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For Immediate Release:

June 5, 2020

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AG Grewal, Division of Consumer Affairs Warn of False Claims, Scams in the Sale and Administration of COVID-19 and COVID-19 Antibody Tests

NEWARK – As testing for COVID-19 and COVID-19 antibodies continue to become more widely available, Attorney General Gurbir S. Grewal and the Division of Consumer Affairs (“the Division”) today warned consumers to beware of false or misleading claims in the sale or administration of COVID-19 tests and COVID-19 antibody tests, and other deceptive practices related to testing.

“As public access to COVID-19 and COVID-19 antibody testing increases, so do opportunities for unscrupulous individuals to make money by exploiting people’s confusion and fears,” said Attorney General Grewal. “We’re urging consumers to do their homework, understand the types of tests being marketed, and recognize what those tests can and cannot do, so they don’t fall victim to false promises and outright scams.”

Last week the Division sent cease-and-desist letters to a Morris County health club and a Passaic County dentist warning them against making false or misleading claims in the sale of antibody, or "serological," tests for COVID-19. These investigations and other similar investigations remain ongoing, so the Division is not releasing the names of the letters’ recipients at this time.

Antibody testing differs from diagnostic testing in that antibody testing is intended to determine if you possess antibodies to the SARS-CoV-2 virus that causes COVID-19, which indicates past exposure to the virus. Diagnostic testing is intended to determine if you currently have the disease.

In the letter to the Morris County health club, the Division said it had received information that the club had made misrepresentations in advertising COVID-19 antibody testing available to club members via a health and wellness center affiliated with the club. Among other things, the letter noted that the health club’s advertising stated that serological tests can determine “if someone has already contracted the virus and, thus, has developed the antibodies to prevent contracting it again.”

The statement appears misleading because a person may have contracted the virus but not yet developed antibodies that would result in a positive antibody test, and because it has not been established whether the presence of COVID-19 antibodies conveys immunity, and, if so, for how long.

In the letter to the Passaic County dentist, the Division said it had received information that he had made misrepresentations in advertising serological tests for sale to other

dental and medical practitioners. Among other things, the advertising stated that medical practitioners can determine that a patient, upon testing positive for a particular antibody, is “now clear, they have the antibody, they're safe.”

The statement appears misleading because it has not been established whether the presence of COVID-19 antibodies conveys immunity, and, if so, for how long, or whether someone with antibodies would not be able to spread the virus.

"Misinformation of this nature has the potential to provide false security to individuals and contribute, in the aggregate, to widespread public harm, and also violates New Jersey's Consumer Fraud Act," the Division stated in the letters.

According to the U.S. Food and Drug Administration (“FDA”), “because a serology test can yield a negative test result even in infected patients (e.g., if antibody has not yet developed in response to the virus) or may be falsely positive (e.g., if antibody to a coronavirus type other than the current pandemic novel strain is present), antibody tests should not be used in the immediate diagnosis of a patient where COVID-19 infection is suspected.” Thus, antibody or serology tests “cannot be used for diagnosis of infection.”

The FDA also states that “serology tests can play a critical role in the fight against COVID-19 by helping healthcare professionals identify individuals who have antibodies to SARS-CoV-2 virus and have developed an adaptive immune response. In the future, this may potentially be used to help determine, together with other clinical data, whether these individuals may be less susceptible to infection. At this time, it is unknown for how long antibodies persist following infection and if the presence of antibodies confers protective immunity.”

In addition to being aware of misleading information relating to testing for COVID-19 and its antibodies, consumers should also beware of outright scams connected to the sale of COVID-19 tests. Nationwide, individuals and entities are taking advantage of the burgeoning testing market by selling tests that haven't been approved by the FDA and may not provide accurate results; going door-to-door and performing fake tests for money; and by purporting to offer free virus test kits in an effort to collect consumers' personal and health insurance information. There are also reports that scammers posing as contact tracers are texting New Jersey residents with messages saying they came in contact with someone who had COVID-19. The text messages ask people to follow links and then try to get them to reveal their personal information.

“Unfortunately, where there's money to be made, scammers, con artists, and identify thieves are never far behind,” said Paul R. Rodríguez, Acting Director of the Division of Consumer Affairs. “Consumers should be wary of anyone advertising tests for sales via email, on social media, or over the phone. With testing now widely available in New Jersey pharmacies and healthcare practitioners' offices, finding a trustworthy testing site is easier than ever. And consumers should understand that legitimate contact tracers will never ask for social security numbers, bank account or credit card information, or insurance numbers over the phone. They don't need that information.”

Tips to Avoid COVID-19 Testing-Related Scams:

- Want a test? Talk to your doctor or pharmacist. If you want an antibody test, reach out to your healthcare provider or local pharmacy. They can help you figure out if the test will be covered by insurance and where to find a legitimate clinic, and can ensure that you understand what the results mean.
- Do research before buying. Scammers put pressure on people to buy or commit without giving them time to do further research. Before you agree to anything, do some investigating. Check the [FDA website](#) to verify claims that a test has been approved by the FDA or has received an emergency use authorization issued by the FDA.
- Understand your options. The Center for Disease Control and Prevention has a [detailed guide](#) to testing for COVID-19. Understand the different tests available

and what you need.

- Never share your personal information with strangers. Only make purchases and share your personal information with people and companies you know and trust.
- Know what a legitimate contact tracing interview entails. To learn more about the contact tracing process, go to the NJ Department of Health's [Contact Tracing for COVID-19 webpage](#).

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The mission of the Division of Consumer Affairs, within the Department of Law and Public Safety, is to protect the public from fraud, deceit, misrepresentation and professional misconduct in the sale of goods and services in New Jersey through education, advocacy, regulation and enforcement. The Division pursues its mission through its 51 professional and occupational boards that oversee 720,000 licensees in the state, its Regulated Business section that oversees 60,000 NJ registered businesses, as well as its Office of Consumer Protection, Bureau of Securities, Charities Registration section, Office of Weights and Measures, and Legalized Games of Chance section.

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