



# Office of Mental Health

## New York State Psychiatric Institute Control Over State Resources

Report 2008-S-145



Thomas P. DiNapoli

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# State of New York Office of the State Comptroller

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## Division of State Government Accountability

January 28, 2011

Dr. Michael F. Hogan, Ph.D.  
Commissioner  
NYS Office of Mental Health  
44 Holland Avenue  
Albany, NY 12229

Dear Commissioner Hogan:

The Office of the State Comptroller is committed to helping State agencies, public authorities and local government agencies manage government resources efficiently and effectively and, by doing so, providing accountability for tax dollars spent to support government operations. The Comptroller oversees the fiscal affairs of State agencies, public authorities and local government agencies, as well as their compliance with relevant statutes and their observance of good business practices. This fiscal oversight is accomplished, in part, through our audits, which identify opportunities for improving operations. Audits can also identify strategies for reducing costs and strengthening controls that are intended to safeguard assets.

Following is a report of our audit of the Office of Mental Health: New York State Psychiatric Institute: *Control Over State Resources*. This audit was performed pursuant to the State Comptroller's authority under Article V, Section 1 of the State Constitution and Article II, Section 8 of the State Finance Law.

This audit's results and recommendations are resources for you to use in effectively managing your operations and in meeting the expectations of taxpayers. If you have any questions about this report, please feel free to contact us.

Respectfully submitted,

*Office of the State Comptroller  
Division of State Government Accountability*

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## State of New York Office of the State Comptroller

### EXECUTIVE SUMMARY

#### Audit Objective

Our audit objective was to determine whether New York State Psychiatric Institute officials provide adequate control over State resources.

#### Audit Results-Summary

The New York State Psychiatric Institute (Institute) is one of two clinical research facilities administered by the New York State Office of Mental Health (OMH). During the 12-month period ended June 30, 2010, the Institute reportedly serviced 431 inpatients and 1,288 outpatients, and employed a staff of about 500. The Institute is funded by a combination of State appropriations and public/private research grants and its reported expenditures for the fiscal year ended March 31, 2009 totaled \$92.5 million, of which \$64.6 million related to personal services. The Institute 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.

We found that Institute management has not always provided adequate control over State resources. For example, we found insufficient controls for assuring that Institute employees were performing State work commensurate with their State pay. We also found that the Institute was not ensuring it was receiving fair compensation for use of certain of its facilities by Columbia. In addition, contrary to OMH policy, the Institute is not receiving the ownership and royalty rights for certain patented technologies developed on its premises and/or by its employees.

As of October 31, 2008, 195 Institute staff were working on multiple projects involving the Institute or Columbia. Accordingly, these employees received salaries from both the Institute and Columbia depending on the percentage of hours that the employees spent working for, or at, each employer. However, Institute records do not show the time spent working on specific projects for either employer or even the overall amount of time spent working for each employer. As such, there is no way to assure that the employees have spent an appropriate amount of time on Institute projects to justify the amount of State salary provided to compensate them. We selected a sample of 21 of the Institute's 195 employees who were also compensated by Columbia. As of October 31, 2008, the annual Institute-related salary for these employees

totaled \$1.7 million. When we visited the Institute during December 2008 and January 2009, we found each of these employees to be at their assigned work locations. However, we were only able to confirm that ten of the employees were working on Institute projects that supported their State salary. At the time of our visits, no documentation was provided to support the assignment of work between Institute and Columbia purposes for the remaining staff.

Only after discussing our findings with Institute officials, did these officials have their staff prepare work schedules to support employee time allocable to their State salary. As a result, we question whether management is adequately assuring that the State salaries paid to these employees are fully justified.

