

STATE OF MICHIGAN
DEPARTMENT OF ATTORNEY GENERAL
CORPORATE OVERSIGHT DIVISION

In the Matter of:

Attorney General
File No. 2016-0161571-A

Breast Cancer Outreach Foundation, Inc.

Respondent.

Notice of Intended Action and Cease and Desist Order

TO: Breast Cancer Outreach Foundation, Inc.
Neil G. Paulson, Sr., President
1613 E. Livingston St.
Orlando, FL 32803

InCorp Services, Inc.
Registered Agent for Breast Cancer Outreach Foundation, Inc.
2285 S. Michigan Road – PO Box 266
Eaton Rapids, MI 48827

Bill Schuette, Attorney General of the State of Michigan, under Section 20(4) of the Charitable Organizations and Solicitations Act, MCL 400.271 *et seq.*, notifies Breast Cancer Outreach Foundation of his intention to bring a civil action against Breast Cancer Outreach Foundation in Ingham County Circuit Court and orders Breast Cancer Outreach Foundation to cease and desist all unlawful solicitations as described below. Before bringing a civil action, the Attorney General will consider accepting an assurance of discontinuance or other appropriate settlement agreement. Concurrent with this Notice of Intended Action, the Attorney General is also issuing a Notice of Intent to Deny renewal of Breast Cancer Outreach Foundation's charitable solicitation registration.

I. Jurisdictional Allegations

1. Respondent Breast Cancer Outreach Foundation, Inc. (“BCOF”) is a Florida nonprofit corporation with 501(c)(3) tax-exemption status. Its address is 1613 E. Livingston St., Orlando, FL 32803. Its President is Neil G. Paulson, Sr. Its Michigan-based resident agent is InCorp Services, Inc., 2285 S. Michigan Road – PO Box 266, Eaton Rapids, MI 48827.
2. BCOF was incorporated in July 2014. In August 2014, it filed its solicitation registration form with the Michigan Attorney General. It is registered as #51784 under Michigan’s Charitable Organizations and Solicitations Act (“Solicitations Act”).
3. As a registered charitable organization soliciting in Michigan, BCOF is a person subject to the authority of the Attorney General under the Solicitations Act. MCL 400.271 *et seq.*; MCL 400.272(a) and (e).

II. Background Facts

4. In April 2016, BCOF submitted its renewal registration form to the Attorney General’s Charitable Trust Section, including BCOF’s 2015 IRS Form 990. **Exhibit A**, BCOF 2015 Form 990 and Registration Form.
5. **Large Cash Fundraising, but Almost No Cash Programs.**
 - a. BCOF’s 2015 IRS Form 990 reported that BCOF raised \$1,425,201 in cash from fundraising contributions.

- b. Despite this large amount of cash raised, BCOF reported no cash grants and only one program expense that appeared to be paid from its cash: travel expenses of \$1,237.
 - c. Instead, BCOF's cash mostly was spent on fundraising expenses: \$758,633 in fundraising costs and \$510,040 as "Expenses for the benefit of BCOF," also listed as a fundraising expense. (These two fundraising expenses total \$1,268,673.) BCOF also reported \$95,048 in management and general expenses, including \$76,463 as the salary (and payroll taxes) of its President, Neil G. Paulson, Sr.
6. **Gift-in-kind Fundraising and Program Expense.** In addition to its cash fundraising and programs, BCOF also reported gift-in-kind donations on its 2015 Form 990.
- a. BCOF reported \$3,894,214 in pharmaceuticals received as a gift-in-kind donation.
 - b. BCOF also reported \$3,932,599 as the program expense related to BCOF's distribution of these pharmaceuticals.
7. **Almost All of BCOF's Programs are Related to its Large Gift-in-kind Program.** Of BCOF's \$3,933,836 in total program expenses, \$3,932,599 came from its gift-in-kind program. (BCOF's only other program expense reported was the \$1,237 in travel expenses stated above.)
8. **BCOF Solicits to Fund Vaccine Research.** However, solicitation materials on behalf of BCOF—materials already in the Charitable Trust

Section's possession from its investigation into professional fundraiser Corporations for Character—showed that BCOF was raising money by phone telling call recipients: “The reason for my call is that we’re in the middle of helping support development of a vaccine for Breast Cancer. So aside from the fundraising costs, the mission is to continue to fund research, diagnosis, and treatment that will eliminate Breast Cancer for our lifetime.” **Exhibit B**, Corporations for Character Scripts.

