NYS Commission on Quality of Care and Advocacy for Persons with Disabilities

Center for Discovery:

A Review of Fiscal and Governance Practices

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EXECUTIVE SUMMARY

Under Article 45 of the Mental Hygiene Law, the NYS Commission on Quality of Care and Advocacy for Persons with Mental Disabilities (CQC) is mandated to "[r]eview the cost effectiveness of mental hygiene programs and procedures provided for by law with particular attention to efficiency, effectiveness and economy in the management, supervision and delivery of such programs" (MHL §45.07(b)). While this core function has always been important, it is now critical given the current economic environment and the growing strain on public resources.

The Commission has always taken its responsibility to conduct cost-effectiveness reviews seriously. Prior investigations, in cooperation with state oversight and law enforcement agencies, have resulted in significant changes in the operations of provider agencies, substantial repayments of funds inappropriately billed to the Medicaid program and, in some instances, criminal convictions.[1]

This report summarizes the Commission's investigation into SDTC – The Center for Discovery (The Center), a not-for-profit corporation affiliated with the Cerebral Palsy Associations of New York State located in Harris, New York, in Sullivan County. The investigation began in the summer of 2006 after a former board member lodged a complaint alleging that the compensation of Executive Director Patrick Dollard was, at over $500,000, excessive and that when he started to look into this issue he was denied access to certain corporate records. The former board member also expressed concerns over the cost of dinner meetings, sometimes including expensive bottles of wine, paid for by The Center.

The Commission investigated the allegations by conducting a limited review of agency finances and the controls over expenditures. Throughout the review, there were a number of instances in which findings were shared with The Center, and in many cases, The Center responded with corrective actions, including instituting many policy and procedural changes.

Commission findings and resultant recommendations regarding three issues – the executive director's compensation, payment of medical expenses related to a catastrophic accident incurred by the son of The Center's then chief financial officer, and management of an administrative petty cash fund maintained by the executive director's administrative assistant – continue to be of concern.

The Commission's review resulted in a total of thirteen recommendations. For the most part, The Center either agreed or partially agreed with nine of the recommendations, mainly in areas that involved improvements in internal controls and took steps to implement corrective actions. A chart describing the Commission's recommendations and The Center's response is presented at the end of this Executive Summary. Given the disagreement regarding the three areas referenced above and The Center's detailed justification for its actions, the Commission briefly addresses each of the three areas below.

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[1]Europa Associates for Community Services, Inc., A Study into the Failure of a Board of Directors to Exercise its Fiduciary Responsibilities, July 2009; PSCH Inc., An Investigation into Financial Practices and Corporate Governance, November 2008; Lessons Learned-Changes Made, The Case of Evelyn Douglin Center for Serving People in Need, February 2008.

The Center requested that the Commission's publication of this report include The Center's narrative response with addenda. The Commission has fulfilled this request by attaching The Center's response and addenda to this report as Appendix 1.

Executive Director's Compensation

In New York State, not-for-profit corporations such as The Center are offered little state statutory or regulatory guidance regarding an executive's compensation other than a vague standard set by the Not-for-Profit Corporation Law that requires compensation to be "reasonable" (§202(a)(12)). The Internal Revenue Service (IRS), however, has provided extensive guidance that not-for-profit corporations can follow in order to demonstrate the reasonableness of executive compensation. The IRS defines reasonable compensation as "the amount that would ordinarily be paid for like services by like enterprises (whether taxable or tax-exempt) under like circumstances" (26 C.F.R. §53.4958-4).

The Commission reviewed the executive director's compensation over the six-year period 2001 to 2006. The review included an examination of the executive director's employment agreement, the board's oversight and approval of the compensation package and a comparison of the compensation to that paid by similar agencies. When the Commission compared the executive director's compensation package, $512,600 in 2005[2], to that of other executive directors at agencies which are also affiliated with the Cerebral Palsy Associations of New York State, the compensation level at The Center was found to be significantly higher than at the other affiliates.

The Commission questioned the degree to which the specific agencies used as "comparables" in determining the executive director's compensation package were comparable in size, nature and location to The Center. Specific agencies used as comparables in The Center's analysis were provider agencies in the New York City/Long Island region, many of which had revenues significantly higher than The Center. Accordingly, the Commission recommended that The Center, as a best practice in setting executive compensation in the future, assure that the board is provided information describing the executive compensation paid by specific agencies of a similar size, providing similar services, in a similar geographic region.

The Center has declined to accept this recommendation and responded by discussing at length the due diligence that the board pursued in establishing Mr. Dollard's compensation package. The board points out that its process was "exceedingly thorough and comprehensive and incorporated multiple steps to assure that the process was free of even the appearance of bias." The process included, among other actions, establishing a compensation committee, hiring three separate experts to provide appropriate comparable data, and presenting the information to the full board for their approval. The board also had access to a broad array of information about the scope and complexity of services provided by The Center (see, for example, Addendum B of The Center's response), and Mr. Dollard's role in the growth of those services, which it considered in justifying Mr. Dollard's compensation. As a result, The Center

[2] Mr. Dollard's compensation in 2007 was $583,586.

concluded that it established the executive director's compensation in a manner that should be lauded as a best practice model.

Payment of Unreimbursed Medical Expenses

The second issue that The Center disputed related to The Center paying for the personal medical expenses of one of its consultants, who is the son of The Center's former chief financial officer (CFO). In June 2005, the consultant was severely injured while residing in Texas. According to The Center, in order to obtain appropriate treatment, it was necessary to transport him, first from Austin to Houston and, later, from Houston to New York via air ambulance. The total cost for the trips was $21,205, which was paid by the executive director using The Center's credit card. The air ambulance costs were only a small piece of a larger settlement that The Center entered into with its insurance carrier to resolve the issue of who was responsible for paying for the consultant's total medical costs which were estimated at more than $500,000 and anticipated to be on-going. The settlement, which was signed in April 2006, directed The Center to pay $225,617 in cash to the insurance company. While the Commission did not question the wisdom of the settlement itself, it did question the propriety of The Center paying the air ambulance costs, a benefit not covered under the policy. The Commission also questioned the propriety of The Center paying approximately $2,600 for two round-trip airfares for the CFO to travel to and from Texas to attend to his son.

The Center stated that the son, prior to his injury, was mistakenly classified as an independent contractor and allowed to purchase health insurance through The Center's insurance carrier and that the air ambulance costs were paid under the mistaken belief that they would be reimbursed by the insurance company. The Center concluded that the payment of the air ambulance costs and settlement with its insurance company were addressed reasonably and appropriately because they were resolved in a way that "protected The Center." Regarding the two round-trip airfares for the CFO, The Center stated that because the CFO was returning to work at the request of The Center in order to meet The Center's needs, it was fair and appropriate that The Center pay the airfare.

The Commission recommended that The Center reconsider its perspective of the propriety of paying for the air ambulance charges and seek restitution from the CFO for the round-trip airfares. The Center declined to accept this recommendation.

Administrative Petty Cash Fund

The third unresolved area related to The Center's administrative petty cash fund, which was maintained by the executive director's administrative assistant. From 1999 into 2006, The Center paid out more than $115,000 from this fund. The Commission identified numerous problems with the administration of this fund, including large payments beyond what would be considered "petty;" missing receipts; questionable handwritten receipts; lavish dinners, including expensive bottles of wine; reimbursements for employee prescriptions; and receipts which appeared to have been altered. For example, in 2006, about $8,000 of reimbursements were made without an accompanying receipt; significant amounts (about $52,000) were disbursed to reimburse restaurant charges in excess of $100 per receipt; and over $500 was used to reimburse copayments for personal prescriptions.

Although The Center changed its policies and procedures governing the administrative petty cash fund, its response dismissed the Commission's findings by (a) not responding to concerns about expenditures running into the thousands of dollars for restaurant charges and alcoholic beverages; (b) suggesting that they are satisfied as to the validity of the expenditures based on its independent review; and (c) suggesting that $18,738 of expenditures that it could not validate, including the employee prescription copayments which were admittedly inappropriate, were too insignificant to be addressed.

Conclusion

The Commission estimates that The Center receives over 90 percent of its total annual revenue from public funds, mainly from the Medicaid program. In this economic environment, there is an increased and justified focus on accountability and transparency in the use of public funds. The Center must fulfill its obligation to act as faithful stewards of public funds.

The Commission commends the board for responding affirmatively to most of the Commission's recommendations. While quality of services was not an issue in this review, the Commission believes that all services must be delivered in a manner which is cost-effective, transparent and accountable to the taxpayer, and that every effort must be made to ensure that public funds are used to the maximum benefit of the individuals intended to be served. The Commission will revisit The Center at some time in the future to assure that the reforms which the board has adopted are implemented.

CQC Recommendations and Center Response

CQC Recommendation	Center Agreement	Summary of Center Response
When setting compensation levels the board should consider comparability data from specific agencies delivering similar services and which is compiled by an independent party.	Disagreed	The board established the CEO's compensation package with the assistance of experts in accordance with IRS guidelines.
The board should be given a detailed listing of all forms of the CEO's compensation documenting conformity with contract amounts. The board should also review the executive director's fringe benefit costs and seek corrective actions for any amounts not paid in accordance with the contracts.	Partially Agreed	The board has instructed the finance office to provide a detailed listing of all forms of compensation. The Center reviewed the executive director's fringe benefits and determined that no corrective action was required.