We also note that the Institute operates from two OMH-owned buildings and from leased space in three privately-owned buildings. One of the privately-owned buildings is owned by Columbia and houses Columbia's School of Public Health. This building is located on land that had been previously donated to the State by Columbia. Since February 2005, the Institute has leased 2 of the building's 19 floors, about 10.5 percent of the total floor space, and under the lease agreement, has paid Columbia 14.1 percent of the building's total operating and maintenance expenses (\$611,547 for the year ended June 30, 2008). Conversely, Columbia staff occupies space in two OMH-owned buildings free of charge. According to an agreement between the parties, Columbia donated the land upon which one of the buildings is situated. Therefore, Columbia has free access to, and use of, the Lawrence Kolb Research Laboratory. However, Columbia also occupies space in the Institute's Riverside Drive Building, located at a different site on land owned by OMH, and for which no similar agreement exists. Based on the percentage of occupied space, and the current market rates for commercial leases in the area, we calculated that OMH could be receiving about \$417,000 a year for this space. OMH should pursue a lease with Columbia to ensure that some form of reasonable compensation is received for the use of this building.

According to OMH's Inventions and Technology Transfer Policy (Patent Policy), "all inventions and technology conceived, developed, made or reduced to practice by OMH employees in the course of their employment, and all patents which result from such activities, are the property of the OMH." OMH also owns and has the rights to "all inventions and technology conceived, developed, made or reduced to practice by persons or agencies during the performance of a contract with the OMH." We identified two pending patents for technologies developed at the Institute using Institute equipment that were being registered jointly by the applicable researchers and Columbia. As a result, Columbia will own the patent rights for both products if they are approved, and the Institute will lose the potential revenue from these technologies.

Institute officials stated that the activities of the Institute and Columbia are so intertwined that it is difficult to differentiate Institute activities from Columbia activities. They also told us they were not charging Columbia rent for its use of the Riverside Drive Building because they believed the agreement granting Columbia free use of the Kolb Building also applied to the Riverside Drive Building. The Institute's Executive Director acknowledged that the Institute did not do a good job of disseminating its Patent Policy to Institute staff but is in the process of negotiating an agreement with Columbia to address this issue.

Our report contains seven recommendations to enhance management control over the Institute's State resources.

OMH officials agree in whole, or in part, with all of our recommendations. However, they believe our report has drawn inferences that extend beyond our audit scope and methodologies and that they have historically, and continue to, protect State assets in their charge.

This report, dated January 28, 2011, is available on our website at: <http://www.osc.state.ny.us>.

Add or update your mailing list address by contacting us at: (518) 474-3271 or

Office of the State Comptroller

Division of State Government Accountability

110 State Street, 11th Floor

Albany, NY 12236

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## Introduction

### Background

The New York State Psychiatric Institute (Institute), established in 1895, is one of two clinical research facilities administered by the New York State Office of Mental Health (OMH). The Institute conducts clinical trials and research studies relating to the treatment of mental illness. The Institute serviced 431 inpatients and 1,288 outpatients during the 12-month period ended June 30, 2010, and employed a staff size of about 500. Most treatment services occur in the context of research studies.

The Institute is funded by a combination of State appropriations and public/private research grants. The grants are administered by the New York State Research Foundation for Mental Hygiene, a not-for-profit corporation created in 1952 to increase the resources available to, and administer grants on behalf of, the State. The Institute's reported expenditures for the fiscal year ended March 31, 2009 totaled \$92.5 million, of which \$64.6 million related to personal services.

The Institute, located in upper Manhattan, has a long-standing collaborative relationship with neighboring 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 and staff are overseen by the Institute's Executive Director who also serves as the Chair of Columbia's Department of Psychiatry, and as Psychiatrist-in-Chief at Presbyterian. In effect, Columbia's Department of Psychiatry, Presbyterian's Department of Psychiatry and the Institute operate as a unified psychiatric facility.

In a prior audit of the Institute (Report 2006-S-2, issued in January 2007), we found that the Institute's contract with Columbia and Presbyterian, governing the residency training program, did not specify the obligations of each entity nor state how the related administrative expenses were to be shared among the three entities. As such, we concluded that State resources were not being adequately safeguarded. We recommended that the contract between the Institute, Columbia and Presbyterian be revised and enhanced to address these matters. Prior to initiating our current audit, we received allegations that, similar to our prior findings, State assets were not being protected in other Institute operations as well.

