



Review of the Albany County
Nursing Home Security Staff

March 3, 2010

County of Albany
Department of Audit & Control
Michael F. Conners, II
Comptroller

Authority

Article 4 of the Albany County Charter establishes the Department of Audit & Control and an elected Comptroller as the chief fiscal and auditing officer of the County and shall have all the powers and perform all the duties conferred or imposed upon a Comptroller under the County Law.

Background

In September of 2007, the Albany County Comptroller's Office received a complaint via the Fraud Waste and Abuse hotline regarding issues two employees were observing at the Albany County Residential Healthcare Facilities, (the Facility) The Comptroller and members of his staff interviewed these whistleblowers on September 13, 2007.

The major complaint arose out of concerns that a nursing home security guard was purchasing black lights and growing equipment from a supplier in Florida called "Hid Hut" so he could operate an illegal marijuana growing business. The Security Guard who initially made the complaint alleged that this equipment was being shipped to the Facility and that drugs were being sold on the premises by the guard accused in the complaint. He provided a receipt showing a delivery was made to the Nursing Home from Hid Hut in Florida.

As our office investigated these allegations as well as other issues, including the training and licensing of guards and human resources issues were brought to the forefront.

Scope of Review

The Comptroller's Office staff interviewed several employees of the Facility, the Albany County Department of Human Resources and the whistleblowers. Comptroller's staff also toured the facilities and grounds and contacted County and Federal Law enforcement agencies. Staff also contacted the New York State Department of State (DOS) which oversees the licensing of Security Guards.

Arrest of Security Guard

On September 13, 2007, during the interview of the two Facility employees, the major allegations were:

- A Security Guard was selling marijuana at the facility grounds, claimed that his growing equipment was being shipped from Hid Hut in Florida to the nursing home. A receipt from Hid Hut was produced and given to staff.
- The accused security guard is a nephew of the Building Superintendant who supervises the security staff..
- Guards were punching other guards in and out when they were not working.

Immediately after the interview of the two whistleblowers, our office contacted the Albany County Sheriff's Office regarding the possible criminality alleged in the discussion. The Comptroller also contacted a colleague in the Drug Enforcement Agency (DEA) who he had worked with on a prior Medicaid Fraud case.

On November 13, 2007, our office received an email from the whistleblower saying that he had read in the *Times Union* newspaper that the accused security guard and another man were arrested by the DEA and Colonie police for felony possession of marijuana and unlawfully growing cannabis, a misdemeanor.

On June 19, 2008, we were informed by the whistleblower that the arrested security guard was returning to work at the Facility. It was also alleged by the whistleblower that he had been on paid leave from the time of his arrest until his start date that was to begin June 20, 2008. Our office immediately contacted the Deputy County Executive who said he had no knowledge of this matter. He informed us that he had contacted the Director of the Facility, and told him that under no circumstances was the Security Guard to be placed back on the schedule.

Our office conducted interviews with Facility staff to attempt to find out why they would re-hire this guard, and why he was placed on paid leave from the time of his arrest on November of 2007 until the June 20th scheduled reinstatement date.

On June 25, 2008, Comptroller's staff interviewed the Secretary to the Director of Administration who was the former Secretary to the Building Superintendent in charge of security. During the interview the following details were revealed:

The Secretary informed Comptroller's staff that this guard was suspended with pay on 11/15/2007.

According to a written statement by the Secretary, after his court appearance the suspended guard came to the Facility to talk with his Union Representative in order to find out when he could return to work. This was approximately June 5, 2008 (This was the day after his court appearance). She also stated that the accused guard was attempting to get back on the duty roster and was waiting to talk with the Human Resources Representative regarding this matter.

She then stated that after talking with the Human Resources Representative, the guard came back and told her that he would be starting at the beginning of the next work schedule, which would be on 06/20/08.