CQC Recommendation	Center Agreement	Summary of Center Response
The board should approve any compensation for individuals who exercise substantial influence over the organization.	Agreed	The board agreed and has implemented changes to address CQC's concerns.
The board should continue to ensure that policies regarding fringe benefits be clearly stated in writing. The board should also review whether benefits afforded certain employees were proper.	Agreed	The board took steps to address CQC's concerns by approving an updated version of the employee handbook and approved a revised policy restricting cash-outs for any paid time off accruals.
Time and attendance records should be maintained by the CEO and CFO and reviewed periodically by the board. Additionally, the board should be fully informed and approve of personal/business trips of executives working out of town.	Partially Agreed	The board responded that time and attendance records are maintained in accordance with federal and state law. The board agreed with the periodic review of sick and vacation time usage. However, the board disagreed that the CFO should have taken leave time while in Texas taking care of his son.
The Center should reconsider its perspective on the propriety of the $21,505 in corporate charges for air ambulance and avoid any similar charges in the future.	Disagreed	The Center initially authorized the payment for these charges under the mistaken belief that they were covered by its insurance policy. After learning that it was not, The Center retroactively amended its health plan's covered services and added air ambulance services as a self-insured benefit.
The Center should seek restitution for the personal travel costs of the CFO.	Disagreed	The executive director advised the CFO that, because the CFO was returning from Texas to work at the request of The Center in order to meet The Center's needs, it was fair and appropriate that The Center pay the airfare required to bring the CFO back to work.
The Center should establish guidelines on the circumstances when business meals are appropriate and itemized bills should be retained to comply with state reporting requirements.	Agreed	The board agreed that policies should be established, records maintained, and a monitoring system instituted. The board instructed The Center management to propose guidelines addressing circumstances when business meals are appropriate.

CQC Recommendation	Center Agreement	Summary of Center Response
The board should encourage complete cooperation with any investigation into the administrative petty cash fund.	Agreed	The board expects complete cooperation with any investigation and believes The Center has met and continues to meet this expectation with respect to the Commission's investigation of The Center's administration of its petty cash fund.
The Center should ensure that future financial reporting is free from errors described in the report.	Agreed	The board generally agreed with the CQC's recommendation and took appropriate measures to address CQC's concerns.
The Center should establish policies for responding to requests from individual board members for access to corporate records.	Agreed	The board agrees that all board members be given a copy of the corporate by-laws and that access to other corporate records be given to members in response to reasonable requests.
The Center's affiliate corporations should continue to ensure the presence of appropriately constituted boards of directors who fulfill the necessary corporate governance legally required by their separate incorporation status.	Agreed	The board agreed and took action to ensure that The Center's affiliates have appropriately constituted boards of directors.
The board should evaluate all transactions with possible conflicts of interest. Anyone involved in a transaction, either directly or indirectly, should not be present during the deliberations or vote. Pertinent information and approvals should be clearly documented in the board minutes.	Disagreed	The recommendation requires actions not required by law and is otherwise unworkable. The Center adopted appropriate policies governing conflict of interest and will continue to comply with them.

INTRODUCTION

Background

SDTC - The Center for Discovery (The Center) is a not-for-profit organization incorporated in 1950 under the laws of the State of New York, located in Harris, New York, in Sullivan County. It was originally incorporated under the name The Sullivan County Cerebral Palsy Association, Inc., and has also been known as The United Cerebral Palsy Association of Sullivan County, Inc. The Center is one of 24 independent non-profit affiliates that are part of the Cerebral Palsy Associations of New York State, whose mission is to advocate and provide direct services with and for individuals with cerebral palsy and other significant disabilities. Over 90 percent of The Center's revenues are derived from governmental funding sources for residential, educational and medical services in programs licensed by the State Education Department (SED), the Department of Health (DOH), and primarily by the State Office of Mental Retardation and Developmental Disabilities (OMRDD). In 2005, The Center reported $59 million in revenue, against $58.3 million in expenses.

In support of its mission, The Center has four affiliated corporations:

A. **Center for Discovery Magnet Services Corporation (Magnet)** assists families of children and adults with developmental disabilities residing outside of New York State in securing access to the residential, day and educational services provided by The Center, and to enter into contracts and agreements for these services. For 2005, revenue was $1.5 million with $1.5 million of expenses.

B. **SDTC Foundation, Inc. (Foundation),** advances, assists, and facilitates the charitable purposes of The Center. The Center's board adopted resolutions in connection with certain fundraising events, directing 25 percent of the net charitable donations raised by The Center to be transferred to the Foundation. For 2005, revenue was $562,000 (including $71,000 in interest income) with $48,000 of expenses reported. As of December 31, 2005, it had accumulated net assets of $1.6 million.

C. **Developmental Residential Services, Inc. (DRSI),** provides 24-hour fire protection and emergency power to the facilities owned and operated by The Center. For 2005, revenue was $190,000 with expenses the same.

D. **Sullivan C. P. Residence Corporation, Inc. (CP Residence),** was set up as a separate corporation in order to obtain HUD funding for residential housing. For 2005, revenue was $46,000 with $60,000 of expenses.

The Executive Director of The Center is Mr. Patrick Dollard. The longstanding President of The Center's board was Ms. Elizabeth Berman, until her resignation in 2008. The current chairman of the board of directors is John Milligan.

Complaint

In April 2005, the Commission was contacted by a board member of The Center who felt that the compensation of The Center's executive director was excessive. The complainant also stated that he was the lone dissenting vote on the executive director's most recent compensation package and expressed frustration that an accounting consultant, who was a friend of the executive director, had "manipulated the board." The complainant stated that the consultant was at every board meeting, including executive sessions, which appeared to him to be unusual. He also expressed concerns over the cost of dinner meetings paid for by The Center, which sometimes included expensive bottles of wine. When he asked the executive director for certain corporate records, he received a letter from the agency's attorney asserting that such requests can not be made by an individual board member but, instead, must be formally made by the full board. The board member was not reelected to the board at the end of his term in May 2005.

Scope of Review

The Commission began a fiscal review of The Center in the summer of 2006 based upon the complaint made by the former board member, now deceased. The Commission investigated the allegations by conducting a limited review of agency finances and the controls over expenditures mainly for 2005, though further records were examined, some as far back as 1999, with special attention devoted to the executive director's compensation and other aspects of the complaint. Just prior to the Commission's involvement, OMRDD had conducted a fiscal review of The Center. That review was not based upon the complaint but, in a few instances, similar review areas overlapped as noted in this report.

Throughout the Commission's review, there were a number of instances where findings were shared with The Center, including at a board meeting in April 2007, and in many instances The Center followed up with corrective actions, including enacting numerous resolutions and instituting many policy and procedural changes. The Center has also sought to improve its compliance with government regulations and reporting through the hiring of a full-time compliance officer. This report is a summary of the Commission's findings, which incorporate consideration of The Center's actions to date.

FINDINGS

EXECUTIVE COMPENSATION

(a) Executive Director's Compensation

The Commission reviewed the executive director's compensation over the six-year period from 2001 to 2006. The review included an examination of the executive director's employment agreement, the board's oversight and approval of the compensation package and a comparison of the compensation to similar agencies. The review found the following:

- Total compensation from 2001 to 2006 increased from $381,462 to $549,630, which represents a 44 percent increase over the six-year period.

- Compensation consisted of an array of fringe benefits beyond his base salary, including several life insurance and disability insurance policies, several retirement plans, an expense allowance, an automobile for Patrick Dollard's personal use, sabbatical leave and accrued vacation and sick leave buyouts. Over the six-year period reviewed, the executive director received close to $254,000 for his leave accruals.

- An expense account given to Mr. Dollard starting in October 2002 which generated an additional $9,600 per year did not appear to have been approved by The Center's board.[3] It also appears that some members of the board were unaware of what the total compensation was prior to the 2005 contract.

(b) Executive Director's 2005 Contract

On April 14, 2005, The Center entered into a new employment agreement with Mr. Dollard as executive director.[4] The agreement, which was retroactively effective beginning January 1, 2005, totaled $512,600, was for a five-year period, and included the following terms with regard to his compensation:

- A base salary of $350,000. The base salary after 2005 would be determined during an annual review of the executive director by the board's compensation committee.
- An array of fringe benefits including leave buyouts, several life and disability insurance policies, several retirement plans, an expense account of $5,500, and $1,600 for personal use of an agency automobile.

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[3] This benefit was to provide an expense allowance pertaining to business meetings that take place in New York City after normal business hours and "may warrant the Executive Director to obtain overnight lodging accommodations." Upon information and belief, Patrick Dollard owns an apartment in New York City.
[4] This latest contract replaced a prior ten-year contract Mr. Dollard had with The Center. The prior contract called for an annual base salary of $145,000 plus fringe benefits, including a discretionary amount set at 45 percent of his salary. The contract stipulated a minimum salary increase of 6 percent annually.

- "Discretionary Additional Compensation" for fringe benefits not to exceed $85,000 annually. This benefit allows Mr. Dollard the flexibility to choose a mix of benefits up to the set amount.
- An option to substitute a portion of his base salary with additional pension or deferred compensation.

The renegotiation of the executive director's employment agreement began in early December 2004, when Mr. Dollard requested that a Compensation Committee (the Committee) be established to review and determine the terms and parameters of a new contract. The Committee initially consisted of three board members (a fourth member was later added to the Committee). Two outside consultants were also advisors to the Committee, Vincent DiCalogero, CPA[5] and Dr. Clarence York.

