

**BOND SCHOENECK
& KING**22 Corporate Woods Boulevard, Suite 501 | Albany, NY 12211 | bsk.com**ROGER A. BEARDEN, ESQ.**
rbearden@bsk.com
P: 518.533.3217
F: 518.533.3299

January 23, 2025

VIA NYSCEF

Hon. Sharon MJ Gianelli
Commercial Division, Nassau County
Supreme Court of the State of New York
100 Supreme Court Drive
Mineola, NY 11501

Re: *Caring Professionals, Inc. et al. v. New York State Department of Health et al.*
Index No. 601181/2025

Dear Judge Gianelli:

We write on behalf of Plaintiffs Caring Professionals, Inc. and Consumer Directed Personal Assistance Association of New York State (collectively "Plaintiffs") with regard to the above-captioned action. By proposed Order to Show Cause, Plaintiffs have sought a narrow Temporary Restraining Order to prevent Defendants from imposing unlawful sanctions which would have the catastrophic effect of preventing them from engaging in any business funded through New York State's Medicaid program, including the provision of licensed home care services. Counsel for Caring Professionals spoke with the Assistant Attorney General representing Defendants in this action yesterday to seek consent to this narrow TRO and, as of this writing, we are awaiting a response.

Through this letter, and as described more fully below, we respectfully request the following:

1. Oral argument be granted on Plaintiffs' application for a Temporary Restraining Order (NYSECF Dkt. 37); and
2. Permission to file a Memorandum of Law (NYSECF Dkt. 38) in support of the preliminary injunction and temporary restraining order not to exceed 14,000 words.

This action challenges the directives issued on December 6, 2024 and December 23, 2024 from Defendant New York State Department of Health ("DOH") under which DOH purported to direct Fiscal Intermediaries in the Consumer Directed Personal Assistance Program ("CDPAP") to provide confidential information protected under federal and state law. Under these directives, Fiscal Intermediaries were to provide this data on or

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before January 15, 2025 under threat of “penalties and other sanctions, including exclusion from the Medicaid program.” December 23, 2024 Directive (NYSCEF Dkt. 34).

By Order to Show Cause, Plaintiffs seek a narrow Temporary Restraining Order, prohibiting Defendants from taking any adverse action or issuing sanctions or penalties against Caring Professionals or any Member Fiscal Intermediary of CDPAANYS including, but not limited to, efforts to have Caring Professionals and or any Member Fiscal Intermediary of CDPAANYS expelled and/or terminated from the Medicaid Program. (NYSCEF Dkt 37)

The irreparable harm Caring Professionals, Inc. and the Member Fiscal Intermediaries will experience as a consequence of Defendants’ draconian threats are examined in our Memorandum of Law. See NYSCEF Dkt. 38, at 42-26. Briefly, for any Fiscal Intermediary that provides services to Medicaid beneficiaries, exclusion from the Medicaid program would deny them the ability not only to provide Fiscal Intermediary services, but any Medicaid-funded service, including licensed home care services, services for people with mental illness, and/or services for people with developmental disabilities. This sanction would not only irreparably harm the providers delivering these services, but the Medicaid beneficiaries, some of the most vulnerable New Yorkers, of access to these services. The proposed TRO would avoid these harms pending resolution of Plaintiffs’ request for preliminary injunctive relief.

We are in receipt of the Letter from counsel to Defendant Public Partnerships LLC (NYSCEF Dkt. 45). If the Court grants oral argument, we will be prepared to fully address the arguments presented in that Letter. However, we would note that the narrow TRO sought in this action has not previously been sought in any of the actions cited in that Letter and, further, that the TRO sought is not directed at PPL, but at the New York State Department of Health. Further, the PPL Letter contains a stunning admission that the data demanded in the DOH directives has been furnished to PPL in violation of federal health privacy laws, stating “All existing FI’s were directed by DOH to turn over their client data to PPL by January 15, 2025.” (NYSCEF Dkt. 45, at 1) (emphasis added). PPL, a vendor assuming Fiscal Intermediary functions and with no current relationship with Consumers, has no right to such information.

Further, we would respectfully request that permission be granted to permit the filing of a 14,000 word memorandum of law in support of the temporary restraining order and preliminary injunction. The plaintiffs in this action, each of whom would be entitled to submit a 7,000 word memorandum of law, have submitted a joint brief and would therefore request permission to submit a combined 14,000 word memorandum of law, permitting a full exploration of the issues in this matter.

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Last, due to a scrivener's error, the proposed TRO describes "Financial Intermediaries," in lieu of "Fiscal Intermediaries." Should this Court grant the requested TRO, we would respectfully request that this error be corrected in any Order from this Court.

Very truly yours,

BOND, SCHOENECK & KING, PLLC

/s/ Roger A. Bearden

Roger A. Bearden
*On behalf of Plaintiff Consumer Directed Personal
Assistance Association of New York State*

s/s Edward Wipper

Edward Wipper
On behalf of Plaintiff Caring Professionals, Inc.