According to the Secretary, as well as the Human Resources representative, and the Payroll Supervisor, the guard's pay code status was never changed in KRONOS timekeeping system from "suspended with pay" even though he was placed on the schedule. The Secretary stated that she placed him on the schedule as a convenience to aid her in scheduling vacations and overtime for the guards. This explanation is illogical. Additionally, this guard had not been on the duty roster previously in the many months while he was suspended with pay.

In a separate interview with the former Building Superintendent and Uncle of the suspended Security Guard, he was asked, "Who do security guards answer to?" He

replied that the Building Superintendent manages the guards and is responsible for scheduling work hours and assignments.

The Payroll Supervisor was also interviewed. She stated that the HR Representative told the Secretary of the Building Superintendent to put the suspended guard back on the work schedule, and that the Union Representative was told by the HR representative that this guard was returning to work.

Two work schedules were obtained for the alleged start date of the guard (6/20/08-7/17/08) during the interview. The one printed on 06/12/08 has the suspended guard scheduled to work on 6/20/08 and the other schedule printed on 06/23/08 has his name omitted from the schedule. The second schedule was printed after our investigation of his rehiring began.

On June 25, 2008, a member of the Comptroller's staff was allowed to review the suspended guard's files in the presence of the Human Resources attorney. Upon review of the file, it was noted that a new ID card was issued for the guard. There were two photocopies of the security guard's license. There was also paperwork in the file that indicated he was to start work at the Facility on 6/20/08. His file included:

- Two ID badges – Expiration dates of 12/31/09 and 12/31/12
- Note- Suspended with pay on 11/15/07

Paperwork was received from Human Resources showing that he was suspended with pay on November 15, 2007.

His new information was entered into the County payroll system on 6/13/08.

Finding: The timeline of events shows that this guard was placed back on the duty roster and the County payroll system after an arrest for criminal possession of marijuana and growing cannabis by an unlicensed person and a conviction of the latter. This suspended employee of the Facility, who was convicted on drug charges, was also allowed to enter the Facility unaccompanied.

Lastly, the amount of time with pay given to this guard, while not in violation of the Union agreement, is extremely excessive. He was suspended with pay from November 15, 2007 until June 26, 2008. He was suspended without pay for 30 days pursuant to the union contract. After the 30 day period he was again placed on paid suspension as per union contract. He was also given a sum of 14 weeks pay on October 31, 2008. This was a result of a Stipulation of Settlement to avoid a hearing on the matter.

Recommendations: For the safety of the staff and residents any suspended/terminated employee should not be allowed into the Albany County Nursing Home unaccompanied.

The settlement, as mentioned above is enormously extreme. The question should be asked as to why the County settled in this case when the individual pleaded guilty to drug charges.

Human Resources (HR) response: *Please see the detailed response on page 8. All corrections made in the final draft.*

Comptrollers Comment to HR response: According to the Deputy County Executive in the exit conference on 3/1/10 and as a result of our findings, suspended/terminated employees are no longer allowed to be in the building unless they are there to see a patient.

According to the Deputy County Executive, there is not a function in the KRONOS Time and Attendance data collection system that identifies the difference between a regular, active employee and one that is suspended with pay. After a discussion with the KRONOS Company, audit staff was told there is a PAY TYPE (SUSP WITH SUSP WITHOUT PAY) which is tracked in KRONOS system to distinguish between the two but is not UTILIZED in our permanent payroll system (MUNIS). The question should be addressed as to what the legalities of coding the proper pay codes for any employees “suspended with or without pay”.

The Director of Human Resources said in his written response that “there is nothing in the file that indicates he [the suspended guard] was to return to work on 6/20/08”. Facts dispute this contention. The security guard was given a new identification card and placed on the schedule. The management at the Nursing home tried to say this was not so but we have a copy of the approved schedule for work which they tried to change after our visit. We have the original work schedule.

Management at the Nursing Home is so deficient, the guard who had marijuana growing equipment shipped to him at the guard station was allowed on the premises and was going to go back to work there until the Comptroller called the Deputy County Executive. The Secretary, who answers to the Building and Grounds Supervisor, an Uncle of the suspended guard, is taking the blame for management’s failure to provide adequate oversight of the operations.

