

ATTORNEY GENERAL OF THE STATE OF NEW YORK
HEALTH CARE BUREAU

In the Matter of Boan Drugs Inc., d.b.a. Embassy Pharmacy

Assurance No. #21-065

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

Boan Drugs Inc., d.b.a. Embassy Pharmacy,

Respondent.

ASSURANCE OF DISCONTINUANCE

The Office of the Attorney General of the State of New York (“OAG”) commenced an investigation pursuant to Executive Law § 63(12) and General Business Law § 349 into improper practices in the administration of COVID-19 vaccines by Boan Drugs Inc., d.b.a. Embassy Pharmacy. This Assurance of Discontinuance (“Assurance”) contains the findings of the OAG’s investigation and the relief agreed to by the OAG and Respondent (collectively, the “Parties”).

OAG’s FINDINGS

1. Respondent Boan Drugs Inc., d.b.a. Embassy Pharmacy (“Respondent” or “Embassy Pharmacy”), is a corporation that does business at 1873 Amsterdam Avenue, New York, New York.
2. Respondent improperly charged a vaccine administration fee of \$25 to approximately 275 consumers that received a COVID-19 vaccination at Embassy Pharmacy, between January 13, 2021 and February 16, 2021.
3. Respondent represents that it did not charge a vaccine administration fee directly to any vaccine recipient after February 16, 2021.

4. Respondent represents that all COVID-19 vaccine recipients improperly charged a vaccination administration fee have been reimbursed by Respondent for the vaccine administration fee.

5. OAG finds that Respondent's improper practices in the administration of COVID-19 vaccines, by the charging of a vaccine administration fee directly to consumers, constitute deceptive acts and practices that violate Executive Law § 63(12) and General Business Law § 349.

6. Respondent admits to the OAG's Findings, paragraphs 1-5, above.

7. 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 § 63(15), in lieu of commencing a statutory proceeding for violations of Executive Law § 63(12) and General Business Law § 349 based on the conduct described above between January 13, 2021 and February 16, 2021.

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

RELIEF

8. General Injunction: Respondent shall not engage, or attempt to engage, in conduct in violation of any applicable laws concerning the administration of COVID-19 vaccines, including charging vaccine administration fees directly to consumers, and expressly agrees and acknowledges that any such conduct is a violation of the Assurance, and that the OAG thereafter may commence the civil action or proceeding contemplated in paragraph 7, *supra*, in addition to any other appropriate investigation, action, or proceeding.

9. Programmatic Relief:

- a. Immediately cease instructing, encouraging, or permitting staff to charge a vaccine administration fee directly to consumers, or to advise consumers that a vaccine administration fee is required to receive a COVID-19 vaccination;
- b. Conduct in-person training on the prohibition against charging a vaccine administration fee directly to consumers for all managers, vaccinators, physicians' assistants, pharmacists, and any other staff responsible for administration of a COVID-19 vaccination, within 30 days of the effective date of the Assurance;
- c. Complete a log recording staff that have completed the training described in paragraph 10(b) that includes full name, date training was completed, and wet signature of each person attending;
- d. Consistent with Center for Disease Control ("CDC") requirements, see CDC Provider Agreement, Agreement Requirements, ¶ 7(e), ensure compliance with a minimum three-year retention schedule for the training logs described in paragraph 10(c);

- e. Prohibit any staff employed by Respondent who has not completed the training described in paragraph 10(b) within 30 days of the effective date of the Assurance from participating in any part of COVID-19 vaccine preparation or administration;
- f. No later than within 30 days of the effective date of the Assurance, provide all staff at COVID-19 vaccination site(s) and otherwise involved in COVID-19 vaccination, including contractors, a document that reads as follows:

