



STATE OF NEW YORK
OFFICE OF THE STATE INSPECTOR GENERAL
Final Report
March 1, 2011

SUMMARY OF FINDINGS/RECOMMENDATIONS

The Inspector General determined that Philip Passero, a Health Program Administrator 2 in the New York State Department of Health's Division of Nutrition, working in concert with Joel Burtman, a building manager employed by a private firm that leases space to the Department of Health, falsified purchase records to conceal the Division's improper purchase of a refrigerator for use by executive staff. The Inspector General also found evidence that Passero's supervisors, Division of Nutrition Director Patricia Hess and Director of the Division's Bureau of Administration and Evaluation Laura VanValkenburg, knew of, and approved, Passero's actions.

The Inspector General also found that errors and deficiencies in the processing of purchase orders by Department of Health staff failed to detect the scheme and further resulted in the state paying twice for the refrigerator in question.

The Inspector General has provided a copy of this report to the Albany County District Attorney for review and to the Department of Health for appropriate disciplinary action.

ALLEGATION

On April 27, 2010, the Department of Health (DOH) reported to the Inspector General that, while conducting an internal inquiry into an unrelated matter, it had discovered evidence that Philip Passero, a Division of Nutrition employee, with the approval of management, had prepared a purchase order purportedly for electrical upgrades but which was actually used to acquire a refrigerator for staff use.

SUMMARY OF INVESTIGATION

The Division of Nutrition

DOH's Division of Nutrition (the "Division") provides funding and educational support for programs aimed at improving nutrition for low-income, pregnant women; infants; preschool children; school-age children in high-risk areas; and adults at risk for chronic disease, among other populations deemed in need of such services. The Division

is located in Riverview Center, a building owned by Riverview Assets at 150 Broadway, Menands, in which DOH and other state agencies lease space.

Division Employee and Building Manager Create Fraudulent Purchase Order

In late December 2009, the refrigerator located in the Division's executive suite for use by executive management and support staff malfunctioned. On December 29, 2009, Laura VanValkenburg, Director of the Division's Bureau of Administration and Evaluation, met with her subordinates Philip Passero, a Health Program Administrator 2, and Marlene Dana, a Health Program Administrator 1, and discussed replacing the refrigerator. According to both Passero and Dana, as the state would not fund the purchase of a new refrigerator, VanValkenburg asked Dana to contact Joel Burtman, the building manager, to attempt to arrange for building management to purchase a new refrigerator but conceal the purchase under the guise of additional electrical work which was to be billed to DOH.

As directed, Dana telephoned Burtman, and when they met soon thereafter, Dana conveyed the request regarding the disguised refrigerator purchase. Burtman related to the Inspector General that he initially informed Dana he was uncomfortable with the idea and took no further action at that time. Dana reported the result of the meeting to Passero, who informed VanValkenburg. According to Passero, VanValkenburg suggested that Burtman again be approached with the proposal. Passero also stated that he and VanValkenburg then discussed the idea with Hess, who consented.

In January 2010, Passero met with Burtman, asking, according to Burtman, "Can you do us a favor; we need a little help here?" Burtman declared that Passero specifically asked him to purchase a new refrigerator for the Division's executive suite, but submit an invoice disguising the purchase as "electrical work." Burtman admitted that he agreed to the scheme, supposedly reluctantly, because DOH is a major tenant in the building and he viewed his job as dependent on keeping the agency satisfied.

On January 6, 2010, Burtman prepared a formal quote of \$997.92 for work falsely described as "redistribute electrical loads to minimize tripping breakers," but which in fact was for the purchase of a refrigerator for the Division's executive suite. After Passero signed the quote on January 11, 2010, indicating his approval, Burtman purchased a Whirlpool full-size refrigerator at Lowes for \$679.43. At Burtman's direction, the building management's bookkeeper then prepared a standard voucher in the amount of \$997.92 for work falsely referred to as "redistribute electrical loads in suite 514 per quote." The voucher included no mention of the refrigerator, the actual item purchased, which was installed in the executive suite on January 18, 2010. On January 19, 2010, both Burtman and Passero signed the voucher attesting to its validity. Notably, Burtman certified that "the above bill is just, true and correct"; while Passero certified that "this voucher is correct and just, and payment is approved, and the goods or services rendered or furnished are for use in the performance of the official functions and duties of the agency." Burtman, when interviewed by the Inspector General, claimed that the \$318.49 difference between the refrigerator's purchase price and the amount of the voucher covered his cost to move and install the refrigerator. As he was directly involved in the fraudulent purchase scheme, Passero accepted Burton's fraudulent voucher including this additional charge.

