



STATE OF NEW YORK
OFFICE OF THE STATE INSPECTOR GENERAL
Final Report
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SUMMARY OF FINDINGS AND RECOMMENDATIONS

The New York State Inspector General found that Kathleen Caggiano-Siino, Executive Deputy Commissioner of the Office of Alcohol and Substance Abuse Services (OASAS), improperly used her position to assist a relative, John Allegretti-Freeman, to be prematurely placed on a list of providers for counseling persons arrested or convicted of Driving While Intoxicated. The Inspector General further found that Caggiano-Siino, with the knowledge of OASAS Counsel Robert Kent, caused an opinion request to be made to the New York State Commission on Public Integrity (COPI) regarding Allegretti-Freeman's addition to the list which, while informing COPI of a tenuous and insignificant connection between Kent and the applicant, knowingly withheld the fact of the actual familial relationship between Caggiano-Siino and Allegretti-Freeman. This omission rendered the opinion request, at best, misleading. As Caggiano-Siino's conduct may violate the ethical guidelines contained in the Public Officers Law, the Inspector General is referring these findings to COPI and to OASAS for appropriate action.

ALLEGATION

Paula Johnston, former Credentialing Unit Manager at OASAS, alleged to the Inspector General that the Credentialing Unit was instructed by OASAS management to afford preferential treatment to John Allegretti-Freeman by prematurely adding him to a list of OASAS qualified counselors to provide services to individuals charged with or convicted of Driving While Intoxicated.

SUMMARY OF INVESTIGATION

Background

New York State Vehicle and Traffic Law § 1198-a provides for Driving While Intoxicated (DWI) offenders, under certain circumstances, to receive alcohol and substance abuse assessments and treatment from qualified providers. Prior to November 2006, the New York State Department of Motor Vehicles (DMV) was responsible for compiling a list of agencies and professionals qualified to provide this screening and assessment. Effective November 1, 2006, the state legislature amended the law to designate OASAS responsible to "develop a list of the names and locations of all licensed agencies and credentialed alcohol and substance abuse professionals throughout the state

which are capable of and available to provide an assessment of, and treatment for, alcohol and substance abuse and dependency.” Accordingly, the new legislation further declared that that providers of treatment under Vehicle and Traffic Law § 1198-a were required to be “credentialed” by OASAS. The legislature did not specify the method by which OASAS was to develop the list of credentialed providers but, rather, entrusted the formulation and implementation of this procedure to the expertise of the agency.

To facilitate its assumption of this new responsibility, OASAS created a “DWI law work group” to develop a procedure for creating this list. This work group, which convened after the effective date of the new law, included representatives of a number of the agency’s divisions. The OASAS work group decided that the list would be compiled in three phases: phase one, which was to be completed August 24, 2007, would only include OASAS-certified providers such as not-for-profit organizations and other agencies that provide treatment services; phase two, to be completed about September 24, 2007, would add to the list individuals who held an OASAS-issued Credentialed Alcoholism and Substance Abuse Counselor (CASAC) certificate and a license issued by the New York State Education Department in an eligible profession; phase three, to be implemented about October 24, 2007, would add individual providers who had been included on the earlier DMV list and whom OASAS deemed qualified. Individuals seeking to be added to the list in phase three would be required to submit to OASAS documentation of their credentials and a signed form attesting to their qualifications.

On August 28, 2007, the legislature again amended the Vehicle and Traffic law. In relevant part, the definition of “alcohol and substance abuse professionals” eligible to be deemed capable to perform the required services was clarified to explicitly include “licensed by the state education department in an appropriate health field including licensed clinical social worker, licensed master social worker, licensed mental health counselor, nurse practitioner, physician, physician’s assistant, psychiatrist, psychologist, and registered nurse.” This amendment was made effective by the legislature November 27, 2007.

Many substance abuse treatment providers earn substantial income from counseling those charged with or convicted of DWI offenses. OASAS officials advised the Inspector General that while the list of approved providers was being developed, the agency received calls from a number of the approximately 700 individual providers who, by virtue of their credentials, were not included in the first two phases expressing concern that this phased-in approach would injure them financially.

