

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549

FORM 8-K

CURRENT REPORT  
Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

Date of Report (Date of earliest event reported): **March 16, 2020**



**CHEMBIO DIAGNOSTICS, INC.**

*(Exact name of registrant as specified in its charter)*

**Nevada**  
*(State or Other Jurisdiction of  
Incorporation or Organization)*

**0-30379**  
*(Commission File Number)*

**88-0425691**  
*(I.R.S. Employer  
Identification No.)*

**555 Wireless Boulevard, Hauppauge, New York 11788**  
*(Address of principal executive offices) (Zip code)*

Registrant's telephone number, including area code: **(631) 924-1135**

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- ☐ Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- ☐ Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- ☐ Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- ☐ Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 or Rule 12b-2 of the Securities Exchange Act of 1934.

Emerging growth company ☐

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act. ☐

**Item 1.01 Entry into a Material Definitive Agreement.**

We entered into an employment agreement, dated March 4, 2020 and effective as of March 16, 2020, with Richard L. Eberly with respect to his service as our Chief Executive Officer and President. The principal terms of the employment agreement are described in Item 5.02 below, which description is incorporated by reference into this Item 1.01.

**Item 5.02 Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers.**

We entered into an employment agreement, dated March 4, 2020 and effective as of March 16, 2020, with Richard L. Eberly with respect to terms of his employment as our Chief Executive Officer and President. The terms of the employment agreement were approved by the compensation committee, which consists of three disinterested members of the board of directors, and the compensation terms were established in part based upon advice of Pearl Meyer & Partners, LLC, the compensation committee's independent compensation consultant.

The employment agreement provides for our at-will employment of Mr. Eberly as our Chief Executive Officer and President for an initial term commencing March 16, 2020 and expiring December 31, 2021. The term will extend automatically for additional calendar years as of each January 1 (commencing January 1, 2022), unless either party delivers, by no later than the immediately preceding October 1 (initially October 1, 2021), a written notice to the other party that the term will not be extended.

Under the terms of the employment agreement, we will pay Mr. Eberly an annual base salary of \$400,000, which amount is subject to annual review by the compensation committee and may be increased, but not decreased.

In accordance with the terms of the employment agreement, we granted to Mr. Eberly on March 16, 2020 a restricted stock unit, or RSU, award to acquire, without payment of any purchase price, up to 233,589 shares of common stock. Consistent with Nasdaq Listing Rule 5635(c)(4), the RSU award was made outside of our 2019 Omnibus Incentive Plan as an inducement material to Mr. Eberly's entering into employment with us and was approved by the compensation committee without need for stockholder approval. Subject to Mr. Eberly's continued service with us, the RSU award will vest in three equal installments as of March 16 of each of 2021, 2022 and 2023, except that vesting will accelerate in full upon the occurrence of a Change in Control or upon his death or Permanent Disability (each such capitalized term as defined in the employment agreement).

If Mr. Eberly's employment is terminated or not renewed by us without Cause or by Mr. Eberly for Good Reason (each such capitalized term as defined in the employment agreement), the RSU award will vest in full and, in addition, we will be required to pay to Mr. Eberly an amount equal to his base salary and a pro rata bonus amount, each with respect to the year in which the termination occurs.

The employment agreement contemplates that the board will nominate Mr. Eberly for election as a director at our 2020 Annual Meeting of Stockholders.

*The foregoing description of Mr. Eberly's employment agreement with us does not purport to be complete and is subject to, and qualified in its entirety by, the full text of the agreement, which is included as Exhibit 10.1 to this report and is incorporated into this Item 5.02 by reference.*

**Item 7.01 Regulation FD Disclosure.**

On March 20, 2020, we issued a press release entitled "Chembio Diagnostics Reports Inducement Award Under Nasdaq Listing Rule 5635(c)(4)." A copy of the press release is furnished as Exhibit 99.1 to this report.

On March 20, 2020, we issued a press release entitled "Chembio Diagnostics Receives \$4 Million Purchase Order from Bio-Manguinhos for Production of DPP COVID-19 IgM/IgG System in Brazil." A copy of the press release is furnished as Exhibit 99.2 to this report.

*The information contained in this Item 7.01 and in the press releases furnished as Exhibits 99.1 and 99.2 to this report shall not be incorporated by reference into any filing with the Securities and Exchange Commission made by us whether made before or after the date hereof, regardless of any general incorporation language in such filing.*

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**Item 8.01 Other Events.**

On March 12, 2020, we announced that we had entered into a worldwide strategic partnership with LumiraDx Limited, or LumiraDx, to develop point-of-care diagnostic tests for the detection of the COVID-19 virus and IgM and IgG antibodies on both our and LumiraDx’s platforms. We entered into a Research and Development Collaboration Agreement under which each party will be able to develop a COVID-19 test for its own platform. We have previously collaborated with LumiraDx on feasibility studies for different diseases. As an additional part of the strategic relationship, we and LumiraDx entered into a distribution agreement with respect to a COVID-19 test arising from the collaboration that runs on our DPP platform, with LumiraDx appointed as an exclusive distributor in designated markets and as a co-exclusive distributor with us in the remaining markets.

**Item 9.01 Financial Statements and Exhibits.**

(d) Exhibits.