Significantly, Passero advised the Inspector General that Division of Nutrition Director Patricia Hess was present when the purchase of the refrigerator was discussed, and approved the plan to conceal the purchase as electrical work. When interviewed by the Inspector General, both VanValkenburg and Hess denied knowledge or approval of these actions. VanValkenburg stated that Passero had approached the building management about the refrigerator on his own initiative, and that she did not know the voucher was fraudulently used to purchase a refrigerator. Hess asserted that she did not recall having discussions with any employee about having the refrigerator replaced.

In contrast, the Inspector General was informed by a Division employee that when a refrigerator used by Division non-executive staff in a nearby unit malfunctioned at about the same time, approximately 20 employees of that unit contributed personal funds totaling \$300 to \$400 to purchase a new compact-size refrigerator. According to the employee, it was “frustrating for staff to think that some people could have something covered . . . while other staff had to meet their needs on their own.”

Hess Orders Refrigerator Removed After Inquiries by Inspector General

In April 2010, DOH Bureau of Employee Relations began an internal inquiry into alleged unauthorized outside employment by DOH staff. In the course of that inquiry, the Bureau of Employee Relations found evidence relating to the improper refrigerator purchase. After learning that questions were being raised about the purchase, Division Director Hess dispatched Deborah Reehl, an administrative assistant in her office, to meet with Burtman and request that the refrigerator be removed from the executive suite. Burtman advised the Inspector General that Reehl approached him asking what she characterized as a “big favor” – that the refrigerator be “taken out of our kitchen immediately.” According to Burton, although he thought the request odd, he moved the refrigerator to an area of Riverview Center occupied by a private firm.

When asked by the Inspector General why she had the refrigerator removed, Hess claimed she did not want the refrigerator in the executive suite if it were the subject of any controversy. The Inspector General finds Hess’s explanation implausible.

Clerical Error Results in State Paying for Refrigerator Twice

Exacerbating the Division’s improper actions, the Inspector General determined that due to clerical errors, the state paid for the improperly purchased refrigerator twice. DOH’s Purchase Order Unit submitted the \$997.92 voucher, along with numerous other invoices related to DOH’s lease of space at Riverview Center, to the Office of the State Comptroller (OSC) for payment. The \$997.92 voucher was paid as part of a \$67,952.11 check that OSC issued to Riverview Assets, the owner of Riverview Center, on March 11, 2010. Notwithstanding this payment, as a result of a processing error at DOH, the \$997.92 voucher was also submitted among a later batch of invoices and paid by OSC as part of a check for \$1,771.60 issued on April 28, 2010. Neither DOH nor OSC was aware of this duplicate payment until it was discovered by the Inspector General. Following notification by the Inspector General, DOH has initiated action to recover the excess payment.

The Inspector General also found that the DOH's Purchase Order Unit submitted the \$997.92 voucher to OSC without adequate review. As noted, the sham voucher prepared by Burtman and approved by Passero indicated work performed to "redistribute electrical loads in suite 514 per quote." However, a voucher for work of this nature should have been accompanied by an invoice from a licensed electrician or electrical firm, and the lack of such an invoice should have alerted and been questioned by the Purchase Order Unit.

FINDINGS AND RECOMMENDATIONS

The Inspector General determined that Philip Passero, a Health Program Administrator 2 in the New York State Department of Health's Division of Nutrition, working in concert with Joel Burtman, a building manager employed by a private firm that leases space to the Department of Health, falsified purchase records to conceal the Division's improper purchase of a refrigerator for use by executive staff. The Inspector General also found evidence that Passero's supervisors, Patricia Hess and Laura VanValkenburg, knew of, and approved, Passero's actions and that upon learning of the Inspector General's investigation, Hess directed that the refrigerator be removed and secreted in other space in the building.

The Inspector General also found that due to errors and deficiencies in the processing of purchase orders, DOH staff failed to detect the scheme and the state paid twice for the refrigerator.

The Inspector General has provided a copy of this report to the Albany County District Attorney for review. The Inspector General further recommends that DOH take appropriate disciplinary action against Passero (disciplinary action against Hess and VanValkenburg is precluded by their retirement from state employment) and appropriate action to address deficiencies in purchase order processing.

Response of the Department of Health

In response to the Inspector General's recommendations, DOH advised that it served Passero with a Notice of Discipline on January 5, 2011, charging him with approving a quote to fraudulently bill for services, falsifying purchase records, and certifying a voucher for payment of \$997.92 to Riverview Assets for fraudulent charges, and is seeking his termination. Additionally, DOH stated that it has temporarily assigned Passero to duties in the Division of Nutrition which will not require him to work with purchasing or to sign vouchers.

DOH further advised that upon review it identified procedural safeguards which were not utilized in this instance, resulting in the duplicate payment for the refrigerator. To address this finding, DOH advised that all staff in its Accounts Payable Unit will be required to attend remedial training in relevant procedures.