**Audit Scope and Methodology**

We audited selected financial management practices of the Institute for the period April 1, 2006 through December 2, 2009, to determine whether Institute officials were properly controlling State resources. Our audit focused on the Institute's payroll and personnel practices, its office and laboratory space sharing arrangements with Columbia, and its management of the State's ownership rights in patents for discoveries made at the Institute. To accomplish our objectives, we interviewed OMH and Institute officials and staff, and reviewed applicable Institute records including employee time and attendance reports, payroll summaries, building leases, and support for selected expenses.

We also selected a judgmental sample of 21 Institute employees who were identified as receiving salaries from both the State and Columbia. We visited their assigned work locations during their scheduled work hours to confirm that they were engaged in their official Institute work duties. In addition, we reviewed OMH's Inventions and Technology Transfer Policy and the patent database maintained by the United States Patent and Trademark Office.

We conducted our performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained during our audit provides a reasonable basis for our findings and conclusions based on our audit objectives.

In addition to being the State Auditor, the Comptroller performs certain other constitutionally and statutorily mandated duties as the chief fiscal officer of New York State. These include operating the State's accounting system; preparing the State's financial statements; and approving State contracts, refunds, and other payments. In addition, the Comptroller appoints members to certain boards, commissions and public authorities, some of whom have minority voting rights. These duties may be considered management functions for purposes of evaluating organizational independence under generally accepted government auditing standards. In our opinion, these functions do not affect our ability to conduct independent audits of program performance.

**Authority**

This audit was performed 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.

**Reporting Requirements**

A draft copy of this report was provided to OMH officials for their review and comment. Their comments were considered in preparing this final report and are attached in their entirety at the end of this report.

OMH officials agree in whole, or in part, with all of our recommendations. However, they believe our report has drawn inferences that extend beyond our audit scope and methodologies and that they have historically, and continue to, protect State assets in their charge.

Within 90 days of the final release of this report, as required by Section 170 of the Executive Law, the Commissioner of the Office of Mental Health shall report to the Governor, the State Comptroller, and the leaders of the Legislature and fiscal committees, advising what steps were taken to implement the recommendations contained herein, and where recommendations were not implemented, the reasons why.

**Contributors to the Report**

Major contributors to this report include Frank Patone, Michael Solomon, Stuart Dolgon, Orin Ninvalle, Dmitri Vassiliev, Lisa Duke, Carole Le Mieux, and Dana Newhouse.

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## Audit Findings and Recommendations

We found Institute management has not provided adequate control over the millions of dollars in State resources they spend each year to operate the Institute. As a result, we concluded that there was inadequate assurance that all employees on the Institute's payroll are working the appropriate number of hours to support their State salary. There is also inadequate assurance that the Institute is being properly reimbursed for its facilities used by Columbia staff or for Columbia business. In addition, contrary to OMH policy, the Institute is not receiving the ownership and royalty rights for certain patented technologies developed on its premises and/or by its employees.

### **Personal Service Costs**

Many Institute staff also work for Columbia. In fact, as of October 31, 2008, 195 Institute staff were also being paid by Columbia. In most cases, these staff work on multiple projects receiving separate salaries from the Institute and Columbia, respectively. For example, a clinical psychiatrist who is working as a 50-percent Institute employee (an average of 20 hours per week) would be on the Institute's payroll and receive 50 percent of the full-time salary for this position. This employee may also be a 50-percent employee in some professional capacity at Columbia receiving 50 percent of a full-time Columbia salary for that position. These percentages vary from employee to employee (e.g., 45/55, 20/80, etc.), and in several cases (based on their reported salaries) employees are paid as full-time employees at both entities. These percentages are based on the number of hours each employee is reportedly working at, or for, each employer.

Although each Institute employee maintains a monthly attendance report noting his/her hours worked each day, these attendance reports do not note what specific project(s) the employee was working on or for which employer. There are also no other records (daily assignment sheets or project reports) that provide this information. As such, there is inadequate assurance these bi-payroll employees are working the required number of hours necessary to earn their respective State salaries.

