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**New York State Office of the State Comptroller**  
Thomas P. DiNapoli

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Division of State Government Accountability

# **Selected Operating and Administrative Practices of the Bureau of Narcotic Enforcement**

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## **Department of Health**

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# Executive Summary

## Purpose

To determine whether the Bureau of Narcotic Enforcement (Bureau) is effectively and efficiently combating prescription drug diversion and abuse in New York State. The audit covers the period April 1, 2007 through March 8, 2012.

## Background

Illegal use of prescription drugs is an escalating problem that drives up healthcare costs and threatens the safety of all citizens. So great is the problem that the Centers for Disease Control and Prevention has classified abuse and diversion of prescription drugs as an epidemic and the nation's fastest growing drug problem. The underground market for these drugs is fueled in large part by individuals and criminal groups who use fraudulent tactics to acquire powerful and addictive medications, including painkillers like Oxycodone, Fentanyl or Morphine; stimulants like amphetamines or Ritalin; and hypnotic drugs and sleep aids like Ambien. The Bureau is responsible for combating these illegal activities by overseeing the State's Official Prescription Program and investigating suspected cases of drug diversion and abuse. To this end, it maintains a database of all New York State prescriptions used to acquire controlled substances.

## Key Findings

The Bureau has a significant amount of information and resources at its disposal to combat illegal drug activity. Our audit identified several areas where improvements are needed to ensure these resources are used effectively to stem the growing problem of prescription drug diversion and abuse through a range of efforts from prevention and deterrence, to detection and prosecution.

- By applying data mining techniques to 15 months of the Bureau's prescription data, we culled more than 565,000 filled prescriptions that contained errors or inconsistencies. These include 67,000 prescriptions for drugs like Oxycodone, each potentially used multiple times for a total of almost 180,000 transactions at different pharmacies and/or containing different information about the prescribers or the drugs involved. While we recognize further assessment and refinement of the data is needed, analyses like this can pinpoint patterns and relationships that identify criminal activity.
- The Bureau does not always properly secure or monitor returned prescription forms. As a result, data shows thousands of unused forms, supposedly destroyed, may actually have been used to obtain controlled substances.
- The Bureau's previous management failed to establish consistent investigative priorities among its regional offices, making the Bureau less effective in detecting and ceasing criminal conduct.
- Some Bureau funding was used for other activities or should have been used more efficiently, including over \$43,000 of computer equipment purchased several years ago, the majority of which was still not in use by the end of 2011.

During our audit, we provided Department officials with preliminary findings detailing our observations and recommendations. At the conclusion of our fieldwork and shortly thereafter, the Department announced several changes to Bureau operations including installation of new leadership, implementation of new data mining strategies and plans to eliminate the paper-based

prescription system for controlled substances. These positive steps should help address several of the challenges discussed in this report. However, further improvements are still needed to maximize the Bureau's ability to combat the growing problem of prescription drug diversion and abuse.

## Key Recommendations

- Further review the prescription data identified by our audit to isolate instances and patterns that warrant formal investigation.
- Modernize the Bureau's use of technology and information resources by expanding routine data analysis to assist in more effectively identifying and investigating prescription drug diversion and abuse.
- Properly account for, safeguard and monitor the destruction or other disposition of prescription forms returned to both the Bureau and its contracted supplier.
- Establish and communicate clearly defined and consistent priorities, objectives and goals to guide regional investigations. Monitor outcomes to determine whether investigators and offices are meeting expectations.
- Monitor and reconcile expenditures to ensure that funding is used as intended.

In responding to our draft report, officials acknowledge both the value of data mining and analysis, and that their own subsequent testing has shown some of the records we cited were related to specific instances of suspected criminal activity. Officials also reported they plan to expand the Bureau's analytical staff to conduct more in-depth analysis to address diversion. Officials also reported actions taken to better account for returned prescription forms, oversee statewide investigative activities, correct previously identified problems, and control the use of Bureau funding. At the same time, the Department's response also includes several statements that minimize the significance of the findings from our analysis of prescription data.

### Auditor Comment

When looking for fraud and abuse, officials should expect that only a very small percentage of transactions will be problems and specific tools, like data mining and analysis, are necessary to highlight the ones that pose the highest risk. Considering the vast number of prescriptions filled for these controlled substances, we caution that officials should not be too quick to dismiss the impact of even a small percentage of problems; especially when only one-half of one percent could translate into 100,000 instances each year where dangerous drugs are dispensed improperly. Our specific rejoinders to some of the Department's statements are presented as State Comptroller's Comments at the end of this report.

## Other Related Audits/Reports of Interest

[Department of Health: Office of Professional Medical Conduct Complaints and Investigations Process \(2008-F-29\)](#)

**State of New York**  
**Office of the State Comptroller**

**Division of State Government Accountability**

November 21, 2012

Nirav Shah, M.D., M.P.H.  
Commissioner  
Department of Health  
Corning Tower  
Empire State Plaza  
Albany, New York 12237

Dear Dr. Shah:

The Office of the State Comptroller is committed to helping State agencies, public authorities and local government agencies manage government resources efficiently and effectively and, by so doing, providing accountability for tax dollars spent to support government operations. The Comptroller oversees the fiscal affairs of State agencies, public authorities and local government agencies, as well as their compliance with relevant statutes and their observance of good business practices. This fiscal oversight is accomplished, in part, through our audits, which identify opportunities for improving operations. Audits can also identify strategies for reducing costs and strengthening controls that are intended to safeguard assets.

Following is a report of our audit of the Department of Health entitled *Selected Operating and Administrative Practices of the Bureau of Narcotic Enforcement*. This audit was performed pursuant to the State Comptroller's authority under Article V, Section 1 of the State Constitution and Article II, Section 8 of the State Finance Law.

This audit's results and recommendations are resources for you to use in effectively managing your operations and in meeting the expectations of taxpayers. If you have any questions about this report, please feel free to contact us.

Respectfully submitted,

*Office of the State Comptroller*  
*Division of State Government Accountability*

## Table of Contents

Background	5
Audit Findings and Recommendations	6
The Bureau Can More Effectively Use Prescription Data to Target Illegal Activities	7
Poor Controls Over Prescription Forms	11
An Inconsistent Approach to Investigating Drug Diversion Causes a Wide Disparity in Results Among the Bureau's Regional Offices	13
Use of Bureau Funding	15
Failure to Fully Correct Problems Previously Identified	16
Recommendations	16
Audit Scope and Methodology	17
Authority	18
Reporting Requirements	18
Contributors to This Report	20
Exhibit	21
Agency Comments	22
State Comptroller's Comments	31

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## Background

The Centers for Disease Control and Prevention considers the diversion and abuse of prescription medications to be the nation's fastest growing drug problem, having reached epidemic proportion in recent years. The Bureau of Narcotic Enforcement (Bureau) is the Department of Health's (Department) primary means of combating the abuse and diversion of potentially dangerous prescription drugs within New York State. The Bureau is charged with administering the State's Official Prescription Program and overseeing the lawful distribution of controlled substances under Article 33 of the Public Health Law. To this end, the Bureau:

- provides official New York State prescription forms free-of-charge to over 95,000 prescribing practitioners throughout the State;
- conducts investigations of suspected drug diversion and illegal sales (e.g., involving theft, forgery and fraudulent visits to practitioners' offices), while working closely with law enforcement agencies;
- issues controlled substance licenses to manufacturers, distributors, hospitals, nursing homes and researchers; and
- provides prescription drug abuse prevention outreach to parents, educators and health-care professionals.

Federal regulations categorize controlled substances into one of five schedules. Schedule I controlled substances have no accepted medical use in treatment in the United States and cannot be prescribed. Schedule II controlled substances, such as Oxycodone, have a high potential for abuse and can lead to severe psychological and physical dependence. Schedules III through V controlled substances have decreasingly lesser potential for abuse.

To help combat prescription fraud, since 1972 the Official Prescription Program has required prescriptions for controlled substances (drugs that have a high potential for abuse) to be written on an official prescription form containing security features that prevent alterations and forgeries. In 2006, the program was expanded and required all prescriptions written in New York State to be on pre-numbered official prescription forms provided free-of-charge by the Department. In 2010, pharmacies filled 22.6 million New York State prescriptions for controlled substances, a 36 percent increase since 2007.

Pharmacies must electronically submit information to the Bureau on all prescriptions dispensed for controlled substances. The Bureau uses the data as part of its Practitioner Notification Program (PNP) to notify practitioners when their patients have obtained drugs from multiple practitioners within a short time period, a practice known as "doctor shopping." This information enables practitioners to better evaluate patients' treatment and determine whether abuse may be occurring.