The Committee first met on January 6, 2005, to discuss the new contract. In order to make an informed decision, the Committee was provided with a package of information prepared by Mr. DiCalogero. The package included Mr. Dollard's 2004 contract parameters (total compensation of $401,443 which consisted of a base salary of $245,000 and fringe benefits of $156,443), five executive compensation surveys which compared the compensation packages of other executives[6], and new contract terms for consideration. Among the items under consideration was the proposal to increase Mr. Dollard's base salary from $245,000 to $300,000, a 22 percent increase over the previous year. According to the minutes, the Committee considered the $300,000 base salary reasonable because it was based upon the average base salary ($313,958) of other executive directors as presented in the surveys provided by Mr. DiCalogero.

Over the next two months, the Committee met three more times (February 2, February 16 and March 23). At the February 2, 2005, meeting, it discussed raising Mr. Dollard's base salary to $350,000 stating that "it would be appropriate for the compensation of the Executive Director to fall within the upper quartile of the Rankings schedule that lists the dollar value of the Executive Director's compensation within the 990 surveys." And, because the "Executive Director has not received any additional salary increases (other than the normal 6 percent increase each year) over his past 10-year term," this increase in base salary represents a one-time catch-up adjustment. One of the concerns of the Committee was to ensure that it was in compliance with Internal Revenue Code §4958 due diligence requirements relating to the

[5] Mr. DiCalogero received significant consulting fees from The Center. In 2005, he was paid $286,286 for billings under Vincent J. DiCalogero, CPA and also benefited from $51,994 in payments to his firm Basile & DiCalogero, CPAs. In 2004, he was paid $247,361 for billings under Vincent J. DiCalogero, CPA with his own personal hourly charges to The Center amounting to the equivalent of a half-time employee (an average of 20 hours per week at $150 per hour).

[6] The five surveys compiled by Mr. DiCalogero included a 990 survey of NY Metro Area Residential Adult & Children's Services Organizations, a 990 survey of National Residential Adult & Children's Services Organizations, a survey of NYC area not-for-profit organizations from Professionals for Non-Profits, Inc., a survey of Long Island for-profit companies, and a survey conducted by Mr. DiCalogero of not-for-profit agencies based on his "first-hand in-depth knowledge of the compensation packages received by other Executive Directors."

evaluation and setting of the executive compensation.[7] According to the February 2, 2005, minutes, the Committee unanimously approved all the provisions of the proposed contract, although later minutes reflect that one member (the Commission's complainant) disputed this account, stating he never agreed to the proposal. Nevertheless, the approval process was not complete, as the Committee agreed to hire its independent external auditor, Grant Thornton, in order to ensure that the due diligence requirements were met.

The Committee requested Mr. DiCalogero to provide Grant Thornton with all necessary information. On February 16, 2005 the Committee was presented with the Grant Thornton report, which concluded that "the information provided to you (the Committee) constitutes comparable data appropriate for establishing the rebuttable presumption of reasonableness as it pertains to the Intermediate Sanctions legislation under Internal Revenue Code Section 4958."

Once the Grant Thornton report was received, a Committee member raised a concern that the auditors were not "independent" because they were The Center's external auditors. The Committee member recommended and the Committee agreed to engage yet another firm to render an opinion on the Committee's compliance with the Internal Revenue Code. Deloitte Tax, LLP, reviewed the proposed compensation plan and issued an analysis on March 18, 2005, concluding that, if the Committee followed its recommendations, The Center "will have established a rebuttable presumption of reasonableness of the compensation for purposes of IRC Section 4958." In rendering its conclusion Deloitte used the studies provided by Mr. DiCalogero and Grant Thornton, and its own data. It concluded that the "terms proposed herein are within the 75th percentile of market practices in similarly situated organizations. The IRS generally considers compensation at or below the 75th percentile to be reasonable compensation."

The Committee met for the last time on March 23, 2005, to discuss the Deloitte analysis, which proposed that Mr. Dollard's total compensation package be $512,600, comprised of $350,000 base salary and $162,600 in benefits. The Committee voted at that time to recommend the package to the full board for their approval. The vote was 3 to 1 with one member (the Commission's complainant) voting to disapprove the proposal. According to the minutes, the dissenting board member wanted to use the Deloitte analysis as a "starting point" for discussion; whereas the other members felt that this was the conclusion of the process. On March 30, 2005, by a majority vote of 8 to 1, The Center's full board approved the contract provisions as recommended by the Committee.

[7] IRS regulations impose a 10 percent excise tax on "organization managers" who participate in giving an individual who is classified as a "disqualified person", (e.g., Executive Director), unreasonable compensation. For example, if the IRS determined that the reasonable compensation for the CEO of a not-for-profit is $200,000, but the CEO in fact received $250,000, the CEO has received $50,000 in unreasonable compensation.

(c) Compensation Committee's Analysis

In determining Mr. Dollard's compensation, the Committee reviewed extensive data provided by its outside consultant and two independent accounting firms. Those studies included both regional and multiple national compensation surveys. While the national surveys were informative, the only specific comparables available to the Committee were those entities selected by Mr. DiCalogero. During its deliberations regarding the compensation issue, The Center's corporate counsel, Seth Stein, stated that the "most relevant information is the actual information about the agencies that deliver similar services." The Commission agrees.

Mr. DiCalogero presented the Committee with two surveys he compiled which reflected specific agency information of health care providers. The information compiled by Mr. DiCalogero is illustrated in the two charts which follow. The first data-set includes 11 not-for-profit organizations in the NY Metro area (Chart 1); and the second includes 7 agencies located in other states in the Northeast (Chart 2).

Chart 1
2005 Compensation Analysis
(Trended from earlier periods)
Agencies Compiled by V. DiCalogero

NY Metro Area Residential Adult & Children's Services Organizations	**Agency Revenue**	**CEO Salary**	**CEO Benefits**	**Total Compensation**
AHRC, New York City	139,416,823	398,732	114,832	513,564
New York Foundling Hospital	81,570,181	286,225	60,110	346,335
Young Adult Institute	118,639,035	442,308	158,917	601,225
Young Adult Institute	118,639,035	374,173	143,119	517,292
UCP New York City	77,112,243	261,196	16,310	277,506
Goodwill Industries of Greater NY	63,688,029	388,341	147,080	535,421
AHRC Nassau County	87,881,256	272,454	70,457	342,911
ACLD, Bethpage	42,448,131	297,731	31,012	328,743
Developmental Disabilities Institute	64,674,901	250,889	58,114	309,003
Maryhaven Center of Hope	37,909,882	349,459	133,257	482,716
Family Residences and Essential Enterprises	50,122,768	283,718	74,707	358,425
Independent Group Home Living	34,943,205	324,539	6,621	331,160
Mean	**76,420,457**			**412,025**
Median	**70,893,572**			**352,380**
75th Percentile	**95,570,701**			**514,496**

Chart 2

2005 Compensation Analysis
(Trended from earlier periods)
Agencies Compiled by V. DiCalogero

National Residential Adult & Children's Services Organizations	**Agency Revenue**	**CEO Salary**	**CEO Benefits**	**Total Compensation**
Kennedy Krieger Education & Comm. Services	89,213,953	381,924	135,002	516,926
Woods Services, Inc.	85,842,355	342,766	43,584	386,350
Bancroft Neurohealth	144,821,864	350,971	33,122	384,093
The Melmark Home	30,004,797	334,511	67,389	401,900
Elwyn, Inc.	171,297,350	295,947	92,417	388,364
Community Options, Inc.	32,198,282	292,486	10,578	303,064
New England Center for Children, Inc.	31,569,124	226,573	31,168	257,741
Mean	**83,563,961**			**376,920**
Median	**85,842,355**			**386,350**
75th Percentile	**117,017,909**			**395,132**
THE CENTER FOR DISCOVERY – PATRICK DOLLARD	**56,503,311**	**350,000**	**162,630**	**512,600**

As noted in Chart 1, Mr. Dollard's compensation, when compared to the NYC Metropolitan agencies, falls at approximately the 75th percentile. When compared to the National agencies, his compensation is 30 percent higher than the 75th percentile. While Mr. Dollard's compensation is higher than most of the other agencies, the comparisons included agencies with much higher revenues than The Center. Twenty-six percent of the comparables in the above charts pertain to agencies with revenues more than double that of The Center. Although the Compensation Committee minutes reflect discussion about Mr. Dollard's compensation, they are silent as to why the Committee felt The Center should be compared to agencies with revenue so much larger than The Center.

The Commission compared Mr. Dollard's compensation to that of the executive directors of other agencies serving consumers and operating OMRDD-licensed programs like those of The Center – the remaining 23 independent non-profit affiliates are part of the Cerebral Palsy (CP) Associations of New York State (Chart 3).

