

ATTORNEY GENERAL OF THE STATE OF NEW YORK
HEALTH CARE BUREAU

In the Matter of

Assurance No. 22-076

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

**Dr. Niranjan K. Mittal; Niranjan K. Mittal, Physician, PLLC
(d/b/a CareCube); and Care Cube, LLC (d/b/a CareCube),**

Respondents.

ASSURANCE OF DISCONTINUANCE

The Office of the Attorney General of the State of New York (“OAG”) commenced an investigation pursuant to Executive Law Section 63(12) into certain business practices of Dr. Niranjan K. Mittal, Niranjan K. Mittal, Physician, PLLC (d/b/a “CareCube”), and Care Cube, LLC, (also d/b/a “CareCube”), relating to CareCube’s improper billing for COVID-19 rapid and PCR tests. This Assurance of Discontinuance (“Assurance”) contains the findings of the OAG’s investigation, and the relief agreed to by the OAG and Respondent CareCube, whether acting through its respective directors, officers, employees, representatives, agents, affiliates, or subsidiaries (the OAG and CareCube collectively, the “Parties”).

OAG FINDINGS

I. BACKGROUND

1. CareCube currently provides primary care services at four locations in Brooklyn and one in the Bronx. From April 2020 through March 2023, CareCube provided COVID-19 testing at 22 storefront locations in Manhattan, the Bronx, Queens and Brooklyn.

2. Since the start of 2021, the Health Care Bureau (HCB) of the OAG has received dozens of consumer complaints regarding CareCube's charges and billing for COVID-19 testing. On August 27, 2021, the HCB issued a Cease and Desist letter to CareCube, advising CareCube to "immediately cease and desist from billing New York consumers" for COVID-19 tests in all circumstances where CareCube is an in-network provider with consumers' health plans. The OAG also commenced an investigation pursuant to Executive Law § 63(12) into CareCube's improper billing practices for COVID-19 tests.

II. THE OAG'S INVESTIGATION

3. The OAG's investigation has determined that CareCube's improper billing practices fall into three categories. First, many consumers who went to a CareCube location for COVID-19 tests were improperly charged for the tests at the time of service, even though their providers were in-network with their health plans and their plan benefits covered the full cost of the test, without cost sharing (*i.e.*, a co-payment). Consumers believed that CareCube was an in-network provider for their COVID-19 tests based on information on the CareCube website listing their plan as an "accepted" plan, or a phone call with a CareCube representative confirming in-network status. This resulted in many consumers paying out-of-pocket for tests for which there should have been no upfront cost. Although CareCube represented to the OAG that, during the course of the OAG's investigation, CareCube made many refunds to patients improperly

charged, the OAG found that not all affected patients received a refund, or received a refund in the correct amount.

4. Second, CareCube improperly charged some consumers who sought COVID-19 testing for children under the age of 18 years old an up front cost of \$125 for an office visit, even when the parents' health plans covered the tests and related services for children, without adequately explaining the reason for the charge. Some consumers were told that this was a "surcharge" for children under the age of 18 years old. The charge was actually imposed because the CareCube providers were not credentialed with the health plans to treat children under 18 years old. CareCube failed to adequately disclose its reason for these surcharges on its website, or to adequately warn potential consumers about these charges. Eventually CareCube added an obscure reference to the charge in the "Q&A" section at the bottom of its "COVID-19 Testing" webpage, in an answer to the question "What if I don't have insurance?" However, CareCube never disclosed the charge for children on its "Insurance" webpage at all.

5. Third, CareCube disseminated incorrect and misleading information about charges for testing for individuals who may have been exposed to COVID-19 but are asymptomatic. For example, CareCube's website stated that if a consumer is asymptomatic, a copayment and deductible would be applicable to the visit for COVID-19 tests. This statement is incorrect and misleading. At the time of this representation, health plans were required under federal and New York law to cover the cost of diagnostic testing of asymptomatic individuals without cost sharing, when the purpose of the testing was for diagnosis or treatment of COVID-19.