9. On June 21, 2016, Charitable Trust Auditor Joe Kylman wrote to BCOF's President Neil G. Paulson, Sr., advising of inaccuracies with BCOF's Form 990 and advising that amendment of the Form 990 might be necessary. **Exhibit C**, Joe Kylman Letter. The letter also inquired about BCOF's gift-in-kind program, requested BCOF's soliciting materials, and asked that BCOF identify all grants and other funding of breast cancer research.
10. On July 15, 2016, Paulson responded in writing to the Charitable Trust Section's requests and included an amended 2015 Form 990 for BCOF. **Exhibit D**, Paulson Response Letter and Amended Form 990.
11. **Amended 2015 Form 990 Again Shows No Grants for Breast Cancer Research.** BCOF's Amended 2015 Form 990 again reported no cash grants for breast cancer research or for any other kind of research. Paulson's written response also explained BCOF's grants for 2014, 2015, and 2016. **Exhibit D**, Paulson Letter of 7/15/16, Response 5.

- a. In 2014, BCOF granted \$712 to the Cleveland Clinic for research and \$500 to a research project at the San Antonio Military Center.
 - b. In 2015, BCOF apparently made no grants because of a problem with the San Antonio program and because the Cleveland Clinic advised that BCOF's funding was not welcome as its fundraising was conducted exclusively by its own development department.
 - c. In the first two quarters of 2016, BCOF granted \$17,100 to Cleveland Clinic and \$3,700 to the San Antonio program.
12. Paulson's written response also advised that the difference in the cost of gifts-in-kind received by BCOF (\$3,894,214) and the cost of BCOF's gift-in-kind distribution program (\$3,932,599) included shipping costs paid by BCOF of \$38,385. **Exhibit D**, Response 3.

13. **BCOF's Solicitation Materials All State that Donations are for Cancer Research.** BCOF's response included the following solicitation materials from fundraisers Courtesy Call, Newport Creative Communications, and Corporations for Character. **Exhibit E**, Paulson Response of 7/15/16, Excerpts of Solicitation Materials. Emphasis has been added to highlight representations to donors regarding BCOF's use of funds for grantmaking purposes.

- a. **Courtesy Call.** BCOF advised that the below materials have been used from September 2014 to the date of its response in July 2016. Courtesy Call's telemarketing script states:

Funds raised from this drive ***will be used towards grants*** and providing education and encouragement to women and men to pursue screening and treatment. The Foundation is also ***devoted to funding breast cancer vaccine research*** and is a vocal advocate for those suffering from Breast Cancer. [Exhibit E, p. 1]

Courtesy Call's pledge form states:

The mission of Breast Cancer Outreach Foundation is to provide education, prevention and treatment resources to men and women diagnosed and suffering with breast cancer ***including, but not limited to, providing grants for screening, vaccines, mammography, surgery, chemotherapy and follow up care*** as well as funding clinical trial research. [Exhibit E, p. 2]

The reverse side of the pledge form states:

BCOF raises money ***to give grants and funding for Breast Cancer vaccine research*** and is a vocal advocate for those suffering from Breast Cancer. We educate and encourage women and men to get screening and treatment. [Exhibit E, p. 3]

According to Courtesy Call's brochure:

We need your support ***to provide grants and funding for research*** which will most rapidly, with FDA approval, speed an affordable vaccine to the market! [Exhibit E, p. 4]

- b. **Newport Creative Communications.** Foundation entered a contract with Newport Creative Communications in March 2015. Solicitation materials provided were used in monthly rotation through BCOF's response in July 2016.

Samples of Newport's materials state:

Locally, nationally and internationally, Breast Cancer Outreach Foundation, a 501(c)(3) organization raises money and ***provides grants for Breast Cancer research*** and is a vocal advocate for those suffering from Breast Cancer. [Exhibit E, p. 5]

With your help, *we'll work to find vaccines* that can cure this dreaded disease. [Exhibit E, p. 5]

Please also *enclose a generous tax-deductible gift to help find the cure for breast cancer.* [Exhibit E, p. 6]

And please act now *to help* The Breast Cancer Outreach Foundation (BCOF) *find a cure for breast cancer....*Any amount you can spare could help – someone even close to you – survive breast cancer. [Exhibit E, p. 7]

c. **Corporations for Character.** BCOF entered a contract with

Corporations for Character in July 2015. Materials provided by

Foundation that were used in 2015 state:

It's supporting people like yourself that make such a big difference in helping *support development of a vaccine for Breast Cancer.* [Exhibit D, Paulson Letter of 7/15/16, Response 6]

...this time *your support will continue to fund research, diagnosis, and treatment that will eliminate Breast Cancer* in our lifetime.... [Exhibit D, Paulson Letter of 7/15/16, Response 6]

...the mission is to continue to fund research, diagnosis, and treatment that will eliminate Breast Cancer in our lifetime....