Chart 3

2005 Compensation Analysis
Based on IRS Form 990
Agencies Compiled by the Commission

CP Associations of New York State (Affiliates of The Center)	**Year Ended**	**Agency Revenue**	**Total Compensation**
CP 1	June 30, 2005	83,608,683	182,375
CP 2	June 30, 2005	79,923,069	252,087
CP 3	December 31, 2005	79,747,884	219,221
The Center for Discovery	December 31, 2005	**56,503,311**	**512,630**
CP 4	December 31, 2005	55,565,248	253,838
CP 5	December 31, 2005	49,469,675	137,312

CP Associations of New York State (Affiliates of The Center)	Year Ended	Agency Revenue	Total Compensation
CP 6	December 31, 2005	39,583,164	237,933
CP 7	December 31, 2005	31,185,046	300,698
CP 8	June 30, 2005	28,786,550	162,545
CP 9	December 31, 2005	28,587,239	184,179
CP 10	December 31, 2005	19,177,538	142,770
CP 11	December 31, 2005	14,908,139	134,215
CP 12	December 31, 2005	14,603,794	103,569
CP 13	December 31, 2005	14,386,962	106,941
CP 14	December 31, 2005	14,249,553	136,451
CP 15	December 31, 2005	13,529,944	128,689
CP 16	December 31, 2005	13,457,705	102,137
CP 17	December 31, 2005	11,542,997	139,693
CP 18	December 31, 2005	10,188,327	142,324
CP 19	June 30, 2005	8,314,787	97,309
CP 20	June 30, 2005	7,444,672	103,443
CP 21	December 31, 2005	6,186,602	75,227
CP 22	December 31, 2005	5,510,878	75,000
CP 23	June 30, 2005	5,304,489	95,300

The Commission's analysis found that Mr. Dollard's compensation was significantly higher than the executives at all the other CP affiliates, including the much larger affiliates (CP1 & CP2) located in the New York City metro area. The Commission also compared Mr. Dollard's compensation to that of executive directors of chapters of the New York State ARC.[8] The ARC chapters, like The Center, generate most of their revenues from OMRDD certified programs. The ARC analysis yielded similar results to that of the CP affiliates above. Mr. Dollard's compensation was higher than all of the ARC chapters, including those that are much larger and operate in the higher cost-of-living areas of metro NYC.

The Commission believes that, going forward, such information should be made available to the entire board in the course of its deliberations regarding executive compensation and that specific agencies used for comparison be selected on the basis of objective criteria by individuals or entities who are free from any conflict of interest. The Commission currently is conducting a review of governance practices relative to the establishment of executive compensation in a wide-array of non-profit agencies licensed by the Office of Mental Health (OMH) or OMRDD. Simultaneously, it is participating, along with OMH, OMRDD and the Office of Alcoholism and Substance Abuse Services, in an interagency workgroup that is examining governance practices. As a result, the Commission will defer any further specific recommendations regarding establishment of executive compensation until the findings and recommendations resulting from those two initiatives are available.

[8] According to its website, the NYSARC is the largest not-for-profit agency in the nation serving persons with intellectual and other developmental disabilities. It has a presence in 61 of New York State's 62 counties, through 49 community chapters and 4 developmental center chapters.

(d) Executive Director's Flexible Fringe Benefit Package

The terms of Mr. Dollard's employment contracts gave him the flexibility to choose a mix of fringe benefits within a set dollar limit. A new benefit added in 2003 (retroactively to October 2002), called a "nonaccountable expense allowance arrangement," generated an additional $9,600 a year toward Mr. Dollard's compensation. This amount was not computed as part of his allotment; it was over and above the existing contract limit. The Commission found no approval of this added fringe in the board minutes and the plan document was signed by the CFO, but not by a board member.[9]

The Commission recommended that the board annually obtain and approve a detailed list of all forms of the executive director's compensation along with a showing of how such benefits match the approved contract. The Commission also recommended that the board retroactively conduct a review of fringe benefit costs and seek corrective actions for any amounts not paid in accordance with the contracts.

The board agreed to obtain a detailed listing of all forms of the executive director's compensation on an annual basis. Also, it conducted a review and decided no corrective action was required. The Center's response stated that in 2003 the board president approved the $9,600 allowance; however, the response is silent as to whether the full board concomitantly approved.

(e) Review of Other Compensation Arrangements

The rebuttable presumption requirements in Internal Revenue Code §4958 regarding reasonable compensation pertains not only to the CEO, but also apply to any person in a position that exercises substantial influence over the organization. The federal regulations specifically identify certain other positions to which the requirements apply, including the CFO. However, the Commission found no separate board approval or compensation comparisons for Robert VanDusen, The Center's CFO, who had a compensation package totaling $249,300 in 2005. Based upon the Commission's recommendation, the board has since adopted a resolution to evaluate the CFO's compensation for future periods.

(f) Employee Benefits

The Commission found that certain top level Center staff were at times receiving benefits beyond those listed in the employee handbook. When the Commission questioned the activity, Center officials acknowledged that there were no written guidelines for the extra benefits. Deviations from the handbook included:

- Life insurance was provided beyond the stated level of "an amount equal to your annual salary up to a maximum of $50,000." The Commission found that term

[9] Under the new contract starting in 2005, the nonaccountable expense allowance arrangement is now separately specified outside the fringe allotment. There are other fringe benefits that are similarly listed separately in the new contract but were not separated in the old contract, specifically long-term disability and personal automobile usage. During the old contract time period, these items were paid over and above the fringe allotment.

insurance was provided at double the annual salary up to a maximum of $100,000. Further, certain higher-level employees were not capped at $100,000, while the CEO and CFO received a flat $500,000 of term insurance each, which had no correlation to their pay rate.

- Payouts to current employees for unused vacation time were made even though the handbook only states "Retirees or resignees in good standing will be entitled to pay for accrued vacation time." The handbook makes no reference to current employees being eligible for vacation payouts, yet the Commission found that The Center routinely allowed employees to cash out portions of unused vacation time.
- For some administrative employees, the amount of vacation time accrued exceeded the handbook limits. The handbook stated that, depending upon position classification, employees were eligible for up to four weeks of vacation annually with an extra week granted for those employed over three years. While this guideline should have allowed no more than five weeks per year, the Commission found a dozen employees who were accruing six weeks.
- Payouts for unused sick/personal time were only to be allowed after resignation or retirement and were limited to a maximum payout of 50 percent of the accrued balance.[10] The Commission examined the payouts for 2004 and 2005, involving 68 and 62 employees respectively, finding most of the payouts were made in compliance with The Center handbook. However, there were exceptions. The Commission noted that nine employees not only received payouts without a termination event, but also received payment at the rate of 100 percent, twice that of the written policy. Included among those nine employees were Mr. Dollard, who received $9,421.60 in 2004, and Mr. VanDusen, who received $3,269.60 in 2004 and $6,539.20 in 2005.

The Commission recommended the board review the circumstances surrounding the special benefits previously afforded to certain employees to determine whether such payments were proper. The Commission also recommended that the board continue to ensure that policies regarding employee fringe benefits are clearly stated in writing, preferably in a board-approved up-to-date employee handbook. All special fringe benefits given to select employees, such as the tiered life insurance coverage, extra vacation leave, and the grandfathered sick/personal payout policy, should be specified in writing and include a description of the positions qualifying for the special benefits.

The Center has responded by revising its policies as described in the employee handbook, including a revised policy for cash outs of time accruals. The board asked management for a report on any other changes necessary to address the Commission's concerns and for a report regarding past benefit payments.

[10] The written policy for payout for sick/personal leave on termination was ten percent for each full year of employment, with a maximum of 50 percent for five years or more.

(g) Executive Time and Attendance

The Commission examined payroll records of the CEO and CFO for leave time charges and found the amounts were extremely low, resulting in extensive payouts for unused leave time. The CEO rarely charged leave time – three weeks total over a six-year period.[11] The CFO charged three days over a three-year period, with no time charged while out of town for weeks attending to the injury of a family member.[12]

The importance of accurately completed and documented approvals of leave records is reflected in the payouts for unused leave. Mr. Dollard received an extra $215,883.85 for unused vacation and $38,086.40 for unused sick leave during the six-year period 2001 through 2006. The Commission reviewed the three-year period of 2004 to 2006 for Mr. VanDusen and found he was paid $78,484.80 for unused vacation and $9,808.80 for unused sick leave above his base pay.

These two individuals accrue vacation at a level higher than other Center employees, though the extra amount has recently been reduced. Up through 2004, the CEO received ten weeks, while his new contract in 2005 called for eight weeks. The CFO's vacation leave, though not part of a contract, was reduced in 2005 from nine to seven weeks in order to correspond with the CEO's reduction. The most vacation time accrued by any other employee is six weeks.

The 2006 OMRDD audit found that the CEO was not maintaining time records and there was no board process to review his leave accrual/use records. OMRDD recommended that time records be maintained by the CEO and reviewed by the board periodically. The Commission recommends that the board also review the time records of the CFO. Reports to the board should include accrued leave balances, activity, and payout amounts. Further, the extent to which the executives are working out of town, especially on combined personal/business trips, should be detailed in the reporting process so that the documentation shows the board has been fully informed and approves the payment of such wages.

At its April 2007 briefing, the Commission brought up the low amount of leave charged by Mr. Dollard. The Center's written response stated that its review "uncovered no reason to question the accuracy of Mr. Dollard's time records . . . and that he rarely takes time off." In June 2007, The Center's board adopted a resolution whereby time records for senior management are to be reviewed by the board on a quarterly basis going forward.

Regarding the CFO's time and attendance, the Commission has questioned the accuracy of leave charges (none), which is inconsistent with the CFO's travel to Texas when he spent weeks with his son during the summer of 2005. According to The Center's July 2009 response,

[11] For the six-year period 2001 through 2006, Patrick Dollard charged vacation days as follows: one day in 2001, three days in 2002, none for 2003 and 2004, and five days in 2005 and six days in 2006. There were no sick days charged during that entire time.

[12] For 2005, Robert VanDusen charged only one leave day, a sick/personal day in January, which was prior to his son's out-of-town injury in the summer of 2005. Mr. VanDusen charged no leave time during 2004 and two days in 2006.

the reason why no leave time was charged was because "Mr. VanDusen worked for the Center while he was in Texas caring for his son."