To determine whether Institute employees were, in fact, performing sufficient Institute work to support their Institute pay, we selected a sample of 21 of the Institute's 195 bi-payroll employees. As of October 31, 2008, the annual Institute-related salaries of these 21 employees totaled \$1.7 million. We visited these employees at their assigned Institute work locations during December 2008 and January 2009 to ask them about their respective job duties.

We found all 21 employees to be at their assigned work locations. However, only ten of them were working on projects that we could trace back to the Institute. We could not trace the work being performed by the remaining 11 employees to the Institute. One of the 11 was being paid half-time (50 percent) by the Institute (\$48,305) as a Research Scientist 5. However, at the time of our floor check, he informed us that he was working exclusively on two projects for Columbia. He mentioned that he had recently completed work on two State-funded grants which had previously expired.

When discussing our observations with Institute officials, they told us that this employee was confused by our questions and that he is, and was, fulfilling his State work responsibilities. However, they did not submit any evidence to support their assertion. (In response to our draft report, Institute officials provided us with an affidavit prepared by this individual where he acknowledged his prior confusion and misunderstanding of our questions. However, in this affidavit he (re) confirms that he was working only on Columbia grants during our audit. He also notes that, in his position of co-Director of an Institute laboratory, he performs other State-related duties which he did not delineate.)

Institute representatives also provided us with work schedules subsequently prepared by the employees in our sample in an attempt to refute our findings and affirm that they were in fact working on Institute projects at the time of our floor checks. This documentation clearly contradicted what each of these employees had told us weeks before. Institute officials also stated that the activities of the Institute and Columbia are so intertwined that it is difficult to differentiate Institute activities from Columbia activities.

As such, we conclude that without the maintenance of real-time independently-verified records to document what each Institute employee is working on, there will be inadequate assurance that the monies paid to the Institute's bi-payroll employees are for Institute/State business.

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

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.

**Other Than  
Personal Services**

The Institute operates from two OMH-owned buildings and leases space in three privately-owned buildings. One of the privately-owned buildings is owned by Columbia and houses Columbia's School of Public Health. This building is located on land that had been previously donated to the State by Columbia. Since February 2005, the Institute has leased 2 of the building's 19 floors, about 10.5 percent of the total floor space, and under the lease agreement, has paid Columbia 14.1 percent of the building's total operating and maintenance expenses (\$611,547 for the year ended June 30, 2008). Similar expenses for the year ended June 30, 2009 were not provided to us.

Conversely, Columbia staff occupies space in both of the OMH-owned buildings free of charge. According to an agreement between the parties, Columbia donated the land upon which one of the buildings lies. Therefore, Columbia has free access to, and use of, the Lawrence Kolb Research Laboratory. However, Columbia also occupies space in the Institute's Riverside Drive Building, located at a different site on land owned by OMH, and for which no similar agreement exists.

According to Institute officials, Columbia staff has occupied space in the Riverside Drive Building since the building opened in May 1998. At the time of our audit, a total of 118 Columbia employees were occupying space in the building. None of these employees were on the Institute's payroll; yet Columbia was not paying rent for the use of this space. Based on the percentage of occupied space, and the current market rates for commercial leases in the area, we calculated that OMH could be receiving about \$417,000 a year for this space.

Institute officials told us they were not charging Columbia rent for its use of the Riverside Drive Building because they believed the agreement granting Columbia free use of the Kolb Building also applied to the Riverside Drive Building. Institute officials also indicated that there are circumstances where the Institute has been granted access to Columbia research facilities, the use of which has been - and is - invaluable to the Institute, and for which no payments are made to Columbia. Citing the close working relationship between the two entities, the Institute and OMH believe that the space-sharing arrangements work well and benefit both Institutions. However, Institute officials did not offer any examples where Institute staff occupied Columbia space free of charge.

(In response to our draft report, OMH officials assert that a lease with Columbia will be pursued for those Columbia employees working in the Riverside building who are engaged solely in Columbia activities. However, they will not pursue such a lease for Columbia employees working in the building who are subject to the pre-existing covenants and agreements.)

- 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.