The Bureau is funded through a sub-allocation from the Department of Financial Services (formerly from the State Insurance Department, one of the Department of Financial Services' predecessor agencies). State fiscal year 2010-11 funding was \$16.4 million. The Bureau is comprised of one Director and 33 employees, including 16 investigators who report to a Chief Investigator. The Bureau's headquarters is in Troy, with regional offices in Syracuse, Rochester, Buffalo and Manhattan.



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## Audit Findings and Recommendations

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To carry out its responsibility for protecting the public health, the Bureau investigates suspected drug diversion and illegal sales of prescription controlled substances. Our examination found that the Bureau needs to enhance its data mining efforts of the vast amount of controlled substance prescription data it collects to help pinpoint cases of possible criminal activity and serve as a greater deterrent to prescription drug diversion. Our initial analysis of this prescription data for just a 15-month period identified several hundred thousand prescription records containing inaccurate or inconsistent information. These prescriptions were reportedly filled over a half-million times to dispense potentially dangerous and addictive drugs such as Oxycodone, Fentanyl, Morphine and Hydrocodone.

We also observed a distinct disparity in the types of cases pursued in various regions of the State during our audit period, indicating a lack of strategic direction from prior Bureau management in establishing investigative priorities. This disparity can undermine the effectiveness of the Bureau in detecting and ceasing large scale criminal conduct, and the resulting deterrent effect that should be created by a coordinated and consistent approach to investigation and prosecution.

The Bureau is also responsible for overseeing the secure distribution of official State prescription forms, yet we found forms that were not properly secured and accounted for. The Bureau's data also showed that thousands of prescriptions that were supposedly destroyed may have actually been used. In some cases, these documents may have gone missing from the form supplier's facilities, or even the Bureau's own offices, due to lack of controls and proper records. As a result of the audit, the Bureau is taking steps to improve accountability over returned and unused prescription forms.

Our report also addresses ineffective use of resources, including over \$43,000 worth of computer equipment purchased in 2009 and 2010, the majority of which had yet to be placed in service by the end of 2011. Our report makes recommendations to monitor and reconcile expenditures to ensure that funding is not wasted and is used as intended.

During the conclusion of our audit fieldwork and shortly thereafter, the Department implemented several changes in the Bureau's operations, many of which should help address the recommendations contained in our report. Among the most significant changes are plans to eliminate the use of paper-based prescriptions for controlled substances and institute a fully electronic system. The Bureau has also hired a new Director who, as a former prosecutor, has prior experience overseeing criminal narcotics investigations. The new Director has already implemented new data mining strategies and centralized operational control so that regional offices now report directly to the central office.

These positive steps, along with the Bureau's movement into the Department's broader Center for Health Care Quality and Surveillance, should help address several of the challenges discussed in this report. At the same time, further improvements are still necessary if the Bureau is to maximize its ability to combat the growing problem of prescription drug diversion and abuse through a range of efforts from prevention and deterrence, to detection and prosecution.

## The Bureau Can More Effectively Use Prescription Data to Target Illegal Activities

**The Bureau needs to enhance its data mining efforts of the vast amount of controlled substance prescription data it collects to help pinpoint cases of possible criminal activity.**

The Bureau is not fully using the controlled substance prescription data that it possesses to identify drug diversion. Despite access to a rich source of information on controlled substance drug activity in the State, the Bureau still largely relies on referrals and complaints from external sources to identify suspected drug diversion and abuse of controlled substances.

We applied data mining techniques to the prescription data from the Bureau's own databases using just the 15-month period from April 1, 2010 through July 15, 2011. We conducted seven different analyses that identified records for over 325,000 prescriptions, filled more than 565,000 times to obtain controlled substances, that contain errors or inconsistencies. While we recognize that further assessment and refinement of the data results is necessary to pinpoint prescription drug diversion and abuse, data mining can be a powerful tool to find patterns and relationships in the data to help identify criminal activity.

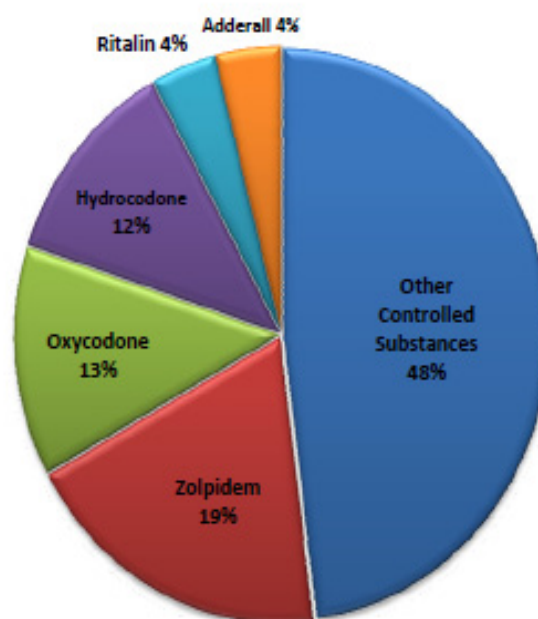
Three medications comprise almost half of the drugs acquired with these prescriptions:

- Zolpidem - a hypnotic drug used to treat insomnia and sometimes marketed as Ambien (19 percent);
- Oxycodone - a popular painkiller commonly marketed as OxyContin (13 percent); and
- Hydrocodone - another pain medicine sometimes marketed as Vicodin (12 percent).

Two other medications each account for 4 percent of the drugs acquired:

- Methylphenidate Hydrochloride - a central nervous system stimulant, such as Ritalin, often used to treat attention deficit disorders; and
- Amphetamines - powerful psychostimulant drugs, such as Adderall, that produce effects like increased energy and euphoria.

**Breakdown of Top Drugs Acquired**



All of these valuable drugs carry significant demand on the street and through "black market" operations. According to the Bureau's prescription data on dispensed controlled substances, some of the examples we found include:



- 120,183 prescriptions filled 133,738 times with an invalid Drug Enforcement Administration (DEA) registration number for the prescriber. At least 37 percent of these prescriptions were for Oxycodone, Hydrocodone and Zolpidem, including:
  - 143 prescriptions used for cash purchases of 25,200 Oxycodone pills from two New York City pharmacies located in close proximity to each other. Criminals often pay in cash to limit their paper trail and move between different pharmacies to avoid detection of fraudulent activity. The data showed some of the prescriptions were ostensibly ordered by practitioners specializing in pediatrics, the care of young children. Bureau officials confirmed that the DEA numbers from these prescriptions did not belong to the ordering practitioners, who were all located close to each other and to the pharmacies. When presented with this data, the Bureau's Chief Investigator agreed it was an unusual situation that would warrant an investigation.
- 66,407 prescriptions filled 179,667 times where the same prescription form number appeared in the data more than once, either at different locations or with inconsistent information about the prescriber and/or the drug. The Exhibit at the end of this report illustrates the inconsistencies and combinations of pharmacies, prescribers and drugs involved. These included:
  - Thirteen prescriptions that were used 68 times to obtain 2,015 pills of Zolpidem. Each prescription was reportedly used more than once at different pharmacies in close proximity to each other. Four of the 13 prescriptions were filled using different prescribers at different times, and all 13 prescriptions were filled using variations of the same patient name and address. Bureau officials confirmed this was inappropriate prescription activity and that an investigation had already been opened based on a pharmacy tip. However, officials also stated that the Bureau's investigation addressed only a portion of the inappropriate activity we identified.

Bureau officials reviewed this analysis and concluded based on their experience that, of the 66,407 cases we identified in this initial screening, 13,648 were likely the result of pharmacy data entry errors; 8,674 the result of a change in pharmacy ownership; and 23,664 the result of pharmacies failing to delete the original official prescription serial number from their internal database when dispensing a new prescription presented by the patient. At the same time, they were still unable to readily explain several thousand of the potential exceptions. While we do not necessarily agree with all of the assumptions made in the Bureau's analysis, the important issue is that this type of additional analysis is what the Bureau should be doing on a routine basis to enable it to hone in on suspicious activity and direct its limited investigative resources in the most effective manner.