6. CareCube compounded the improper practices described above by being unresponsive to many consumer complaints. In some cases, where the provider did not

participate with the consumer's health plan, consumers were unable to submit a claim for reimbursement from their health plan after paying CareCube on the date of service, because they could not obtain the correct documentation from CareCube, despite requesting such documentation. In other cases, CareCube billed consumers even though their health plan paid for the cost of the test. In some situations, when health plans tried to assist in correcting CareCube's improper billing, CareCube was unresponsive to the health plan.

7. As noted above, CareCube represents that during the OAG's investigation it issued refunds to certain consumers for improper charges arising from COVID-19 testing during the time period of April 2020 to present.

III. RELEVANT LAW

8. The New York State Executive Law prohibits repeated "fraudulent or illegal acts" in the conduct of any business, trade or commerce, and allows the Attorney General to institute a special proceeding for restitution, damages, and/or injunctive relief against any party that has committed such acts. N.Y. Exec. Law § 63(12).

9. The New York General Business Law prohibits "deceptive acts or practices in the conduct of any business, trade or commerce or in the furnishing of any service" in New York State. N.Y. Gen. Bus. Law § 349.

10. Section 3202(b) of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) requires providers of diagnostic tests for COVID-19 to make public the cash price for a COVID-19 diagnostic test on the provider's public internet website.

11. The OAG finds that CareCube's actions, as described above, constitute repeated violations of Executive Law § 63 (12) and GBL § 349, and § 3202(b) of the CARES Act.

12. CareCube neither admits nor denies the OAG's findings that its actions violated any law or statutory provisions, but in the interest of resolving the OAG's investigation CareCube agrees to the remedies set forth in this AOD.

13. The OAG finds the relief and agreements contained in this Assurance appropriate and in the public interest. THEREFORE, the OAG is willing to accept this Assurance pursuant to Executive Law § 63(15), in lieu of commencing a statutory proceeding for violations of New York law based on the conduct described above.

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

RELIEF

14. Programmatic Relief

- a. CareCube has represented to the OAG that it ceased administering COVID-19 testing services as of April 1, 2023. In the event that CareCube resumes providing COVID-19 testing services, CareCube will provide written notice to the OAG within 10 days of resumption of testing. Further, CareCube agrees that in the event CareCube resumes providing COVID-19 testing services, it will abide by the provisions indicated below in Paragraph 14(b) through (e).
- b. *Billing Practices.* CareCube shall modify its billing system and communicate to consumers that: (1) CareCube will not bill a consumer who goes to its locations for COVID-19 tests when it is a participating provider with the consumer's health plan and the plan covers the tests without cost-sharing; (2) CareCube will not impose any surcharges for office visits related to COVID-19 testing for children under the age of 18 years old; (3) where a consumer is treated by a

CareCube provider who is out-of-network with the consumer's health plan, CareCube will not bill the consumer more for COVID-19 testing (including any related office visit) than the amount prominently disclosed both on its website and at the location of testing. Prior to billing a consumer for COVID-19 testing, CareCube staff must determine whether the consumer's health plan covers COVID-19 testing for the purpose stated by the patient.

- c. *Disclosures to Consumers.* CareCube shall post in permanent text (*i.e.*, not a rotating banner) in prominent lettering, in a clear and conspicuous location on the CareCube website and in the reception areas of its office locations: (1) a list of providers at CareCube locations, specifying those who are in-network and those who are out-of-network with health plans offered in New York; and (2) the full cost to patients for a COVID-19 test, including any charges for related "office visits." "Prominent lettering" means text that is: (a) in a larger font than its surrounding text; and (b) distinguished by font color, font type, font style (*i.e.*, bold or italics), and/or any other special effect that serves to highlight the text in relation to its surrounding text.
- d. *Training.* CareCube shall develop written training materials that include procedures and practices that its staff must follow regarding COVID-19 testing, in accordance with the practices set forth in Paragraph 14(b), and the disclosures set forth in Paragraph 14(c). The training shall also instruct CareCube staff that, prior to billing a consumer for COVID-19 testing and/or related services, they must determine if the consumer has health insurance coverage, and, if the consumer does have coverage, staff shall consult with the insurance provider to

determine the scope of coverage for COVID-19 testing and related services.