**Patent  
Ownership**

In the course of their research activities, Institute employees may develop new and patentable inventions and technologies. Inventors and developers patent their products to establish their legal rights of ownership, usage and rights to any associated revenues from the use of the products. According to OMH's Inventions and Technology Transfer Policy (Patent Policy), which became effective on November 7, 2007, "all inventions and technology conceived, developed, made or reduced to practice by OMH employees in the course of their employment, and all patents which result from such activities, are the property of the OMH." OMH also owns and has the rights to "all inventions and technology conceived, developed, made or reduced to practice by persons or agencies during the performance of a contract with the OMH." The Patent Policy applies to all individuals utilizing OMH facilities and resources.

To determine whether Institute officials and staff were complying with this OMH policy, we reviewed the Institute's patent committee minutes prepared during the audit period, interviewed several Institute research scientists, and reviewed a database maintained by the United States Patent and Trademark Office. We identified two pending patents for technologies, developed at the Institute using Institute equipment, that were being registered jointly by the applicable researchers and Columbia. One patent was submitted for approval in 2007, and was developed by a Columbia employee before OMH's Patent Policy was enacted. The other patent was submitted in 2008 by an Institute employee. However, Columbia was claiming ownership for both patents. As a result, Columbia will own the patent rights for both products if they are approved.

When we discussed this issue with Institute officials, the Institute's Executive Director acknowledged that the Institute did not do a good job of disseminating the Policy to Institute staff. Institute officials also informed us that they would apprise Columbia of the error regarding the product developed in 2008, and work to resolve the matter. They had not taken a position on the product developed in 2007.

Institute officials further responded that OMH is in the process of negotiating an agreement with Columbia to address this issue.

- Recommendations**
5. Pursue the State's ownership rights regarding the two technologies discussed in this report.
  6. Ensure that OMH's Inventions and Technology Transfer Policy is adequately disseminated to all Institute employees.
  7. Establish a process to monitor compliance with the Institute's Policy.

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## Agency Comments



State of New York  
David A. Paterson  
Governor

**omh** Office of Mental Health  
44 Holland Avenue  
Albany, New York 12229  
www.omh.state.ny.us

November 8, 2010

Frank Patone, CPA  
Audit Director  
Office of the State Comptroller  
Division of State Government Accountability  
123 William Street – 21st Floor  
New York, NY 10038

Dear Mr. Patone:

The Office of Mental Health has reviewed the draft audit report entitled, Office of Mental Health: NYS Psychiatric Institute - Control Over State Resources (2008-S-145). Our comments to the findings and recommendations contained in the report are enclosed.

The Office of Mental Health appreciates the Office of the State Comptroller's efforts to recommend improvements in our operations.

Many thanks for your continued help and cooperation.

Sincerely yours,

Bruce E. Feig  
Executive Deputy Commissioner

Enclosure

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER



OMH 26.01 (3/08)

**NEW YORK STATE PSYCHIATRIC INSTITUTE  
RESPONSE TO OFFICE OF THE STATE COMPTROLLER  
DRAFT REPORT 2008-S-145  
CONTROL OVER STATE RESOURCES**

**Introduction**

The New York State Office of Mental Health (OMH) and New York State Psychiatric Institute (NYSPI) have received the draft audit report from the Office of the State Comptroller (OSC) entitled New York State Psychiatric Institute Control Over State Resources, Report 2008- S-145. We have carefully examined the report, the data upon which it is based, and OSC's conclusions and recommendations. We thank OSC for this opportunity to provide a response to their report.

The NYSPI is a psychiatric research institute that is owned by New York State (NYS) and operated by OMH. Our commitment to science and public service is, and has been for our nearly 105 years, our primary mission. We fully recognize the value of New York's investment in the work of the Institute, and will take steps to implement OSC's recommendations that we refine the methods used to document our controls over use of State resources. However, we believe that the OSC report has drawn inferences and conclusions that appear to extend beyond the limited scope of their audit and their methods. These issues are addressed below in sections on personal service costs, other than personal services, and patent ownership.