- The Public Health Law prohibits pharmacies from refilling prescriptions for Schedule II drugs, which are the most dangerous and/or potentially addictive among those that can be prescribed in the United States. In another analysis, we identified 39,500 prescriptions for these substances that were not reported as refills on the Bureau's database, but were apparently dispensed a total of 86,702 times. About 30 percent of the time these prescriptions were for Oxycodone. Ritalin, amphetamines and Morphine account for another 41 percent. In addition:
  - 1,160 prescriptions were used 2,358 times to obtain Testosterone, which is sometimes illegally used as a performance enhancing drug. In these instances, the patients' addresses and the addresses of the prescribers' places of business were the same. Officials indicated the pharmacy involved was previously under investigation in 2007 for similar activity, but the case was closed in 2008 due to a district attorney's decision not to prosecute the case. Due to renewed interest, the Bureau indicated they subsequently reopened the case on January 9, 2012, five days after we originally presented this analysis to the Bureau.
- By comparing filled prescription data with the report of lost and stolen prescriptions maintained on the Bureau's website, we identified 4,001 prescription form numbers that prescribers had reported as either lost or stolen that were apparently filled 4,539 times. Bureau officials told us whenever prescription forms are reported lost or stolen, they automatically open an investigation. However, they also noted that lost and stolen prescription forms are sometimes used before they are reported to the Bureau.

While the Bureau periodically performs some tests of the data, including monthly reports run on noncritical fields to look for possible errors, we found that staff is not performing certain routine analyses that could identify potential prescription drug diversion. These tests include matching prescription data against other information such as: authorized refill quantities; the prescription form ordering information; and information about Office of Professional Medical Conduct actions against practitioners. We performed these tests which revealed:

- 90,497 prescriptions were apparently refilled 157,879 times beyond their authorized refill quantities, including:
  - 11,764 prescriptions refilled 17,377 times for Schedule II controlled substances, which are prohibited from refills. In contrast to the 39,500 prescriptions discussed earlier, these items were clearly noted as refills in the Bureau's database, yet still did not raise suspicion. About 25 percent of these cases involved Morphine; while Fentanyl, Oxycodone, Testosterone and Methadone accounted for another 66 percent. Just one of these prescriptions was reportedly used 11 extra times to obtain 334 Methadone pills. Further analysis showed three pharmacies in Long Island, Buffalo and Syracuse were responsible for filling 48 percent of the prescriptions; and
  - 78,733 prescriptions refilled 140,502 times for other controlled substances in excess of the authorized refill quantity. More than half of these orders were for Zolpidem

and Hydrocodone. One prescription was used 18 times beyond its authorized limit to obtain more than 2,100 ml of liquid Hydrocodone.

- 4,449 prescription form numbers were used 4,719 times before they were ever even issued to practitioners. Some prescription form numbers were used more than a year before they were ordered - a strong indication of potential counterfeiting.
- 125 prescriptions filled 135 times were prescribed by practitioners who had already had their licenses revoked, suspended, surrendered or otherwise inactivated. As a result of our discussions, the Bureau now receives direct notification whenever license actions are taken.

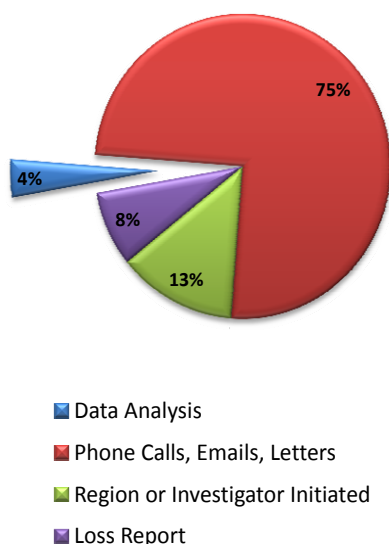
After the Bureau's review of the analyses we conducted, officials concluded a majority of the findings were likely attributable to data entry errors. For instance, according to officials, in the past the Bureau regularly sent letters to pharmacies notifying them of invalid DEA information. Pharmacies were then instructed to resubmit prescription data with accurate DEA numbers. According to the Bureau, however, this process stopped in 2009 due to staffing shortages. Under the new Bureau leadership, these compliance reviews are slated to begin again.

The Bureau also conducted an onsite review at a local chain-operated pharmacy to examine prescription forms supporting 34 of the items identified by our analyses. Based on this review, the Bureau determined that 32 of the exceptions were the result of pharmacy clerical errors. However, the other two (6 percent of the items identified) did exhibit signs of diversion, having been reported missing by the hospitals to which they were issued. The Bureau informed us that these two cases were already under investigation as a result of a pharmacy tip.

While we recognize that data entry errors explain some anomalies detected in the data, data mining, and further refinement of the data, can be a powerful tool to find patterns and relationships in the data to help pinpoint criminal activity. Historically, the Bureau has generally used the prescription data as a tool to support investigations, rather than for identifying possible cases of diversion and illegal activity by pharmacies and prescribers. The Bureau's overall approach to managing investigations is to largely rely on referrals and complaints from external sources to identify suspected drug diversion and abuse of controlled substances. Even though data on all prescriptions that are dispensed for controlled substances is available on its own systems, the vast majority of the Bureau's cases still stem from information received from external sources.

As the chart on the following page shows, from January 1, 2009 through July 11, 2011, 75 percent of the Bureau's 881 investigative cases resulted from a phone call (600 cases), an email (33 cases) or some other correspondence (26 cases); 21 percent were self-initiated, often based on reports by pharmacies and doctors about missing pills. Conversely, only 35 cases (4 percent) resulted from data analysis. Most of these (25) were focused on "doctor shopping" by patients, rather than on pharmacies or doctors who may be the source of diversion or whose identities are possibly being used to commit crimes.

Percentage of Cases by Source



We recognize that external referrals are one of the most valuable sources of case information. For instance, one of the Bureau's most noteworthy cases, dubbed "Operation Bad Medicine," dismantled an Oxycodone ring as a result of a pharmacist's tip. Still, by failing to properly use the data it already has, the Bureau is missing opportunities to combat illegal use of controlled substances.

Bureau officials are part of an interagency workgroup comprised of leaders and staff from various federal and State agencies. This workgroup is examining the issues of prescription drug misuse, diversion and overdose. Although some data analysis has occurred, it has been mostly directed at demographics and has not included identifying prescription drug diversion cases. However, officials told us one of the most significant areas being explored is the most effective use of the controlled substance prescription data collected by the Bureau, including the potential for sharing

the data with other agencies. Also, Department epidemiologists are performing analyses of the controlled substance prescription data to guide this initiative and the Bureau's investigative program will be aligned accordingly based on the outcome of this analysis. Furthermore, the new Director has recently implemented new data mining strategies and officials state they plan to assign additional resources to analyze the prescription data to identify drug diversion and illegal use of controlled substances.

## Poor Controls Over Prescription Forms

**Returned and unused prescription forms are not always properly secured and accounted for, thus increasing the risk of misuse of prescription forms.**

The Bureau does not always secure or monitor returned prescription forms. Properly securing these forms is essential to protecting the public health and safety. Blank prescription forms returned to the Bureau are usually the result of an order by the Department's Office of Professional Medical Conduct. There is no official process for this to occur and, as a result, the Bureau is unaware forms are being returned.

One Bureau employee is responsible for receiving and maintaining a log of all returned prescription forms. With assistance from the Chief Investigator, he stores returned forms in a locked cabinet that is only accessible to Bureau personnel. The Chief Investigator has the only key to the cabinet. Periodically, the staff member boxes up the returned forms and notifies investigators that they are ready to be destroyed (i.e., burned) in conjunction with the State Police.

During our audit, we observed one of these boxes stored outside the secure cabinet. The staff member responsible for logging these forms was under the impression that the box had already

been destroyed. As a result, it likely could have remained outside the locked cabinet until the next burn occurred four to six weeks later. While the box was still within the Bureau's locked office space, this area is at times accessible to cleaning staff, escorted visitors and other Department employees who Bureau staff allow to enter. We inventoried the box and found:

- 78 prescriptions that had been logged as returned were missing from the box. The prescription data we used for our other tests indicated four of these forms were reportedly used to acquire controlled substances. Three were prescribed by a veterinarian for anti-seizure and anti-anxiety medications, while the fourth was prescribed by a medical doctor for an anti-anxiety drug.
- 2,034 prescriptions found in the box had not been logged in, including 1,500 pieces of blank Electronic Medical Record (EMR) paper. EMR paper is particularly vulnerable to theft since it contains all the enhanced security features of a valid prescription and can easily be made into counterfeit forms using a laptop and laser printer.

Our further review of these issues showed that since August 17, 2007, 362,531 prescription forms were logged in as returned to the Bureau and reportedly destroyed. However, according to the Bureau's prescription data, between April 2010 and July 2011, 772 of these purportedly destroyed forms were used a total of 920 times to obtain controlled substances. We also noted that no new items had been entered into the log for about a year, so there was no way to determine what had been returned and supposedly destroyed during that period. Bureau officials indicated they are in the process of purchasing scanning software to improve the timeliness and accuracy of these logs.