CareCube shall provide this training to all relevant employees and agents within thirty (30) days of hire, and then for all employees, annually thereafter. If requested, CareCube shall provide the OAG with documentation showing that its employees and agents have completed such training.

e. *Complaint Process.*

i. CareCube shall establish a complaint process under which it: (i) records and tracks all consumer complaints made to CareCube with concerns about improper charges for COVID-19 testing and which supports reporting by date and category of complaint or query; and (ii) reviews how consumer complaints are handled and resolved. If requested, CareCube shall provide the OAG with documentation that it implemented such a process.

ii. CareCube shall provide training regarding its new complaint process to all relevant employees and agents within thirty (30) days of hire, and then for all employees, annually thereafter. If requested, CareCube shall provide the OAG with documentation showing that its employees and agents have completed such training.

f. Acceptance of this Assurance by the OAG is not an approval or endorsement by the OAG of any of CareCube's practices, policies or procedures, and CareCube shall make no representation to the contrary.

15. Oversight/Monitoring

a. *Auditor:* CareCube shall, in accordance with the provisions of Paragraph 16 below, appoint an Auditor to review its compliance with the procedural reforms

set forth in Paragraph 14 and the restitution process set forth in Paragraph 16.

- b. *Periodic Compliance Reports:* CareCube shall, upon thirty (30) days written notice from the OAG, provide all documentation and information necessary for the OAG to verify compliance with this Assurance.
- c. *Recordkeeping Requirements:* CareCube shall retain all records relating to its obligations hereunder and reporting process in accordance with this Assurance.
- d. *Cooperation:* CareCube agrees to continue to cooperate with the OAG and promptly resolve all consumer complaints to CareCube.

16. Monetary Relief

- a. *Restitution:* CareCube shall issue refunds plus nine (9) percent interest per annum to all consumers who, during the time period of March 2020 to the Effective Date (the “Covered Period”), fall into one or more of these categories (“Eligible Consumers”):
 - i. consumers who paid CareCube for a COVID-19 test and/or related services (including the related office visit at the time of the COVID-19 test) when, on the date of service, the CareCube provider was in-network with the consumer’s health plan and the plan benefit covered the test, but who have not already received a refund.
 - ii. consumers who paid CareCube a surcharge for an office visit related to a COVID-19 test for an individual under 18 years of age because the provider was not credentialed to treat children under 18 years of age, but who have not already received a refund.

- b. In order to ensure that restitution is made to all Eligible Consumers, CareCube will retain an independent individual or firm, approved by the OAG, who has experience auditing medical billing and claims records and is certified and/or credentialed for reviewing medical claims (“Auditor”). The Auditor shall be retained within sixty (60) days of the Effective Date of this Assurance. Within fifteen (15) days from the date the Auditor is retained, CareCube shall provide the Auditor with records sufficient to identify Eligible Consumers. Within ninety (90) days from the date the Auditor is retained, the Auditor shall complete its review of CareCube records in order to identify all Eligible Consumers. If, after its review, the Auditor is unable to determine definitively whether a particular consumer is an Eligible Consumer, the default determination shall be that the consumer is an Eligible Consumer.
- c. Within sixty (60) days from the date that all Eligible Consumers are identified by the Auditor, CareCube shall issue a payment to each Eligible Consumer, in the amount determined by the Auditor, plus nine (9) percent interest per annum.
- d. CareCube shall send the payment by regular mail to the last known address of the Eligible Consumer. CareCube shall make reasonable efforts to ensure the payments are received, which shall include but not be limited to contacting the United States Post Office for a possible forwarding address if the payment is returned.