We begin with some background on the importance of our longstanding partnership with Columbia University (CU), as this relationship is the focus of the OSC audit report. Further comment on the nature of this collaboration as it pertains to specific comments in the OSC report is included in subsequent sections. We feel that a more complete understanding of the nature and benefits of this kind of collaborative research enterprise is necessary for the required evaluation of NYSPI's use and control of State resources.

OMH and NYSPI recognize that NYSPI, and its complex historical relationship with CU, are not typical of most State facilities, agencies and institutions that OSC reviews. We appreciate the significant time and effort invested by OSC in trying to understand this unique affiliation. We recognize that the complexity of the affiliation *in operation* made it difficult, in some cases, to discern between NYSPI and Columbia Department of Psychiatry activities; however, we would like to emphasize that the same integration and synergism that makes that exercise difficult is what makes the affiliation so successful and so valuable to the State. NYSPI agrees with OSC about the importance of ensuring the proper utilization of State resources.

We at NYSPI sincerely believe and are confident that the State's investment in personnel and facilities, and its interests in intellectual property are managed appropriately and directly in the service of NYS. Moreover, we believe that the affiliation between NYSPI and CU provides enormous value in scientific progress, quality of mental health care services and economic development to the citizens of New York State.

### **Background of the OMH/NYSPI-Columbia Affiliation**

In 1924 NYS resolved to locate the NYSPI on the health sciences campus of CU and established a covenant with CU setting forth the principles of this affiliation. In the ensuing 86 years the New York State OMH/Columbia affiliation has become an historic and uniquely successful public-private partnership in academic medicine. The decision to locate NYSPI on the campus of a major university and medical center ushered in a new era for care for the mentally ill and for the field of psychiatric medicine. Columbia's intellectual resources, technologies and facilities made available to NYSPI by the University and Medical School, then, as now, enrich and complement the State's own resources and further its mission.

Today, the vast majority of NYSPI researchers and many clinicians at NYSPI maintain faculty appointments at Columbia University because a Columbia title provides access to university collaboration (e.g., genetics, brain imaging, laboratory facilities, and clinical populations). It enables NYSPI to compete for grants and awards in an increasingly competitive funding environment. It enables multi-disciplinary collaborations (e.g., with neurology, neuroscience, psychology, maternal-fetal medicine) so that we may contribute to a broader understanding of brain and behavior. In simplest terms, Columbia enables NYSPI to recruit and retain world-class scientists and clinicians to perform cutting edge scientific research and provide state of the art health care.

A highly integrated NYSPI-Columbia Department of Psychiatry is now widely viewed as one of the foremost academic and research centers in psychiatry in the world. Last year we received more grant income from NIH than any other psychiatric research program in the U.S. Such grants bring revenue to New York and serve to create and maintain jobs. Finally, together NYSPI and Columbia have educated and trained generations of scientists, clinicians, and administrators in the range of mental health disciplines in New York and around the world. Such efforts require sharing and coordination of commitment, resources, and staff toward common goals.

While NYSPI and the CU Department of Psychiatry share a singular mission, they are nonetheless separate business entities and must be separable to ensure the proper utilization of each entity's resources.

### **Personnel Service Costs**

OMH and NYSPI are wholly amenable to recommendations that will improve the process of documenting dually salaried employee efforts on State activities. NYSPI is currently working on developing such a methodology. Yet while steps will be taken to make improvements NYSPI feels that existing controls are adequate to ensure that State employees who are also employed by CU are fulfilling their time commitment to the State and earning their State pay.

The OSC report raised the following two issues regarding personnel service costs:

- (1) whether dually salaried State employees are engaged in State activities during their documented State time; and

(2) whether NYSPI has adequate supervisory controls in place to ensure that these State employees are meeting their time commitment to the State.

NYSPI believes that its State employees are performing State duties during their documented State time and that supervisors are ensuring this condition.

At the time of the audit, the OSC auditors selected 21 State employees for interviews who were also on the faculty or staff of CU and were dually salaried employees. The OSC auditors found all of them to be at work in their assigned State locations at the time of a random floor check, but nonetheless concluded that they were unable to confirm that all were involved specifically in State work at the time. Based on this conclusion, OSC determined that there was inadequate assurance that all employees were fulfilling their State responsibilities.