Exhibit	Description
<a href="#">10.1†*</a>	Employment Agreement, dated as of March 4, 2020 and effective as of March 16, 2020, between Chembio Diagnostics, Inc. and Richard L. Eberly
<a href="#">99.1</a>	Press release of Chembio Diagnostics, Inc. dated March 20, 2020, titled “Chembio Diagnostics Reports Inducement Award Under Nasdaq Listing Rule 5635(c)(4)”
<a href="#">99.2</a>	Press release of Chembio Diagnostics, Inc. dated March 20, 2020, titled “Chembio Diagnostics Receives \$4 Million Purchase Order from Bio-Manguinhos for Production of DPP COVID-19 IgM/IgG System in Brazil”

† Indicates management contract or compensatory plan.

\* Certain sensitive personally identifiable information in this exhibit was omitted by means of redacting a portion of the text and replacing it with [\*\*\*].

## SIGNATURE

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be filed on its behalf by the undersigned hereunto duly authorized.

CHEMBIO DIAGNOSTICS, INC.

Dated: March 20, 2020

By: /s/ NEIL A. GOLDMAN

Neil A. Goldman

Executive Vice President and Chief Financial Officer

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## EMPLOYMENT AGREEMENT

THIS EMPLOYMENT AGREEMENT (this “*Agreement*”) is entered into on March 4, 2020 and effective as of March 16, 2020 (the “*Effective Date*”) between Chembio Diagnostics, Inc., a Nevada corporation (the “*Company*”), and Richard L. Eberly (the “*Executive*”).

In consideration of the premises and mutual covenants in this Agreement and for other good and valuable consideration, the parties agree as follows:

1. *Term of Agreement.* Subject to Section 6, the term of this Agreement shall commence on the Effective Date and end on December 31, 2021 (the “*Term*”), *provided that*, commencing on January 1, 2022 and each January 1 thereafter, the Term shall be automatically extended for one additional calendar year unless, not later than the October 1 immediately preceding the scheduled expiration of the Term (or any extension thereof), either party shall have given notice to the other party that the Term shall not be extended.
  2. *Position.*
    - 2.1 *Duties.* The Executive shall serve as the Company’s Chief Executive Officer and President and shall have such other duties as agreed to by the Executive and the Board of Directors of the Company (the “*Board*”). The Executive shall report directly to the Board (or any Committee of the Board designated for the purpose) and shall have a principal place of employment at the Company’s offices in Hauppauge and Medford, New York, subject to business travel. The Executive shall have such duties and authority as shall be determined from time to time by the Board and as shall be consistent with the bylaws of the Company as in effect from time to time, *provided, however*, that, at all times, the Executive’s duties and responsibilities hereunder shall be commensurate in all material respects with his status as the senior-most officer of the Company. It is anticipated that the Executive will be nominated by the Board for election to the Board at the Company’s 2020 Annual Meeting of Stockholders, and the Executive agrees to serve during the Term as a member of the Board to the extent he is elected to such position in accordance with the bylaws of the Company and applicable law.
    - 2.2 *Service Requirements; Permitted Outside Activities.* During the Term, the Executive shall serve the Company faithfully, diligently and competently, and devote his full working time, energy and skill to the Company’s business. Notwithstanding the foregoing, the Executive may engage in the following outside activities:
      - (a) continue to serve as a member of the public and private company boards of directors on which he serves as of the date of this Agreement, as previously disclosed to the Board; and
      - (b) serve in any capacity with any professional, educational, philanthropic, public interest, charitable or community organization,in each case to the extent the foregoing activities do not at the time the activity or activities commence or thereafter (a) create an actual or potential business or fiduciary conflict of interest, (b) individually or in the aggregate, interfere materially with the performance of the Executive’s duties to the Company, or (c) breach any agreement between the Executive and the Company.
    - 2.3 *Compliance with Company Policies.* During the Term, the Executive shall comply with all personnel policies and procedures of the Company as the same now exist or may be hereafter amended, supplemented or superseded by the Company from time to time, including those policies contained in the Company’s employee manual or handbook setting forth policies and procedures generally for employees of the Company and its subsidiaries.
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3. *Compensation.*

3.1 *Base Salary.* During the Term, the Company shall pay the Executive a base salary (the “*Base Salary*”) at an annual rate of \$400,000. The Base Salary shall be payable in regular payroll installments in accordance with the Company’s payroll practices as in effect from time to time (but no less frequently than monthly). The Compensation Committee of the Board (the “*Compensation Committee*”) shall review the Base Salary at least annually and may (but shall be under no obligation to) increase (but not decrease) the Base Salary on the basis of such review.

3.2 *Annual Bonus.*

3.2.1 *Bonus.* For each calendar year during the Term (commencing with 2020), the Executive shall be eligible to participate in the Executive Incentive Plan of the Company (such plan or any successor plan thereto, together with any supplemental incentive plan or plans thereunder, the “*Bonus Program*”) in accordance with the terms and provisions of the Bonus Program as established from time to time by the Compensation Committee and pursuant to which the Executive shall be eligible, in the discretion of the Compensation Committee, to earn an annual cash bonus (the “*Annual Bonus*”). Pursuant to the terms of the Bonus Program, the Executive shall be eligible to earn, for each calendar year during the Term, a target Annual Bonus of 50% of the Base Salary for such year (pro-rated for period served) (the “*Target Bonus*”) based upon the achievement of one or more performance goals established for such year by the Compensation Committee. The Executive shall have the opportunity to make suggestions to the Compensation Committee prior to the determination of the performance goals for the Bonus Program for each performance period, but the Compensation Committee shall have final power and authority concerning the establishment of such goals. The Compensation Committee shall review the Target Bonus at least annually and may change the Target Bonus on the basis of such review.

3.2.2 *Payment.* The Annual Bonus, if any, for a calendar year during the Term shall be paid to the Executive by no later than March 15 of the succeeding year.

