

OFFICE OF THE ATTORNEY GENERAL  
OF THE STATE OF NEW YORK

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In the Matter of the

**Investigation by Eliot Spitzer,  
Attorney General of the State of New York, of**

**Forensic Associates, Inc.**  
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**ASSURANCE OF DISCONTINUANCE  
PURSUANT TO EXECUTIVE LAW § 63(15)**

In late 2005, the Office of the Attorney General of the State of New York (“OAG”) began to investigate, pursuant to the OAG’s authority under Section 63(12) of the New York Executive Law, the business activities of Forensic Associates, Inc. (“FAI”), a New York corporation, and FAI’s three principals, Jesse H. Bidanset (“Bidanset”), Charles Salerno (“Salerno”), and Robert Dettling (“Dettling”) (collectively, the “FAI Principals”). Specifically, the OAG’s investigation focused on the forensic toxicology testing and analysis performed by FAI for the County of Rockland (the “County”). This Assurance of Discontinuance (“Assurance”) contains the findings from the OAG’s investigation and the relief agreed to by the OAG, FAI, and the FAI Principals (collectively, “the parties”).

**FINDINGS**

The OAG finds as follows:

1. FAI was incorporated in the State of New York in 1995 and is engaged in the business of forensic toxicology testing. Salerno and Dettling each own 50% of FAI.
2. FAI’s corporate address is 1 Wedgewood Drive, Coram, New York, which is Salerno’s personal residence.
3. At all relevant times, Salerno held the position of Co-Director and President of FAI and Dettling held the position of Co-Director and Secretary of FAI.
4. While owning FAI and continuing to date, Dettling and Salerno each have been employed by the County of Suffolk (“Suffolk County”), in the Office of the Medical Examiner working, respectively, as a Provisional Forensic Scientist - Toxicology and Permanent Forensic

Scientist - Chemical. Dettling and Salerno are civil service employees of Suffolk County; they are not prohibited from engaging in outside employment.

5. Bidanset, who holds a PhD in chemistry and was a full professor in the Department of Pharmaceutical Sciences at St. John's University until 1997, has been a consultant to FAI since its incorporation in 1995.

6. For approximately 29 years, from 1977 to 2006, Bidanset provided forensic toxicology testing services to the County, specifically, to the Rockland County Medical Examiner ("RCME"). At or about the time FAI was incorporated, Bidanset informed RCME that he would continue to provide forensic toxicology testing services to the County, but now would do so through FAI. Accordingly, starting in 1995 and continuing through 1999, the County entered into contracts with FAI under which FAI provided forensic toxicology testing services to RCME.

7. From FAI's inception and continuing until December 2005, Rockland County was FAI's primary client. FAI currently has no clients and is not performing work for any entity or person.

8. Salerno and Dettling were FAI's primary contact persons with RCME. They conducted forensic toxicology testing for RCME and drafted forensic toxicology reports for RCME. Bidanset would review these reports and sign them, and then the final reports were forwarded to RCME.

9. From 1995 and continuing through 2001, the County's contracts with FAI were not let pursuant to any bid or request for proposal process. In or about 2000, the County changed its procurement practices and for those services that did not require a public bid process, began to require requests for proposals prior to the award of any contracts for services. Pursuant to such change, in 2002, the County issued a request for proposals to conduct forensic toxicology testing for RCME. FAI and others responded to such request. FAI was awarded that contract in 2002, which subsequently was extended through mid-2005.

10. In 2005, the County issued another request for proposals to conduct forensic toxicology testing for RCME. FAI submitted a response to this request and in so doing agreed to all

provisions in the request for proposals, including a clause requiring respondents to “observe and obey all laws, ordinances, rules and regulations of the Federal, State and local government that apply to Forensic Laboratories.” FAI was awarded the contract, which was effective May 1, 2005 through December 31, 2005 (the “2005 Contract”).

11. Pursuant to the 2005 Contract, FAI expressly agreed that it was not entitled to receive compensation from the County during any period that it “fail[ed] to maintain any required certification, registration and[/]or license, and if applicable, New York State Department of Health approval.”

12. Pursuant to New York Public Health Law § 574, since 1994 through the present, any laboratory that performs forensic toxicology testing must obtain a permit from the New York State Department of Health (“DOH”) to operate as a clinical laboratory and that permit (or an amendment to it) specifically must authorize the clinical laboratory to conduct forensic toxicology testing. DOH is authorized to enforce this law and impose civil penalties for any violations thereof.

13. To be authorized to conduct forensic toxicology testing, the prospective laboratory must undergo an application and review process by DOH. This process includes a review of the clinical laboratory’s testing results, equipment, employee and supervisory competency and training, and safety records. In addition, pursuant to New York Public Health Law § 575, to become authorized to conduct forensic toxicology testing, the clinical laboratory must employ a qualified clinical laboratory director who has obtained a clinical laboratory certificate of qualification from DOH authorizing that director to perform or direct forensic toxicology testing.