NYSPI believes that OSC's erroneous conclusion is based on an inappropriate methodology for determining the nature of the work done by the State employees and their assumption that work on a CU funded project was not in the State's interest. The OSC methodology focused solely on the funding source of grants (whether the project was a "state project" involving a grant administered through the Research Foundation for Mental Hygiene (RFMH), or a "Columbia project" involving a grant administered through Columbia University). Employees were asked about what "projects" or "grants" they were working on and not what activities they did within the scope of their State employment. By using such a narrow measure, OSC did not learn about a large variety of activities that are part of the employee's State work and integral to the mission of NYSPI. For example, while it is true that research employees at NYSPI and CU routinely work on sponsored projects that are funded by research grants (such as those from the National Institutes of Health) that must be administered by CU or the RFMH, all staff, researchers, clinicians, training staff and administrators are also routinely engaged in other State-related activities such as: work on non-sponsored research; writing grant applications and doing other work preliminary to the receipt of funding; writing articles for publication and preparing presentations of the results of their research; teaching and supervising trainees; providing direct care to patients through the NYSPI clinical services; administering State operated programs; supervising State employees; and/or participating in institutional committees. These activities were not asked about, discussed or considered by OSC. In addition, OSC's methodology did not consider that individual grants can be funded through both institutions (CU and NYSPI) through subcontracts that relate to different aspects of the same grant, that a grant at one institution may provide the infrastructure for grants at the other or that an activity which may serve the purpose of one institution, whether grant-funded or not, may also provide support for an activity of the other, again whether grant-funded or not.

As members of NYSPI's integrated work force, research employees do not always focus on the distinction between that which is designated for the State and that which is designated for CU because the tasks in which they are engaged often serve the mission of both employers. Nonetheless, virtually all faculty and many staff work well beyond the number of required hours each week and produce an abundance of high quality, extremely valuable work. In any State agency, a State employee may be assigned to do work which supports an affiliation or collaboration with a non-State entity, and that work will be considered to be within the scope of State employment because it serves the State's interest in that affiliation or collaboration. In our discussions, the OSC auditors agreed with this principle, recognizing that if a task furthered the

\*  
Comment  
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\* See State Comptroller's Comment on page 31.

mission of OMH/NYSPI, it was an appropriate utilization of State resources, even if it also furthered the interests of Columbia.

At the time of the audit NYSPI conducted a review of the work schedule of the 11 employees from the group of 21 whom OSC had sampled and been unable to confirm were engaged in State-related business. Although OSC states that no evidence was submitted, in fact NYSPI provided this documentation to OSC auditors, demonstrating that the 11 State employees were engaged in State-related business. NYSPI also submitted an attestation from one employee who had identified himself to the auditors as working exclusively on Columbia projects; the employee stated he was confused because the auditors were focused only on specific grant or project-related work and thus did not ask about the work he did in his laboratory as part of his State responsibilities.

\*  
Comment  
2

Prior to this OSC audit, NYSPI was confident that these 11 employees in question were routinely engaged in State-related business during their documented State time and that all dually salaried State employees continue to be so engaged. NYSPI employees are subject to the same State rules and regulations for time and attendance as all NYS employees. In addition, NYSPI administration provides oversight through various procedures including completing monthly time and attendance forms, documenting general performance expectations, conducting annual performance evaluations, reviewing grants and protocols at both the departmental and institutional level, and providing on-going supervision, all of which inform NYSPI administration about the activities in which the employee is involved.

**Other Than Personnel Services**

NYSPI has identified a number of employees of the Columbia Department of Psychiatry who occupy space at the 1051 Riverside Drive building, who have no State employment and who are engaged only in business activities on behalf of Columbia. As these individuals may not be subject to the conditions of the 1925 agreement and 1926 deed covenant between CU and NYS, OMH agrees with OSC that Columbia should pay OMH for this use of space. As such, a lease with Columbia will be pursued; however, as will be explained in the following paragraphs, OMH does not believe that Columbia students and professional staff who are subject to the agreement and the deed covenant should be included in this lease.

