

ATTORNEY GENERAL OF THE STATE OF NEW YORK
LAW ENFORCEMENT MISCONDUCT INVESTIGATIVE OFFICE

In the Matter of

Assurance No. 25-020

Investigation by LETITIA JAMES,
Attorney General of the State of New York, of

Broome County Sheriff's Office,

Respondent.

ASSURANCE OF DISCONTINUANCE

The Office of the Attorney General of the State of New York ("OAG") commenced an investigation pursuant to Executive Law 75 into the Respondent Broome County Sheriff's Office's ("BCSO") procurement of the prescription-only drug nalmeferene (brand name Opvee) and distribution of it to personnel and individuals under its supervision or control, for administration in its opioid overdose prevention program ("OOPP"). This Assurance of Discontinuance ("Assurance") contains the findings of the OAG's investigation and the relief agreed to by the OAG and BCSO, whether acting through its respective directors, officers, employees, representatives, agents, affiliates, or subsidiaries, etc. (collectively, the "Parties").

APPLICABLE LAW

1. In New York, only persons authorized to prescribe, dispense, and administer prescription medications may do so. Unless otherwise authorized, non-medical personnel are not permitted to prescribe, dispense, or administer prescription medications, and doing so risks running afoul of New York licensing statutes prohibiting the unauthorized practice of medicine. *See, e.g.,* Education Law § 6512.

2. Specific authorization under New York law permits certain non-medical persons such as law enforcement personnel to administer opioid antagonists under a carefully defined program. Public Health Law (PHL) § 3309 gives the Commissioner of the New York Department of Health (“DOH”) authority to oversee an OOPP. PHL § 3309(3)(a)(i) specifically restricts the medication that may be used by non-medical persons in an OOPP, defining “opioid antagonist” as “a drug approved by the Food and Drug Administration that, when administered, negates or neutralizes in whole or in part the pharmacological effects of an opioid in the body,” and further providing that “[o]pioid antagonist shall be limited to naloxone and other medications approved by the department for such purpose.”

3. Pursuant to PHL § 3309, its implementing regulations in 10 NYCRR § 80.138, and DOH’s Guide for New York State’s Registered OOPPs, naloxone is the only medication approved by DOH as an opioid antagonist. Nalmefene has not been approved by DOH for use in an OOPP program.

OAG’s FACTUAL FINDINGS

4. On March 27, 2024, BCSO personnel met with state DOH and the Broome County Department of Health regarding BCSO’s questions about prescription-only nalmefene in nasal spray form (brand name Opvee), for possible law enforcement use instead of naloxone (brand name Narcan) as an opioid antagonist in cases of opioid overdose. DOH advised BCSO that nalmefene was not an approved opioid antagonist and explained why.

5. On the same day, DOH emailed the BSCO Sheriff a link to PHL § 3309, reiterating that under the law, the approved opioid antagonist to be prescribed through a non-

patient-specific prescription is limited to naloxone “and any other medication approved by [DOH] for such purpose,” and that “DOH had not approved of nalmefene/Opvee.” BCSO represents that it sought further clarification and did not receive a written response until after the BCSO “pilot” was launched.

6. PrimeCare Medical Inc. (“PrimeCare”), based in Harrisburg, PA, is contracted with BCSO to provide all medical and mental health care services to Broome County’s incarcerated population. The Physician Medical Director at Broome County Sheriff’s Correctional Division consistent with that contract is Dr. Mahmood Ahmed.

7. On April 3, 2024, Dr. Ahmed provided his medical license information to the manufacturer of Opvee, Indivior, and signed a certification that he would be responsible for an Opvee shipment to BCSO.

8. On or about the same day, Dr. Ahmed signed an undated non-patient-specific standing order for use of Opvee by “trained staff” of BCSO and by PrimeCare’s Broome County-affiliated health care provider personnel.

9. On April 5, 2024, BCSO again requested DOH to approve BCSO to “pilot” the use of Opvee by BCSO personnel.

10. On April 10, 2024, the BCSO Sheriff directed Indivior to open an account for BCSO to purchase Opvee, and on April 11, 2024, BCSO requested to purchase 300 units of Opvee for \$22,500 from Indivior. The units were shipped to BCSO the same day.