14. FAI never had a clinical laboratory permit and never maintained its own physical laboratory; thus it could not (and did not) have authorization on such a permit to conduct forensic toxicology testing. In addition, at no relevant time did any of the FAI Principals have a clinical laboratory certificate of qualification from DOH authorizing any of them to perform or direct forensic toxicology testing.

15. In 2005 and in previous years, FAI conducted its forensic toxicology testing for the RCME at ICON Laboratories, in Farmingdale, New York (and its predecessor laboratories)

("ICON"). During the relevant time period, ICON had a clinical laboratory permit but that permit did not authorize ICON to conduct forensic toxicology testing. ICON also did not employ a qualified clinical laboratory director with a clinical laboratory certificate of qualification from DOH authorizing that director to perform or direct forensic toxicology testing.

16. Although FAI had no physical laboratory, it made certain statements to the County and RCME that indicated it had a laboratory. For example, in 2005, in FAI's response to the County's request for proposals, FAI stated that it conducted testing in "our" lab. In addition, none of the documents submitted by FAI to RCME in connection with the forensic toxicology testing services it provided to RCME indicated that such forensic toxicology testing had been conducted at ICON: the forensic toxicology reports that Bidanset reviewed and signed, and that were submitted on behalf of FAI to RCME were on FAI letterhead with FAI's Coram address and the vouchers FAI submitted to RCME for payment, which Bidanset also signed, contained FAI's Coram address.

17. In 2005, the County paid FAI a total of approximately \$33,540 for services FAI rendered to RCME. In December 2005, after the OAG notified the County of the finding set forth herein, the County informed FAI that it no longer would utilize FAI for forensic toxicology testing, and its last payment to FAI was in June 2005.

18. By the above conduct, FAI and the FAI Principals violated New York Public Health Law § 574 and breached the 2005 Contract.

### **RELIEF**

WHEREAS, FAI and the FAI Principals are willing to enter into this Assurance without admitting or denying the OAG's findings, except that FAI and the FAI Principals admit that (i) FAI did not have a clinical laboratory permit from DOH; and (ii) the FAI Principals did not have a certificate of qualification from DOH to perform or direct forensic toxicology testing;

WHEREAS, the OAG is willing to accept the terms of this Assurance pursuant to Executive Law § 63(15) and to discontinue its investigation; and

WHEREAS, the parties each believe that the obligations imposed by this Assurance are prudent and appropriate;

IT IS HEREBY UNDERSTOOD AND AGREED, by and between the parties that:

1. The term of this Assurance shall be five years.
2. Pursuant to New York Public Health Law § 577, FAI and the FAI Principals agree to pay a civil penalty of \$38,000. The FAI Principals shall pay \$9,000 of the civil penalty within ten days of execution of this Assurance, each of the three FAI Principals responsible for \$3,000. The civil penalty shall be made payable to the "New York State Department of Health" and sent by certified mail, return receipt requested, to the New York State Department of Health, Bureau of Accounts Management, Room 1258, Corning Tower, Empire State Plaza, Albany, New York 12237-0016. FAI shall forward to the OAG copies of the checks or other proof of the transfer of funds to DOH for the payment(s) due pursuant to this paragraph of the Assurance.
3. DOH shall suspend the remaining \$29,000 of the civil penalty contingent on full compliance by FAI and the FAI Principals with the terms of this Assurance, which prohibit the FAI Principals from seeking any clinical laboratory permit from DOH for five years from the date of execution of this Assurance. If during that five year time period, any FAI Principal applies to DOH for a permit either individually or as part of an entity, the \$29,000 of the civil penalty previously suspended by DOH shall become due immediately, with each of the three FAI Principals responsible for \$9,666.67. Payment of any previously suspended civil penalty shall be made payable and mailed in the same manner as the initial civil penalty payment. After the expiration of the five year time period, if none of the FAI Principals has applied to DOH for a clinical laboratory permit, DOH shall deem the remaining \$29,000 of the civil penalty waived.
4. FAI agrees to pursue a voluntary non-judicial dissolution pursuant to Article 10 of the New York Business Corporation Law and shall file a petition for such dissolution within three months of execution of this Assurance. FAI shall forward to the OAG a copy of the petition filed pursuant to this paragraph of the Assurance. In the event that FAI fails to file a petition for dissolution within the time frame prescribed herein and the OAG seeks an involuntary dissolution pursuant to Article 11 of the Business Corporation Law, FAI hereby agrees to waive any and all defenses to such involuntary dissolution.

5. As restitution for FAI's breach of contract, FAI agrees to pay the County the total sum of \$33,540 within ten days of execution of this Assurance. The restitution shall be made payable to the "Commissioner of Rockland County" and shall be sent by certified mail, return receipt requested, to Thomas Walsh, Esq., Assistant County Attorney, Rockland County Department of Law, 11 Hempstead Road, New City, New York 10956. FAI shall forward to the OAG copies of the checks or other proof of the transfer of funds to the County for the payment due pursuant to this paragraph of the Assurance.

6. FAI and the FAI Principals agree to forfeit, waive, forego, relinquish, and disclaim any claim to payment of any money due FAI or the FAI Principals by RCME or the County.