Cameras

When investigating whether guards were violating the time clock procedures by punching other guards in or out, Comptroller’s staff asked to review the security tapes from cameras placed in the entrance of the Facility.

It was explained to staff that there was no recording capability for the cameras. It was impossible to investigate this claim. In other Albany County buildings such as 112 State St, cameras are placed at the entrances to the building where there are time clocks, to monitor the clocks.

Finding: In addition to the above problem this situation jeopardizes the safety and security of the residents in the facility.

Recommendation: Install cameras with recording capabilities at all entrances to the building to ensure resident safety and security.

Nursing Home response: None

Security Guard Rules and Regulations

According to DOS, there are regulations governing the employment and licensing of Security Guards. Included in these regulations, is a requirement that organizations who have hired licensed security guards through DOS, register the employed guards with DOS.

Comptroller's staff contacted DOS on 7/3/08 and inquired about these requirements. A Security Guard Employee Roster was provided by DOS which listed all Security Guards employed by the Facility that were currently registered. This list was cross referenced with the list of Security Guards currently working at the Facility. Only 11 of the 27 guards were registered with DOS.

Mandated Training Courses

The 1992 Security Guard Act mandates that certain courses must be taken by all Security Guards.

From the New York State Department of Criminal Justice website¹:

Training for security guards was mandated by the Security Guard Act of 1992. The Act requires that all security guards complete three training courses. All courses must be conducted by approved training schools, by certified instructors. The Division of Criminal Justice Services, (DCJS) Office of Public Safety provides administrative oversight for private security training in New York State.

- The first required course is an Eight Hour Pre-Assignment Training course. This is a general introductory course. Upon successful completion of this course the guard is issued a training certificate. This certificate must accompany the security guard's registration application when submitted to DOS. Once the application is submitted, the guard has 90 days to complete the second training course.
- The second required course is the 16 Hour On-the-Job Training course (OJT). This training program should be relevant to the guard's duties, requirements of the work site, and the needs of the employer. Schools may conduct this training in an approved classroom setting or at an approved work site which is conducive to learning.
- The third required training program is the Eight Hour Annual In-service course. **This training must be completed each calendar year following completion of the 16 Hour OJT course.** This program is designed to meet current training needs and refresh or update guards in changes in the security field. The guard

¹ <http://criminaljustice.state.ny.us/ops/sgtraining/sgpcourses.htm>

must complete this course as a prerequisite for renewal of his or her guard registration.²

Comptroller's staff reviewed the licenses of current Security Guard personnel at the Facility to determine whether Albany County complied with the training requirements. According to the Director of Fiscal Operations, in a conversation on 7/23/09, the Facility does not review whether security guards attend the eight hour annual in service course. They hold "occasional" on the job training courses. This information was confirmed with the Training Coordinator at the Facility.

After contacting the Facility for the requested information, Comptroller's staff received a letter from the Director of the Facility on 7/31/09. In this letter the Director stated that *"it is the responsibility of any licensed professional to insure their license remains current"*. Regarding the yearly 8 hour refresher course, the Director acknowledged that he was aware that the yearly refresher course was required however he contends that these yearly refresher course requirements are a prerequisite of license renewal and if the employee provides the Facility with a current license he can *"safely assume the employee has completed the education requirements for license renewal."*

In contrast, all guards employed at the Albany County Office Building located at 112 State Street in Albany, are provided a yearly refresher course on site. They hire an outside contactor to conduct this class. A letter was provided to Comptroller's staff from the Senior Security Guard at 112 State St. from TMR Security Consultants, Inc. The letter was an agreement to provide the eight hour re-certification for guards working under the Senior Security Guard at 112 State. Training lists of attendees were also provided for 2005-2007. Guards working under his supervision include all security guards employed by Albany County except those working at the Facility.

