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STATE OF NEW YORK
OFFICE OF THE STATE COMPTROLLER

March 21, 2014

Ms. Ann Marie T. Sullivan, MD
Acting Commissioner
Office of Mental Health
44 Holland Avenue
Albany, NY 12229

Re: New York Psychiatric Institute: Control
Over State Resources
Report 2013-F-22

Dear Acting Commissioner Sullivan:

Pursuant to the State Comptroller's authority as set forth in Article V, Section 1 of the State Constitution and Article II, Section 8 of the State Finance Law, we have followed up on the actions taken by officials of the New York State Psychiatric Institute to implement the recommendations contained in our audit report, *Control Over State Resources* (Report 2008-S-145).

Background, Scope and Objectives

The New York State Psychiatric Institute (Institute), established in 1895, is one of two clinical research facilities administered by the Office of Mental Health (OMH). The Institute conducts clinical trials and research studies relating to the treatment of mental illness. The Institute is funded by a combination of State appropriations and research grants. Reported expenditures for the fiscal year ended March 31, 2013 totaled \$76.3 million, of which \$44 million related to personal services. During the 12-month period ended July 31, 2013, the Institute reported that it served 502 inpatients and 1,154 outpatients, and employed a maximum staff of 595.

The Institute, located in upper Manhattan, has a long-standing collaborative relationship with Columbia University (Columbia) and Columbia's affiliated hospital, New York Presbyterian Hospital (Presbyterian). These three entities share professional and administrative staff, facilities and equipment, and participate in joint training, research and clinical trial endeavors. Many Institute staff are also employees of Columbia. Institute operations are overseen by the Institute's Executive Director, who also serves as the Chief of Columbia's Department of Psychiatry and as Psychiatrist-in-Chief at Presbyterian.

Our initial audit report, which was issued January 28, 2011, examined selected management practices of the Institute to determine whether the Institute was properly controlling State resources. The audit focused on the Institute's payroll and personnel practices, its space sharing arrangements with Columbia and its management of the State's ownership rights in patents issued for the results of research performed with State resources. We found that Institute management had not always provided adequate control over State resources. For example, we found insufficient controls to ensure that Institute employees were performing State work commensurate with their State pay. We also found that the Institute was not taking steps to ensure that it was receiving fair compensation for the use of its facilities by Columbia personnel. In addition, contrary to OMH's Inventions and Technology Transfer Policy, the Institute was not receiving the ownership and royalty rights for certain patented technologies developed on its premises and/or by its employees.

The objective of our follow-up was to assess the extent of implementation, as of October 31, 2013, of the seven recommendations included in our initial report.

Summary Conclusions and Status of Audit Recommendations

We found that Institute officials have made some progress in addressing the issues identified in our initial report. However, additional improvements are still needed. Of the seven prior report recommendations, one recommendation has been implemented and six recommendations have been partially implemented.

As discussed in the Agency Action section for Recommendation 4, we found that the Institute and Columbia reached a written financial agreement (contract) addressing Columbia's space utilization in an Institute building. This agreement was not submitted to the State Attorney General's Office or the Office of the State Comptroller's Bureau of Contracts for review and approval as required. We recommend that the Institute submit this contract for approval.

Follow-Up Observations

Recommendation 1

Prepare and maintain work assignment records for each Institute employee detailing what project(s) each is working on. These records should be reviewed and approved by a supervisory level employee who works solely for the Institute/State and reports directly to OMH officials.

Status - Partially Implemented

Agency Action - In response to this recommendation, the Institute required its dually employed staff to prepare work assignment records detailing what project(s) they were working on. These records were prepared for a variety of two-week periods between October 15, 2011 and June 15, 2012 and showed that employees' time allocated to State duties either equaled or exceeded the number of hours for which they were paid by the State. These documents were signed by the employees as well as their supervisors. On October 1, 2013,

while we were on site performing our follow-up, Institute officials e-mailed a request to 93 currently dually employed staff to obtain work assignment records for another two-week period. These records once again supported the number of hours for which the selected individuals were paid. Going forward, the Institute plans to randomly select 10 dually employed staff every three months to submit these work assignment records for review. In addition, the Institute is implementing a new effort reporting system that will allow verification of dually employed staff work effort on research projects. The Institute has been training its staff on this new reporting system since December 2013, and estimates full implementation by spring 2014. We believe these actions will improve the Institute's ability to demonstrate that dually employed staff provide the required number of hours to the State.