In fact, it's important to know that *one of the two extremely important vaccine trials we support* should be completed by 2018, so obviously it's a critical time to help them and others

with this hopeful momentum. [**Exhibit D**, Paulson Letter of 7/15/16, Response 6]

14. **BCOF Solicitations and Funds Received in Michigan.** By supplemental response, Paulson also reported on BCOF's solicitation numbers in Michigan, which are summarized in the following table. (Note: BCOF failed to provide numbers for fundraiser Newport Creative Communications—numbers which, if provided, would add to the number of violations alleged below.) **Exhibit F**, Paulson Supplemental Response dated 7/20/16.

	Number of MI solicitations / pledges	Number of paid MI pledges	Amount Collected from Michigan
Courtesy Call-2014	104	41	\$ 1,060.00
CFC - 2015	10,295	1,871	33,447.19
Courtesy Call-2015	237	132	2,925.00
CFC - 2016	11,304	1,246	33,298.81
Courtesy Call-2016	71	48	855.00
Totals	22,011	3,338	\$ 71,586.00

III. Law

15. Section 18 of the Charitable Organizations and Solicitations Act (Solicitations Act) prohibits persons from engaging in a variety of acts. MCL 400.288. These prohibited acts include:

(j) Divert or misdirect contributions to a purpose or organization other than that for which the funds were contributed or solicited.

(n) Employ any device, scheme, or artifice to defraud or obtain money or property from a person by means of a false, deceptive, or misleading pretense, representation, or promise.

(o) Represent that funds solicited will be used for a particular charitable purpose if those funds are not used for the represented purpose.

(u)(ii) Submit any of the following to the attorney general . . . [a] document containing any materially false statement.

(y) For a charitable organization, submit financial statements, including IRS form 990, 990-EZ, 990-PF, or other 990- series internal revenue service return, or any other financial report required under this act, that contain any misrepresentation with respect to the organization's activities, operations, or use of charitable assets.

IV. Alleged Violations

16. Misrepresentation of Use of Funds Donated. MCL 400.288(1)(o).

- a. In 2015, Breast Cancer Outreach Foundation raised \$1,425,201, including at least \$36,372.19 in Michigan resulting from 10,532 total pledges. BCOF's total solicitations in Michigan during 2015 remains unknown; also unknown are BCOF's numbers regarding solicitations by Newport Creative Communications.
- b. BCOF's solicitations informed donors that their donations would fund breast cancer vaccine research.
- c. BCOF's 2015 Form 900 and Amended 2015 Form 990 report no monetary grants of any kind during 2015.
- d. For every solicitation BCOF made in Michigan during 2015, BCOF misrepresented that the funds solicited would be used for a particular charitable purpose—to fund breast cancer research—yet failed to use any of the funds raised for that particular purpose.
- e. **Total violations.** While the total number of BCOF solicitations in Michigan remains unknown, for the purposes of this Notice of Intended

Action, the Attorney General alleges that all 10,532 BCOF pledges from Michigan residents violated Section 18(1)(o) of the Solicitations Act.

17. Employ Any Scheme to Obtain Donation. MCL 400.288(1)(n).

- a. In 2015, BCOF raised \$36,372.19 from a total of 2,003 paid pledges from Michigan residents.
- b. BCOF obtained each of these pledges by informing donors that their donations would fund vaccine research when, in fact, BCOF funded no vaccine research in 2015.
- c. For each of these 2,003 paid pledges, BCOF employed a device, scheme, or artifice to defraud or obtain money from these donors by means of a false, deceptive, or misleading pretense, representation, or promise—that the donation would be used to fund vaccine research.
- d. **Total violations.** The Attorney General alleges that each of the 2,003 paid pledges BCOF obtained from Michigan residents in 2015 violated Section 18(1)(n) of the Solicitations Act.