3.3 *Equity Compensation.* As a material inducement to the Executive’s employment, on March 16, 2020 the Company shall grant to the Executive a restricted stock unit (the “*RSU*”) to acquire, without payment of any purchase price, a number of shares of the Company’s common stock (“*Common Shares*”) equal to (a) 3.0% of the number of Common Shares issued and outstanding as of the close of business on March 13, 2020 divided by (b) 2.222, which is the most recent calculation by the Company (using a Black-Scholes option pricing model) of the ratio of (i) the value of a Common Share subject to a restricted stock unit (without purchase price) to (ii) the value of a Common Share subject to a stock option. Subject to the continued service of the Executive to the Company, one-third of the Common Shares subject to the RSU (subject to rounding) shall vest on the first, second and third anniversaries of the Effective Date, subject to acceleration in full upon the occurrence of a Change in Control (as defined in the 2019 Plan). The Executive shall also be eligible to receive additional equity awards under the 2019 Plan or future equity incentive plans, as may be determined from time to time in the discretion of the Compensation Committee.

4. *Employee Benefits.* During the Term, the Company shall provide the Executive with benefits, to the extent the Executive is eligible therefor, on the same basis as benefits are generally made available to other senior executives of the Company. The Executive shall be entitled to five weeks of paid vacation to be used in accordance with the Company’s then-current vacation policy, *provided* that, in the event the Executive’s employment ends for any reason, the Executive shall be paid only for unused vacation that accrued in the calendar year his employment terminated and any unused vacation for any prior year shall be forfeited.

5. *Expenses.*
- 5.1 *Relocation Expenses.* With respect to his move to a personal residence closer to his principal place of employment with the Company, the Executive shall be entitled to payment by the Company of (a) a non-accountable allowance of \$10,000 for expenses associated with his move, which shall be payable in the first payroll run following the Effective Date, and (b) rental expenses, for a period of up to six months commencing on the Effective Date, associated with such a personal residence that were mutually agreed upon in advance by the parties in their discretion, which rental expenses shall be payable at such times as may be agreed upon by the Executive and the Compensation Committee.
- 5.2 *Business Expenses.* During the Term, the Company shall reimburse the Executive, in accordance with the standard reimbursement practices established by the Company and approved by the Board from time to time, for reasonable business expenses he incurs in the performance of his duties hereunder
6. *Termination.* Notwithstanding any other provision of this Agreement, either the Company or the Executive may terminate the Executive's employment for any reason or no stated reason at any time, subject to the notice and other provisions set forth below.
- 6.1 *Certain Definitions.* For purposes of this Section 6 and elsewhere in this Agreement:
- 6.1.1 "Cause" shall mean the Executive's:
- (a) conviction of, or pleading nolo contendere to, any crime, whether a felony or misdemeanor, involving the purchase or sale of any security, mail or wire fraud, theft, embezzlement, moral turpitude, or theft of Company property (with the exception of minor traffic violations and similar misdemeanors);
  - (b) repeated neglect of his duties to the Company; or
  - (c) willful misconduct in connection with the performance of his duties or other material breach of this Agreement;
- provided* that the Company may not terminate the Executive's employment for Cause unless (i) the Company first gives the Executive notice of its intention to terminate and of the grounds for such termination within ninety days following the date the Board is informed of such grounds at a meeting of the Board and (ii) if such Cause is capable of being cured, the Executive has not, within thirty days following receipt of such notice, cured such Cause in a manner reasonably satisfactory to the Board.
- 6.1.2 "Change in Control" shall mean the occurrence of any of the following events:
- (a) the acquisition, directly or indirectly, by any individual, entity or group within the meaning of Section 13(d)(3) or 14(d)(2) of the Securities Exchange Act of 1934 (a "Person" for purposes of this Section 6.1.2) of the beneficial ownership (within the meaning of Rules 13d-3 and 13d-5 under the Securities Exchange Act of 1934, except that, in calculating the beneficial ownership of any particular Person, such Person shall be deemed to have beneficial ownership of all securities that such Person has the right to acquire by conversion or exercise of other securities, whether such right is currently exercisable or is exercisable only after the passage of time) of more than fifty percent of the outstanding securities of the Company;

- (b) a merger or consolidation in which the Company is not the surviving entity, except for a transaction the principal purpose of which is to change the state in which the Company is incorporated;
- (c) the sale, transfer or other disposition of all or substantially all of the assets of the Company;
- (d) a complete liquidation or dissolution of the Company; or
- (e) a reverse merger in which the Company is the surviving entity but in which securities possessing more than fifty percent of the total combined voting power of the Company's outstanding securities are transferred to a Person or Persons different from the Persons holding those securities immediately prior to such merger.

Notwithstanding the foregoing, a Change in Control shall not be deemed to occur unless one of the foregoing events constitutes a "change in control event" within the meaning of Section 409A.

6.1.3 "Good Reason" shall mean the Company's:

- (a) reducing the Executive's position, duties, or authority;
- (b) failing to secure the agreement of any successor entity to the Company that the Executive shall continue in his position without reduction in position, duties or authority;
- (c) relocating the Executive's principal work location beyond a fifty-mile radius of his work location as of the Effective Date; or
- (d) committing any material breach of this Agreement;

*provided* that (i) the occurrence of a Change in Control, following which the Company continues to have its common stock publicly traded and the Executive is offered continued employment as an executive officer with substantially the same duties and authority as he has hereunder of such publicly traded entity, shall not be deemed to give rise to an event or condition constituting Good Reason, and (ii) no event or condition shall constitute Good Reason unless (A) the Executive gives the Company a Notice of Termination specifying his objection to such event or condition within ninety days following the occurrence of such event or condition, (B) such event or condition is not corrected, in all material respects, by the Company in a manner that is reasonably satisfactory to the Executive within thirty days following the Company's receipt of such notice, and (C) the Executive resigns from his employment with the Company not more than thirty days following the expiration of the thirty-day period described in the foregoing clause (B).