Prescription form orders are also returned to the contracted supplier for several reasons including misspellings or other errors. The company has two facilities located outside New York: one in Connecticut and the other in New Jersey. Printed forms are usually returned to the company's warehouse in Connecticut, while most EMR paper orders go to the facility in New Jersey. According to its contract with the Department, the company is required to destroy all prescription forms that are deemed unusable and report the prescription form numbers to the Bureau. However, prior to our audit the Bureau had never requested a list of destroyed prescriptions and the company had never provided one.

We reviewed the supplier's log of returned prescription forms, as well as the returned item information captured by its product ordering system, and found several indications that the records were inaccurate and incomplete. In some cases, it was not clear whether forms had been destroyed or reshipped for use by others.

In Connecticut, returned orders are first logged in on a spreadsheet, which is then used to update the ordering system. These records are then updated to show the final disposition of the returned forms. For the period April 1, 2007 to July 15, 2011, there were no records to substantiate the final disposition of 55 returned orders totaling 82,000 prescriptions. We also identified 182 orders totaling 234,200 forms that were recorded on the initial spreadsheet, but had not been subsequently noted as returned in the ordering system.

Over the roughly four and a half years between April 1, 2007 and September 15, 2011, Connecticut records indicate at least 735,100 prescription forms were returned and purportedly destroyed. We compared this information against the Bureau's prescription data and identified 180 prescriptions for controlled substances reportedly filled 200 times during the 15 month period between April 2010 and mid-July 2011. In addition, of the 55 returned orders for which the company could not explain the disposition, 607 prescriptions were reportedly filled 693 times.

We found even more problems with the records maintained in New Jersey, where the bulk of the highly vulnerable blank EMR paper is returned. Serial numbers recorded in those logs often appeared inaccurate, being composed of too many or too few digits, or spanning ranges that were too large or too small for conventional orders. As a result, it is unclear how much EMR paper may have actually been returned to the facility or what became of that material.

For the New Jersey location, since we were unable to determine exactly what lots of EMR paper were returned, we ran our tests against a sample of 898,400 prescription form numbers that appeared to be valid and were scheduled to be destroyed. We identified 4,367 prescriptions for controlled substances reportedly filled 5,652 times during the 15-month period. This relatively high incidence rate indicates there is substantially more risk that this highly vulnerable material may be making its way into the hands of individuals or groups engaged in illegal activities, such as creating counterfeit prescriptions.

In response to the audit, the Bureau agreed that a standard log indicating the disposition of returned official prescription forms is an appropriate measure and has directed the contracted supplier to begin forwarding a log of returned prescription forms to the Bureau.

## **An Inconsistent Approach to Investigating Drug Diversion Causes a Wide Disparity in Results Among the Bureau's Regional Offices**

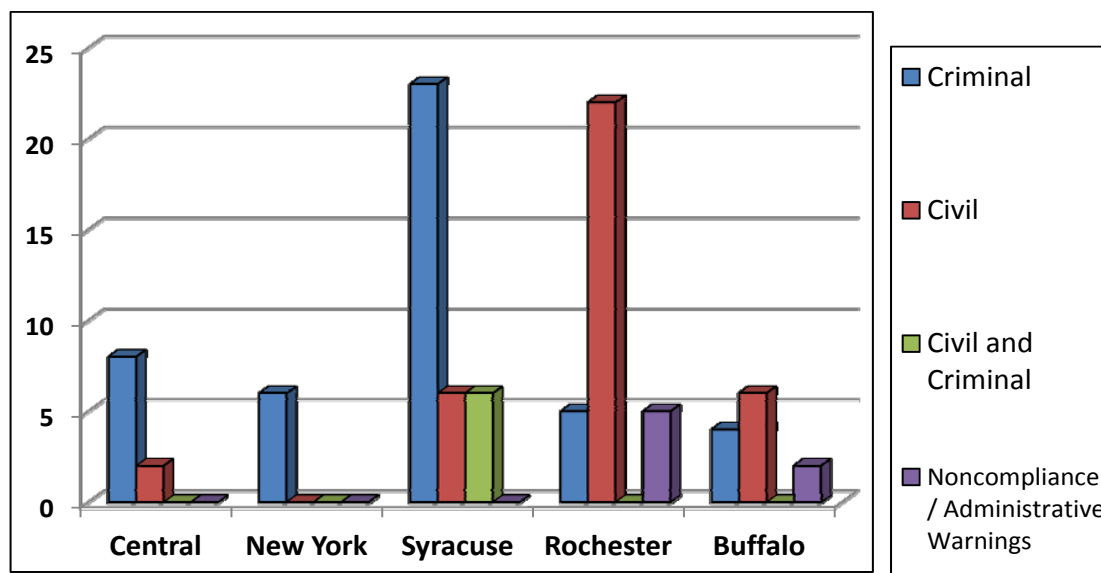
**Inconsistent investigative priorities among its regions makes the Bureau less effective in detecting and ceasing criminal activity.**

The Bureau does not have a consistent approach to investigating drug diversion across the State. As a result, caseloads and case results differed significantly among the five offices and their assigned investigators during the audit period. Some offices seem more inclined to pursue criminal matters, while others focus more on civil cases and administrative issues. Absent a uniform approach, similar matters are likely to be treated differently rather than follow a statewide focus that ensures the appropriate remedy is employed to maximize the prevention of prescription drug diversion and abuse. For example:

- The Syracuse office accounted for half of the Bureau's completed cases that resulted in criminal charges and was the only region that closed cases with both criminal and civil charges.
- The Rochester and Buffalo offices completed 78 percent of the Bureau's civil cases and were the only offices to issue notices of noncompliance and administrative warnings. Further, the Rochester office accounted for 76 percent of the cases that resulted in no findings.



## Number of Completed Cases by Region



- The number of cases assigned to each investigator during our audit period also varied significantly, ranging from a high of 143 to a low of 55.
- Over half of the cases completed by one investigator (16 of 31 cases) resulted in criminal charges. This was more than twice the number of criminal cases produced by any other investigator.

This inconsistency in approach, as well as in case results, occurred in part because the Department allowed the regional offices to run autonomously and under the direction of non-Bureau leadership. While the Chief Investigator provided quality assurance over investigation reports and provided guidance on an as-needed basis, he had little direct authority over what cases the regional investigators actually worked. Instead, the regional investigators were sometimes supervised by non-Bureau employees, including managers from the Office of Professional Medical Conduct in the Rochester and Buffalo regions. Such inconsistency potentially reduced the Bureau's ability to prevent prescription drug diversion.

Bureau management has also not established goals, objectives or performance standards for its investigations unit. The Chief Investigator informed us that the investigators' annual performance evaluation form includes a standard of completing 25 prosecutable cases (civil or criminal), but that the goal was set arbitrarily. Between January 5, 2010 and July 11, 2011, not one investigator met this standard. Instead, Bureau officials told us they actively monitor investigative outcomes, including investigator time and productivity, through ongoing reviews of the investigative case management system by the Director and Chief Investigator. They also point to frequent communication between the Director, Chief Investigator and regional office supervisors and investigators. Officials state they will now plan for semi-annual in-person reviews of all investigations with each investigator. Also, additional development of goals, objectives and performance measures will ensue as part of the Department's Strategic Planning Initiative.

In November 2011, the Bureau hired a new Director with extensive narcotics investigative experience. The new Director informed us that he recognizes there will be some discrepancies in results across the regions due to different levels of responsiveness by local law enforcement. However, under its new leadership, the Bureau is taking steps to standardize enforcement among the regions. Since November 2011, regional investigators now report operationally to the Bureau's central office leadership. The Bureau's new Director is the direct-line supervisor for all regional program directors, and the Chief Investigator supervises all investigations and assignments conducted by investigators regardless of their geographical assignment. With this direct oversight, the Bureau is confident it will have more effective direction and oversight of investigative activities throughout the State.

## Use of Bureau Funding

**Technology resources purchased to aid in investigations were not put to use, while Bureau funding is sometimes spent on other activities.**

We found the Bureau spent \$43,386 in federal grant monies to buy computers for its investigators and other staff, yet the majority of the computers went unused for several years. In 2009, the Bureau spent \$21,736 to buy 23 laptop computers and, again in 2010, \$21,650 for 25 desktop units. At the end of 2011, only five desktops and seven laptops had been put to use. Bureau officials report all of this equipment is now deployed.

