

Court sides with labs

Ruling says Department of Health overcharged private laboratories

By CATHLEEN F. CROWLEY Staff Writer

Updated:01:00 a.m., Friday, July 23, 2010

ALBANY -- The Supreme Court's Appellate Division ruled in favor of private laboratories that sued the state Department of Health, claiming that the state overcharged them.

The labs perform blood work, urine analysis and other tests ordered by physicians, and the state collects \$18 million from them to pay for a DOH program that inspects the labs.

The lawsuit claimed that the state charged the labs much more than the cost of the oversight program. Jeffrey J. Sherrin, the lawyer who represents the labs, estimates the true cost is \$8 million annually. If the labs prevail in this lawsuit and a second suit brought by additional labs, the state may have to repay up to \$60 million, Sherrin said.

In its ruling, the Appellate Division said the DOH failed to keep accurate financial records and said the fees were "arbitrary and capricious." A lower court ordered DOH to reconstruct the true cost of the program but deemed the numbers "bald estimates" that included costs not associated with the monitoring program.

The DOH submitted a second set of numbers that the courts found even more suspect. Thursday's ruling noted that DOH refused to disclose documents to support the estimates.

The appellate judges wrote: "The Department's intention to shift as many costs as possible onto the clinical laboratories was further revealed in the testimony that the Director had once boasted that he had been able to transfer 17 percent of the Wadsworth Center's budget to the clinical laboratories."

Sherrin, who represents the American Association of Bioanalysts, said this case was an example of state government at its worst.

"They abused a program properly established by the legislature, used it as a slush fund, and then tried every maneuver imaginable to hide what they did," he said. "Fortunately, the trial court and the appellate court saw through it."

The Supreme Court has ordered DOH to recalculate the fees based on the court's decision and refund the excess payments.

A spokeswoman for DOH said the agency is reviewing the appellate decision and considering options for an appeal.

Cathleen F. Crowley can be reached at 454-5348 or by e-mail at ccrowley@timesunion.com.

 [Printable Version](#)

 [Email This](#)