As required by General Business Law, security guards must be supervised by a licensed security guard who is in charge of the security staff. During the review period, guards at the Facility were supervised by the Building Superintendant who did not hold a Security Guard license.

Comptroller's staff called DOS on 8/11/09 and confirmed the following:

- Maintaining a current license is in fact, the responsibility of the security guard. DOS mails out renewal forms three months prior to guards for renewal.
- It is the responsibility of **the Employer** to make sure that the 8 hour refresher course is taken by the employee.
- It is the responsibility of the Employer to maintain records for a period of one year following the retirement, resignation or termination of a security guard's employment.

² http://law.justia.com/newyork/codes/general-business/gbs089-n_89-n.html

- The Employer must file the appropriate forms with DOS when a new security guard is hired or when there is termination of a security guard within 15 days of the action.³
- Failure to comply with these regulations can result in fines.

In this letter provided by the Director of the Facility, copy of the ID badges of all the security guards employed by the Facility were included. Of the 10 guards employed by the facility, 7 guards were not registered as working for Albany County with DOS as required by General Business Law. Included in the statement by the Director was a letter sent to a security guard on July 24, 2009, the day after the request by the Comptroller's office for records, asking for a copy of her current license. This employee was suspended until a current license could be produced. DOS confirmed that this employee had renewed her license but was not registered with DOS as employed by Albany County.

Finding:

The Facility does not notify DOS when they hire or terminate security guards. This is required under General Business Law. The Facility does not maintain records as to whether the guards take the 8 hour refresher course as required.

Nursing Home response: None

Recommendation:

All security staff, including those who work at the Facility should be under the jurisdiction of the Senior Security Guard who oversees the guards in all other county buildings. This will assure that all rules and regulations are uniformly enforced.

To protect the interests of Albany County as well as the residents of the Facility, the Department should require Nursing Home guards attend the training classes offered at the Albany County Office Building (112 State St) every calendar year.

The personnel overseeing the Security Guards must fill out the State's Employee Status Notification form within 15 days of hiring/retirement/termination of a guard and file it with DOS.

Nursing Home response: The nursing home and Deputy County Executive contend that security guards are responsible for their own refresher course as a requirement to license renewal.

Comptroller response: Since Albany County Department of General Services provides these training courses already for the security guard staff that is overseen by the Department of General Services, the policy should extend to guards at the Nursing Home

³ <http://www.dos.state.ny.us/lcns/pdfs/1205.pdf>

and the Nursing Home administration should require the attendance of these courses by security personnel.

Albany County

Department of **HUMAN RESOURCES**

Michael G. Breslin

Albany County Executive

Robert D. Conway, Commissioner

Jennifer Skelly Clement, Deputy Commissioner

MEMORANDUM

TO: Kristen Devoe, Technical Writer

FROM: Robert D. Conway, Commissioner

DATE: March 1, 2010

RE: Response to Draft Review of Albany County Nursing Home Security Staff

I write in response to your recent draft Review of Albany County Nursing Home Staff. Please allow me to add some procedural details and correct some factual errors.

1. **Page 2 (5th paragraph)** States "suspended with pay on 11/17/2007". Mr. Berhaupt was suspended with pay on 11/15/2007. (Department of Residential Health Care Facilities Disciplinary Action, Dated 11/15/2007) This suspension was due to his arrest (Mr. Berhaupt was charged, NOT convicted). With only an arrest, and no conviction, the facility does not have just cause to suspend him without pay. However, due to concern for resident/facility well being the Nursing Home made the choice to suspend with pay pending an investigation and conviction. Notably, Mr. Berhaupt was told he was suspended until further notice. After his conviction, Mr. Berhaupt was notified on 6/26/08, pursuant to contract provisions, that he was suspended without pay for 30 days. (Letter from Gene Larrabee dated June 26, 2008) Furthermore, pursuant to the contract, after the 30 day period Mr. Berhaupt was placed back on suspension with pay pending a hearing (Agreement between the County of Albany and Albany County