11. On April 15, BCSO jail personnel were notified that Opvee was replacing Narcan in intake and medical units, and that training would take no more than five minutes.

12. On April 22, 2024, BCSO issued a press release stating it had procured Opvee and distributed it to BSCO staff for administration in its OOPP.

13. On the same date, the BCSO Sheriff issued an interim order, directing that for all suspected opioid overdoses, BCSO personnel shall use Opvee instead of Narcan. The order stated that only members trained and/or approved by the Sheriff and/or his designee would carry and deploy Opvee. The order did not require personnel to call Emergency Medical Services after administering Opvee, but it stated that if the victim showed no improvement in breathing, officers should strongly recommend the overdose victim go to the hospital via transport by Emergency Medical Services or law enforcement.

14. On April 23, 2024 DOH reiterated to BCSO in writing that DOH had not approved of use of nalmefene/Opvee in an OOPP.

15. In that letter, DOH specifically noted that intranasal nalmefene has never been used by medical professionals, and stated that:

the [current] standing order [permitting law enforcement to dispense an opioid antagonist] is assessed by the Department of Health's Commissioner. It currently includes multiple variations of naloxone products nalmefene (Opvee®) falls into another opioid antagonist drug classification and is not included in the legislation allowing a standing order to be issued. It would have to be specifically approved by the Health Commissioner to be added to the standing order. The determination of approved products is based on scientific study and expert opinions and nalmefene does not meet the standard required to be added to the standing order.

16. DOH further stated in its letter to BCSO that, "[b]ased on current science and medical judgment, we believe that the products available under the standing order and at Opioid Overdose Prevention Programs are the appropriate formulations to keep New Yorkers safe and we will not support a pilot of nalmefene," and that naloxone (brand name Narcan) is the appropriate medication for law enforcement use.

17. On April 23, 2024, the BCSO Sheriff characterized the DOH letter in an email as “a no without saying no.”

18. On April 26, 2024, BCSO continued to move forward, requesting the County approve for payment the Opvee BCSO already purchased on April 11, 2024.

19. On May 8, 2024, the April 11 BCSO Opvee purchase was approved by Broome County officials.

20. On May 10, 2024, counsel for the New York State Sheriffs’ Association received an email from the BCSO Sheriff containing the DOH April 23rd written response about Opvee. In response, the counsel stated to the BCSO Sheriff that, “[DOH’s] position is that Opvee is ok but only if you have a patient specific prescription . . . which eliminates its use in the jail or on the road.”

21. On the same date, the BCSO Sheriff responded, “I agree I would argue the DOH is [sic] still doesn’t agree that doctors have the ability to sign the non-patient specific prescription.”

22. On May 21, 2024, the BCSO stated in a Facebook post that its BCSO personnel had used Opvee in the field, and posted a video showing a BCSO officer arriving at a private home and administering Opvee.

23. The use of nalmefene by BCSO personnel and any individuals under BCSO’s supervision or control is and was not authorized by DOH.

24. On July 2, 2024, OAG sent BCSO a Cease-and-Desist notification, advising it to “immediately cease and desist from obtaining, distributing, administering or utilizing nalmefene in any way, as doing so violates [PHL § 3309, its implementing regulation in 10 NYCRR §

80.183, and DOH's Guide for New York State's Registered Opioid Overdose Prevention Programs].”

25. On July 9, 2024, the Broome County Attorney notified OAG that BCSO had complied with the Cease-and-Desist Notification, and verified that BCSO would preserve documents and provide requested documents, which it subsequently did provide.

CONCLUSION

26. OAG finds that BCSO violated PHL § 3309, Education Law § 6512, and 10 NYCRR § 80.138.

27. BCSO admits the OAG's findings in paragraphs (1)-(25) above.

28. The OAG finds the relief and agreements contained in this Assurance appropriate and in the public interest.

THEREFORE, the OAG is willing to accept this Assurance pursuant to Executive Law § 75, in lieu of commencing a statutory proceeding for violations of PHL § 3309, Education Law § 6512 and 10 NYCRR § 80.138 based on the conduct described above.