- e. The Auditor shall also identify all Eligible Consumers who were billed by CareCube at any time from March 1, 2020 through the Effective Date, and whose accounts were sent to a debt collector (“Collection Consumers”). For each Collection Consumer, CareCube shall: (i) instruct the debt collector to cease all collection activity; (ii) set the balance including all fees and interest to \$0 in both CareCube’s accounts and that of the debt collector; and (iii) request that all major credit bureaus remove any derogatory information reported for the Collection Consumer. If the Collection Consumer paid any amounts prior to the referral to a debt collector, CareCube shall issue a refund for such payment.

- f. Within sixty (60) days from the date all restitution payments are made, CareCube shall submit to the OAG a report (“Restitution Report”) that includes, for each payment: the identity of the Eligible Consumer, the date(s) of service, the payment amount with an explanation as to how it was calculated, the date the payment was issued, the address to which the payment was sent, and whether the payment was returned. In addition, the report shall:
 - (i) identify all Collection Consumer accounts, including the identity of the Collection Consumer, the identity of the provider(s) involved in the claim, the date(s) of service, and the total balance including fees and interest; and
 - (ii) contain a confirmation that collection activity has ceased, and the account has been cleared, as well as a confirmation that major credit bureaus have been requested to remove any derogatory information reported for the Collection Consumer.

- g. CareCube shall continue to cooperate with the OAG to promptly resolve all consumer complaints that the OAG submits to CareCube, or that otherwise come to the attention of CareCube, which shall include issuing appropriate refunds to consumers.
- h. CareCube shall bear all costs for the procedures set out in this section.
- i. CareCube shall pay a total of \$300,000 in penalties to the New York State Department of Law, payable in two installments. Within thirty (30) days of the Effective Date of this AOD, CareCube shall pay \$150,000; within sixty (60) days of the Effective Date of this AOD, CareCube shall pay the remaining balance of \$150,000. These payments shall be made by attorney check, corporate or certified check, or bank draft, which shall be made payable to the “State of New York,” and shall reference Assurance No. 22-076. Payments shall be addressed to the attention of Assistant Attorney General Michael D. Reisman, State of New York Office of the Attorney General, Health Care Bureau, One Civic Center Plaza, Poughkeepsie, NY 12601.

17. Affidavit of Compliance

- a. CareCube shall submit to the OAG, within one-hundred twenty (120) days after the Effective Date, an affidavit subscribed by an officer of CareCube authorized to bind CareCube, setting forth CareCube’s compliance with the provisions of this Assurance.

18. CareCube expressly agrees and acknowledges that a material default in the performance of any obligation under this Assurance is a violation of the Assurance, and

that the OAG thereafter may commence the civil action or proceeding contemplated in paragraph 20, in addition to any other appropriate investigation, action, or proceeding, and that evidence that the Assurance has been violated shall constitute *prima facie* proof of the statutory violations described in paragraphs 8 through 11, pursuant to Executive Law § 63(15).

MISCELLANEOUS

Subsequent Proceedings

19. In any subsequent investigation, civil action, or proceeding by the OAG to enforce this Assurance, for violations of the Assurance, or if the Assurance is voided pursuant to paragraph 26, CareCube expressly agrees and acknowledges:
 - a. that any statute of limitations or other time-related defenses related to the claims herein are tolled from and after the Effective Date of this Assurance;
 - b. that the OAG may use statements, documents or other materials produced or provided by CareCube prior to or after the Effective Date of this Assurance; and
 - c. that any civil action or proceeding must be adjudicated by the courts of the State of New York, and that CareCube irrevocably and unconditionally waives any objection based upon personal jurisdiction, inconvenient forum, or venue.
20. If a court of competent jurisdiction determines that CareCube has violated the Assurance, CareCube shall pay to the OAG the reasonable cost, if any, of obtaining such determination and of enforcing this Assurance, including without limitation legal fees, expenses, and court costs.

