of PHI;
- b. § 164.530(c) and (i), which requires appropriate administrative, technical, and physical safeguards to protect the privacy of PHI, and policies and procedures to comply with those requirements.

16. NYP’s conduct also violated Executive Law § 63(12).

17. Respondent neither admits nor denies the NYAG’s findings, paragraphs 1-16 above.

---

<sup>3</sup> United States Department of Health and Human Services, *Use of Online Tracking Technologies by HIPAA Covered Entities and Business Associates* (Dec. 1, 2022), at <https://www.hhs.gov/hipaa/for-professionals/privacy/guidance/hipaa-online-tracking/index.html>

18. The NYAG finds the relief and agreements contained in this Assurance appropriate and in the public interest. THEREFORE, the NYAG is willing to accept this Assurance pursuant to Executive Law § 63(15), in lieu of commencing a statutory proceeding for violations of Executive Law § 63(12), and the HIPAA Privacy Rule, 45 C.F.R. Part 164 Subpart E.

IT IS HEREBY UNDERSTOOD AND AGREED, by and between the Parties:

**PROSPECTIVE RELIEF**

19. For the purposes of this Assurance, the following definitions shall apply:
- a. “Protected Health Information” shall have the definition ascribed to the term in section 160.103 of title 45 of the Code of Federal Regulations implementing the Health Insurance Portability and Accountability Act (“HIPAA”).
  - b. “Third Party” shall mean any individual or entity other than an entity with which Respondent has a business associate agreement complying with 45 C.F.R. Part 164.504(e)(2)(ii).

**GENERAL COMPLIANCE**

20. Respondent shall comply with Executive Law § 63(12) in connection with its collection, use, and maintenance of Protected Health Information, and shall not misrepresent the manner or extent to which it protects the privacy, security, or confidentiality of Protected Health Information.

21. Respondent shall comply with General Business Law § 899-aa.

22. Respondent shall comply with the HIPAA Privacy Rule, 45 C.F.R. Part 164 Subparts E, and the Breach Notification Rule, 45 C.F.R. Part 164 Subpart D in connection with its collection, use, and maintenance of Protected Health Information. For the avoidance of doubt,

consistent with the December 2022 HHS OCR Guidance, and unless and until the relevant portion of that guidance is amended, superseded, withdrawn, revoked, supplanted by successive guidance, or temporarily or permanently enjoined and/or rejected by a court ruling applicable to covered entities in New York State or to the U.S. Department of Health and Human Services (HHS), including the HHS Office for Civil Rights, tracking technologies on an unauthenticated webpage that addresses specific symptoms or health conditions, or that permits individuals to search for doctors or schedule appointments without entering credentials may have access to protected health information. For example, Respondent is disclosing protected health information when tracking tools collect an individual's email address or IP address on a webpage where an individual searches for available appointments with a health care provider.

23. Respondent shall, on each website, mobile application, or other online service it owns or operates, clearly disclose all Third Parties that receive Protected Health Information as the result of a pixel, tag, or other online tool, and a description of the Protected Health Information that is received.

#### **DELETION OF COVERED INFORMATION**

24. Subject to any other legal obligations NYP may have, within thirty (30) days of the effective date of this Assurance, Respondent shall instruct all Third Parties that received Protected Health Information to delete any Protected Health Information and provide written confirmation that any identified Protected Health Information has been deleted. Respondent's instruction to each Third Party shall include a general description of the Protected Health Information the Third Party may have received.

## **PRIVACY SAFEGUARDS AND CONTROLS**

25. Respondent shall develop, implement, and maintain reasonable policies and procedures governing the deployment and use of tools, including web pixels and software development kits, used in connection with websites or apps owned or operated by Respondent.

26. Prior to the deployment of any tool subject to paragraph 25, Respondent shall conduct a reasonable audit, assessment, review, or testing of (a) the tool, to determine whether the tool has access to Protected Health Information and (b) the contracts, privacy policies, and terms of service associated with the tool, to determine how information is collected, used, and disclosed. Respondent shall not deploy a tool unless its deployment complies with Respondent's policies and procedures and this Assurance.