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

RELIEF

29. General Injunction: BCSO shall not engage, or attempt to engage, in conduct in violation of any applicable laws, including but not limited to PHL § 3309, Education Law § 6512, and 10 NYCRR § 80.138, and expressly agrees and acknowledges that any such conduct is a violation of the Assurance, and that OAG thereafter may commence the civil action or proceeding contemplated in the Conclusion, *supra*, in addition to any other appropriate investigation, action, or proceeding

30. Programmatic Relief:

- a. The OAG will provide instructions on the management or disposal of the remaining Opvee doses of those purchased by BCSO. BCSO agrees to follow all of OAG's instructions.
- b. BCSO will not provide nalmeferene through a non-patient specific standing order to BCSO personnel and any individuals under BCSO's supervision or control; and BCSO personnel and any individuals under BCSO's supervision or control shall not dispense nalmeferene to members of the public through a non-patient specific standing order unless nalmeferene is approved by DOH for that purpose.
- c. BCSO will ensure BCSO personnel and any individuals under BCSO's supervision or control will use naloxone (brand name Narcan) as the sole approved medication under the OOPP per PHL § 3309 and 10 NYCRR § 80.138 unless and until other medications are approved by DOH for that purpose.
- d. Within 30 days of the Effective Date of this Assurance, BCSO will notify and train BCSO personnel and any individuals under BCSO's supervision or control as to the requirements of this Assurance.

- e. BCSO will not purchase nalmefene (brand name Opvee) except if and when individually prescribed.
 - f. Acceptance of this Assurance by the OAG is not an approval or endorsement by OAG of any of BCSO's policies, practices or procedures, and BCSO shall make no representation to the contrary.
31. Oversight:
- a. *Certification of Compliance:* BCSO shall provide OAG with a certification affirming its compliance with the requirements set forth in this Assurance, paragraphs (29)-(30), to be submitted to OAG within 60 days following the Effective Date. This certification shall be in writing and be signed by an appropriate authorized individual on behalf of BCSO.
 - b. BCSO expressly agrees and acknowledges that a default in the performance of any obligation under this paragraph is a violation of the Assurance, and that OAG thereafter may commence the civil action or proceeding contemplated, *supra*, in addition to any other appropriate investigation, action, or proceeding, and that evidence that the Assurance has been violated shall constitute prima facie proof of the statutory violations described in paragraphs (1)-(28), pursuant to Executive Law § 75.

MISCELLANEOUS

Subsequent Proceedings.

32. BCSO expressly agrees and acknowledges that OAG may initiate a subsequent investigation, civil action, or proceeding to enforce this Assurance, for violations of the Assurance, or if the Assurance is voided pursuant to paragraph 38, and agrees and acknowledges that in such event:

- a. any statute of limitations or other time-related defenses are tolled from and after the effective date of this Assurance;
- b. the OAG may use statements, documents or other materials produced or provided by BCSO prior to or after the effective date of this Assurance;
- c. any civil action or proceeding must be adjudicated by the courts of the State of New York, and that BCSO irrevocably and unconditionally waives any objection based upon personal jurisdiction, inconvenient forum, or venue.
- d. evidence of a violation of this Assurance shall constitute prima facie proof of a violation of the applicable law pursuant to Executive Law § 63(15).

33. If a court of competent jurisdiction determines that BCSO has violated the Assurance, BCSO shall pay to the OAG the reasonable cost, if any, of obtaining such determination and of enforcing this Assurance, including without limitation legal fees, expenses, and court costs.

Effects of Assurance:

34. All terms and conditions of this Assurance shall continue in full force and effect on any successor, assignee, or transferee of BCSO. BCSO shall include any such successor, assignment or transfer agreement a provision that binds the successor, assignee or transferee to

the terms of the Assurance. No party may assign, delegate, or otherwise transfer any of its rights or obligations under this Assurance without the prior written consent of the OAG.

35. Nothing contained herein shall be construed as to deprive any person of any private right under the law.

36. Any failure by OAG to insist upon the strict performance by BCSO of any of the provisions of this Assurance shall not be deemed a waiver of any of the provisions hereof, and OAG, notwithstanding that failure, shall have the right thereafter to insist upon the strict performance of any and all of the provisions of this Assurance to be performed by BCSO.

Communications:

37. All notices, reports, requests, and other communications pursuant to this Assurance must reference Assurance No. ²⁵⁻⁰²⁰ ~~37~~, and shall be in writing and shall, unless expressly provided otherwise herein, be given by hand delivery; express courier; or electronic mail at an address designated in writing by the recipient, followed by postage prepaid mail, and shall be addressed as follows:

If to BCSO, to: Cheryl Sullivan, or in her absence, to the person holding the title of Broome County Attorney.