6.1.4 "Permanent Disability" shall mean:

- (a) the inability of the Executive to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment that can be expected to result in death or can be expected to last for a continuous period of not less than twelve months; or
- (b) the Executive is, by reason of any medically determinable physical or mental impairment that can be expected to result in death or can be expected to last for a continuous period of not less than twelve months, receiving income replacement benefits for a period of not less than three months under an accident and health plan covering employees of the Company.



The Executive shall be deemed to have a Permanent Disability if he is determined (i) by the Social Security Administration to have a “total disability” or (ii) in accordance with a disability insurance program to be “disabled,” *provided* the definition of “disabled” under the program complies with the definition of Permanent Disability hereunder. Otherwise, such Permanent Disability shall be certified by a physician chosen by the Company and reasonably acceptable to the Executive, unless the Executive is then legally incapacitated, in which case such physician shall be reasonably acceptable to the Executive’s authorized legal representative.

6.1.5 “Section 409A” shall mean Section 409A of the Internal Revenue Code of 1986.

6.1.6 “Termination Date” shall mean:

- (a) in the event of a termination of the Executive’s employment by the Company for Cause or by the Executive for Good Reason, the date specified in a notice of termination (or, if not specified therein, the date of delivery of such notice), but in no event earlier than the expiration of the cure period set forth in Section 6.1.1 or 6.1.3, respectively;
- (b) in the event of a termination of the Executive’s employment by the Company without Cause, the date specified in a notice of termination (or if not specified therein, the date of delivery of such notice);
- (c) in the event of a termination of the Executive’s employment by the Executive without Good Reason, the date specified in a notice of termination, but in no event less than sixty days following the date of delivery of such notice;
- (d) in the event either party shall have given to the other party notice pursuant to Section 1 that the Term shall not be extended, the December 31 that is the final day of the Term;
- (e) in the event of a termination of the Executive’s employment due to Permanent Disability, the date the Company terminates the Executive’s employment following the certification of the Executive’s Permanent Disability; and
- (f) in the event of a termination of employment due to the Executive’s death, the date of the Executive’s death.

6.2 *Generally.* In the event of the termination of the Executive’s employment for any reason, the Executive shall receive payment of the following (the “Base Obligations”):

- (a) any unpaid Base Salary through the Termination Date, to be paid in accordance with Section 3;
- (b) subject to Section 4, any accrued but unpaid vacation through the Termination Date, to be paid within 14 days of the Termination Date; and
- (c) any earned but unpaid Annual Bonus with respect to the calendar year ended prior to the Termination Date, payable in accordance with Section 3.2.1.

In addition, in the event of the Executive’s termination of employment, the applicable provisions of each outstanding equity award agreement executed by the Executive and the Company shall govern the treatment of such equity award.

6.3 *Termination Without Cause or Nonrenewal by the Company or Termination for Good Reason by the Executive.* In the event of the termination of the Executive's employment by the Company without Cause or by the Executive for Good Reason or the expiration of the Term upon notice of nonrenewal delivered by the Company in accordance with Section 1, the Executive shall, subject to Section 6.7, be entitled to receive, in addition to the Base Obligations, the following payments and benefits (the "Severance Benefits"):

6.3.1 Severance Payment.

6.3.1.1 *Amount.* The Company shall pay the Executive an amount (the "Severance Payment") equal to (a) the Base Salary with respect to the calendar year in which the Termination Date occurs and (b) any pro-rata Target Bonus with respect to the calendar year in which the Termination Date occurs, determined by multiplying the Target Bonus for such calendar year by a fraction, the numerator of which is the number of days in the calendar year in which the Termination Date occurs through the Termination Date and the denominator of which is three hundred sixty-five. The pro-rata Target Bonus shall be paid only in the event the performance goals established under the Bonus Program for that calendar year with respect to such Target Bonus have been satisfied. Payment of the pro-rata Target Bonus shall be delayed until following the date the Compensation Committee determines that such performance goals have been satisfied, in accordance with the rules under the Bonus Program (the "Determination Date").

6.3.1.2 *Payment.* The Severance Payment is payable in a lump sum within two weeks following the Termination Date. Notwithstanding the foregoing, payments of the pro-rata Target Bonus portion of the Severance Payment shall be paid within thirty days following the Determination Date, except that if payment of one or more installments of the pro-rata Target Bonus portion of the Severance Payment must be delayed until following the Determination Date, the initial installment shall consist of a lump sum equal to the total of all such installments delayed or due as of such payment date, without adjustment for interest.

6.3.2 *Health Care Coverage Payments.* Provided the Executive is covered by the Company's health care plans immediately prior to the Termination Date, the Company shall pay to the Executive on a monthly basis, during the two-year period commencing on the first day of the Severance Period (or such shorter period ending as of the initial date the Executive is eligible for coverage under the health care plans of a subsequent employer), a taxable cash payment equal to the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) premium for the highest level of coverage available under the Company's group health plans, but reduced by the monthly amount that the Executive would pay for such coverage if the Executive was an active employee.