PAYMENT OF UNREIMBURSED MEDICAL EXPENSES

In June 2005, while residing in Texas, J.V., the son of The Center's chief financial officer, suffered a severe spinal cord injury.

Over the years, J.V. worked at The Center in various capacities; first as a summer employee when he was 16, and then later as a full-time employee in the IT department earning $15.90 per hour. J.V. resigned from his full-time position with The Center on September 26, 2003, to relocate to Texas. While in Texas, he continued to work for The Center as an IT consultant. During 2004 and 2005, J.V. charged The Center $38,097.50 and $27,726.57, respectively, for his consultant services.[13] As a consultant, J.V. did not receive any benefits as an employee. However, The Center allowed him to pay the full cost for health insurance and carried him on The Center's health insurance policy.[14]

On June 11, 2005, J.V. was injured in Austin, Texas. According to The Center, in order to obtain appropriate treatment, it was necessary to transport J.V., first from Austin to Houston and, later, from Houston to New York via air ambulance. The total cost of the trips was $21,505 which was paid by the executive director using The Center's credit card. The Commission was told that The Center paid the charge with the expectation that The Center's health insurance carrier, GHI, would reimburse J.V. for the outlay. The Center's contract with GHI, however, provided no coverage for this type of service.[15]

The air ambulance costs were only a small piece of a larger settlement that The Center entered into with GHI. In 2005, when GHI learned of J.V.'s consultant status, The Center was informed that GHI intended to disclaim coverage for the medical care and treatment of J.V. because, as a consultant, he was not eligible to participate in The Center's health insurance program. The Center sought a legal opinion to determine, "for purposes of insurance coverage" whether J.V. was an employee or an independent contractor. The legal opinion concluded that "While clearly there are several factors pointing to independent contractor status (i.e., 1099, no other benefits provided, much work performed off-site), it appears that many of the major factors favor IT's [J.V.] status as an employee of CFD [The Center]." The opinion also recommended that The Center seek further legal counsel "so as to best preserve and advance CFD's and its insureds' rights."[16]

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[13] According to Center records, in 2004 and 2005, The Center paid for at least 11 round trip airfares for J.V. to travel from Texas to New York. The records referred to the costs as "consulting travel" or "consultant airfare." Additionally, in 2004, J.V. was issued a Form 1099 as a "nonemployee consultant."

[14] The Commission found that seven consultants were on The Center's health insurance policy in 2005, two of whom were related to executive staff. The Center has since changed its policy to no longer allow any individual who is classified as an independent contractor to participate in its health insurance program.

[15] Under the GHI contract, emergency air ambulance service was covered up to $300 per trip; however, in a letter dated December 8, 2006, The Center's VP of Finance stated that the two trips "were not covered under the plan because the services were not for emergency medical evacuation."

[16] At some point after the June 2005 accident, The Center retroactively reclassified J.V. to W-2 employee status, and wage withholding records were created and backdated to December 2004. Although J.V. was

Facing the possibility of protracted and costly litigation and the possibility of being held responsible for the actual and direct cost of J.V.'s medical expenses, which were estimated at more than $500,000, The Center entered into a settlement with GHI. The settlement, which was signed in April 2006, directed The Center to pay $225,617 in cash to GHI.[17]

The settlement also contained a "wash" payment pertaining to the air ambulance charges. Basically, The Center paid an additional $21,086 to GHI which, in turn, paid the same amount back to The Center, thus resulting in no net effect. The reason for this unnecessary exchange of cash is unclear. According to The Center, the payment was not a prearranged part of the settlement and the overpayment and subsequent return of funds were the result of an administrative oversight. Yet, per an August 29, 2006 email from The Center's insurance broker to GHI, it appears that there was an understanding that after The Center was to make its first payment "GHI will then reimburse The Center for $21,086.00 (preferably by check) for the air ambulance claim."

In addition to the costs noted above, the Commission also found that The Center incurred $2,657 for three round-trip airfare charges for the CFO from/to Texas in the months following the accident.[18] The Center explained that when Mr. VanDusen traveled to Texas after his son's accident, they needed to bring him back in order to work on Center projects. It did not pay for his initial flight to Texas or his final trip home but only for two intermediate trips home and then back to Texas to enable him to work at The Center.

The Commission does not consider the air ambulance charges or the two round-trip air charges for Mr. VanDusen to be appropriate expenditures because they were personal in nature. Regarding the air ambulance costs, The Center states that they were made because Mr. Dollard "believed, albeit mistakenly, that the cost was covered under [The Center's] health insurance policy." The Commission believes that at the time the payment was made, there was no basis for The Center to cover the unreimbursed personal medical expenses of an employee or consultant.[19] Regarding the round-trip air charges incurred on behalf of Mr. VanDusen, the Commission believes these costs should be considered commuting expenses of Mr. VanDusen because he was in Texas on personal business. The Center does not agree with the Commission's position on this issue. Its July 2009 response states, "the Center had no opportunity to plan for the CFO's sudden departure, or for an extended absence from his position as the Center's Chief Financial Officer. . . . Therefore, the Center's Executive Director asked the CFO to periodically return to the Center and resume his duties full time as Chief Financial Officer during the period when his son was hospitalized in Texas. . . . The Executive Director advised the CFO that, because the CFO was returning to work at the request of the Center in order to meet the Center's needs, it

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one of several consultants allowed to participate in The Center's health insurance program, he was the only consultant who had his payments converted to employee status.

[17] Despite numerous attempts to obtain the full account of the circumstances surrounding J.V.'s health insurance coverage and costs, it was only after the Commission became aware of the settlement through an independent third party that The Center provided the Commission with information regarding the settlement.

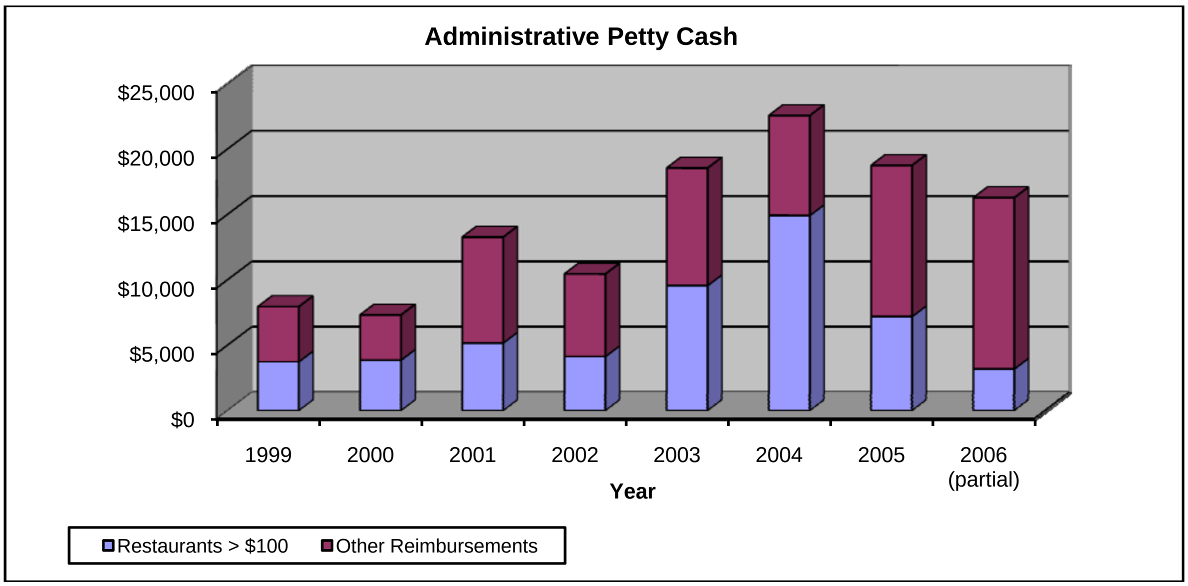
[18] One set of tickets costing $505 was never used and The Center recently requested a refund.

[19] In June 2007, The Center's Board adopted a resolution to retroactively institute a self-insurance plan for air ambulance coverage for its employees.

was fair and appropriate that the Center pay the airfare required to bring the CFO back to work." This seems inconsistent with The Center's position on why no leave time was charged by the CFO for the weeks he was in Texas.

FINANCIAL IRREGULARITIES IN ADMINISTRATIVE PETTY CASH FUND

The Center maintained approximately 50 petty cash funds for its various programs and locations. The largest was the "administrative" petty cash fund maintained by Patrick Dollard's administrative assistant. The Commission determined that from 1999 into the year 2006, over $115,000 was paid out through this fund. The records themselves fail to document who participated in the transactions. Nearly half the money, about $52,000, covered restaurant charges in excess of $100 per receipt. The chart below breaks down the reimbursements by year.[20]



The Commission identified numerous problems with the receipts[21] used to reimburse petty cash, including:

- large payments beyond what would be considered "petty" amounts;
- no documentation of who authorized and received payments;
- missing receipts;
- questionable handwritten receipts;
- receipts which appeared to be altered;
- dinners including expensive bottles of wine;
- receipts for employee prescriptions and other personal items;
- patterns of obscured receipts; and,
- extensive purchases from a liquor store.

[20] Note that the 2006 year is only a partial period, as the records were pulled together for the Commission prior to the year-end closing with reimbursements into the month of October. The last full years of 2003 through 2005 had annual reimbursements totaling from $18,558 to $22,576.