If to the OAG, to: Assistant Attorney General Tina Peng, or in her absence, LEMIO Bureau Chief Tyler Nims or in his absence, the person holding the title of Bureau Chief, LEMIO.

Representations and Warranties:

38. The OAG has agreed to the terms of this Assurance based on, among other things, the representations made to OAG by BCSO and its counsel and OAG's own factual investigation

as set forth in Findings, paragraphs (1)-(25) above. BCSO represents and warrants that neither it nor its counsel has made any material representations to OAG that are inaccurate or misleading. If any material representations by BCSO or its counsel are later found to be inaccurate or misleading, this Assurance is voidable by OAG in its sole discretion.

39. No representation, inducement, promise, understanding, condition, or warranty not set forth in this Assurance has been made to or relied upon by BCSO in agreeing to this Assurance.

40. BCSO represents and warrants, through the signatures below, that the terms and conditions of this Assurance are duly approved.

General Principles:

41. Unless a term limit for compliance is otherwise specified within this Assurance, BCSO's obligations under this Assurance are enduring. Nothing in this Agreement shall relieve BCSO of other obligations imposed by any applicable state or federal law or regulation or other applicable law.

42. BCSO agrees not to take any action or to make or permit to be made any public statement denying, directly or indirectly, any finding in the Assurance or creating the impression that the Assurance is without legal or factual basis. BCSO agrees it can comment on the Assurance and findings only in a manner consistent with this paragraph.

43. Nothing contained herein shall be construed to limit the remedies available to OAG in the event that BCSO violates the Assurance after its effective date.

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

45. In the event that any one or more of the provisions contained in this Assurance shall for any reason be held by a court of competent jurisdiction to be invalid, illegal, or unenforceable in any respect, in the sole discretion of OAG, such invalidity, illegality, or unenforceability shall not affect any other provision of this Assurance.

46. BCSO acknowledges that they have entered this Assurance freely and voluntarily and upon due deliberation with the advice of counsel.


47. This Assurance shall be governed by the laws of the State of New York without regard to any conflict of laws principles.

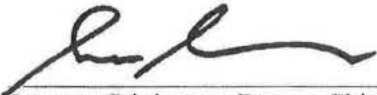
48. The Assurance and all its terms shall be construed as if mutually drafted with no presumption of any type against any party that may be found to have been the drafter.

49. This Assurance may be executed in multiple counterparts by the parties hereto. All counterparts so executed shall constitute one agreement binding upon all parties, notwithstanding that all parties are not signatories to the original or the same counterpart. Each counterpart shall be deemed an original to this Assurance, all of which shall constitute one agreement to be valid as of the effective date of this Assurance. For purposes of this Assurance, copies of signatures shall be treated the same as originals. Documents executed, scanned and transmitted electronically and electronic signatures shall be deemed original signatures for purposes of this Assurance and all matters related thereto, with such scanned and electronic signatures having the same legal effect as original signatures.

50. The Effective Date of this Assurance shall be April 16, 2025.

LETITIA JAMES
Attorney General of the State of New York
28 Liberty Street
New York, NY 10005

By:  4/28/2025
Tina Peng, Assistant Attorney General
Law Enforcement Misconduct Investigative Office

By: 
Darsana Srinivasan, Bureau Chief
Health Care Bureau

BROOME COUNTY SHERIFF'S OFFICE

By:

Fred J. Akshar II
Sheriff
Broome County Sheriff's Office
155 Lt. VanWinkle Drive
Binghamton, NY 13905

STATE OF

COUNTY OF

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ss.:

On the 17th day of April in the year 2025 before me personally came Sheriff Fred J. Akshar II to me known, who, being by me duly sworn, did depose and say that he resides in Broome County, New York; that he is the duly elected Sheriff of the Broome County Sheriff's Office, the Respondent described in and which executed the above instrument.

Sworn to before me this

17th day of April, 2025

NOTARY PUBLIC

Valerie Datta

VALERIE DATTA
Notary Public, State of New York
Registration No. 01DA6062788
Qualified in Broome County
Commission Expires 08/13/20 25