Allegretti-Freeman is Prematurely Added to the List of Credentialed Providers

One of the providers voicing complaint regarding the time-lag in certification was John Allegretti-Freeman. Allegretti-Freeman is the Director of Community and Rehabilitation Services at the New York State Office of Mental Health (OMH) but, with OMH approval, has secondary employment as a clinical social worker in private practice. Allegretti-Freeman had been included on the previous provider list maintained by DMV, but because he was not an OASAS-certified provider and does not hold a CASAC

certificate, he was not eligible to be reviewed for inclusion on the OASAS list until the inception of phase three, on or about October 24, 2007. Allegretti-Freeman is licensed by the state education department as a clinical social worker, and, therefore, was statutorily eligible to be placed on the list of qualified providers as of November 27, 2007.

Allegretti-Freeman is married to the first cousin of OASAS Executive Deputy Commissioner Kathleen Caggiano-Siino. On September 10, 2007, over a month before the implementation of phase three and over two months before the statutory amendment became effective, Allegretti-Freeman contacted Caggiano-Siino and complained that the process for compiling the new list might cause an interruption in his private practice as a counselor for DWI offenders. Caggiano-Siino informed the Inspector General that she neither had control over whether a provider would be added to the list nor had any knowledge about the specific details of the phasing process. She said she informed Allegretti-Freeman of these facts and suggested that he speak with OASAS Associate Counsel Patricia Flaherty, who was in a better position to assist him. That same day Caggiano-Siino sent Flaherty an e-mail supplying Flaherty with Allegretti-Freeman's OMH telephone number and requesting that Flaherty contact Allegretti-Freeman and explain the process to him. Caggiano-Siino's e-mail to Flaherty reads in pertinent part as follows:

Could you call John Freeman back at OMH? He's got some concern about the new procedure for DDI assessment – he's been doing this as a social worker for 20 years, privately and really could use you to clarify the expectations.

his number is 41955

PS – he's my cousin;)

Notably, Caggiano-Siino concluded her e-mail's postscript with an "emoticon," a textual expression that utilizes punctuation marks to represent a writer's facial expression and alert a reader to the tenor or temper of a statement. In this instance, Caggiano-Siino used the emoticon ";)", which is commonly known to represent an eye wink.¹

When Flaherty and Allegretti-Freeman subsequently spoke, he repeated his concerns about the process and Flaherty advised him as to the records he should submit to demonstrate eligibility for inclusion on the list. Flaherty informed the Inspector General that she first spoke with Allegretti-Freeman on the same day she received the e-mail from Caggiano-Siino, but believed that he had telephoned her prior to her reading Caggiano-Siino's e-mail containing the information regarding the familial relationship.²

¹ See http://en.wikipedia.org/wiki/List_of_emoticons. While in its response, OASAS states that this emoticon is subject to "indeterminate meaning", the agency fails to provide any other reasonable meaning in this context.

² Allegretti-Freeman confirmed for the Inspector General that he had called Caggiano-Siino, his cousin by marriage, about being placed on the list and that Caggiano-Siino referred him to Flaherty who instructed him to send her his information directly and that Allegretti-Freeman subsequently provided her this information.

Flaherty stated that she instructed Allegretti-Freeman to send her his resume and a letter, which she received on September 12, 2007, two days after she received the e-mail from Caggiano-Siino. Flaherty stated that beyond this e-mail, Caggiano-Siino was not involved in the process to put Allegretti-Freeman on the list and she never communicated with Caggiano-Siino about Allegretti-Freeman again. Flaherty maintained that Caggiano-Siino's relationship with Allegretti-Freeman did not affect the discretionary review process or her decision to approve Allegretti-Freeman for placement on the list describing the relationship as "a coincidence of circumstances."³ Caggiano-Siino told the Inspector General that she did not inquire about what transpired after Flaherty and Allegretti-Freeman spoke.⁴