18. Diversion of Contributions to Other Purpose. MCL 400.288(1)(j).

- a. In 2015, BCOF raised \$36,372.19 from 2,003 paid pledges from Michigan residents, advising donors that their donations would fund vaccine research.
- b. In 2015, BCOF spent \$0 on vaccine research (or any other kind of research) but spent \$38,385 of cash donations on a separate charitable

program—BCOF's gift-in-kind pharmaceutical program, a program that was not disclosed to donors in solicitations. The \$38,385 of cash donations spent by BCOF was paid to Charity Services International for shipping and related services to ship tablets of medicine overseas.

- c. In this way, BCOF diverted or misdirected all \$36,372.19 from the 2,003 paid pledges from Michigan residents to a purpose other than that for which the funds were contributed or solicited.
- d. **Total Violations.** The Attorney General alleges that, for each of the 2,003 paid pledges from Michigan residents diverted to another purpose, BCOF violated Section 18(1)(j) of the Solicitations Act.

19. Submitting Documents with False Statements to Attorney General.

MCL 400.288(1)(u)(ii).

- a. The Attorney General's June 21, 2016 letter requested information regarding the \$510,040 BCOF listed as "Expenses for the benefit of BCOF" on its 2015 Form 990. The expense was allocated to fundraising expenses.
- b. In response, BCOF amended its 2015 Form 990 and now allocated this \$510,040 as a program service expense as "JT Costs SOP 98-2." In allocating \$510,040 to program services, BCOF allocated approximately 40% of its fundraising costs to program services.
- c. BCOF also checked the box in Part IX, line 26 on its Amended 2015 Form 990 indicating that it had followed SOP 98-2 (ASC 958-720)

regarding the allocation of joint costs. The reference to SOP 98-2 is to the American Institute of Certified Public Accountants' Statement of Position 98-2, *Accounting for Costs of Activities of Not-for-Profit Organizations and State and Local Governmental Entities That Include Fundraising*.

- d. BCOF's allocation of \$510,040 to program services is not allowed under SOP 98-2. SOP 98-2 requires that before allocation of joint costs can be made, the following three criteria must be met: purpose, audience, and content. FASB ACS 958-720-45-29. Further, the purpose criterion is not met if a majority of any party's compensation varies based on contributions raised. FASB ACS 958-720-45-40. Also, any allocation of such joint costs must be reasonable. FASB ACS 958-720-45-54. The allocation of such costs must also be disclosed in the notes to the financial statements. FASB ACS 958-720-50-2. For the following reasons, BCOF's allocation violated SOP 98-2:

- i. BCOF's contracts with its two telemarketing firms state that the fundraiser's compensation will be 90% of the gross proceeds. Thus, since compensation varies based on the amount raised, the purpose criterion is not met and compensation of these professional fundraisers is not allocable to program services.

- ii. Even if compensation paid to Foundation's professional fundraisers could be allocated, the allocation of 40% of the compensation to program services is not reasonable.
 - iii. The notes to Foundation's financial statements fail to make the required disclosure that it has allocated joint costs to program services.
- e. BCOF's audited financial statements also falsely stated that the financial statements were in accordance with Generally Accepted Accounting Principles.
- f. In submitting the Amended 2015 Form 990 including improper joint cost allocations that falsely claim to follow SOP 98-2, and in submitting its audited financial statements including false statements, BCOF submitted documents containing materially false statements.
- g. **Total Violations.** The Attorney General alleges two violations of Section 18(1)(u)(ii).

20. Submitting Financial Statements that Misrepresent BCOF's charitable activities. MCL 400.288(1)(y).

- a. As alleged in the previous paragraph, BCOF's Amended 2015 Form 990 and audited financial statements wrongly allocated \$510,040 in fundraising expenses as charitable program services. In making this improper joint cost allocation, BCOF overstated its charitable program

services by \$510,040 and understated its fundraising expenses by the same amount.

- b. BCOF also overstated its charitable activities by claiming to operate a pharmaceutical gift-in-kind program with expenses of \$5,297,557.

Exhibit D, Amended 2015 Form 990, page 2, line 4a. But according to line 1 on Part IX of BCOF's Amended 2015 Form 990, the expense of the pharmaceutical gift-in-kind program allocated to program services was \$3,932,599—not \$5,297,557.