COVID-19 VACCINATION PROGRAM: COVID-19 Vaccine must be administered in accordance with guidance from the Center for Disease Control, New York State Department of Health, and New York City Department of Health and Mental Hygiene. Anyone aware of potential fraud or abuse should immediately contact 833-VAX-SCAM, STOPVAXFRAUD@health.ny.gov, 1-800-HHS-TIPS, or the New York State Office of the Attorney General at 1-800-428-9071. Complaints can be made anonymously. Please enter this important contact information into your phone now.
- g. For all staff at COVID-19 vaccination site(s) and otherwise involved in COVID-19 vaccination, complete a log acknowledging receipt of the document described in paragraph 10(f) that includes full name, date received, and wet signature of each recipient;
- h. Establish policies and procedures by which (i) any new staff at a COVID-19 vaccination site or otherwise involved in COVID-19 vaccination, including contractors, is provided the document described in paragraph 10(f) within three business days of beginning qualifying work, (ii) their information is added to the log described in paragraph 10(g) acknowledging receipt of the document, and (iii) the log is retained for at least three years; and

- i. No later than within 30 days of the effective date of the Assurance, post the following language at every vaccination site, including mobile sites, both (i) someplace where it is clear and conspicuous to all staff (e.g., in a break room or on an employee bulletin board), and (ii) in the drawing room or equivalent space where COVID-19 vaccine doses are prepared and administered:

COVID-19 VACCINATION PROGRAM: COVID-19 Vaccine must be administered in accordance with guidance from the Center for Disease Control, New York State Department of Health, and New York City Department of Health and Mental Hygiene. Anyone aware of potential fraud or abuse should immediately contact 833-VAX-SCAM, STOPVAXFRAUD@health.ny.gov, 1-800-HHS-TIPS, or the New York State Office of the Attorney General at 1-800-428-9071. Complaints can be made anonymously. Please enter this important contact information into your phone now.

- j. Acceptance of this Assurance by the OAG is not an approval or endorsement by OAG of any of Respondent's policies, practices or procedures, and the Respondent shall make no representation to the contrary.
 - k. Respondent shall pay to the State of New York a stipulated penalty of \$5,000 for each and every default in the performance of any obligation under this paragraph occurring after the effective date of the Assurance.
10. *Compliance with Other Obligations.* In the event that Respondent reasonably believes that the performance of its obligations under any provision of this Assurance would conflict with any federal or state law or regulation that may be enacted or adopted after the effective date of this Assurance such that compliance with both this Assurance and such provision of law or regulation is not possible, Respondent shall notify the OAG promptly and the Parties shall meet and confer at their earliest convenience to attempt to resolve such alleged conflict.

MISCELLANEOUS

Subsequent Proceedings:

11. Respondent expressly agrees and acknowledges that the 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 19, 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 the Respondent 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 Respondent 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).

12. If a court of competent jurisdiction determines that the Respondent has violated the Assurance, the Respondent 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:

13. This Assurance is not intended for use by any third party in any other proceeding.
14. All terms and conditions of this Assurance shall continue in full force and effect on any successor, assignee, or transferee of the Respondent. Respondent 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.

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

16. Any failure by the OAG to insist upon the strict performance by Respondent of any of the provisions of this Assurance shall not be deemed a waiver of any of the provisions hereof, and the 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 the Respondent.

17. This Assurance does not prevent or prohibit Respondent from seeking reimbursement from health plans for the administration of the COVID-19 vaccine pursuant to contractual agreements with health insurance companies, or pursuant to a Medicare or Medicaid program as an approved provider.

Communications:

18. All notices, reports, requests, and other communications pursuant to this Assurance must reference Assurance No. #21-065, 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 the Respondent, to: Rasheed A. Yusuff, Vice-President, or in his/her absence, to Patrick J. Bliss, Esq., counsel to Embassy Pharmacy.

If to the OAG, to: Sara Haviva Mark, or in her absence, to the person holding the title of Bureau Chief, Health Care Bureau.