After Allegretti-Freeman provided the requested documentation to Flaherty, Flaherty directed Douglas Rosenberry, Director, Workforce Development and Field Evaluation, to add Allegretti-Freeman to the list although he did not meet the criteria for phase one or two of the established process. Rosenberry subsequently instructed a subordinate, Paula Johnston, manager of the OASAS credentialing unit, to add Allegretti-Freeman to the list. Allegretti-Freeman's inclusion on the list occurred on or about September 24, 2007, approximately 30 days before other providers with similar credentials were added in accordance with the three-phase approach, two months prior to the effective date of the change in the law, and two weeks after Flaherty was informed of the familial connection between Caggiano-Siino and the applicant.⁵

Allegretti-Freeman's Addition to List is Protested

The directive to add Allegretti-Freeman to the list prior to the inception of phase three was protested by Johnston, who had served on the working group that developed the process for implementation of the list. Johnston said she expressed her disagreement with the decision to Rosenberry, her supervisor, who responded by informing her that the OASAS Counsel's Office had instructed him it reserved the right to exercise discretion in adding to the list without a formal review process. Dissatisfied with that explanation, Johnston sent an e-mail on October 2, 2007, to Charles Monson, the Associate Commissioner to whom she was responsible, stating her strong objection to Allegretti-Freeman's premature consideration and inclusion. Johnston copied Rosenberry and Flaherty on the e-mail. No response was received from Monson, but Flaherty answered

³ It is noteworthy that Rosenberry informed the Inspector General that the discretionary review process was not established until October 2007.

⁴ In light of OASAS's response, summarized below, the Inspector General notes that neither an explicit order, "follow-up" on a request nor actual involvement in the process are necessary in order to substantiate, at a minimum, of the appearance of undue influence. This is particularly true when the questionable communications emanate from the second highest-ranking member of an agency to a subordinate. Indeed, agency executive management must be particularly cautious in its communications with subordinate staff based upon their place in the agency hierarchy and the reasonable want of employees to please their supervisors.

⁵ Irrespective of whether Flaherty spoke with Allegretti-Freeman before or after reading Caggiano-Siino's inappropriate e-mail, Flaherty clearly had read this e-mail prior to receiving the requested documentation and directing Rosenberry to add Allegretti-Freeman to the list of certified providers.

Johnston, asserting that creation of the list was not a “credentialing process” but rather a statutory mandate. Johnston reiterated her concerns in several e-mails to Monson, none of which was answered.

Johnston then sent a series of e-mails to Caggiano-Siino protesting the directive. At the time, Johnston was unaware of Caggiano-Siino’s familial connection to Allegretti-Freeman. Unaware of this actual relationship, Johnston speculated that OASAS General Counsel Robert Kent was the source of the preferential treatment conferred upon Allegretti-Freeman based on a perceived personal acquaintance with him. Specifically, prior to his employment at OASAS, Kent served as an associate counsel at OMH, where Allegretti-Freeman is employed. Johnston also learned that both men resided in the same town, fueling her hypothesis that Kent had facilitated Allegretti-Freeman’s early placement on the provider list. In response, Caggiano-Siino advised Johnston that an internal investigation of the matter would be conducted, and assured Johnston that she would not be retaliated against for making the complaint. In 2008, Johnston resigned her employment with OASAS, where she had worked for 26 years, to accept a position with another state agency. She cited her disagreement with management over the outcome of her allegations as the reason for her departure from OASAS.

OASAS’s Disingenuous Request for Opinion from the Commission on Public Integrity

Caggiano-Siino claimed to the Inspector General that she was unaware that Allegretti-Freeman was added to the list until Johnston met with her on October 12, 2007. After the meeting with Johnston, Caggiano-Siino convened members of OASAS’s executive board, which included, Kent, Monson, OASAS Chief of Staff Monica Wilson, and Flaherty to discuss Allegretti-Freeman’s placement on the list as a result of a discretionary decision. In addition to Caggiano-Siino, at the time of this meeting both Kent and Flaherty were aware of her familial connection with Allegretti-Freeman. In fact, Kent admitted that he was aware of Caggiano-Siino’s e-mail to Flaherty in which she had made this relation known. At the meeting, it was determined that Wilson would contact the New York State Commission on Public Integrity (COPI) to solicit an opinion on the process that OASAS was following to place eligible persons on the DWI provider list. However, neither Caggiano-Siino, Flaherty nor Kent advised Wilson of the relationship between Caggiano-Siino and Allegretti-Freeman, much less provide her a copy of Caggiano-Siino’s e-mail, prior to contacting COPI. In fact, Wilson informed the Inspector General that she did not become aware of the family connection until “quite some time” after these events.

