



## Justice Center for the Protection of People with Special Needs

KATHY HOCHUL  
Governor

DENISE M. MIRANDA  
Executive Director

July 21, 2022

Chinazo Cunningham, M.D.  
Commissioner  
New York State Office of Addiction Services and Supports (NYS OASAS)  
501 7<sup>th</sup> Avenue  
New York, New York 10018

### **RE: Findings Related to Professional Boundaries at OASAS Certified and Licensed Programs**

Dear Dr. Cunningham:

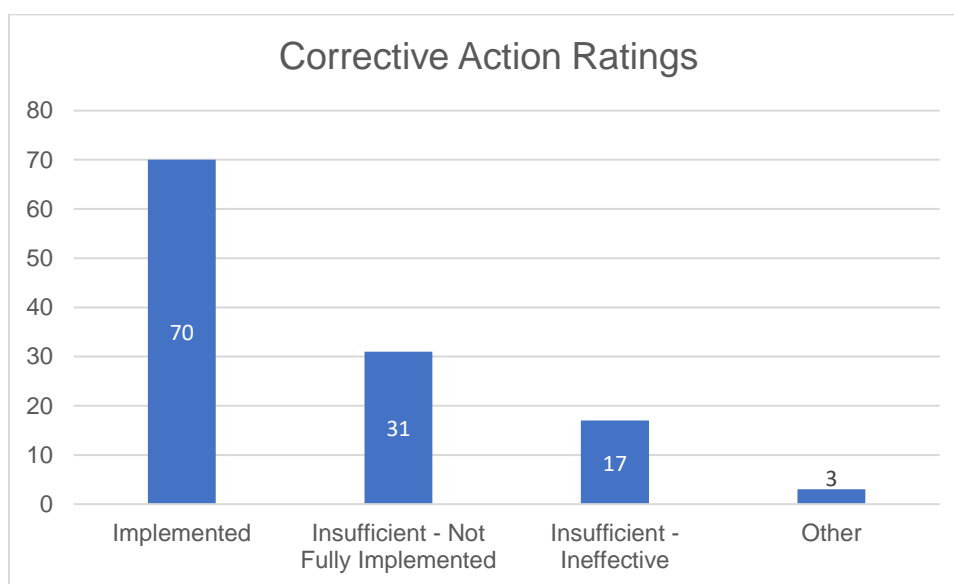
I am writing to share our findings related to violations of professional boundaries that we have identified in several of our corrective action plan (CAP) audits over the past year that are likely to jeopardize the treatment, care and well-being of people receiving services at programs licensed and operated by several OASAS providers throughout New York State.

### **Background**

Following a Justice Center interagency committee meeting where a case involving sexual abuse of a person receiving services at an OASAS provider was discussed, the Justice Center's Prevention and Quality Improvement (PQI) unit had concerns that serious incidents were continuing to occur at this program despite our Corrective Action Plan (CAP) audits that contained findings and recommendations to help mitigate the risk of similar incidents from occurring. PQI conducted an analysis of data from the Vulnerable Persons' Central Register (VPCR) of CAPs closed and/or due in 2020-2022 for cases involving similar offenses and identified programs with high numbers of substantiated offenses of sexual abuse and/or neglect for failure to maintain professional boundaries. We also collaborated with personnel in the OASAS Division of Quality Assurance and Performance Improvement unit to discuss data and identify programs to include in this project. From there, PQI conducted a series of CAP audits at these providers to identify trends and potential systemic issues contributing to this ongoing problem of violations of professional boundaries in the OASAS service system.

As part of this project, PQI conducted thirty-five CAP audits, for five OASAS providers between October 2021 and April 2022 for cases involving substantiated offenses of sexual abuse and/or neglect for failing to maintain professional boundaries.<sup>1</sup> Between five to nine CAPs were audited for each provider, and cases audited occurred across different service settings including detox/inpatient, residential and outpatient programs. For the majority of the cases, the thirty-five CAP audits revealed that the focus of the agency's corrective actions were personnel actions rather than developing tools to address the underlying issues contributing to repeated offenses of staff engaging in sexual abuse of and/or failing to maintain professional boundaries with people receiving services.