27. Respondent shall regularly conduct reasonable audits, assessments, reviews, or testing of (a) all tools subject to paragraph 25, and (b) the contracts, privacy policies and terms of service associated with such tools, to ensure deployment of the tools comply with Respondent's policies and procedures and this Assurance.

## **THIRD-PARTY ASSESSMENT**

28. Within one (1) year of the effective date of this Assurance, Respondent shall obtain an independent, comprehensive assessment conducted by an independent third-party assessor who uses procedures and standards generally accepted in the profession to:

- a. Identify all tools, including web pixels and software development kits, used in connection with Respondent's websites and apps; and
- b. Identify what data may have been transmitted to Third Parties through the use of such tools.



An assessment conducted between June 16, 2022 and the effective date of this Assurance that otherwise meets the requirements of this paragraph fulfills Respondent's obligations under this paragraph.

#### **NOTICE AND TRAINING**

29. Respondent shall provide notice of the requirements of the Assurance to all employees responsible for implementing or maintaining any policy or process required by the Assurance, and all management-level employees who, either directly or indirectly, oversee such employees. Respondent shall implement appropriate training of all such employees. The notice and training required under this paragraph shall be provided to the appropriate employees within sixty (60) days of the effective date of this Assurance, or within thirty (30) days of when an employee first assumes responsibility for implementing or maintaining a relevant policy or process, or overseeing an employee with such responsibility.

#### **MONETARY RELIEF**

30. Respondent shall pay to the State of New York three hundred thousand dollars (\$300,000). Payment shall be made in full within fourteen (14) days of the effective date of this Assurance.

31. Payments shall be made in accordance with instructions provided by a NYAG representative and shall reference Assurance No. 23-066.

#### **MISCELLANEOUS**

32. Respondent expressly agrees and acknowledges that NYAG may initiate a subsequent investigation, civil action, or proceeding to enforce this Assurance, for violations of the Assurance, or if the Assurance is voided pursuant to paragraph 39, and agrees and

acknowledges that in the event the Assurance is voided pursuant to paragraph 39:

- a. any statute of limitations or other time-related defenses are tolled from and after the effective date of this Assurance;
- b. the NYAG may use statements, documents or other materials produced or provided by Respondent prior to or after the effective date of this Assurance;
- c. any civil action or proceeding must be adjudicated by the courts of the State of New York, and that Respondent irrevocably and unconditionally waives any objection based upon personal jurisdiction, inconvenient forum, or venue; and
- d. evidence of a violation of this Assurance shall constitute prima facie proof of a violation of the applicable law pursuant to Executive Law § 63(15).

33. If a court of competent jurisdiction determines that Respondent has violated the Assurance, Respondent shall pay to the NYAG the reasonable cost, if any, of obtaining such determination and of enforcing this Assurance, including without limitation legal fees, expenses, and court costs.

34. This Assurance is not intended for use by any third party in any other proceeding. This Assurance is not intended, and should not be construed, as an admission of liability by Respondent.

35. All terms and conditions of this Assurance shall continue in full force and effect on any successor, assignee, or transferee of Respondent. Respondent shall include in any such successor, assignment or transfer agreement a provision that binds the successor, assignee or transferee to the terms of the Assurance. No party may assign, delegate, or otherwise transfer any of its rights or obligations under this Assurance without the prior written consent of NYAG.

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

37. Any failure by the NYAG to insist upon the strict performance by Respondent of any of the provisions of this Assurance shall not be deemed a waiver of any of the provisions hereof, and the NYAG, notwithstanding that failure, shall have the right thereafter to insist upon the strict performance of any and all of the provisions of this Assurance to be performed by Respondent.