All other benefits, if any, due the Executive following termination pursuant to this Section 6.3 shall be determined in accordance with the plans, policies and practices of the Company, *provided* the Executive shall not be entitled to participate in any other severance plan, policy or program of the Company. The Severance Benefits are payments and benefits to which the Executive is not otherwise entitled, are given in consideration for the Release (as described in Section 6.7) and are in lieu of any severance plan, policy or program of the Company or any of its subsidiaries that may now or hereafter exist. The payments and benefits to be provided pursuant to this Section 6.3 shall constitute liquidated damages and shall be deemed to satisfy and be in full and final settlement of all obligations of the Company to the Executive under this Agreement. The Executive acknowledges and agrees that such amounts are fair and reasonable, and are his sole and exclusive remedy, in lieu of all other remedies at law or in equity, with respect to the termination of his employment hereunder. If, during the Severance Period, the Executive breaches in any material respect any of his obligations under Section 7, or the Confidentiality Agreement, the Company may, upon notice to the Executive (a) terminate the Severance Period and cease to make any further payments of the Severance Payment and (b) cease any health care coverage payments, except in each case as required by applicable law.

6.4 *Permanent Disability or Death.* The Executive's employment hereunder shall terminate upon his Permanent Disability or death. Upon termination of the Executive's employment due to Permanent Disability or death, the Executive or his estate (respectively) shall, subject to Section 6.7, be entitled to receive, in addition to the Base Obligations:

- (a) a pro rata Target Bonus with respect to the calendar year in which the Termination Date occurs, determined by multiplying the Target Bonus for such calendar year by a fraction, the numerator of which is the number of days in the calendar year in which the Termination Date occurs through the Termination Date and the denominator of which is three hundred sixty-five, payable in a lump sum within thirty days following the Release Effective Date, *provided* that if the sixty-day period described in Section 6.7 begins in one calendar year and ends in another, the pro rata Target Bonus shall be paid not earlier than January 1 of the calendar year following the Termination Date; and
- (b) accelerated vesting of the Option in full and, in accordance with Section 3.3, each outstanding equity award agreement executed by the Executive and the Company shall describe the treatment of the equity award under this Section 6.4.

All other benefits, if any, due the Executive or his estate (as applicable) following termination pursuant to this Section 6.4 shall be determined in accordance with the plans, policies and practices of the Company, *provided* the Executive shall not be entitled to participate in any other severance plan, policy or program of the Company.

6.5 *Termination for Cause by the Company or Termination Without Good Reason or Nonrenewal by the Executive.* In the event of the termination of the Executive's employment by the Company for Cause or by the Executive without Good Reason or the expiration of the Term upon notice of nonrenewal delivered by the Executive in accordance with Section 1, the Executive shall have no further rights to any compensation (including any Annual Bonus) or any other benefits under this Agreement other than the Base Obligations. All other benefits, if any, due the Executive following the Executive's termination of employment pursuant to this Section 6.5 shall be determined in accordance with the plans, policies and practices of the Company, *provided* that the Executive shall not be entitled to participate in any severance plan, policy, or program of the Company.

6.6 *Mitigation; Offset.* Following the termination of his employment for any reason, the Executive shall have no obligation or duty to seek subsequent employment or engagement as an employee (including self-employment) or as a consultant or otherwise mitigate the Company's obligations hereunder nor shall the payments provided by this Section 6 be reduced by the compensation earned by the Executive as an employee or consultant from any such subsequent employment or consultancy.

- 6.7 *Release.* Notwithstanding anything to the contrary in this Agreement, receipt by the Executive of any Severance Benefits or other compensation or benefits under this Section 6 (other than the Base Obligations) is subject to the Executive executing and delivering to the Company a general release of claims following the Termination Date, in substantially the form attached as EXHIBIT A (the “*Release*”), that, within sixty days following the Termination Date, has become irrevocable by the Executive (such date the Release becomes irrevocable being the “*Release Effective Date*”). If the Executive dies or becomes legally incapacitated prior to the Release Effective Date, then the Release requirements described in the preceding sentence shall apply with respect to the Executive’s estate and the Release shall be modified as reasonably necessary to allow for execution and delivery by a personal representative of the Executive’s estate or the Executive’s authorized legal representative, as applicable.
7. *Restrictive Covenant Agreement.*
- 7.1 *Delivery.* Contemporaneously with the execution and delivery of this Agreement, the Executive is executing and delivering to the Company a Nondisclosure, Intellectual Property, Non-Competition and Non-Solicitation Agreement (the “*Restrictive Covenant Agreement*”) in the form provided by the Company.
- 7.2 *Specific Performance.* The Executive acknowledges and agrees that the Company’s remedies at law for a breach or threatened breach of the Restrictive Covenant Agreement would be inadequate and, in recognition of this fact, the Executive agrees that, in the event of such a breach or threatened breach, in addition to any remedies at law, the Company, without posting any bond, shall be entitled to obtain equitable relief in the form of specific performance, temporary restraining order, temporary or permanent injunction or any other equitable remedy which may then be available.
8. *Disputes.* Except as provided in Section 7.2, any dispute arising between the parties under this Agreement, under any statute, regulation, or ordinance, under any other agreement between the parties, or in way relating to the Executive’s employment shall be submitted to binding arbitration before the American Arbitration Association (“AAA”) for resolution. Such arbitration shall be conducted in New York, New York, and the arbitrator shall apply New York law, including federal law as applied in New York courts. The arbitration shall be conducted in accordance with the AAA’s Employment Arbitration Rules as modified in this Section 8. The arbitration shall be conducted by a panel of three arbitrators that is mutually agreeable to both the Executive and the Company, all in accordance with AAA’s Employment Arbitration Rules then in effect. If the Executive and the Company cannot agree upon the panel of arbitrators, the arbitration shall be settled before a panel of three arbitrators, one to be selected by the Company, one by the Executive, and the third to be selected by the two persons so selected, all in accordance with AAA’s Employment Arbitration Rules. With respect to any and all costs and expenses associated with any such arbitration that are not assignable to one of the parties by the arbitrator, each party shall pay their own costs and expenses, including attorneys’ fees and costs, except that the Company shall pay the cost of the arbitrators and the filing fees charged to the Executive by the AAA, provided he is the claimant or counter claimant in such arbitration and is the prevailing party. The award of the arbitrators shall be final and binding on the parties, and judgment on the award may be confirmed and entered in any state or federal court in the City of New York, New York. The arbitration shall be conducted on a strictly confidential basis, and Executive shall not disclose the existence of a claim, the nature of a claim, any documents, exhibits, or information exchanged or presented in connection with such a claim, or the result of any action (collectively, “*Arbitration Materials*”), to any third party, with the sole exception of the Executive’s legal counsel, who also shall be bound by confidentiality obligations no less protective than the provisions set forth in the Restrictive Covenant Agreement. In the event of any court proceeding to challenge or enforce an arbitrators’ award, the parties consent to the exclusive jurisdiction of the state and federal courts in New York, New York and agree to venue in that jurisdiction. The parties agree to (a) take all steps necessary to protect the confidentiality of the Arbitration Materials in connection with any such proceeding, (b) file all Information (as defined in the Restrictive Covenant Agreement), and all documents containing Information, under seal, subject to court order, and (c) the entry of an appropriate protective order encompassing the confidentiality terms of this Agreement and the Restrictive Covenant Agreement. Nothing contained in this Section 8 shall be construed to preclude the Company from exercising its rights under Section 7.2.