### Summary of CAP Audit Findings



Approximately 40% of the corrective actions assessed by the Justice Center were insufficient in that they were not fully implemented, or the action taken was ineffective in that it most likely would not prevent the recurrence of a similar incident. For the majority of the 31 corrective actions that were found to be “insufficient - not fully implemented”, the agency failed to ensure that all staff at the program/agency completed the required retrainings following the incident. Some actions were insufficient - not fully implemented because the agency failed to maintain documentation to support implementation of the CAP.

Of the 17 insufficient - ineffective corrective actions, 14 were due to the agency failing to implement immediate safeguards to ensure the safety and well-being of people receiving services; the remaining three of the “insufficient – ineffective” corrective actions were because one provider’s policy on staff boundaries did not include guidance regarding exchanging phone calls, photos, or gifts or connecting with a person receiving services

<sup>1</sup> Providers included the Liberty Behavioral Management Group, Inc.’s Conifer Park and Arms Acres, Finger Lakes Area Counseling & Recovery Agency (FLACRA), Inc., Samaritan Daytop Village, Inc., Phoenix Houses of New York/Long Island, and Fairview Recovery Services, Inc.

on social media platforms. Lastly, there were three corrective actions rated as “Other” as the provider determined that the corrective action was not necessary based on the other actions implemented.

## **Issues Identified**

### Social Media

Approximately 80% of the cases involved sexually inappropriate communication between the subject staff and the person receiving services through phone calls, text messages, email correspondence, and/or social media such as Facebook, Facebook Messenger and SnapChat.

### Discharge/Transfer

A high percentage of cases involved inappropriate contact between the subject and the person receiving services during the person’s transition between service settings such as from detox/inpatient to a residential program and from a residential program to an outpatient program.<sup>2</sup>

### Subject Staff

The CAP audits revealed that the subject staff involved in these cases varied across all disciplines including Registered Nurses, Licensed Practical Nurses, Program Directors/Managers, Therapy Aides, Mental Health Counselors, Licensed Master Social Workers, Case Managers, Addiction Technicians, Peer Specialists, Food Service Workers, contracted cleaners, security guards, and transportation drivers. Additionally, the subject’s age was not a consistent factor, and the offenses were committed nearly equally by male and female subjects.

Of note, approximately 50% of the cases involved subject staff who were employed by the agency for less than one year, and approximately 22% of the cases involved a subject staff that had been employed by the agency for less than two years.

### Corrective Action Plans

The primary corrective action taken by the agency was termination of the subject employee. Specifically, for 27 of the 35 subjects, their employment with their agency was terminated; seven of the subjects resigned and one subject never returned to work following the allegation. For all but one subject that had a license and/or credentials, the agency properly reported the subject to the appropriate licensing/credentialing oversight body.

### Incident Management

Twenty-one audits contained additional findings outlined in the addendum of the audit, that were specific to incident management concerns.

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<sup>2</sup> This was reflected in 5 of the 8 cases audited for FLACRA, 3 of the 7 cases audited for Samaritan Daytop Village, Inc., and 2 of the 7 cases audited for Fairview Recovery Services, Inc.

## Summary of Addendum Findings

The Justice Center identified thirty-five additional findings during these CAP audits which were documented in the addendum of the CAP audit letter with recommendations to address the issue(s). More than half of the additional findings identified during the CAP audit were related to improper incident management practices. Agency incident management/reporting policies and procedures for two providers were unclear on when, who, and what should be reported to the Justice Center and/or contained inaccurate guidance. Staff training records from programs for three of the providers revealed not all staff completed or were up to date on trainings on incident management/reporting policies and procedures and/or the annual Justice Center Code of Conduct. Unclear and inaccurate guidance within agency policies and/or the lack of sufficient training on incident management provided to staff likely contributed to the multiple findings of improper and/or poor incident management practices across all five providers. This included findings related to agency personnel conducting investigative actions (including interviewing subject(s), and/or taking written statements) prior to reporting the incident to the Justice Center's VPCR; discussing details of the allegations with staff and people receiving services; and not reporting the allegations of abuse/neglect to the Justice Center in a timely manner upon discovery. Other incident management findings included a provider completing the CAP prior to the receipt of the Justice Center's letter of determination and redacted investigation report resulting in the CAP not addressing all issues of concern identified by the Justice Center. Additionally, one agency was using an outdated and less comprehensive *Staff-Patient Boundary* policy during staff trainings, one agency did not report the subject staff to the Office of Professional Discipline (OPD), and documentation of staff trainings were not recorded and/or maintained in an organized, accessible manner.