38. All notices, reports, requests, and other communications pursuant to this Assurance must reference Assurance No. 23-066, and shall be in writing and shall, unless expressly provided otherwise herein, be given by hand delivery; express courier; or electronic mail at an address designated in writing by the recipient, followed by postage prepaid mail, and shall be addressed as follows:

If to Respondent NYP, to:

Mary Beth Claus  
Group Senior Vice President  
Chief Legal Officer and General Counsel  
466 Lexington Avenue, 13<sup>th</sup> Floor, Box 36  
New York, NY 10017

If to NYAG, to:

Clark Russell, Deputy Bureau Chief, or in his absence,  
to the person holding the title of Bureau Chief  
Bureau of Internet & Technology  
28 Liberty Street  
New York, NY 10005

39. NYAG has agreed to the terms of this Assurance based on, among other things, the representations made to NYAG by Respondent and its counsel and NYAG's own factual

investigation as set forth in the Findings, paragraphs 1-16 above. Respondent represents and warrants that neither it nor its counsel have made any material representations to NYAG that are inaccurate or misleading. If any material representations by Respondent or its counsel are later found to be inaccurate or misleading, this Assurance is voidable by NYAG in its sole discretion.

40. 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.

41. Respondent represents and warrants, through the signature below, that the terms and conditions of this Assurance are duly approved.

42. The obligations of this Assurance set forth in ¶¶ 25-27, and 29 shall expire at the conclusion of the seven (7) year period after the effective date.

43. Unless a term limit for compliance is otherwise specified within this Assurance, the Respondent's obligations under this Assurance are enduring. Nothing in this Agreement shall relieve Respondent of other obligations imposed by any applicable state or federal law or regulation or other applicable law.

44. Respondent agrees not to take any action or to make or permit to be made any public statement denying, directly or indirectly, any finding in the Assurance or creating the impression that the Assurance is without legal or factual basis. Nothing in this paragraph affects Respondent's right to take legal or factual positions in defense of litigation or other legal proceedings to which the NYAG is not a party.

45. Nothing contained herein shall be construed to limit the remedies available to NYAG in the event that Respondent violates the Assurance after its effective date.

46. This Assurance may not be amended except by an instrument in writing signed on behalf of the Parties to this Assurance.

47. In the event that any one or more of the provisions contained in this Assurance shall for any reason be held by a court of competent jurisdiction to be invalid, illegal, or unenforceable in any respect, in the sole discretion of NYAG, such invalidity, illegality, or unenforceability shall not affect any other provision of this Assurance.

48. Respondent acknowledges that it has entered this Assurance freely and voluntarily and upon due deliberation with the advice of counsel.

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

50. The Assurance and all its terms shall be construed as if mutually drafted with no presumption of any type against any party that may be found to have been the drafter.

51. This Assurance may be executed in multiple counterparts by the Parties hereto. All counterparts so executed shall constitute one agreement binding upon all Parties, notwithstanding that all Parties are not signatories to the original or the same counterpart. Each counterpart shall be deemed an original to this Assurance, all of which shall constitute one agreement to be valid as of the effective date of this Assurance. For purposes of this Assurance, copies of signatures shall be treated the same as originals. Documents executed, scanned and transmitted electronically and electronic signatures shall be deemed original signatures for purposes of this Assurance and all matters related thereto, with such scanned and electronic signatures having the same legal effect as original signatures.

52. The effective date of this Assurance shall be January 15, 2024.

**LETITIA JAMES  
ATTORNEY GENERAL OF THE  
STATE OF NEW YORK**

By:           /s Clark Russell          

Clark Russell  
Jordan Adler  
Nathaniel Kosslyn  
Bureau of Internet and Technology  
New York State Attorney General  
28 Liberty St.  
New York, NY 10005  
Phone: (212) 416-8433  
Fax: (212) 416-8369

          12.26.23            
Date

**THE NEW YORK AND PRESBYTERIAN  
HOSPITAL**

By:           *Mary Beth Claus*          

Mary Beth Claus  
Group Senior Vice President  
Chief Legal Officer and General Counsel  
466 Lexington Avenue, 13<sup>th</sup> Fl., Box 36  
New York, NY 10017

          12-20-2023            
Date