The Bureau is funded through a special revenue account devoted solely to its operations. Over a two-year period, about \$550,000 of Bureau funding was used to support other activities and operations. At the same time, about \$710,000 in funding originally allocated to other areas of the Department was actually spent on Bureau operations.

From April 1, 2009 through March 31, 2011, the Bureau spent about \$5.1 million on payroll costs to fund 46 employees. Five of these 46 employees, whose costs totaled \$486,931, did not work in the Bureau. However, during this same timeframe, \$711,100 in personal service costs for seven employees working in the Bureau was charged to other Department programs.

During the same period, the Bureau also spent \$552,133 for temporary personnel services to supplement its permanent staff. The Bureau sometimes uses temporary personnel to assist practitioners in registering for the Official Prescription Program and to carry out various administrative tasks. We identified 19 temporary staff members costing \$64,902 who were actually assigned to areas unrelated to the Bureau, such as the Department's donor registry program.

Bureau management told us they were unaware that funds were being used for temporary staff not working in the Bureau. This problem reportedly occurred because the Finance Office paid the invoices and allocated costs based on purchase order information created by the Bureau's parent division, the Division of Quality and Patient Safety, without knowledge of who the temporary staff members were and where they actually worked.

In response to the audit, to assure proper use and recording of sub-allocated funds, the

Department will immediately implement periodic reconciliations of expenditures to confirm that the level of expenditures is appropriate. Additionally, the Department will provide training to individuals involved in coding expenditures to ensure they are properly charged.

## Failure to Fully Correct Problems Previously Identified

**Some issues raised more than three years ago by the State Inspector General have yet to be addressed.**

The Bureau has not fully remedied the following problems identified by the New York State Office of the Inspector General in its 2008 report that outlined several internal control weaknesses.

- Bureau management has still not established controls to ensure that investigators do not abuse State time in relation to outside employment. We identified one senior investigator in the Syracuse regional office who, in May 2011, was appointed Chief of Police at a local police department with a salary of \$30,000; apparently without the knowledge, or approval, of the former Bureau Director.
- The Bureau's Peace Officer's manual still has not been updated. The Bureau issued a "State Vehicle Parking Policy," but other policies remain outdated. The former Bureau Director stated several policies were still being worked on.

Although the Bureau acted to address some of the issues in the Inspector General's report, management acknowledges that more work needs to be done. In response to the audit, Bureau officials stated that the review and revision of the manual will be done by the end of 2012.

## Recommendations

1. Further review the prescription data identified by our audit to isolate instances and patterns that warrant formal investigation.
2. Modernize the Bureau's use of technology and information resources by expanding routine data analysis to assist in more effectively identifying and investigating prescription drug diversion and abuse.
3. Properly account for, safeguard and monitor the destruction or other disposition of prescription forms returned to both the Bureau and its contracted supplier.
4. Establish and communicate clearly defined and consistent priorities, objectives and goals to guide regional investigations. Monitor outcomes to determine whether investigators and offices are meeting expectations.
5. Monitor and reconcile expenditures to ensure that funding is used as intended.

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## Audit Scope and Methodology

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We audited whether Bureau of Narcotic Enforcement resources are used in an effective and efficient manner to combat prescription drug diversion and abuse in New York State. We also determined whether Bureau funds were used solely for their intended purpose and followed up on the implementation of recommendations included in a 2008 report by the New York State Inspector General's Office. Our audit scope included the period April 1, 2007 through March 8, 2012.

To accomplish our audit objectives, we interviewed Department officials, along with warehouse managers from the Department's contracted prescription supplier. Using data mining software, we conducted seven analytical tests on 28.5 million records of dispensed prescriptions for controlled substances as reported by pharmacies for the period April 1, 2010 through July 15, 2011. Our analyses used the most up-to-date pharmacy data available, which included and accounted for subsequent corrections made by pharmacies to the data they originally reported. Part of our analysis included matching this data against the Bureau's Lost/Stolen list of prescriptions as of August 5, 2011 and against Office of Professional Medical Conduct actions for a judgmental sample of 141 of 295 actions effective as of 2009. Our sample was based on the action and whether we could clearly determine the outcome (e.g., license revoked). We also matched the data against official prescription form ordering information for the period January 1, 2010 through July 15, 2011.

In addition, we reviewed: relevant federal and State laws; the Bureau's relevant policies and procedures; the Bureau's personal and non-personal service expenditures, organizational charts, New York State Central Accounting System expenditure data, and all invoices for temporary personal services; the Bureau's former and current Case Tracking Systems; State vehicle and cell phone records for the Bureau's narcotic investigators; license renewal applications; Bureau employees' qualifications; and Bureau outreach efforts.

We conducted our performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

In addition to being the State Auditor, the Comptroller performs certain other constitutionally and statutorily mandated duties as the chief fiscal officer of New York State. These include operating the State's accounting system; preparing the State's financial statements; and approving State contracts, refunds, and other payments. In addition, the Comptroller appoints members to certain boards, commissions and public authorities, some of whom have minority voting rights. These duties may be considered management functions for purposes of evaluating organizational independence under generally accepted government auditing standards. In our opinion, these functions do not affect our ability to conduct independent audits of program performance.

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## Authority

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This audit was performed according to the State Comptroller's authority under Article V, Section 1 of the State Constitution and Article II, Section 8 of the State Finance Law.

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## Reporting Requirements

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We provided a draft copy of this report to Department officials for their review and comment. Their comments were considered in preparing this final report and are attached in their entirety at the end of the report.

Within 90 days after final release of this report, as required by Section 170 of the Executive Law, the Commissioner of the Department of Health shall report to the Governor, the State Comptroller, and the leaders of the Legislature and fiscal committees, advising what steps were taken to implement the recommendations contained herein, and where recommendations were not implemented, the reasons why.

In responding to our draft report, Department officials acknowledge the value of data mining and analysis as a tool to identify prescription drug diversion and abuse, and also recognize that the 'drill down' approach used in our data mining analysis identified instances of suspected criminal activity and diversion. Officials further indicate they will hire additional analytical staff and routinely conduct more in-depth analyses to address diversion. To improve controls over official prescription forms returned to the Bureau and its contractor, Department officials state they will automate the Bureau's inventorying process and have taken additional steps to ensure the proper safeguarding of prescription forms. Officials also reaffirmed their commitment to ensuring effective direction and oversight of statewide investigative activities, fully correcting problems previously identified by the State Inspector General, and improving controls over the use of Bureau funding. At the same time, the Department's response also includes several statements and analyses which seek to minimize the significance of the findings and conclusions from our analysis of prescription data, and thus the need for appropriate follow-up.

### *Auditor Comment*

When looking for fraud and abuse, one has to expect that only a very small percentage of transactions will be problems. As a result, these items will become lost in large populations unless specific tools, like data mining and analysis, are used to highlight the ones that pose the highest risk. As our report indicates, our analyses represent only the initial steps that management should be taking to highlight records with errors or inconsistencies that may be initial indicators of fraud or diversion. Our analyses have culled the population of over 28 million records down to less than five percent that pose the greatest risk based on the factors we considered. As demonstrated by its analysis of the 66,407 duplicate records, the Bureau should be able to hone down the list of possible exceptions even further as it applies its professional knowledge and expertise in this area. In fact, its goal should be to sharpen its focus by explaining and eliminating

as many items as possible. We are confident such analysis can be a valuable tool to help the Bureau identify specific individuals, prescribers and pharmacies that may be involved in abuse and diversion. Considering the vast number of prescriptions filled for these controlled substances, we caution that officials should not be too quick to dismiss the impact of even a small percentage of problems; especially when only one-half of one percent could translate into 100,000 instances each year where dangerous drugs are dispensed improperly.

Our specific rejoinders to some of the statements in the Department's response to our draft report are presented as State Comptroller's Comments at the end of this report.



## Contributors to This Report

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## Division of State Government Accountability

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### Vision

A team of accountability experts respected for providing information that decision makers value.