## Conclusion and Recommendations

The Justice Center discussed findings and updates from this project with personnel from the OASAS Division of Quality Assurance and Performance Improvement in February, March and May 2022. During our March 2022 meeting, OASAS shared data they collected related to boundary violations reported between 2015-2019, highlighting providers with high rates of boundary violations based on the provider's capacity and the number of violations per year for each provider. After these discussions with OASAS personnel, in April 2022, the OASAS Associate Commissioner of the Division of Quality Assurance and Performance Improvement and the Justice Center presented data on professional boundary violations and the general findings and trends identified during this series of CAP audits to the Alcoholism and Substance Abuse Providers (ASAP) Regulatory Relief Committee. The committee members discussed suspected root causes contributing to the problem and strategies to help reduce the violations.

The Justice Center provided recommended resources related to professional boundaries including the Justice Center's *Spotlight on Prevention: Professional Boundaries* which provides useful information and tools to educate people receiving services, self-advocates, direct care providers, agency employees and administrators, and the public about the importance of professional boundaries in the provision of care ([Professional Boundaries for the Protection of People with Special Needs | Justice Center for the](#)

[Protection of People With Special Needs \(ny.gov\)](#)) and the Justice Center's interactive training on professional boundaries ([Professional Boundaries Training Course | Justice Center for the Protection of People With Special Needs \(ny.gov\)](#)) in the addendum of all of the CAP audits. Additionally, when issues were identified with the agency's incident reporting practices and/or with the agency's completion/implementation of their CAP, applicable Justice Center resources were also provided.

The Justice Center also created and is now offering new resources to help reduce professional boundary violations in the service system. In addition to the resources the Justice Center previously developed and shared with providers on tools and training to help educate and support staff on maintaining professional boundaries in the provision of care, the Justice Center recently developed a two-page resource containing tips and recommendations for creating an abuse free environment in the area of professional boundaries, [Best Practices for an Abuse-free Environment | Justice Center for the Protection of People With Special Needs \(ny.gov\)](#). This guidance document includes general best practices to help reduce issues of this nature within the program, red flags of potential boundary issues, policy and trainings suggestions and Justice Center and OASAS resources on the topic. Also, in April 2022, the Justice Center's training unit received approval from OASAS to offer OASAS credentialing clock-hour credit to Credentialed Alcoholism and Substance Abuse Counselors (CASAC), Credentialed Prevention Professionals (CPP) and Credentialed Prevention Specialists (CPS) for attendance at the Justice Center's Professional Boundaries Training. This 3-hour WebEx training offers 3 credentialing clock hours and consists of both large and small group discussion. Training opportunities are posted on the online OASAS Training Catalog, which can be found at <https://webapps.oasas.ny.gov/training/index.cfm> and on the Justice Center's website at <https://www.justicecenter.ny.gov/event/professional-boundaries-oasas-providers>.

We commend OASAS for monitoring and addressing this issue with providers and working with us to develop guidance and training for the field on best practices for maintaining professional boundaries with people receiving services.

The Justice Center offers the following recommendations for OASAS to consider as you continue to address this problem:

- Develop standard policy/guidance on professional boundaries that can be shared with the field. Include language that explicitly outlines the possible consequences for engaging in relationships with people receiving services.
- Develop guidance on social media use in OASAS programs
- Require professional boundary training as part of the required trainings staff must complete annually in OASAS programs.
- Develop a sample incident management policy that can be shared with the field. Include the definitions of abuse and neglect and reporting requirements.

## OASAS Oversight and Monitoring Process

- Include verification of policies/guidance and training records as part of the certification and re-certification process for providers
- Train OASAS staff who have a responsibility to visit programs, to look for areas of risk during their site visits. Environmental factors such as staff offices being in secluded areas and offices with no windows or doors, have led to incidents of abuse/neglect of this nature.
- Reach out to providers who have none or few reported issues involving staff failing to maintain appropriate boundaries with people receiving services. Discuss and review their policies and procedures, their vetting, hiring and new employee orientation process, and their staff training and oversight practices to identify best practices that can be shared with providers who are experiencing issues in this area.