- c. Moreover, even had BCOF reported the expense of its pharmaceutical gift-in-kind program as \$3,932,599, it would still have misrepresented the organization's activities for the following reasons:

- i. BCOF's pharmaceutical gift-in-kind program, which on paper represents BCOF's most significant activity (and for 2015, perhaps its only charitable activity), is coordinated by third-party organizations World Assist and Charity Services International. BCOF's only role in the program is to tell the other parties where it wants a shipment sent. Then, BCOF reports millions of dollars on its financial statements both in contributions and in charitable programs services. This has the effect of making BCOF appear far more effective on paper; it also helps to disguise the fact that BCOF raised \$1.4 million dollars cash and made no charitable grants with the cash raised.

(For an example of the misleading effect of BCOF's gift-in-kind program, see BCOF's program service percentage from the Attorney General's website. **Exhibit G**, 12/19/16 screen shot showing BCOF's charitable program services as 74.26% of its expenses, despite making no charitable grants from the \$1.4 million of donated cash.)

- ii. Additionally, the millions of dollars BCOF claims from its pharmaceutical gift-in-kind program are only achieved by inflating the values of the drugs it receives. (As an example, BCOF's shipments of pills ranged in value from six to seven figures. In contrast, BCOF reported the value of one of these shipments to U.S. Customs as \$50. **Exhibit H**, Gift-in-Kind Shipment Materials, see p. 8 for customs value of \$50.)
- d. In submitting both the Amended 2015 Form 990 and audited financial statement with the improper joint cost allocation and overstatement of the value of its pharmaceutical gift-in-kind program, BCOF misrepresented its activities, operations, or use of charitable assets.
- e. **Total Violations.** For the submission of both the Amended 2015 Form 990 and audited financial statements, the Attorney General alleges two violations of Section 18(1)(y) of the Charitable Organizations and Solicitations Act.

21. **Total Violations.** In total, and as described in the preceding paragraphs, the Attorney General alleges that BCOF has violated the Solicitations Act 14,542 times.¹

V. Attorney General's Authority

22. Section 20 of the Charitable Organizations and Solicitations Act specifies the Attorney General's authority to redress violations of the Act, including:

- a. Issuing a Notice of Intended Action, MCL 400.290(4);
- b. Issuing a Cease and Desist Order, MCL 400.290(4);
- c. Bringing a civil action in court with a fine of up to ***\$10,000 per violation***, MCL 400.290(1);
- d. Accepting an Assurance of Discontinuance, MCL 400.290(4); and
- e. Requesting injunctive relief, attorney fees and costs, and restitution, MCL 400.290(1).

23. Section 20 of the Solicitations Act allows the Attorney General to proceed against individual officers, directors, shareholders, or controlling members of Breast Cancer Outreach Foundation. MCL 400.290(1).

VI. Cease and Desist Order

24. The Attorney General **HEREBY ORDERS** Breast Cancer Outreach Foundation to ***CEASE AND DESIST*** all unlawful solicitations as

¹ At a maximum civil fine of \$10,000 per violation, as alleged, BCOF faces a maximum penalty of \$145,420,000.

described in the above violations. Within twenty-one (21) days, Breast Cancer Outreach Foundation must confirm in writing to the Attorney General its compliance with this order.

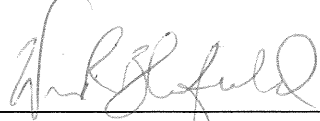
25. Violations of this order may result in a civil action for restitution, civil fines, litigation costs, and injunctive relief. Continuing violations may also result in additional violations alleged in any civil action.

VII. Opportunity to Respond or to Confer with the Attorney General

26. Within twenty-one (21) days of receiving this Notice, Breast Cancer Outreach Foundation has the opportunity to respond to the undersigned Assistant Attorney General and to confer with the undersigned Assistant Attorney General in reaching an appropriate assurance of discontinuance or settlement agreement.

27. If no satisfactory resolution is reached during this period, the Attorney General intends to bring a civil action against Breast Cancer Outreach Foundation and its President Neil G. Paulson, Sr. (and possibly other BCOF directors), in Ingham County Circuit Court. The Attorney General will request restitution, civil fines, the awarding of litigation costs, and injunctive relief.

BILL SCHUETTE
ATTORNEY GENERAL

A handwritten signature in dark ink, appearing to read "W. R. Bloomfield", written over a horizontal line.

William R. Bloomfield (P68515)
Assistant Attorney General
Corporate Oversight Division
P.O. Box 30755
Lansing, MI 48909
Phone: (517) 373-1160
bloomfieldw@michigan.gov

Date: January 18, 2017