

SUBPOENA DUCES TECUM

**DEPARTMENT OF LABOR, STATE OF NEW YORK
THE PEOPLE OF THE STATE OF NEW YORK**

**TO: HARRY'S NURSES REGISTRY
88-25 163rd Street
Jamaica, New York 11432**

212
686 - 0252

GREETINGS:

YOU ARE HEREBY REQUIRED to appear and attend before the person duly designated by the Commissioner of Labor to give evidence in connection with an investigation instituted by the Department of Labor, located at the **New York State Department of Labor, ATTN: Lorelei Boylan, Director of Strategic Enforcement, 75 Varick Street – 7th Floor, New York, NY 10013** on the 27th day of July, 2010, at 10:00 o'clock in the forenoon of that day to testify and give evidence in a inquiry instituted by the Commissioner of Labor under Sections 21 and 39 of the New York State Labor Law, for the purpose of determining compliance with the Labor Law and Regulations under Article 4, Article 5, Article 6, Article 18, Article 19, Article 30 of the Labor Law.

YOU MUST ALSO produce at the above time and place certain items listed in Attachment "A," as well as **General Ledger, Journals, Cash Book, Corporate Minute Book, Payroll Records, Copies of Social Security Returns, Copies of Unemployment Insurance Tax Returns (STATE & FEDERAL), Check Stubs & Canceled Checks and any other records pertaining to payments for services annexed hereto, covering the period from January 1, 2004 to the present.**

If you fail to do so, proceedings may be brought pursuant to Section 2308 (b) of the Civil Practice Law and Rules to compel you to do so and to direct a Sheriff to bring you to the hearing and you will be liable to pay costs and the penalty provided by law.

SIGNED and sealed this
13th day of July, 2010



Colleen C. Gardner
Commissioner of Labor

By 

Michael C. Clarke
Deputy Director
Office of Special Investigations
(518) 457-7012

MAURA MCCANN
Chief Labor Standards Investigator
Department of Labor
W. Averell Harriman State Office Campus
Building 12, Room 532, Albany, NY 12240
www.labor.ny.gov
(518) 457-2460

(Handwritten signature)

January 14, 2015

COPY

Harry's Nurses Registry, Inc.
Attn: Mr. Harry Dorvilier
88-25 163 St
Jamaica, NY 11432

Re: LS03 2010015248 Investigation Findings and Underpayment Total

Total Due: \$7,061,005.21

Dear Mr. Dorvilier:

On July 13, 2010, New York State Department of Labor investigators visited Harry's Nurses Registry a/k/a Harry's Home Care at 88-25 163rd Street in Jamaica, New York to investigate allegations of labor law violations. We understand your position has been that your employees are independent contractors.

We obtained copies of your payroll and time records and have since been concluding the audit portion of our investigation. It is our understanding that other related proceedings have also been initiated, including a FLSA class-action lawsuit, and a criminal proceeding brought by the Queens District Attorney. We believe these proceedings also addressed the issue of independent contractor status as a matter of jurisdiction; therefore, our position is that the nurses you employ are not independent contractors.

In making our determinations, we have taken the outcomes of the above-referenced proceedings into consideration. After concluding an audit of your payroll records, it is our position that you owe wages to **415 employees** for the following reasons:

- **Unpaid overtime wages** (for the period of June 2005 – June 2010) are owed to employees for your failure to pay time and one-half the regular rate of pay for over 40 hours worked in a payroll week. These amounts are listed as Claim Type 4 on the attached spreadsheet. To determine overtime amounts due we used your payroll and time records. Because payroll is bi-weekly, we split the total hours worked in half for each pay period. We made this decision based on a review of your time records, which demonstrated the total hours worked were almost always evenly split between two work weeks. Where an hourly rate of pay was not clear according to your payroll records, we extrapolated a rate by dividing the gross pay by the hours worked, or we applied any observable patterns for pay rates. We calculated the overtime

due by multiplying half of the full hourly pay rate, and the number of hours worked over 40 for each week. Note: we did not include medically fragile enhancement rates in the calculation of overtime, nor did we include underpayments for weeks where it was questionable that someone worked overtime. **The amount due for unpaid overtime is \$ 5,621,015.57.**

- **Unpaid wages** are due to employees for your failure to reimburse the full amount due to nurses who performed services for Medically Fragile Children (for the period of January 1, 2007 – June 2010). To determine the amounts due we used the enhancement rate of \$6.31 per hour. Where we observed that you increased the rate of pay for a nurse during the relevant period, we credited the partial raises as amounts paid. Claim Type 1 lists the balance of the enhancement due that you improperly retained. Your payroll records show a pattern of a rate increase for nurses worked on medically fragile enhancement cases. We were able to corroborate this pattern with the timing of the legislation and by cross-referencing your records with Medicaid billing data. **The amount due for unpaid wages is \$1,005,963.26.**
- **Unpaid wages for illegal deductions** of workers' compensation insurance costs (for the period of July 2006 – December 2007) is due to employees. These amounts are Claim Type 14 on the enclosed spreadsheet. These amounts were calculated directly from your payroll records as you referenced the charge as "LESS: W/C @1 PER HR..." in your payroll records. **The amount due for illegal deductions from wages is \$434,026.38.**

You did not respond to our letter dated May 19, 2014 in which we requested to meet with you to discuss these findings. As such, the enclosed spreadsheet lists the total amount due for each claimant for each claim type as described above. We will allow 21 days from the date of this letter to review the spreadsheet and your payroll records. You must then contact this office to make payment arrangements. Failure to contact this office to make payment arrangements within 21 days from the date of this letter will result in further legal action, including issuance of an Order to Comply. An Order to Comply will include an assessment of interest and civil penalties on the amounts due.

Sincerely,



Maura McCann
Chief Labor Standards Investigator
Division of Labor Standards

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MM:sc

cc: Harry's Nurses Registry, Inc.
Attn: Mr. Harry Dorvilier
169-14 Hillside Avenue
Jamaica, NY 11432