We thank you for your partnership with us to improve the treatment and services at providers under your oversight and to protect the people who depend on OASAS' programs for their care and protection from abuse and neglect. While several resources were referenced in this correspondence, the Justice Center's website contains additional resources that may be helpful to OASAS as they evaluate their systems, including a self-assessment tool to identify areas of risk and training for incident reporting and the Code of Conduct for Custodians of People with Special Needs. All Justice Center abuse prevention resources can be found by visiting <https://www.justicecenter.ny.gov/prevent-abuse>.

The Justice Center will accept a written response to these findings and recommendations within 60 days of receipt of this correspondence. If you have questions or concerns that you would like to discuss before submitting a response, please contact Kim Affinati at [Kimberly.Affinati@justicecenter.ny.gov](mailto:Kimberly.Affinati@justicecenter.ny.gov) to set up a phone conference.

Sincerely,



Denise M. Miranda, Esq.  
Executive Director

Cc: Trishia Allen, OASAS  
Keith McCarthy, OASAS  
Kelly Grace, OASAS  
Laura Darman, Justice Center  
Davin Robinson, Justice Center  
Jody Signoracci, Justice Center  
Kim Affinati, Justice Center  
Tracey Sosa, Justice Center  
Caitlyn Kelley, Justice Center





## Office of Addiction Services and Supports

OASAS. Every Step of the Way.

KATHY HOCHUL  
Governor

CHINAZO CUNNINGHAM, MD  
Commissioner

September 19, 2022

Denise M. Miranda, Esq.  
Executive Director  
**NYS Justice Center for the Protection of People with Special Needs**  
161 Delaware Avenue  
Delmar, New York 12054-1310

Dear Ms. Miranda:

This letter is in response to your July 21, 2022 letter of findings related to violations of professional boundaries identified by the NYS Justice Center for the Protection of People with Special Needs (Justice Center), in corrective action plan (CAP) audits of programs certified by the NYS Office of Addiction Services and Supports (OASAS). While I am quite concerned by these findings, I am appreciative of the Justice Center for raising awareness of this troubling activity.

Since receiving your letter, I have met with my team multiple times to learn more about activities to date on this matter and strategize on a plan for addressing it. In addition, I would like to highlight the collaborative efforts that have been undertaken by our agencies on this issue over the past year alone:

- the sharing and discussion of data relating to the rates of incidence for professional boundaries violations in March 2022, which assisted the Justice Center in the planning of site visits;
- the invitation by OASAS to an April 2022 meeting with the NYS Alcoholism and Substance Abuse Providers (ASAP) Regulatory Relief Committee to discuss suspected root causes for such violations contributing to the problem and strategies to help reduce the violations; and
- approval by OASAS in April 2022 for clock-hour credit to Credentialed Alcoholism and Substance Abuse Counselors (CASAC), Credentialed Prevention Professionals (CPP) and Credentialed Prevention Specialists (CPS) for attendance at the Justice Center's Professional Boundaries Training.

I am also aware that OASAS Associate Commissioner of the Division of Quality Assurance and Performance Improvement, Keith McCarthy, presented to the Justice Center's Abuse Prevention Committee on this topic at their June 2022 meeting. He reported that a productive dialogue took place, and that he shared his thoughts for how OASAS would like to work toward addressing this and other concerning incidents moving forward.

It is my understanding that OASAS also conducted training for the Justice Center in October 2021, with follow-up provided in March 2022, entitled "Understanding Ethical Boundaries." The purpose of this training was to educate Justice Center investigators on the CASAC Canon of Ethics for purposes of conducting hearings pertaining to this topic. Likewise, since 2019, OASAS staff have regularly provided subject matter expert testimony and support to the Justice Center's Administrative Litigation Unit when a hearing is requested related to a substantiated case of abuse and neglect. Clearly, there has been much collaboration between our agencies toward addressing this troubling topic.

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In addition, OASAS conducted training to all of our State-operated Addiction Treatment Centers (ATCs) in 2017 to educate staff about the Justice Center's role and decrease the overall rate of concerning incidents occurring in our State Operated Programs, including professional boundaries. This training then became available to all OASAS certified programs via our "Learning Thursday" series.