9. *Miscellaneous.*

- 9.1 *Acceptance.* The Executive represents and warrants, as a material inducement to the Company's agreement to enter into this Agreement, that there are no legal, contractual or other impediments precluding the Executive from entering into this Agreement or from performing the services with the Company contemplated by this Agreement. Any violation of this representation and warranty by the Executive shall render all of the obligations of the Company under this Agreement void *ab initio* and of no force and effect.
- 9.2 *Entire Agreement; Amendments.* This Agreement, together with the Restrictive Covenant Agreement and the Option, contain the entire understanding of the parties with respect to the employment of the Executive by the Company, and shall supersede any and all previous contracts, arrangements or understandings between the Company and the Executive with respect to the subject matter set forth of this Agreement. This Agreement may not be altered, modified or amended except by written instrument signed by the Company and the Executive.
- 9.3 *No Waiver.* The failure of a party to insist upon strict adherence to a term of this Agreement on any occasion shall not be considered a waiver of such party's rights or deprive such party of the right thereafter to insist upon strict adherence to that term or any other term of this Agreement.
- 9.4 *Successor; Assignment.* Neither of the parties shall, without the consent of the other, assign or transfer this Agreement or any rights or obligations hereunder. Without limiting the foregoing, the Executive's right to receive payments hereunder shall not be assignable or transferable whether by pledge, creation of a security interest or otherwise, other than a transfer by the Executive's will or by the laws of descent and distribution. In the event of any attempted assignment or transfer contrary to this Section 9.4, the Company shall have no liability to pay the assignee or transferee any amount so attempted to be assigned or transferred. The Company shall cause this Agreement to be assumed by any entity that succeeds to all or substantially all of the Company's business or assets and this Agreement shall be binding upon any successor to all or substantially all of the Company's business or assets, *provided* that no such assumption shall release the Company of its obligations hereunder, to the extent not satisfied by such successor, without the Executive's prior consent.
- 9.5 *Notice.* All notices, requests, consents, claims, demands, waivers and other communications under this Agreement shall be in writing and shall be deemed to have been given: (a) when delivered by hand (with written confirmation of receipt); (b) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); (c) on the date sent by electronic mail (with confirmation of transmission) if sent during normal business hours of the recipient, and on the next day (other than a Saturday, Sunday or other day on which commercial banks in the New York, New York, are authorized or required to close) if sent after normal business hours of the recipient; or (d) on the third day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. Such communications must be sent to the respective parties at the following addresses (or at such other address for a party as shall be specified in a notice given in accordance with this Section 9.5):

If to the Company: Chembio Diagnostics, Inc.  
555 Wireless Boulevard  
Hauppauge, New York 11788  
Attention: Chief Financial Officer  
Email: legalnotices@chembio.com

If to the Executive: Richard L. Eberly  
[\*\*\*]