According to the state’s code of ethics, specifically Public Officers Law § 74(3)(f), no officer or employee of any state agency should “give reasonable basis for the impression that any person can improperly influence him or unduly enjoy his favor in the performance of his official duties.” Nor should any state officer or employee be “affected by the kinship of any party or person.” Public Officers Law § 74(3)(h) further states that an officer or employee of a state agency should not exhibit any conduct that will raise suspicion among the public that “he is likely to be engaged in acts that are in

violation of his trust.” COPI is the state agency which is charged with interpreting these sections and provides advice to state officers and employees regarding ethically appropriate conduct.

Wilson contacted COPI Special Counsel Theresa Schillaci based upon Johnston’s complaint and her knowledge of the factual and legal background. Uninformed of Caggiano-Siino’s relation to Allegretti-Freeman and the ill-advised e-mail, Wilson only informed COPI of the general parameters of the process and the fact of Kent having previously worked at the same state agency that employs Allegretti-Freeman. Specifically, as memorialized in an e-mail to Caggiano-Siino and Kent that same day, Wilson advised COPI that “one of these individuals [Allegretti-Freeman] came from the same agency as our Counsel’s former agency but that Counsel did not know this person.” Based upon this incomplete information, COPI responded with an informal opinion that the process that had been reported to them by Wilson appeared to be proper. However, even lacking complete information from OASAS, COPI advised OASAS that any persons discretionarily approved to the list out of sequence needed to file all the required documents as anyone else applying for the same placement.

When questioned by the Inspector General about the allegations, Kent was adamant that Caggiano-Siino had engaged in no misconduct. When asked why Wilson was not instructed to inform COPI of the fact that Allegretti-Freeman was married to the first cousin of Caggiano-Siino, much less advise COPI that Caggiano-Siino had expressly ensured that Flaherty was aware of this connection, Kent claimed that this fact was irrelevant to the allegation made by Johnston. Kent opined that Johnston’s allegation focused on a perceived relationship between Allegretti-Freeman and himself, and therefore only facts relevant to this allegation were reviewed. Kent further suggested that informing Johnston of the Caggiano-Siino and Allegretti-Freeman relationship was not necessary because Caggiano-Siino simply referred the phone call to the correct department. Notably, Kent admitted that he was aware of the e-mail communication by Caggiano-Siino to Flaherty but professed that if he believed that the communication was meant by Caggiano-Siino to use her influence to ensure Allegretti-Freeman’s placement on the list, he would have reported the incident himself. Wilson and Monson also supported Caggiano-Siino’s actions. They testified that informing Johnston of the relationship was irrelevant because it had no bearing on the discretionary review, which required that Allegretti-Freeman be qualified and have experience to be considered for placement on the list. The Inspector General does not find these explanations persuasive.

The Inspector General learned that Allegretti-Freeman was the first of four individuals added to the list out of sequence at the discretion of OASAS. According to Kent, OASAS had the discretion to add capable individuals to the list outside of the established process. Rosenberry stated that a “discretionary review panel” composed of himself, Flaherty and now retired OASAS Director of Criminal Justice Service Kenneth Perez was established in October 2007, after Allegretti-Freeman had already been added to the list on September 24, 2007, and only after Johnston had registered her numerous objections to the breach of process. The discretionary review panel ultimately added three additional individuals to the list on or about October 19, 2007, just days before they

otherwise would have been eligible to be added. Indeed, the Inspector General found that since Allegretti-Freeman was added to the list during phase two, he was incorrectly listed as having a CASAC certificate. Interestingly, Flaherty informed the Inspector General that because one of the applicants subsequently added to the list under this “discretionary review” was an acquaintance of hers, she recused herself from the process in regard to that individual. Flaherty’s appropriate recusal stands in stark contrast to Caggiano-Siino’s e-mail to Flaherty in regard to Allegretti-Freeman.