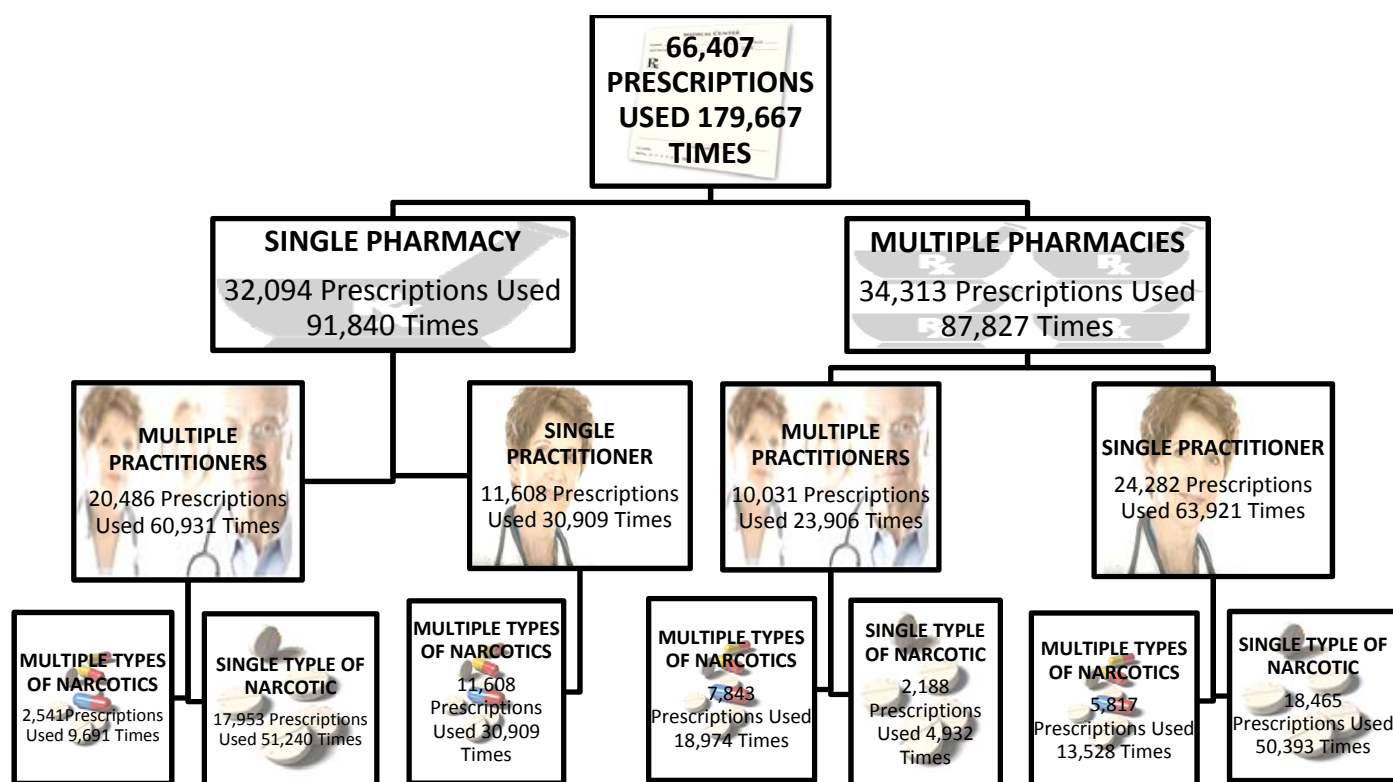
### Mission

To improve government operations by conducting independent audits, reviews and evaluations of New York State and New York City taxpayer financed programs.

# Exhibit

## Unique Prescription Numbers Used at Different Pharmacies and/or Containing Different Prescribers or Drugs

April 1, 2010 - July 15, 2011



# Agency Comments

Nirav R. Shah, M.D., M.P.H.  
Commissioner

**NEW YORK**  
*state department of*  
**HEALTH**

Sue Kelly  
Executive Deputy Commissioner

October 1, 2012

Andrea Inman, Audit Manager  
Office of the State Comptroller  
Division of State Government Accountability  
110 State Street – 11<sup>th</sup> Floor  
Albany, New York 12236

Dear Ms. Inman:

Enclosed are the New York State Department of Health's comments on Office of the State Comptroller draft audit report 2011-S-19 (revised September 17, 2012) on "Selected Operating and Administrative practices of the Bureau of Narcotic Enforcement."

Thank you for the opportunity to comment.

Sincerely,



Sue Kelly  
Executive Deputy Commissioner

Enclosure

cc: Terence J. O'Leary  
Michael J. Nazarko  
Edward M. Cahill  
Stephen Abbott  
Diane Christensen

**HEALTH.NY.GOV**  
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**Department of Health  
Comments on Office of the State Comptroller  
Revised Draft Audit Report 2011-S-19 on  
Selected Operating and Administrative Practices of  
the Bureau of Narcotic Enforcement**

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The following are the Department of Health's (Department) comments in response to Office of the State Comptroller (OSC) Draft Audit Report 2011-S-19 (revised September 17, 2012) on "Selected Operating Practices of the Bureau of Narcotic Enforcement," including general comments followed by responses to the specific recommendations contained in the report.

**General Comments:**

The Department's Bureau of Narcotic Enforcement (Bureau) has worked aggressively and diligently to address the public health crisis of prescription drug abuse. The Bureau is a key component of the Governor's efforts to address this epidemic. The cornerstone of the Governor's agenda is comprehensive, ground-breaking legislation to address prescription drug abuse and diversion that was passed unanimously by the Senate and Assembly and signed into law by the Governor on August 27, 2012. The new legislation:

- creates an updated Prescription Monitoring Program (PMP) that expands the Bureau's ability to share information with practitioners, pharmacists, local health departments, law enforcement agencies and PMPs in other states;
- makes New York the first state to mandate that all prescriptions for controlled substances be transmitted electronically, in accordance with federal security and encryption standards. This will help eliminate the use of paper prescriptions and related diversion and illegal activity;
- updates the State's controlled substance schedules to create better security/protection of specific prescription drugs that are prone to abuse, including hydrocodone and tramadol;
- requires the recently-created Pain Medication Awareness Program to assume an expanded role, including education programs for prescribers and pharmacists, as well as public awareness campaigns aimed at patients and the general public; and
- establishes an ongoing program to allow the public to safely dispose of unused medications by establishing "medication drop boxes" in easily-accessible locations throughout the state.

The new law comprehensively addresses all causes that contribute to this public health crisis, not solely diversion. It will ensure that prescription medications are properly provided to legitimate patients, while preventing diversion and abuse. Strengthening and expanding the Bureau's operations and authority is a critical foundation of the legislation. In support of the Governor's agenda, the Department had already undertaken many of the recommendations found in OSC's draft report.

**OSC Recommendation #1:**

Further review the prescription data identified by our audit to isolate instances and patterns that warrant formal investigation.

**Department's Response:**

As part of the Governor's efforts to fight prescription drug abuse, the Bureau is currently updating its computer system and expanding its analytical staff. This includes creating a state of the art PMP that will receive approximately 24,000,000 unique controlled substance dispensing records annually from over 5,000 pharmacies on a "real time" basis. The Bureau will then disseminate that information to an expanded audience as allowed by law. By hiring additional analytical staff, the Bureau will routinely conduct more in-depth analysis to address diversion as well as help the Department create new law enforcement and public health strategies to address this epidemic.

The Bureau is well aware of the value of data mining and analysis, as it has been analyzing prescription drug data for over 30 years to inform its investigations as well as provider and public education efforts. Thousands of investigations have taught the Bureau that certain combinations of improperly filled fields do not reflect criminal activity, rather they are the result of common errors and inconsistencies which are sometimes included in the millions of unique records submitted by thousands of pharmacies.

The draft report states that in reviewing a 15 month period, OSC auditors observed "325,000 prescriptions, filled more than 565,000 times...that contain errors or inconsistencies."<sup>1</sup> To place the 325,000 records identified by OSC into context, this comprises less than 0.15% of the approximately 218,000,000 Official Prescription forms supplied by the Bureau to practitioners during that same time period. The overwhelming majority of these records are the likely result of clerical or data entry errors and not evidence of diversion. In fact, to even determine whether an Official Prescription form was "used," records within the PMP data must be cross referenced with a visual inspection of the actual Official Prescription forms presented to and kept by a pharmacist, as submitters routinely make errors in reporting Official Prescription serial numbers.

The types of errors and inconsistencies identified in the records by OSC were previously monitored on a daily basis by the Bureau. This includes data submissions with "invalid DEA numbers," which accounts for over a third of OSC's identified prescription forms. During the audit, the Bureau explained that previous analyses of these data over several years demonstrated that almost all of the discrepancies resulted from data entry errors or pharmacy technical problems, not from diversion or abuse.