[21] The Commission has provided The Center's board with examples of the problematic receipts.

(a) Large Payments, Recipients Not Documented, Missing Receipts

Some receipts were for restaurant bills reflecting the following:

1. There were eight instances where the restaurant bills were in excess of $1,000. About $27,000 were for meal receipts above $500. Such large amounts are inappropriate for the petty cash fund; business expenses of this level are more appropriately charged on a corporate credit card. Although Mr. Dollard had a corporate credit card, it is unclear why the card was not used for these and similar expenditures.
2. The documentation did not specify who received the money and the "authorized by" section was filled in as "administration" rather than specifying an employee name. The lack of any notations regarding which individuals were involved with the transactions occurred here and throughout the entire universe of receipts in the administrative petty cash fund.
3. One receipt for $1,500.86 is based upon a notation "receipt lost."

Other lost or missing receipts were noted by the Commission, particularly for the year 2006. The 2006 records were compiled at the request of the Commission prior to the year-end and contained about $8,000 of reimbursements without an accompanying receipt. For 1999 through 2005, receipts did not support another $8,000 in payments. The list below contains some of the large cash payments made without receipts:

Date	**Amount**	**Description**
8/22/03	$1,000.00	Negotiations with Mexico
4/25/05	$2,000.00	Dinner Dance – Various Tips, etc.
5/3/06	$3,000.00	Various Necessities for the Dinner Dance

(b) Handwritten Receipts

Some reimbursement forms had receipts attached which were stationery stock with the restaurant name handwritten, rather than preprinted, on the form. Some receipts do not appear to be appropriate forms for use by a restaurant, as they make reference to a "clerk" and "account forward." Further, based upon their near sequential serial numbering, the receipts appear to have come from the same batch of blank forms even though they were presented for reimbursement as being from different restaurants. For example, a receipt numbered 7573-17 was supposedly for a dinner meeting at the Danube Restaurant in February 2003 while a similar receipt numbered 7573-36 covered a dinner meeting in December 2003 for the Compass restaurant.

SDTC-THE CENTER FOR DISCOVERY
PETTY CASH DISBURSEMENT RECEIPT

DATE: 02/26/03

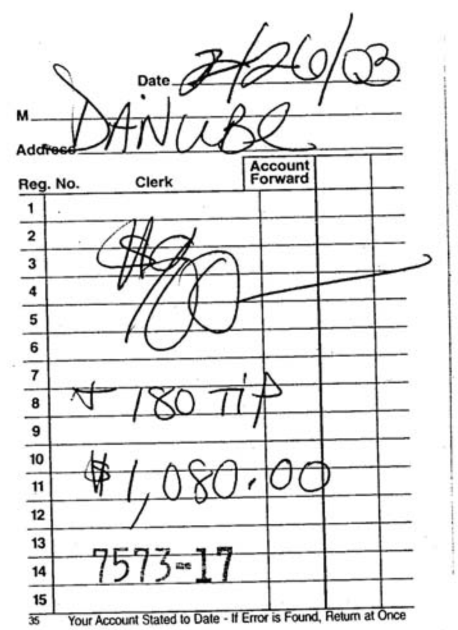
PROGRAM: Administration AMOUNT: $1,080.00

VENDOR: DANUBE Restaurant

PURPOSE OF COST: Dinner Meeting - Administrative Review

AUTHORIZED BY: Administration

PLEASE ATTACH RECEIPT



SDTC-THE CENTER FOR DISCOVERY
PETTY CASH DISBURSEMENT RECEIPT

DATE: 12/01/03

PROGRAM: administration AMOUNT: $505.00

VENDOR: Compass Restaurant

PURPOSE OF COST: Dinner Meeting - Development - Fundraising - Music Therapy

AUTHORIZED BY: administration

PLEASE ATTACH RECEIPT

Date 12-01-03

M. Compass

Address

Reg. No.	Clerk	Account Forward		
1				
2				
3				
4	$420.	00		
5				
6				
7	+ 85.	00		
8				
9				
10	$505.	00		
11				
12				
13				
14	7573-36			
15				

35 Your Account Stated to Date - If Error is Found, Return at Once

(c) Altered Receipts

A number of other restaurant petty cash reimbursements were made based upon receipts that appear to have been ripped or defaced making the preprinted serial number illegible. Also, the dollar amount handwritten on some of the receipts appears to have been written over, raising the possibility that the amounts were altered. The Commission noted two receipts that appeared to have had an extra digit added in slightly different color ink, increasing the totals by $100 and $400 ($11.35 changed to $111.35 and $12.75 changed to $412.75).

(d) Detailed Restaurant Receipts Often Included Expensive Wine

The vast majority of restaurant receipts analyzed were handwritten totals rather than itemized machine-printed receipts as noted in the two previous examples. In the few cases where receipts had detailed listings of the items purchased, expensive bottles of wine were often ordered. For example, a meal for two at Beppe's cost a total of $262.18, including two bottles of wine purchased for $73 and $85. Another dinner at Beppe's included seven bottles of wine for twelve people, two of which were $92 each and another two were $73 each. A third dinner at Beppe's, which was only partially documented by a ripped receipt, included wine costing $68, $91, and $142 a bottle. The Commission questions other reimbursements for Beppe's where the paperwork only consisted of a handwritten total or missing receipts, when it was apparent that the restaurant was capable of providing detailed printed receipts. Given the lack of detailed receipts for most of the petty cash reimbursements, the extent to which alcoholic beverages were included in such payments can not be determined.[22]

(e) Receipts for Personal Employee Prescriptions

The Commission advised The Center of other receipts that did not appear to represent legitimate business expenses. One compilation of petty cash receipts grouped together by the Commission contained pharmacy receipts that appear to be reimbursements for employees' personal prescription copayments. Altogether, between 2003 and 2005, the Commission noted over $500 in petty cash reimbursements that appear to cover personal prescription copayments. The Center responded that there are no instances where it would be appropriate to reimburse such costs. Because of differing copayment amounts in the receipts which reflect two different health insurance plans (The Center offers its employees a choice between two plans), the receipts indicate that at least two individuals were submitting receipts for prescription copayments. The Center was only able to link one of its employees to some of the copayment receipts. It informed the Commission that eight receipts for Peter's Pharmacy totaling $180 belonged to the administrative assistant, who was maintaining the petty cash fund. The Center asserts that problems with this fund occurred because the administrative assistant "collected [the records] in an unorganized fashion during the year and attempted to reconcile at year's end." Specific to the reimbursements for personal prescriptions, The Center "believes that [the administrative assistant] inadvertently placed receipts for prescription copayments with petty cash disbursement documents."

[22] Alcoholic beverages are a non-reimbursable expenditure (Consolidated Fiscal Reporting and Claiming Manual, Appendix X).

However, the Commission found what appeared to be a pattern with the pharmacy receipts, as they were often defaced in the center section of the receipt, thereby obscuring that the purchase was for a prescription. The Center asserted that this was not a purposeful alteration.

(f) Patterns of Obscured Receipts

The Commission found additional receipts which were either "lifted" or ripped in a way that obscured relevant information. In one group of receipts, it was difficult to discern the original receipt date. In some cases, a faint remainder of "1999" was still showing on these original receipts even though they were used to support reimbursements in 2000 and 2001.

There were many other instances where store receipts were incomplete, either because parts of the receipt were ripped off or because the printing was lifted, thereby making it difficult if not impossible to determine what "office supplies" The Center was paying for. In some instances, the Commission was able to use the remaining SKU numbers to establish what was purchased, which included items such as Nicorette, Pampers and Enfamil formula. At other times, the store receipts still contained the list of items purchased including, numerous over-the-counter drugs such as Advil, Tylenol, aspirin, Motrin, Vicks Vapor rub, vitamins, Claritin, Aleve, Chigarid, Bacitraycin, Neosporin, and Benadryl, all of which were paid for under the category of "office supplies."

(g) Extensive Purchases of Alcoholic Beverages

The petty cash fund was also used for frequent purchases from a wine and liquor store. The Commission believes a total of $14,701.19 was reimbursed for purchases from Kaz's Wine and Liquor between 1999 and 2006, ranging from $90 in 1999 to more than $5,200 in 2006. The Commission verified that only alcoholic beverages were sold at Kaz's. Reimbursement forms typically listed the alcoholic beverage purchases as "dinner supplies."

For 2005 and 2006, the reimbursement forms reported the vendor was "Kaz's." Prior reimbursement forms with attached register tapes that appeared to be from Kaz's, reported that the purchases were from other vendors, such as Edenbrook, Liberty Farm Stand, Buena Fortuna, and Tru Value. Although the Kaz's register tape does not contain the store name, the tape is somewhat unique, especially for the years 1999 to 2000 when Kaz's had a problem with its register causing the print to contain a distinctive feature whereby the last numerical digit is cut off.

(h) Center's Response

The Center stated that the lack of controls over administrative petty cash was recognized only after the Commission brought the problem to its attention and that the system has been significantly changed since that time to include a cap of $100, detailed documentation requirements to support expenses, and other improved controls. The Center's response was silent on some of the issues presented in this report such as the near consecutive serially numbered receipts from different restaurants, the "lifted" receipts whose date did not correspond to the year of the reimbursement, or the extensive reimbursements for alcohol using forms describing the purchases as dinner supplies. Generally, The Center dismissed the Commission's concerns by suggesting that they are satisfied as to the validity of most of the expenditures based upon the review of its independent audit firm.