- 9.6 *Withholding Taxes.* The Company may withhold from any amounts payable under this Agreement such federal, state and local taxes as may be required to be withheld pursuant to any applicable law or regulation.
- 9.7 *Section 409A.* Notwithstanding any other provision of this Agreement, any payment, settlement or benefit triggered by termination of the Executive's employment with the Company shall not be made until six months and one day following Termination Date if such delay is necessary to avoid the imposition of any tax, penalty or interest under Section 409A. Any installment payments that are delayed pursuant to this Section 9.7 shall be accumulated and paid in a lump sum on the day that is six months and one day following the Termination Date (or, if earlier, upon the Executive's death) and the remaining installment payments shall begin on such date in accordance with the schedule provided in this Agreement. For purposes of this Agreement, termination or severance of employment shall be read to mean a "separation from service" within the meaning of Section 409A where it is reasonably anticipated that no further services would be performed after that date or that the level of services the Executive would perform after that date (whether as an employee or independent contractor) would permanently decrease to no more than twenty percent of the average level of bona fide services performed over the immediately preceding thirty-six month period. Additionally, the amount of expenses eligible for reimbursement or in-kind benefits to be provided during one calendar year may not affect the expenses eligible for reimbursement or any in-kind benefits to be provided in any other calendar year and the right to reimbursement or in-kind benefits is not subject to liquidation or exchange for another benefit. All reimbursements shall be made no later than the last day of the calendar year following the calendar year in which the Executive incurs the reimbursable expense. This Agreement is intended to comply with the requirements of Section 409A (including the exceptions thereto), to the extent applicable, and the Agreement shall be administered and interpreted in accordance with such intent. If any provision contained in the Agreement conflicts with the requirements of Section 409A (or the exemptions intended to apply under the Agreement), the Agreement shall be deemed to be reformed to comply with the requirements of Section 409A (or the applicable exemptions thereto). The Company, after consulting with the Executive, may amend this Agreement or the terms of any award provided for in this Agreement in any manner that the Company considers necessary or advisable to ensure that cash compensation, equity awards or other benefits provided for in this Agreement are not subject to U.S. federal income tax, state or local income tax or any equivalent taxes in territories outside the United States prior to payment, exercise, vesting or settlement, as applicable, or any tax, interest or penalties pursuant to Section 409A. Any such amendments shall be made in a manner that preserves to the maximum extent possible the intended benefits to the Executive. This Section 9.7 does not create an obligation on the part of the Company to modify this Agreement and does not guarantee that the amounts or benefits owed under the Agreement shall not be subject to interest and penalties under Section 409A. For purposes of this Agreement, all rights to payments and benefits hereunder shall be treated as rights to receive a series of separate payments and benefits to the fullest extent allowed by Section 409A.

- 9.8 *Clawback.* The Executive agrees that compensation and benefits provided by the Company under this Agreement or otherwise shall be subject to recoupment or clawback by the Company under any applicable clawback or recoupment policy of the Company that is generally applicable to the Company's executives, as may be adopted by the Board and in effect from time-to-time or as required by applicable law.
- 9.9 *Audit Rights.* Any and all equity compensation of any kind due hereunder to Executive after the Termination Date shall be accompanied by a detailed statement from the Company showing the calculation for such compensation for the period being measured. Within thirty days after the delivery of such statement, the Executive may notify the Company of any objections or changes thereto, specifying in reasonable detail any such objections or changes. If the Executive does not notify the Company of any objections or changes thereto or if within twenty days of the delivery of an objection notice the Executive and the Company agree on the resolution of all objections or changes, then such statements delivered by the Company, with such changes as are agreed upon, shall be final and binding. If the parties shall fail to reach an agreement with respect to all objections or changes within such twenty-day period, then all disputed objections or changes shall, be subject to resolution in accordance with Section 8.
- 9.10 *Interpretation.* For purposes of this Agreement:
- (a) headings used in this Agreement are for convenience of reference only and shall not, for any purpose, be deemed a part of this Agreement;
  - (b) any references in this Agreement to a Section refer to a Section of this Agreement, unless specified otherwise;
  - (c) the word "day" refers to a calendar day;
  - (d) the word "include" and "including" as used in this Agreement shall not be construed so as to exclude any other thing not referred to or described;
  - (e) the word "or" is not exclusive;
  - (f) the definition given for any term in this Agreement shall apply equally to both the singular and plural forms of the term defined;
  - (g) unless the context otherwise requires, (i) references in this Agreement to an agreement, instrument or other document mean such agreement, instrument or other document as amended, supplemented and modified from time to time to the extent permitted by the provisions thereof and (ii) references in this Agreement to a statute mean such statute as amended from time to time and include any successor legislation thereto and any rules and regulations promulgated thereunder; and
  - (h) this Agreement shall be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted.
- 9.11 *Counterparts.* This Agreement may be executed in counterparts, each of which shall be deemed an original but both of which together shall constitute one and the same instrument. Counterparts may be delivered via electronic mail (including pdf or any electronic signature complying with the U.S. federal ESIGN Act of 2000, *e.g.*, [www.docuSign.com](http://www.docuSign.com)) or other transmission method and any counterpart so delivered shall be deemed to have been duly and validly delivered and be valid and effective for all purposes.

9.12 *Governing Law.* This Agreement shall be governed by and construed in accordance with the laws of the State of New York.

IN WITNESS WHEREOF, the parties have duly executed this Agreement as of the day and year first above written.

RICHARD L. EBERLY

CHEMBIO DIAGNOSTICS, INC.

/s/ Richard L. Eberly

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By: /s/ Gail S. Page

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Gail S. Page

Interim Chief Executive Officer





### **Chembio Diagnostics Reports Inducement Award Under Nasdaq Listing Rule 5635(c)(4)**

HAUPPAUGE, NY, March 20, 2020 -- Chembio Diagnostics, Inc. (Nasdaq: CEMI), a leading point-of-care diagnostic company focused on infectious diseases, today reported that, in accordance with Nasdaq Listing Rule 5635(c)(4), it has granted a restricted stock unit award to Richard L. Eberly, Chembio's new Chief Executive Officer and President, outside Chembio's 2019 Omnibus Incentive Plan.

The restricted stock unit award was granted upon Mr. Eberly's joining Chembio on March 16, 2020, in accordance with terms of his employment agreement with Chembio, which was entered into on March 4, 2020 and became effective as of March 16, 2020. Under the award, Mr. Eberly can acquire, upon vesting and without payment of a purchase price, up to 233,589 shares of Chembio common stock. Subject to Mr. Eberly's continued service with us, the award will vest in three equal installments as of March 16 of each of 2021, 2022 and 2023, except that vesting will accelerate in full upon the occurrence of a defined change in control of Chembio or other specified events set forth in his employment agreement.