In illustrating the types of errors, inconsistencies and anomalies routinely found in the data submitted by pharmacies, the Bureau analyzed one specific finding by OSC. The report states that "66,407 prescriptions forms were filled 179,667 times where the same prescription form number appeared in the data more than once, either at different locations or with inconsistent information about the prescriber and/or drug."<sup>2</sup> While a very small portion of the data identified reflects diversion, a portion of which is reflected in the draft report, the overwhelming majority of these records reflect lawful prescriptions that are within the bounds of proper prescribing and dispensing. For example:

<sup>1</sup> OSC draft audit report "Selected Operating and Administrative Practices of the Bureau of Narcotic Enforcement," page 7.

<sup>2</sup> OSC draft audit report "Selected Operating and Administrative Practices of the Bureau of Narcotic Enforcement," page 8.

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Comment  
1

\* See State Comptroller's Comments, page 31

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Comment  
2

- About 13,942 prescription forms that contained the same drug code (NDC), the same pharmacy identifier (NABP code), but had a different pharmacy “Rx number,” which is the pharmacy’s unique number used to internally identify the transaction. When the Rx number is the only different field, this indicates that the pharmacy failed to delete the original Official Prescription serial number from their internal database when dispensing upon the new Official Prescription presented by the patient. This clerical error is then reported to the Bureau with all other records.
- Approximately 8,674 Official Prescription serial numbers reflected the same drug number, same Rx number but a separate NABP pharmacy number. The Bureau observed that the PMP data also reflected that the prescriptions were written by the same practitioner on the same date, and they were also dispensed to the same patient on identical dates. The lone difference was the pharmacy’s NABP code. This discrepancy is almost always the result of a change in ownership of the pharmacy, which requires a change in NABP code. It is not the result of diversion. Pharmacies will routinely report the same prescription in separate reporting cycles. The Bureau has a process in place to handle these issues.
- Approximately 9,722 of these records shared the same NABP number but had separate drug code and Rx number. Past investigations have revealed that this occurs when a pharmacist is filling two separate prescriptions for the same customer. Although required to enter the new Official Prescription serial number, on occasion a pharmacist will forget to delete the prior entry, resulting in the submission of a duplicative serial number. By indicating the separate drug and Rx number, the pharmacist is clearly not trying to hide the second transaction.
- There were 4,798 records where the record originally reported to the Bureau was later corrected by the submitting pharmacy. For instance, if an invalid DEA number was originally submitted to the Bureau, it would be resubmitted, with the correct DEA number, in the subsequent month.
- Approximately 13,648 prescriptions contained a different prescribed drug, different NABP code and a different Rx number. In the Bureau’s experience, this is usually the result of a key stroke error by the pharmacist or pharmacy technician while entering the Official Prescription serial number. These 13,648 records represent less than 1/25<sup>th</sup> of one percent of the 29,537,101 controlled substance prescriptions records collected by the Bureau during the audit period. This 0.04% error rate is below the statistically expected rate attributable to key stroke errors when processing data.<sup>3</sup> Moreover, a pharmacist engaged in a criminal enterprise could easily divert controlled substances in numerous other ways without creating an audit trail.

<sup>3</sup> Dr. Ray Panko, Professor of IT Management and Shidler Fellow, Shidler College of Business University of Hawaii. See <http://panko.shidler.hawaii.edu/HumanErr/Index.htm>

\* See State Comptroller’s Comments, page 31



In the draft report OSC states that it does not “necessarily agree with all of the assumptions made in the Bureau’s analysis.”<sup>4</sup> These are not assumptions, but rather informed conclusions based upon decades of analysis and thousands of investigations. This experience and knowledge was illustrated by the Bureau’s review of a particular pharmacy in the Capital Region. During the 15 month review period, OSC’s review of data identified 19 Official Prescription form serial numbers used to dispense on 34 separate occasions at this particular pharmacy. The Bureau obtained all relevant hard copy Official Prescription forms so they may be reviewed by Bureau officials. This review revealed that in 32 separate instances, these records did not reveal diversion. Of the identified prescriptions;

- 6 forms “used” were the result of key stroke errors. 4 keystroke errors were classified by OSC as “invalid DEA number” while the other two reflected incorrectly entered Official Prescription serial numbers.
- 3 separate prescription forms classified as unlawful refills were dispensed a total of 7 times. Inspection of the Official Prescription forms revealed that they were proper refills. It is unclear why OSC’s data analysis classified these as unlawful refills.
- 8 separate prescription forms identified as “unlawful fills” or “over-authorized fills” were dispensed a total of 19 separate times. These fills were the result of an employee failing to clear the official prescription field in the pharmacy’s computer system before issuing the same customer a new lawful fill. The Bureau’s review of the patients information, prescriber’s information, the date these prescriptions were filled, as well as notations on the face of the prescription form indicate that the sign of diversion was merely the failure to update a patient’s profile. Specifically, the pharmacist entering the data for the new prescription did not update the Official Prescription form serial number from the previous transaction in the pharmacy’s computer system. A review of the actual Official Prescription form revealed the cause of this error and confirmed that the prescription was lawfully written and dispensed.

The Department agrees with OSC that the two remaining prescriptions exhibited signs of diversion. These two prescriptions were reported to the Bureau as lost or stolen, which is also why OSC identified them. Both prescriptions were reported stolen from the same medical facility. However, the facility did not report this theft until over two months after the prescription forms were presented to the pharmacy. These prescription forms were the subject of an active investigation before the facility notified the Bureau of their theft as well as before OSC’s audit began. It should be noted that of all records for this pharmacy that were identified by OSC, the only prescription forms that were actually related to diversion were classified as “lost or stolen.” The remaining 32 records (94%) were the types of data errors and inconsistencies that the Bureau has been aware of for years, including the fact that they do not reveal diversion-related activity.

Consistent with what has been described above, the Bureau acknowledges that a fraction of records identified by OSC’s auditors were related to specific instances of suspected criminal

<sup>4</sup> OSC draft audit report “Selected Operating and Administrative Practices of the Bureau of Narcotic Enforcement,” page 8.

activity. Further, consistent with OSC's stated audit procedures, the Bureau does not identify or discuss those specific cases in this response.<sup>5</sup>

The draft report further states that zolpidem, oxycodone and hydrocodone accounted for 44 percent of drugs OSC believed showed indications of being diverted.<sup>6</sup> Sold under brand names like Ambien, OxyContin and Vicodin, these are three of the most often diverted controlled substances. However, these substances actually appear less often in OSC's identified prescriptions than would be expected. During the audit period, these three drugs comprised 46.8% of the total controlled substances dispensed in New York State. If the records identified by OSC were reflective of actual diversion and criminal activity, the expected outcome would be a higher rate of inclusion of these three drugs, yet that is not the case. This supports the Bureau's informed opinion that these records are not indicative of diversion, fraud, counterfeiting or abuse.

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Comment  
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The draft report focuses on the percentage of cases that result from data analysis as opposed to external sources such as calls, emails or other correspondences.<sup>7</sup> These sources, which most often are credible, professional individuals and organizations such as pharmacists, physicians and law enforcement agencies, are valuable to the Bureau's battle against diversion. Referrals to the Bureau result from years of building relationships and credibility, and reflect a recognition of the Bureau as the organization best suited to address potential diversion. These relationships were also built over years of professional outreach that included speaking at professional schools, institutions, specialty society meetings, law enforcement symposiums and in-service health care programs. The audit finding that 74% of completed BNE investigations were commenced based on outside contacts from external sources downplays the value of these referrals, which often result from direct observation of behavior by a licensed professional and are made in real time.

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Comment  
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The Bureau has and continues to employ other tools to identify and respond to possible illegal or inappropriate situations. The Bureau works to prevent the diversion of controlled substances in the first instance by conducting inspections and issuing licenses to hundreds of individuals and companies each year. The Bureau actively investigates hundreds of cases involving the diversion of controlled substances every year. The Bureau also partners with local, state and federal authorities on several hundred more cases each year. Finally, the Bureau conducts over 1,000 drug destructions throughout the State annually. The Bureau has long recognized the value of data mining and analysis as an important tool to identify possible areas of concern and the Department has committed to expanding the Bureau's capabilities, but it is only one of several assets.

#### **OSC Recommendation #2:**

Modernize the Bureau's use of technology and information resources by expanding routine data analysis to assist in more effectively identify and investigating prescription drug diversion and abuse.

<sup>5</sup> OSC recommends that responses to draft audits "avoid including information...that is considered confidential or sensitive in nature." See [www.osc.state.ny.us/audits/auditprocess.htm](http://www.osc.state.ny.us/audits/auditprocess.htm)

<sup>6</sup> OSC draft audit report "Selected Operating and Administrative Practices of the Bureau of Narcotic Enforcement," page 7.