The Center hired an accounting firm to review all the records of administrative petty cash for the past six years, to determine "whether sufficient documentation or other evidence exists to validate each disbursement" totaling $102,400 and report to the board "if the accounting firm's review suggests that any SDTC employee acted inappropriately or misused petty cash funds."[23] In the meantime, Mr. Dollard made a payment in that amount to The Center and, upon completion of the accountant's review, will receive an offset for any reimbursements "supported by appropriate information." Mr. Dollard stated that he is paying the $102,400 out of his personal funds "as a sign of my good faith and belief in the Center for Discovery, its mission, and its employees, and out of an abundance of caution and desire to remove any cloud whatsoever over the Center." He stated that the payment "is in no way indicative of any supposition, suspicion or inference that I improperly received any of the funds, that I failed to submit appropriate documentation for the funds at issue or that I made inappropriate use of the funds." The Center response dated July 2009 indicated that the accounting review was unable to validate 18 percent of the expenditures ($18,738 out of $102,401).

BUSINESS MEAL EXPENSES AND ALCOHOLIC BEVERAGES

In reviewing one month's corporate credit card receipts, the OMRDD auditors found six meal expenses not supported by itemized receipts. OMRDD recommended that The Center implement a policy and procedure to require that all meal expenses be supported by itemized receipts in order to identify alcohol purchases, which are ineligible for state funding, so that the costs for alcohol purchases can be reported separately on the annual fiscal report filed with OMRDD.

The Commission did a further review because of the allegation of unnecessarily expensive dinners. The Commission also followed-up on an allegation that Patrick Dollard at times asked a consultant to pick up the dinner tab and add the cost to the consultant's bill. Indeed, that particular consultant's bills contained 47 separate add-ons totaling $13,595 for restaurant charges in 2004 alone. The Commission was unable to determine the extent of meals included in other consultant billings which had less detailed expense itemizations.

Additionally, significant amounts for dinner meetings were also being spent directly by The Center by way of corporate credit card, check and petty cash, totaling over $25,700 in 2004 and $27,100 in 2005. The Commission performed an extensive review of the available restaurant receipts, particularly those submitted for petty cash reimbursement, as discussed in the next section below. The extent to which expensive dinner meetings occurred could not be determined because for most of the dinners the available receipts and paperwork do not document what was purchased. The Commission, however, did verify that in some cases, based upon the available records, The Center paid for wine ranging from $68 to $142 a bottle.

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[23] The Center's review period of six years does not completely coincide with the Commission's review period, which is why its total reimbursement being reviewed does not precisely match the dollar amount reviewed by the Commission.

The complainant former board member told the Commission that he personally queried Mr. Dollard over the necessity of expensive dinner meetings, but essentially was told not to worry about it. The Commission recommended that The Center review whether this is the most efficient way to conduct business and to establish guidelines on the circumstances when the purchase of meals and alcoholic beverages are appropriate, regardless of whether paid for directly by The Center or picked up by a consultant. The Center should also consider a monitoring system that would inform the board of the extent to which business meals occur. The board agreed and has instructed Center management to propose guidelines addressing the circumstances when business meals are appropriate.

FINANCIAL REPORTING PROBLEMS

(a) Executive Compensation Not Fully Reported

The Commission found that The Center underreported the executive compensation for top officials on government reports.[24] For example, for 2004, Patrick Dollard's compensation was reported as $245,619 (wages of $188,938 and benefits of $56,681); or about $200,000 less than his actual total compensation. In this case, about 55 percent of his actual compensation was reported. Robert VanDusen's 2004 compensation was reported as $160,269 (wages of $123,284 plus fringes of $36,985), reflecting only 80 percent of his actual compensation.

The Commission found no credible rationale for the underreporting. Some of the differential allegedly pertained to cost allocations to The Center's affiliates, such as an allocation of about 20 percent of Mr. Dollard's compensation to Magnet. The Center had no supporting rationale for such a large allocation to Magnet, which seems disproportionate considering that Magnet's annual expenditures were less than three percent of the total expenses incurred by The Center and all its affiliates combined.

The portion of compensation allocated to its affiliates went unreported because Mr. Dollard and Mr. VanDusen were not listed on the affiliates' Form 990 schedule titled "Current Officers, Directors, Trustees, and Key Employees." As a result, The Center did not accurately report the compensation levels of the executives. The underreporting caused the Commission to initially question the complaint it received regarding Mr. Dollard's compensation level, as the complainant's allegation was not supported by these public filings.

The Commission recommended that The Center take measures to ensure full and accurate disclosure of all executive compensation. Further, if cost allocations are to be performed, they must be conducted on a rational basis, such as using the ratio value method commonly employed. The affiliates' filings should list Mr. Dollard and Mr. VanDusen on the key employee schedule and should disclose any compensation allocated to them. The board has made a general statement that it agrees with the recommendations on proper reporting.

[24] Reporting of individual executive compensation is included in schedules contained in both IRS Form 990 and in the Consolidated Fiscal Report (CFR) filed with New York State (e.g., Office of Mental Retardation and Developmental Disabilities and the State Education Department).

(b) Management Costs Underreported

The Commission found that The Center's financial statements and IRS Form 990 significantly understated management and general costs by incorrectly categorizing those administrative costs as program services. The financial statement is non-compliant with generally accepted accounting principles (GAAP) and the Form 990 reporting is also non-compliant with GAAP as well as the form's specific instructions.[25] An appropriate breakdown of management and general activities is important to outside parties who may be relying on the financial reports, such as prospective donors who wish to contribute to charities with low administrative overhead.

Overall, for 2005, The Center reported management and general costs at approximately one million dollars, or two percent of The Center's expenses. However, millions of dollars of actual management and general expenses were pooled with program services, including all executive staff, accounting and office staff and their related fringe benefits.[26] A review of the 2005 Form 990 makes it appear that The Center spent about 97 cents on the dollar for program services, with only 2 cents per dollar for management and general, and one cent for fundraising. The Commission conservatively estimates that management and general costs were at least four times the reported figure.

The Center has responded to the Commission's concern by stating that, although the administration allocation method had been approved by its auditors, the method will be changed for 2006 fiscal year reports. The Commission recommended that The Center's affiliates should also address this issue, as all four affiliates reported every dollar as program services, leaving nothing under the management and general, and fundraising categories. Some of the affiliates' costs appear to involve management and general expenses, and, in the case of the Foundation presumably fundraising costs. The Center has addressed this recommendation beginning with the 2006 Form 990 filings.

(c) Taxable Fringe Benefits Improperly Reported

The Commission found that certain fringe benefits were being reported on a Form 1099-Misc rather than on a W-2. The error was most significant for the reporting regarding Mr. Dollard who, in 2005, had in excess of $100,000 reported on a Form 1099-Misc. This finding

[25] Generally Accepted Accounting Principles (GAAP) state that "To help donors, creditors, and others in assessing an organization's service efforts, including the costs of its services and how it uses resources, a statement of activities or notes to financial statements shall provide information about expenses reported by their functional classification such as major classes of program services and supporting activities." Separate reporting of supporting services specifically includes segregation of "management and general" activities such as "oversight, business management, general recordkeeping, budgeting, financing, and related administrative activities, and all management and administration except for direct conduct of program services or fund-raising activities." (FAS-117). The Form 990 has three separate columns for reporting Program Services, Management and General, and Fundraising, with instructions that mirror the GAAP requirement for separating these expenses.

[26] Although The Center's 2005 financial statements and Form 990 reported about $1.2 million in administrative costs, its 2005 CFR reported close to $4.4 million in administrative costs.

was brought to the attention of The Center prior to the 2006 calendar year filings. The Center concurred, agreeing to correct the reporting method in future filings.

(d) Taxable Portion of Life Insurance Unreported

The Commission found that the taxable portion of life insurance was not being reported on employee W-2 forms. The cost of term life insurance in excess of $50,000 in coverage is a taxable benefit. Because The Center's life insurance coverage is based upon annual salary,[27] those with the highest pay had the largest unreported benefit, while those with lower pay had little or no unreported benefits. For example, the W-2s of the executive director and the CFO did not include income of approximately $1,500 each for the 2005 tax year when they had a benefit of $500,000 in term life insurance. Upon noticing this error, the Commission promptly notified The Center in time for it to correct its 2006 filings. The Center has acknowledged this error and began reporting the insurance benefit on its W-2s.

(e) The Center and its Affiliates' Financial Statements Not Properly Combined

The Center's financial statements through December 31, 2005, had consolidated the finances of The Center and two of its affiliates (DRSI and CP Residence). During the Commission's review, it advised The Center that the consolidated financial statements should also include the Foundation and, possibly, Magnet as well. According to Generally Accepted Accounting Principles (GAAP), when a not-for-profit corporation possesses an economic interest in another not-for-profit corporation, consolidation of financial statements may be required, depending upon the extent of control.[28]

The Center has responded to this issue by consolidating both Magnet and the Foundation with The Center for the 2006 reporting period, and further resolved that it would continue to do so going forward "assuming continuation of the factual basis."

OTHER ISSUES

(a) Board Member Request for Records Denied

The Center denied a board member access to Center records when the member sought information he felt was necessary to carry out his fiduciary oversight duties. Subsequently, the member was not reelected to the board after the board president unilaterally removed his name from the slate of members up for reelection.

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[27] Term life insurance was being provided to most staff at an amount equal to double their annual salary, with a cap of $100,000, while management level staff was getting coverage equal to double their annual salary, up to a maximum of $500,000.