Recommendation 2

Investigate the actual work activities of the 11 employees cited in this report and recoup any overpayments as appropriate.

Status - Partially Implemented

Agency Action - Institute officials investigated the work activities of the 11 employees by having each of them prepare work schedules listing their daily State activities for a time period within the scope of our original audit. The forms created were signed by the employees and their supervisors. The forms only included the time the dually employed employees dedicated to State services. However, no third-party independent investigation was performed covering the work activities of these employees for the entire audit scope period.

Recommendation 3

Perform periodic reviews of the work activities of all Institute employees on multiple payrolls to ensure that the salary payments they receive from the Institute are supported by their time and effort commitment to the State. Discrepancies should be investigated and restitution sought as appropriate.

Status - Partially Implemented

Agency Action - Since the issuance of our original report, Institute officials have reviewed the work activities of all dually employed staff on both the Institute and Columbia payrolls. In October 2011, Institute officials performed a one-time review of all such employees, requiring them to prepare a two-week work assignment record that showed their work activities. In addition, in October 2013, they sent out notices to the 93 dually employed staff asking them to once again prepare these work assignment records. Institute officials also stated that, going forward, they plan to review the work effort of 10 randomly selected dually employed staff every three months.

Recommendation 4

Formalize any use of space arrangements between Institute and Columbia officials. These arrangements must ensure that the Institute is paid fair consideration for the use of its facilities.

Status - Partially Implemented

Agency Action - Institute and Columbia officials entered into a Revocable Permit agreement for the use of space at 1051 Riverside Drive by Columbia employees. However, rather than requiring Columbia to pay the fair market value of the space it occupies, the agreement instead requires that Columbia reimburse the State for operating expenses (maintenance, housekeeping, security, fuel and utility charges) associated with Columbia's use of the space. The agreement was implemented for a two-year period beginning July 1, 2011, and has been extended for another two-year period, covering July 2013 through June 30, 2015. Payments from Columbia are to total about \$50,000 each year. This agreement was not submitted to the State Attorney General's Office or the Office of the State Comptroller's Bureau of Contracts for review and approval as required. Institute officials indicated that they are pursuing a formal lease agreement with Columbia that will require payment from Columbia based on prevailing market rates. These officials also indicated that, once agreed upon, the lease agreement will be submitted to the State Attorney General's Office and the Office of the State Comptroller for review and approval. We recommend that the Institute promptly submit this agreement once reached.

Recommendation 5

Pursue the State's ownership rights regarding the two technologies discussed in this report.

Status - Partially Implemented

Agency Action - Institute officials have pursued agreement on an Inventions and Technology Transfer Policy with Columbia since 2009. However, to date no agreement has been reached. Institute and Columbia officials have formally agreed to continue to negotiate in good faith to reach a resolution of intellectual property issues as they arise and, where necessary, enter into inter-institutional agreements if patents for newly discovered technologies are to be pursued.

Recommendation 6

Ensure that OMH's Inventions and Technology Transfer Policy is adequately disseminated to all Institute employees.

Status - Implemented

Agency Action - Institute officials disseminated the Policy to all Institute employees and, in April 2011, held a meeting with all researchers and research staff during which the Policy was discussed. The Policy was distributed again in July 2013.

Recommendation 7

Establish a process to monitor compliance with the Institute's Policy.

Status - Partially Implemented

Agency Action - The Institute and Columbia have been in communication regarding any new and pending inventions in which the State may have an interest, and Columbia has agreed that such inventions will be subject to the Policy. However, there have not been any recent inventions that would require monitoring of compliance with the Policy. We note that, effective January 1, 2014, an additional attestation consistent with the Policy was added to the Institute's Application for Approval of Outside Employment form. This document requires employees to acknowledge, as part of their request to work for Columbia, that "OMH reserves the right to the ownership of a particular invention, technology or patent developed using any State resources."

Major contributors to this report were Santo Rendón, Jeremy Mack and Raymond Louie.

We would appreciate your response to this report within 30 days, indicating any actions planned to address the unresolved issues discussed in this report. We also thank the management and staff of the Institute and the Office of Mental Health for the courtesies and cooperation extended to our auditors during this review.

Very truly yours,

Michael Solomon, CPA
Audit Manager

cc: Amy Bennett-Staub, New York State Psychiatric Institute Liaison
James Russo, Audit Liaison, Office of Mental Health