<sup>7</sup> OSC draft audit report "Selected Operating and Administrative Practices of the Bureau of Narcotic Enforcement," page 8.

**Department's Response:**

As part of the Governor's efforts to fight prescription drug abuse, the Bureau is currently in the process of overhauling its computer system and expanding its analytical staff. This includes creating a state of the art PMP that will receive controlled substance histories on a "real time" basis and disseminating that information to an expanded audience, as allowed by law. By hiring additional analytical staff, the Bureau will routinely conduct more in-depth analysis to address diversion as well as help the Department create new strategies to address this epidemic.

It is widely understood by those directly dealing with this epidemic that the misuse of controlled substances is not primarily the result of forgeries, counterfeit prescriptions or illegal activity on behalf of health care providers. The Center for Disease Control stated that prescription drugs, "once they are prescribed and dispensed...are frequently diverted to people using them without prescriptions. More than three out of four people who misuse prescription painkillers use drugs prescribed to someone else."<sup>8</sup> This underscores the fact that the majority of abuse and diversion cannot be uncovered by merely studying the data within the PMP.

As noted in the draft report, the Bureau has already conducted data analysis of prescribing trends and prescription clusters. This analysis was "directed at demographics" and not "identifying prescription drug diversion cases."<sup>9</sup> This was done in recognition of the fact that criminal activity is not the root cause of this epidemic. The Bureau intends to remain steadfast in its commitment to use the data within the PMP, not only for criminal cases, but to inform those who can make a change. By focusing Bureau data mining resources not only on identifying illegal activity, but also for education and outreach, the Department will continue in its efforts to inform practitioners, pharmacists and the public about the dangers of these medications. It is this type of comprehensive approach that will turn the tide on this public health crisis.

**OSC Recommendation #3:**

Properly account for, safeguard and monitor the destruction or other disposition of prescription forms returned to both the Bureau and its contracted supplier.

**Department's Response:**

The Bureau employs sufficient safeguards to protect Official Prescription forms that are returned to the Central Office. The draft report states that OSC auditors observed one box of returned prescription forms "outside" a designated secure cabinet.<sup>10</sup> During the onsite audit, OSC's auditors agreed with the Bureau's interim director that prescription forms, even outside the cabinet, were still in a "secure" location. Indeed, at all times during the audit period returned prescription forms are kept behind a locked and monitored door. That door was monitored by Bureau investigators, a private security company as well as the Troy Police

<sup>8</sup> Center for Disease Control and Prevention; "Policy Impact: Prescription Painkiller Overdoses" <http://www.cdc.gov/homeandrecreationalsafety/rxbrief/>

<sup>9</sup> OSC draft audit report "Selected Operating and Administrative Practices of the Bureau of Narcotic Enforcement," page 11.

<sup>10</sup> OSC draft audit report "Selected Operating and Administrative Practices of the Bureau of Narcotic Enforcement," page 11.

Department. Every month the security logs for this door were reconciled to ensure there was no improper access.

In June 2012, the Bureau moved to a new office located in Albany County. To ensure that the same safeguards existed in the Bureau's new office, the Department expended considerable resources, including constructing a secure wall, evidence room and safe within existing State office space. Only certain BNE employees who have been properly screened in accordance with Division of Criminal Justice standards are allowed to enter this secured area. Visitors to the Bureau are escorted at all times, including cleaning staff who are only afforded access during the workday. This secured area is found behind a second door which requires a separate keycard for entry. Every month the security logs for this door are reconciled to ensure there was no improper access.

The draft audit asserts that 78 prescription forms were missing from this box, and that four of these forms were used to obtain controlled substances. These four missing prescriptions forms that were used to obtain controlled substances were all issued by the practitioner who "returned" the forms to the Bureau and were done so within the scope of their practice. A check of the Bureau's data revealed that none of these prescriptions were filled within 100 miles of the Bureau's office and three prescriptions were actually issued by a veterinarian for anti-seizure medication for a dog. These forms were never returned to the Bureau, but were mistakenly logged in as a result due to human error. The Bureau's move to automate the inventorying process will avoid a similar mistake in the future, but at no time were these forms actually susceptible to theft.

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Comment  
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The Department agrees with OSC that a standard log indicating the disposition of returned Official Prescription forms is an appropriate measure. As such, the Bureau has directed the vendor to begin forwarding a log of returned prescription forms to the Bureau.

While OSC faults the vendor for allowing approximately 5,000 of the nearly 2,000,000 returned prescription forms to be filled, the Bureau is confident that the vendor adequately secures all returned prescriptions in a locked cage subject to video surveillance with access afforded only to employees who have cleared a criminal history check. Aside from the entry of an Official Prescription serial number, there is no other information that illustrates any common use of these Official Prescription forms that would indicate a theft or diversion, i.e., used at geographically similar pharmacies in quick succession. This represents a rate reflecting approximately 0.0005% of the prescriptions printed by this vendor. Again, this error rate is well below the expected data entry error rate; as such, it does not indicate that illegal activity is taking place. Moreover, there is no other evidence indicating a single actual incident of theft or diversion. In any event, the Bureau and vendor communicate on a daily basis to ensure the proper safeguarding of Official Prescription forms.

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Comment  
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#### **OSC Recommendation #4:**

Establish and communicate clearly defined and consistent priorities, objectives and goals to guide regional investigations. Monitor outcomes to determine whether investigators and offices are meeting expectations.

**Department's Response:**

As noted in the draft report, the Bureau has taken steps to standardize enforcement among the regions, including direct oversight of all investigative activities throughout the state.<sup>11</sup> These steps have eliminated the prior decentralized reporting structure, where regional office investigators reported through their regional office management. With this direct oversight, the Bureau now has appropriate and effective direction and oversight of Bureau investigative activities throughout the state, ensuring consistency in Bureau operations and direction.

The Bureau recognizes that previous efforts to update the Peace Officer's Manual have not resulted in a finished guide. The review and revision of the manual have resumed and will be completed by the end of 2012. Moreover, as with all Department programs, additional development of goals, objectives, and performance measures will ensue as part of the Department's Strategic Planning Initiative.

The Bureau actively monitors investigative outcomes, including investigator time and productivity, through ongoing reviews of the investigative case management system by the Director and Chief Investigator. With the centralized reporting structure, there is frequent communication between the Director, Chief Investigator and regional office supervisors and investigators. In addition, the Bureau will allow for semi-annual in-person reviews of all investigations with each investigator.

**OSC Recommendation #5:**

Monitor and reconcile expenditures to ensure that funding is used as intended.

**Department's Response:**

The Department recognizes the importance of proper usage and recording of sub-allocated funds. In response to the audit, the Department has implemented periodic reconciliations of expenditures to confirm that the level of expenditures is appropriate. Additionally, the Department will provide training to individuals involved in coding expenditures to ensure proper charging and allocation.

<sup>11</sup> OSC draft audit report "Selected Operating and Administrative Practices of the Bureau of Narcotic Enforcement," page 15.

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## State Comptroller's Comments

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1. Officials cite a 0.15 percent error rate by comparing the 325,000 records we identified to the entire pool of 218 million forms supplied to practitioners. However, our exceptions were drawn from only the 10 percent of these forms (22 million) used to acquire controlled substances.
2. Officials explain various reasons why errors may be responsible for about 51,000 of the over 66,000 records that we identified as being filled more than once, often at different locations. However, they still offer no explanation for the remaining 15,000 cases.
3. At this level of data analysis, it is not surprising for aspects of such a large pool of potential problems to continue to resemble the population from which it was drawn, especially when searching for problems like fraud or diversion. Differences like the type of drug acquired may only be apparent after the Bureau applies its professional knowledge and expertise in the area to further hone down the list of possible exceptions.
4. We do not downplay the value of these outside referrals. In fact, on Page 7 of our report we specifically recognize them as one of the most valuable sources of case information.
5. The Department's comments focus on attempting to explain the 78 prescriptions that appeared to be missing from the box in the Bureau's office. It does not address the over 2,000 prescription forms in the box that officials did not even have a record of, nor the almost 800 forms recorded as destroyed by the Bureau but apparently used to dispense controlled substances. Given these circumstances, we question the Department's assertion that forms were never actually susceptible to theft.
6. Regarding the roughly 5,000 filled prescriptions that were reported as returned to the contract vendor, officials point out that they only represent 0.0005 percent of the total number of forms printed by the vendor. Not only would this calculation require that 1 billion forms had been printed as compared to the 218 million supply that officials cite earlier, but the more relevant comparison is against the roughly 1.6 million forms returned to, and supposedly destroyed by, the vendor.