Representations and Warranties:

19. The OAG has agreed to the terms of this Assurance based on, among other things, the representations made to the OAG by the Respondent and their counsel and the OAG's own factual investigation as set forth in Findings, paragraphs 1-5, above. The Respondent represents and warrants that neither it nor its counsel has made any material representations to the OAG that are inaccurate or misleading. If any material representations by Respondent or its counsel are later found to be inaccurate or misleading, this Assurance is voidable by the OAG in its sole discretion.

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

21. The Respondent represents and warrants, through the signatures below, that the terms and conditions of this Assurance are duly approved. Respondent further represents and warrants that Embassy Pharmacy, by Rasheed A. Yusuff, Vice-President, as the signatory to this AOD, is a duly authorized officer of Embassy Pharmacy.

General Principles:

22. Unless a term limit for compliance is otherwise specified within this Assurance, the Respondent's obligations under this Assurance are enduring. Nothing in this Agreement

shall relieve Respondent of other obligations imposed by any applicable state or federal law or regulation or other applicable law.

23. Respondent 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.

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

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

26. 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 the OAG, such invalidity, illegality, or unenforceability shall not affect any other provision of this Assurance.

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

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

29. 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.

30. 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.

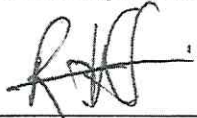
31. This Assurance is limited to the administration of the COVID-19 vaccine.
32. The effective date of this Assurance shall be October 6, 2021.

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

By: *Sara Haviva Mark*
Sara Haviva Mark, Esq.
Special Counsel, Health Care Bureau

BOAN DRUGS INC., D.B.A. EMBASSY PHARMACY

By:


Rasheed A. Yusuff
Vice-President

STATE OF NEW YORK
COUNTY OF NEW YORK

) ss.:

On the 06 day of October in the year 2021 before me personally came RASHEED A. YUSUFF to me known, who, being by me duly sworn, did depose and say that he/she/they reside(s) at 6 Evergreen Lane, Walden, NY 12586; that he/she/they is (are) the vice-president of the Respondent, Boan Drugs, Inc., d.b.a. Embassy Pharmacy, the corporation described in and which executed the above instrument; and that he/she/they signed his/her/their names(s) thereto by like authority.

Sworn to before me this

06 day of October, 2021


NOTARY PUBLIC

MADAYI PEREZ
NOTARY PUBLIC-STATE OF NEW YORK
No. 01PE6254196
Qualified in New York County
My Commission Expires 01-17-2024

AMENDMENT TO ASSURANCE OF DISCONTINUANCE NO. 21-065

THIS AMENDMENT AGREEMENT to the Assurance of Discontinuance No. 21-065 (the "Assurance") between the New York State Office of the Attorney General ("OAG") and Boan Drugs Inc., d.b.a. Embassy Pharmacy ("Respondent"), is made this __ day of January, 2022 between the OAG and Respondent.

WHEREAS, the OAG and Respondent (collectively, the "Parties") signed the Assurance dated October 6, 2021, and the Assurance has been in full force and effect since that time, and

WHEREAS, the Parties hereby wish to amend certain typographical errors in the Assurance,

NOW THEREFORE, the Parties agree as follows:

1. Paragraph 9 c. is amended to correct the paragraph reference from 10(b) to 9(b);
2. Paragraph 9 d. is amended to correct the paragraph reference from 10(c) to 9(c);
3. Paragraph 9 e. is amended to correct the paragraph reference from 10(b) to 9(b);
4. Paragraph 9 g. is amended to correct the paragraph reference from 10(f) to 9(f); and
5. Paragraph 9 h. is amended to correct the paragraph reference from 10(f) to 9(f) and the paragraph reference from 10(g) to 9(g).

Dated: New York, NY
January 27, 2022

Sara Haviva Mark

Sara Haviva Mark, Esq.
Special Counsel, Health Care Bureau
New York State Office of the Attorney General

Dated: 1/31/22, NY
January 31, 2022

Rasheed A. Yusuff

Rasheed A. Yusuff
Vice-President
Boan Drugs Inc., d.b.a. Embassy Pharmacy