The award was approved by the Compensation Committee as an inducement material to Mr. Eberly's entering into employment with Chembio as contemplated by Nasdaq Listing Rule 5635(c)(4). Chembio is issuing this press release pursuant to Rule 5635(c)(4), which requires public announcement of inducement awards.

#### **About Chembio Diagnostics**

Chembio is a leading point-of-care diagnostics company focused on detecting and diagnosing infectious diseases. The company's patented DPP technology platform, which uses a small drop of blood from the fingertip, provides high-quality, cost-effective results in approximately 15 minutes. Coupled with Chembio's extensive scientific expertise, its novel DPP technology offers broad market applications beyond infectious disease, a number of which applications are under active development with collaboration partners. Chembio's products are sold globally, directly and through distributors, to hospitals and clinics, physician offices, clinical laboratories, public health organizations, government agencies, and consumers. Learn more at [www.chembio.com](http://www.chembio.com).

#### **Contact:**

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Gilmartin Group  
(415) 937-5402  
[investor@chembio.com](mailto:investor@chembio.com)

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## **Chembio Diagnostics Receives \$4 Million Purchase Order from Bio-Manguinhos for Production of DPP COVID-19 IgM/IgG System in Brazil**

HAUPPAUGE, NY, March 20, 2020 -- Chembio Diagnostics, Inc. (Nasdaq: CEMI), a leading point-of-care diagnostic company focused on infectious diseases, today announced its receipt of a \$4 million order from Bio-Manguinhos for the purchase of Chembio's DPP COVID-19 IgM/IgG System, to support the urgent needs of Brazil's Ministry of Health. Bio-Manguinhos is a subsidiary of the Oswaldo Cruz Foundation (Fiocruz) that is responsible for the development and production of vaccines, diagnostics and biopharmaceuticals, primarily to meet demands of Brazil's national public health system. Chembio has a long-standing relationship with Bio-Manguinhos, having supplied multiple products for point-of-care detection of HIV and other infectious diseases. Chembio's Brazilian subsidiary has filed for ANVISA approval of the DPP COVID-19 IgM/IgG System under the emergency use authorization program.

The DPP COVID-19 IgM/IgG System is a single-use rapid point-of-care test for the detection and differentiation of IgM and IgG antibodies to COVID-19 in whole blood, via fingerstick using Chembio's handheld analyzer, which achieved ANVISA approval and CE Mark during 2019. The System is intended for use in clinical and point-of-care settings to aid in the diagnosis of SARS-CoV-2 infection.

"We are pleased to deepen our relationship with Bio-Manguinhos to address the serological testing needs surrounding COVID-19," said Javan Esfandari, Chembio's Executive Vice President and Chief Science & Technology Officer. "Recent studies reiterate that both molecular and serological tests are needed to definitively confirm a virus carrier, and the strength of our DPP platform technology enabled our team to develop a high quality test for SARS-CoV-2 efficiently and rapidly. Our serology test will detect the presence of antibodies in blood indicating that a person had an immune response to SARS-CoV-2, regardless of whether symptoms developed from infection or if the infection was asymptomatic."

In the United States, Chembio will begin testing the DPP COVID-19 IgM/IgG system at multiple sites. The testing program has been designed to generate the clinical validation data that Chembio needs in order to submit the DPP COVID-19 IgM/IgG System for Emergency Use Authorization by the FDA and to commercially launch the System under new FDA guidelines.

### **About Chembio Diagnostics**

Chembio is a leading point-of-care diagnostics company focused on detecting and diagnosing infectious diseases. The company's patented DPP technology platform, which uses a small drop of blood from the fingertip, provides high-quality, cost-effective results in approximately 15 minutes. Coupled with Chembio's extensive scientific expertise, its novel DPP technology offers broad market applications beyond infectious disease, a number of which applications are under active development with collaboration partners. Chembio's products are sold globally, directly and through distributors, to hospitals and clinics, physician offices, clinical laboratories, public health organizations, government agencies, and consumers. Learn more at [www.chembio.com](http://www.chembio.com).

### **Forward-Looking Statements**

The first, third and fourth paragraphs of this press release contain statements concerning Chembio's sales, development and commercialization expectations that constitute "forward-looking statements" within the meaning of the Private Securities Litigation Reform Act of 1995. Such statements reflect management's current views based on certain assumptions, and they involve risks and uncertainties. Actual results, events, or performance may differ materially from the forward-looking statements due to a number of important factors, and will be dependent upon a variety of factors, including, but not limited to: the timely fulfillment by Bio-Manguinhos of its obligations under its purchase commitment; the ability of Chembio to maintain existing, and timely obtain additional, regulatory approvals; the risks of doing business with a foreign country, including geopolitical, international and other challenges as well as potential material adverse effects of tariffs and other changes in U.S. trade policy; and other risks described in public reports filed by Chembio with the Securities and Exchange Commission, including under the caption "Risk Factors" in Chembio's Annual Report on Form 10-K for the fiscal year ended December 31, 2019. Chembio undertakes no obligation to update any forward-looking statements contained in this press release as a result of new information, future events or otherwise.

*DPP is Chembio's registered trademark. For convenience, this trademark appears in this release without ® symbols, but that practice does not mean that Chembio will not assert, to the fullest extent under applicable law, its rights to the trademark.*

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