[28] The Center clearly has an economic interest in both the Foundation and Magnet: the Foundation raises funds exclusively for The Center, and Magnet is the conduit allowing Center facilities to care for out-of-state residents.

In April 2005, the board member had sent a letter to the Executive Director requesting certain information as follows:

- corporate bylaws;
- names of the five highest paid employees, their salaries and job descriptions (excluding the CEO);
- names of the five highest paid consultants, total paid to each for the last two years, and a description of the services;
- names of the five highest paid subcontractors, total paid to each for the last two years, and a description of the services; and
- copies of all competitive bids solicited in the last two years for building construction, landscaping, equipment purchases and furnishings.

In response, he received a denial letter from the agency attorney including the following statement:

> "While it is correct that members of the Board of Directors may have access to financial and other corporate data and documents, the right to such access is through the Board of Directors. No member of the Board of Directors has an independent and unilateral right to direct any employee of [The Center] to take any action (including a direction to produce information or documents) unless that Board member has been authorized to take such action by the Board of Directors."

The denial letter further declared:

> "…absent direct and specific authorization from the Board, neither you nor any board member has the legal authority to direct or command any employee of [The Center] to provide a Board member with any information or documentation. Your request must be made by the Board itself."

The board member never received the documents he was seeking, including a copy of the corporate bylaws which all members should possess, as the corporate bylaws contain the rules, rights, and powers specific to a corporation's board of directors. Regarding the highest paid employees and consultants, the board member obtained this information from *guidestar.org*, an internet website which makes the IRS Form 990 publically available.

The Commission has recommended to The Center that it should make sure that all board members have copies of corporate bylaws. Further, it should allow individual board members access to corporate records in response to reasonable requests. The board agreed with the Commission's recommendations and has asked counsel to develop a formal procedure for addressing future requests.

(b) Affiliates' Boards of Directors Not Functioning Properly

The Commission found issues with regard to compliance with not-for-profit governance requirements applicable to all four of The Center's affiliates: Magnet, Foundation, DRSI, and CP Residence. First, a separate and distinct board of directors was reportedly governing the Magnet affiliate, but the Commission found there were no separate meetings of the Magnet board, no board minutes existed, and no legally required annual meetings appeared to have taken place.[29]

The listing of Magnet officers and directors on the Form 990 contained the following individuals for the reporting years 2003, 2004, and 2005:

Magnet Members per Forms 990			Actual Role
Cheryl Conley	Member	2004-2005	Administrative Assistant
Clarence York	Member	2003	Center Consultant
Seth Stein	Member	2003-2005	Center Attorney
Vincent J. DiCalogero	Member	2003-2005	Center CPA Consultant
Beverly Oles	Secretary	2003-2005	Center Board Member
Edward Giacontieri	President	2003-2005	Center Board Member

Cheryl Conley, who was listed as being on the board for two years, told the Commission that although she was told of her nomination to the board, she never attended a Magnet board meeting, nor had she ever received notice of a meeting. Similarly, Dr. Clarence York did not recall ever participating on the Magnet board, or even being told that he was a member, though while functioning as a consultant he did attend some Center meetings. Also attending Center board meetings in their professional capacity were Mr. Stein, as general counsel, and Mr. DiCalogero as an accounting consultant. Mr. Stein informed the Commission that Magnet did not have separate board meetings but that Magnet issues were discussed as part of the full Center board meetings. As such, it appears that Magnet issues were handled like one of The Center's programs rather than separately dealt with or voted on by a separate board of directors.

Unlike the Magnet Corporation, the Commission found that the Foundation affiliate had separate meetings and maintained separate board minutes. However, these minutes revealed that the board gatherings were limited to discussions and planning of fundraising events, and lacked documentation regarding required board oversight of the finances of the Foundation.

Overall, it appeared that all four of The Center's affiliates did not have properly functioning boards. The Commission recommended that these affiliates institute the structures and implement the policies and protocols legally required due to their separate incorporation status. The Center has responded that it agreed with the Commission's recommendation and has taken action to have appropriately constituted boards of directors.

[29] See Not-For-Profit Corp. Law §519 regarding required annual reporting to be performed at the annual meetings of members.

(c) Improper Composition of Foundation Board

During the Commission's review, The Center was advised that the Foundation board appeared improperly constituted, in violation of its incorporation papers. The Foundation board should have been limited to members who also sat on the board of The Center; however, that was not the case as the majority of its members did not sit on The Center board. The following was the relevant excerpt from the Foundation's Certificate of Incorporation:

"Membership in the Corporation shall at all times be limited to individuals who are directors of [The Center]"

The Center agreed and the Foundation has amended its Certificate of Incorporation to now state:

"Membership in the Corporation shall at all times be limited to individuals who are **approved by the** directors of [The Center]" (emphasis supplied to added language)

The Commission recommends that the Foundation continue to ensure that board membership meets the requirements set forth in its bylaws and certificate of incorporation.

(d) Conflicts of Interest

In 2005, The Center instituted a policy for the reporting of possible conflicts of interest for board members, officers and directors. The Center's policy entails disclosure of such relationships to the board president, and the president shall "take such action as is necessary to assure the transaction is completed in the best interest of [The Center] without the substantive involvement of the person who has the possible conflict of interest." There have been a variety of Center transactions which qualified for reporting, including contract employment of relatives of the CEO, CFO, and board president. Conflict of Interest Reporting forms were also submitted by board members of an affiliate, for dealings with a restaurant partly owned by the wife of The Center's attorney Seth Stein, and its consulting accountant Vincent DiCalogero.[30]

The Commission commends The Center for adopting a policy on conflict of interest transactions, but believes the policy could be improved. Written procedures call for disclosure only to the board president; the Commission recommends that disclosure be to the full board. Further, the basis for determining whether the transaction is in the best interest of The Center should be discussed with the full board. Ideally, the board should approve all potential conflict of interest transactions in advance. To avoid the appearance of a lack of independence, any member involved in a transaction, either directly or through a relative, should not be present during the deliberations or vote. Pertinent information and approvals should be clearly documented in the board minutes.

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[30] Mr. Stein's wife owned a 5.5 percent share and Mr. DiCalogero had an 8.7 percent ownership interest in the Maremma Restaurant which purchased meat and produce from The Center. The Center recently informed the Commission that the restaurant has been sold and the new ownership does not include persons who conduct business with The Center.

The Center has declined to improve its conflict of interest policy stating that the Commission's recommendation is "unworkable." The Commission disagrees and would like to further point out that the recommended improvements are consistent with a sample conflict of interest policy suggested by the IRS. [31]

[31] See IRS Instructions for Form 1023 (Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code).

RECOMMENDATIONS

The following is a summary of recommendations made by the Commission. Many of these have already been addressed by The Center as stated throughout the preceding report.

1. When setting compensation levels the board should consider comparability data from specific agencies delivering similar services and which is compiled by an independent party.
2. The board should annually be given a detailed listing of all forms of the executive director's compensation documenting conformity with the contract amounts. The Commission also recommends that the board retroactively conduct a review of Patrick Dollard's fringe benefit costs and seek corrective actions for any amounts not paid in accordance with the contracts.
3. The board should approve in advance any compensation for individuals who exercise substantial influence over the organization.
4. The board should review the circumstances surrounding the special benefits previously afforded to certain employees to determine whether payments were proper. The Commission also recommends that the board continue to ensure that policies regarding employee fringe benefits are clearly stated in writing, preferably in a board-approved up-to-date employee handbook. All special fringe benefits given to select employees, such as the tiered life insurance coverage, extra vacation leave, and the grandfathered sick/personal payout policy, should be specified in writing and include a description of the positions qualifying for the exceptional treatment. The Commission further requests a copy of such written policies.
5. Time and attendance records should be maintained by the CEO and CFO and reviewed by the board periodically. Reports to the board should include accrued leave balances, activity, and payout amounts. Further, the extent to which the executives are working out of town, especially on combined personal/business trips, should be detailed in the reporting process so that the documentation shows the board has been fully informed and approves the payment of such wages. The Commission further requests explanation as to why no leave time was charged by the CFO during his extended stay in Texas.
6. The Center should reconsider its perspective on the propriety of the $21,505 in corporate charges for air ambulance and avoid any similar dealings in the future.
7. The Center should seek restitution for any personal travel costs of the CFO.
8. The Center should review whether dinner meetings are the most efficient way to conduct business and it should also consider the appropriateness of alcohol purchases. It should establish guidelines on the circumstances when business meals are appropriate, regardless of whether paid for directly by The Center or picked up by a consultant. Itemized restaurant bills should be retained and the cost of alcoholic beverages should be segregated to comply with state reporting requirements. The Center should also consider a monitoring system that would inform the board of the extent to which business meals occur.

9. The board should encourage complete cooperation with any investigation into the administrative petty cash fund.
10. The Center should ensure that future financial reporting (Form 990, financial statements, consolidated fiscal reports, W-2 and Form 1099) is free of the errors described in this report.
11. The Center should establish policies for responding to requests from individual board members for access to corporate records.
12. The Center’s affiliate corporations should continue to ensure the presence of appropriately constituted boards of directors who fulfill the necessary corporate governance legally required by their separate incorporation status.
13. The full board should evaluate all transactions with possible conflicts of interest. Anyone involved in a transaction, either directly or through a relative, should not be present during the deliberations or vote. Pertinent information and approvals should be clearly documented in the board minutes.

Appendix 1
The Center's Response

To view The Center's response ***click here***