Department of Residential Health Care Facilities Professional Staff Association,
New York State United Teachers (N.Y.S.U.T.) Article 16 Disciplinary Action)

2. **Page 3 (Paragraph 4)** indicates that there is paperwork in his personnel file which shows he was scheduled to return to work on 6/20/2008. I have reviewed Mr. Berhaupt's personnel file and there is nothing in the file that indicates he was to return to work on 6/20/08. There is a master file update for 6/9/08, effective 6/19/2008 which is an update transaction to change his home phone number contact information. (Employee Master File Nursing Home, dated 6/9/2008)
3. **Page 3 (Paragraph 1 in "Finding")** states Mr. Berhaupt was convicted of possession of a controlled substance. Mr. Berhaupt was not convicted of possession of a controlled substance. In fact he was not even charged with this, a controlled substance is a defined term in the penal law, which doesn't include marijuana unless it is "concentrated cannabis". Mr. Berhaupt was charged with criminal possession of marijuana in violation of penal law section 221.25 (a Class D Felony) and growing of the plant known as cannabis by an unlicensed person. The former charge was dismissed and Mr. Berhaupt was convicted of the latter, a violation of section 3382 of the public health law, growing of the plant known as cannabis by an unlicensed person (Class A Misdemeanor). (Certificate of Disposition, disposition date 6/4/2008, signature date 6/6/2008) Please note that this conviction did not cause Mr. Berhaupt to lose his Security Guard license according to the DOS.
4. **Page 3 (paragraph 2 in "Finding")** states "He was suspended with pay from November 15, 2007-October 30, 2008." Mr. Berhaupt was suspended with pay from November 15, 2007 - June 26, 2008. He was then suspended without pay for 30 days pursuant to the union contract. After the 30 day period, he was again placed back on the paid suspension, pursuant to the union contract. (Agreement between the County of Albany and Albany County Department of Residential Health Care Facilities Professional Staff Association, New York State United Teachers (N.Y.S.U.T.) Article 16 Disciplinary Action)
5. **Page 3 (Paragraph 1 in "Finding")** states Mr. Berhaupt "was placed back on the duty roster and the County payroll system". Please be aware that Mr. Berhaupt came to the facility and spoke to the Maintenance Secretary, telling her that the HR Representative told him that he could be placed back on the schedule. Without verification she placed him on the schedule. The HR Representative asserts that she did NOT tell Mr. Berhaupt that he was approved to return to work. Please note: The draft report shows no confirmation with the HR Representative regarding this matter.

Furthermore, the draft report indicates that Mr. Berhaupt was returned to payroll "after a conviction of possession of a controlled substance". Please be aware that Mr. Berhaupt was already on payroll, per the collective bargaining agreement.

6. **Page 3 (paragraph 2 in "Finding")** states that “the amount of time with pay given to this guard, while not in violation of the Union agreement, is extremely excessive”. Please be aware that there is no choice or discretion with respect to the time with pay. It is a mandate of the union contract that we must comply with. (Agreement between the County of Albany and Albany County Department of Residential Health Care Facilities Professional Staff Association, New York State United Teachers (N.Y.S.U.T.) Article 16 Disciplinary Action)

7. **Page 3 (paragraph 2 in "Finding")** states that “he was also given a sum of 14 weeks pay on October 31, 2008. This was a result of a Stipulation of Settlement to avoid a hearing on the matter”. Please be aware that the settlement was not to avoid a hearing, but rather that the uncertainty of the outcome warranted settlement, due mostly to the fact that the conviction itself may not have permitted a termination. Given the fact that the Nursing Home Director did not want to risk the possibility that Mr. Berhaupt would be returned to the facility, Albany County agreed to settle for a termination. The 14 weeks pay was determined by the number of weeks that would have most likely been paid to him pending a determination by the hearing officer. (Stipulation of Settlement, fully executed 1/29/2009)

Thank you for the opportunity to review and comment on this draft review. I look forward to meeting with you to further discuss this matter.