The Inspector General finds that OASAS’s request for an opinion from COPI was disingenuous. Specifically, Caggiano-Siino and Kent sought advice ostensibly to ensure the propriety of their actions based upon the effect of what they knew was an insignificant connection (Kent’s hypothetical possible prior contact with Allegretti-Freeman) while fully aware of a more direct relationship (Allegretti-Freeman’s family relationship by marriage with Caggiano-Siino) which they failed to disclose. Moreover, rather than recuse herself or make efforts not to reveal this relation during the process, Caggiano-Siino ensured that this relationship was known at the inception of the review. When interviewed about why she informed Flaherty of her relation to Allegretti-Freeman, Caggiano-Siino stated: “I just felt that I shouldn’t not say that, umm . . . but you should know, I probably in my position get one or two calls a week from people asking for clarification, people that I used to work with in the field . . . I don’t have any other cousins that are married to anybody at OMH, but, it is not unusual for me to get calls.”

FINDINGS AND RECOMMENDATIONS

The Inspector General found that Kathleen Caggiano-Siino, Executive Deputy Commissioner of the Office of Alcohol and Substance Abuse Services (OASAS), acted in manner which, at a minimum, created an appearance of impropriety in instigating the agency to prematurely add her cousin by marriage to a list of credentialed providers of counseling services. Although it appears that Allegretti-Freeman would have eventually been added to the list during phase three of the established process and surely would have been eligible under the 2007 statutory amendment, Caggiano-Siino’s e-mail to an agency counsel that included mention of her familial relationship with Allegretti-Freeman undermines confidence in the objectivity of the agency’s decision. Compounding these actions, Caggiano-Siino, with the assent of OASAS Counsel Kent and Flaherty, requested an opinion from COPI informing that body of an irrelevant tangential connection while knowingly omitting information regarding a potential conflict of interest. The Inspector General finds this request for a COPI opinion to be, at best, disingenuous. The Inspector General will forward its findings to COPI for its review under Public Officers Law § 74(3)(f) and (h). A copy of the Inspector General’s report will also be sent to OASAS Commissioner Karen M. Carpenter-Palumbo for her review and appropriate administrative action.

OASAS’S RESPONSE

By letter dated January 28, 2010, Commissioner Karen Carpenter-Palumbo responded to the Inspector General’s findings on behalf of OASAS. While

acknowledging that Caggiano-Siino's behavior "from an outside perspective could give rise to an inference of an appearance of impropriety," OASAS insists that no undue influence was intended to be asserted by Caggiano-Siino. In maintaining that the individuals named in the Inspector General's report did not intend to "engage in any inappropriate action," OASAS relies on the fact that "whatever indeterminate meaning may be ascribed to the emoticon," Caggiano-Siino issued no "explicit order" to advance Allegretti-Freeman's application and did not "follow-up" on her e-mail to Flaherty.

OASAS further notes that Caggiano-Siino was not generally involved in the certification process and therefore could not functionally recuse herself. OASAS further reiterates its defense that COPI was not advised of relationship between Caggiano-Siino and Allegretti-Freeman, much less the "wink" e-mail because "[n]o facts existed then that pointed to actual interference in the process by Caggiano-Siino because of a family relationship, as no facts do now, so it was not relevant circumstances for the particular issue at the time." Notwithstanding the belief that its employees did not intentionally engage in misconduct, OASAS has informed the Inspector General that it "acknowledges the seriousness of any appearance of impropriety" and, based upon the findings of this report, has (1) commenced an agency-wide initiative to further educate OASAS staff on applicable ethics rules; and (2) issued "a formal letter of caution" to Caggiano-Siino regarding her obligations under the Public Officers Law.