Effects of Assurance

21. This Assurance is not intended for use by any third party in any other proceeding.
22. All terms and conditions of this Assurance shall continue in full force and effect on any successor, assignee, or transferee of CareCube. CareCube shall cause this Assurance to be adopted in any such transfer agreement. No party may assign, delegate, or otherwise transfer any of its rights or obligations under this Assurance without the prior written consent of the OAG.
23. Nothing contained herein shall be construed as to deprive any person of any private right under the law.
24. Any failure by the Attorney General to insist upon the strict performance by CareCube of any of the provisions of this Assurance shall not be deemed a waiver of any of the provisions hereof, and the Attorney General, 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 CareCube.

Communications

25. All notices, reports, requests, and other communications pursuant to this Assurance must reference Assurance No. 22-076 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 CareCube, to: John Martin, Esq., Garfunkel Wild, P.C., 111 Great Neck Road, Great Neck, NY 11021

If to the OAG, to: Michael D. Reisman, or in his absence, to the person holding the title of Bureau Chief, Health Care Bureau.

Representations and Warranties

26. The OAG has agreed to the terms of this Assurance based on, among other things, the representations made to the OAG by CareCube and the OAG's own factual investigation as set forth above in paragraphs 1 through 7. CareCube represents and warrants that it has not made any material representations to the OAG that are inaccurate or misleading. If any material representations by CareCube are later found to be inaccurate or misleading, this Assurance is voidable by the OAG in its sole discretion. If the OAG believes that CareCube has made a material representation to the OAG that is inaccurate or misleading, it shall provide written notice to CareCube and provide CareCube thirty (30) days to cure the issue.
27. No representation, inducement, promise, understanding, condition, or warranty not set forth in this Assurance has been made to or relied upon by CareCube in agreeing to this Assurance.
28. CareCube 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.

General Principles

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

30. Nothing contained herein shall be construed to limit the remedies available to the OAG in the event that CareCube violates the Assurance after its Effective Date.
31. This Assurance may not be amended except by an instrument in writing signed on behalf of the Parties to this Assurance.
32. 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 the OAG, such invalidity, illegality, or unenforceability shall not affect any other provision of this Assurance.
33. CareCube acknowledges that it has entered this Assurance freely and voluntarily and upon due deliberation with the advice of counsel.
34. This Assurance shall be governed by the laws of the State of New York without regard to any conflict of laws principles.
35. 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.
36. This Assurance may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.
37. The effective date (“Effective Date”) of this Assurance shall be the date of the last signature to this Assurance.

Letitia James
Attorney General of the State of New York
28 Liberty Street
New York, NY 10005

Dated: 7/21/2023

By: Michael D. Reisman
Michael D. Reisman
ASSISTANT ATTORNEY GENERAL

Dr. Niranjana K. Mittal; Niranjana K. Mittal, Physician,
PLLC (d/b/a CareCube); and Care Cube, LLC (d/b/a
CareCube)

Dated: 7-20-2023

By: Niranjana K. Mittal
Dr. Niranjana K. Mittal

STATE OF NEW YORK

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COUNTY OF Kings

ss.:

On this 20 day of July, 2023, Nirajan K M, Ha, known personally to me to be the Owner of Nirajan K. Mittal, Physician, PLLC and the of Care Cube, LLC, appeared before the undersigned and acknowledged to me that he/she, as such officer and being authorized so to do, executed the within instrument for the purposes therein set forth, on behalf of CareCube by his/her signature on the instrument as such officer.

Sworn to before me this

20 day of July, 2023

Ecliffe Simon
NOTARY PUBLIC

ECLIFFE SIMON
Notary Public State of New York
No. 01SI5011091
Qualified in Kings County
Commission Expires 06/04/2027