7. To the extent not already provided under this Assurance, FAI shall, upon request by the OAG, provide all documentation and information reasonably necessary for the OAG to verify FAI's compliance with this Assurance or that relates to the OAG's investigation of FAI.

8. All notices, reports, requests and other communications to any party pursuant to this Assurance shall be in writing and shall be directed as follows:

If to FAI or the FAI Principals, to:

Jeffrey Sherrin, Esq.  
O'Connell and Aronowitz, P.C.  
54 State Street  
Albany, New York 12207-1885  
Telephone (518) 462-5601  
Facsimile (518) 462-2670

If to the OAG, to:

Office of the Attorney General of the State of New York  
Public Integrity Unit  
120 Broadway, 22nd Floor  
New York, New York 10271  
Attn: Stacy P. Aronowitz, Esq.  
Telephone (212) 416-6676  
Facsimile (212) 416-6589

or to such other address or facsimile number as such party may hereafter specify by written notice to the other parties to this Assurance. Each such notice, request or other communication shall be effective: (i) if delivered in person, when such delivery is made; (ii) if delivered by overnight

courier, the next business day after such delivery is sent; (iii) if delivered by certified mail return receipt requested, as of the date noted as the date of delivery on the return receipt; or (iv) if delivered by facsimile, when such facsimile is transmitted and the appropriate confirmation is received.

9. This Assurance may not be amended except by an instrument in writing signed on behalf of all the parties to this Assurance.

10. This Assurance shall be binding on and inure to the benefit of the parties to this Assurance and their respective successors and assigns, provided that no party, other than the OAG, may assign, delegate, or otherwise transfer any of its rights or obligations under this Assurance without the prior written consent of the OAG.

11. This Assurance may be executed in counterparts, each of which shall be considered the same as if a single document shall have been executed, but shall become effective when such counterparts have been signed by each of the parties hereto.

12. This Assurance constitutes the entire agreement, and supersedes all prior Assurances, agreements and understandings, both written and oral, among the parties with respect to the subject matter of this Assurance. No representation, inducement, promise, understanding, condition, or warranty not set forth in this Assurance has been made or relied upon by any party to this Assurance.

13. In the event that any one or more of the provisions contained in this Assurance shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision of this Assurance.

14. The undersigned represent that they are authorized to enter into this Assurance and bind their respective parties to the terms and conditions thereof.

15. The OAG retains the right under New York Executive Law § 63(15) to compel compliance with this Assurance. Evidence of a violation of this Assurance shall constitute prima facie proof of violation of the applicable law in any civil action or proceeding thereafter commenced by the OAG.

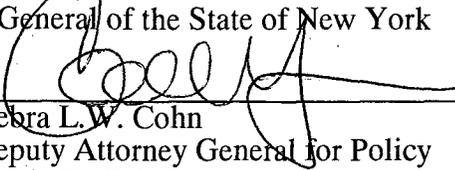
16. Should it be determined that a breach of this Assurance by FAI or the FAI Principals has occurred, FAI shall pay to the OAG the cost, if any, of such determination and of enforcing this Assurance, including, without limitation, legal fees, expenses, and court costs.

IN WITNESS WHEREOF, this Assurance is executed by the parties hereto as to 13<sup>th</sup> of

*CKZ*  
Dec  
November, 2006.

ELIOT SPITZER  
Attorney General of the State of New York

By:

  
Debra L. W. Cohn  
Deputy Attorney General for Policy  
Carrie H. Cohen  
Assistant Attorney General in Charge  
Stacy P. Aronowitz  
Assistant Attorney General  
Public Integrity Unit  
120 Broadway  
New York, New York 10271  
(212) 416-6676

FORENSIC ASSOCIATES, INC.

By:

  
Charles Salerno, President

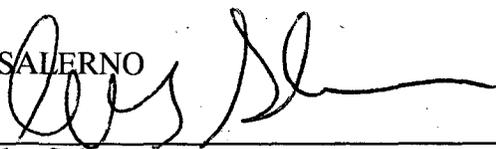
Sworn to before me this  
27 day of November, 2006.

  
Notary Public

VERA MOREA  
Notary Public, State of New York  
No. 4893719  
Qualified in Suffolk County  
Commission Expires May 18, 2007

CHARLES SALERNO

By:

  
Charles Salerno

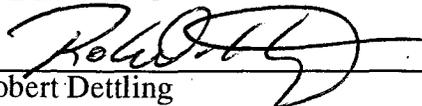
Sworn to before me this  
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Notary Public

VERA MOREA  
Notary Public, State of New York  
No. 4893719  
Qualified in Suffolk County  
Commission Expires May 18, 2007

ROBERT DETTLING

By:

  
Robert Dettling

Sworn to before me this  
27 day of November, 2006.

  
Notary Public

VERA MOREA  
Notary Public, State of New York  
No. 4893719  
Qualified in Suffolk County  
Commission Expires May 18, 2007

JESSE BIDANSET

By: *Jesse Bidanset*  
Jesse Bidanset

Sworn to before me this  
30 day of November, 2006.

*[Signature]*  
Notary Public



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