Noting that these incidents continue to be a concern to both of our Agencies, OASAS is proposing a multi-pronged strategy to raise awareness and help mitigate future occurrences. To begin, OASAS will focus activities on those providers identified with the highest rates of incidence of violations of professional boundaries over the past few years. For those identified providers, OASAS will require the following training for all current staff, and for all new hires:

- Provision of the Justice Center's video training (*Part 1*):

[https://training.justicecenter.ny.gov/ProfessionalBoundaries\\_2022/story.html](https://training.justicecenter.ny.gov/ProfessionalBoundaries_2022/story.html)

- Utilizing the Justice Center's Training Manual and Participant Manuals, provision of the Justice Center training (*Part 2*) on "Professional Boundaries for OASAS Providers":

[https://www.justicecenter.ny.gov/system/files/documents/2022/01/participant-guide\\_addiction-services\\_0.pdf](https://www.justicecenter.ny.gov/system/files/documents/2022/01/participant-guide_addiction-services_0.pdf)

On an ongoing basis, OASAS will require the same trainings of any providers identified as deficient in this area, as a result of OASAS Executive Oversight activities.

In addition, OASAS will conduct a *Provider Send* communication to all OASAS certified, funded and otherwise authorized providers, of the Justice Center's "Maintaining Professional Boundaries: Recommendations for an Abuse Free Environment". In doing so, OASAS will be advising providers of the need to develop policies and procedures for staff supervision that incorporates the principles within this guidance document.

Lastly, OASAS has already initiated efforts to develop a new training module moving forward pertaining to professional boundaries. Led by our new Associate Director of Training, Robert C. Wright, LMSW, Master CASAC, this new training module will incorporate elements of Boundaries, The Client-Counselor Relationship, and Sexual Misconduct into a new, comprehensive format.

In developing this training, OASAS is very mindful of the fact that many in our field have experienced trauma in their lives. As such, we intend to approach this topic in a healthy, proactive manner, focusing on the effects crossing such boundaries can have on the client – while also emphasizing the responsibility all professionals have in preserving the integrity of the profession.

OASAS anticipates that the new training will be comprised of a two-day, 12-hour video and discussion course, followed by a 3-hour in-person session. Day 1 would include discussion about the Justice Center *Part 1* video and what the takeaways were, followed by didactic learning. Day 2 would begin by continuing the didactic learning, to be followed with practicums including case studies, scenarios, and role plays.

The subsequent 3-hour session, to occur 60-90 days after the initial training, would follow-up with the training participants. OASAS is envisioning a half-day of discussion relating to how trainees have been transferring the knowledge from the initial 2-day training into daily practice. We anticipate that it will also provide an opportunity for staff to share whether any potential boundaries incidents had arisen and, if so, how they were handled.

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Once developed, OASAS will require this new training for all individuals with sanctions related to professional boundaries, and offer it regularly to all staff via voluntary enrollment. OASAS believes that portions of the training should be performed for all staff with client contact, with components of the training that pertain to clinical concepts such as transference, counter transference, clinical supervision and administrative response for such incidents targeted to those specific populations who will encounter such circumstances. We also intend to reconvene with the ASAP Regulatory Relief Committee to promote this new training, to garner the broadest possible participation.

For Credentialed Alcoholism and Substance Abuse Counselors (CASACs), OASAS currently requires 45 hours of professional and ethical responsibilities training, 15 hours of which is specific to “Ethics of Addiction Counselors” for initial credentialing – and an additional 6 hours for every renewal cycle. OASAS also currently requires specific training of CASACs for subsequent violations of the Canon of Ethics. By proposing to develop a standardized training to specifically address Professional Boundaries and Sexual Misconduct, OASAS believes we would likewise be establishing new standards for enforcement – i.e., sanctions to employ for administrative reprimands, suspensions, and revocations for CASACs found in violation.

Once again, I thank you and the staff of the Justice Center for highlighting this troubling activity. We look forward to our continued collaborative efforts in addressing this problem, and are available to discuss further.

Sincerely,

A handwritten signature in black ink, appearing to read 'Chinazo', followed by a stylized, loopy flourish.

Chinazo Cunningham, MD, MS  
Commissioner