\*  
Comment  
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The OSC audit report states that “There is also inadequate assurance that the Institute is being properly reimbursed for its facilities used by Columbia staff or for Columbia business”, and that the Department of Psychiatry personnel are inappropriately occupying space in OMH-owned buildings “free of charge.” OMH/NYSPI considers sharing space at the Institute with Columbia to be a vital part of their public-private partnership. Indeed, the principle of sharing space and facilities was integral to the original covenant between CU and NYS in 1926. Space sharing serves OMH and the NYSPI’s interests by providing for the integration and exchange of research and academic resources, contributing significantly to the Institute’s success in realizing its mission. It also promotes efficiency for researchers who have roles in supervising both NYSPI and Department-funded research projects, taking care of NYSPI patients, managing NYSPI programs and teaching future mental health professionals.

\* See State Comptroller’s Comment on page 31.

For more than eighty years, Columbia professional staff working in the Department of Psychiatry have occupied space alongside NYSPI staff while NYSPI staff have had access to the resources of a world class academic medical center. The result has been a uniquely rich collaboration in research, training and clinical care, which has substantially enhanced NYSPI's ability to attract grants to support its mission. In fiscal 2009/2010, for example, NYSPI/CU brought nearly \$117.5 million dollars in federal and private grant revenue into New York State, of which \$90.52 million went to RFMH for NYSPI, a significant return on the State's annual investment. In 2009/2010, NYSPI/CU captured more than \$34 million in federal stimulus dollars, of which \$21.74 million went to RFMH for NYSPI. This infusion of grant income creates and maintains jobs in an otherwise contracting local and State economy, while supporting important and productive research into mental health treatment and service delivery. It is a product of the partnership between NYSPI/OMH and Columbia.

To treat Columbia's occupancy of Institute space as a commercial lease transaction and apply a fair market value rent is not only inconsistent with the affiliation, the 1924 and 1925 agreements, and two existing deed covenants, it would undermine the historical foundation of the relationship upon which the affiliation was built. The co-location of Columbia and Institute staff is an important part of the architecture of the agreement Columbia and OMH conceived of in 1924. At that time, OMH agreed to accept the donation of land for NYSPI subject to the condition that "the Student bodies and professional staffs of the University and the Hospital and associated institutions shall have available during the continuance and existence of the said Psychiatric Institute and Hospital, subject to the rules and regulations of the State Hospital Commission." That land donation was the land upon which the former Building 1 of NYSPI was built. The condition for the use of NYSPI by the students and professional staffs of the University and the Hospital was incorporated into the deed for the property and a second agreement between the parties.

In 1974, Columbia donated a second parcel of land to the State for NYSPI's Kolb Annex, providing in the deed a covenant that "the student bodies and professional staffs of [Columbia] and The Presbyterian Hospital in the City of New York and associate institutions shall have available during the continuance and existence of the said extension to the Psychiatric Institute and Hospital, the facilities of said extension to the Psychiatric Institute and Hospital in the same manner as they have available the facilities of the main Psychiatric Institute and Hospital pursuant to the Agreement between [Columbia and NYSPI], dated December 16, 1925." Like the earlier covenant, this covenant was intended to support the affiliation between NYSPI and the Department by providing for the sharing of resources and efficiencies in operation which were considered integral to achieving their common objectives.

In the 1990's, NYSPI moved out of its original building into 1051 Riverside Drive, its current main building. Because the land on which the Riverside Drive building is built was acquired in two parcels by Eminent Domain from Columbia and from Presbyterian Hospital it is not subject to any restrictive covenants. However, the original agreements remain, as do the covenants in the 1926 deed for those portions of land which are still in use by NYSPI and which did not revert to Columbia with Building 1, and in the 1974 deed for the Kolb Annex.

OSC references the fact that OMH is charged by Columbia for space OMH occupies in the School of Public Health, and argues that therefore Columbia should pay for space it occupies at

NYSPI. There are important differences between OMH's occupancy of space in the School of Public Health and Columbia's occupancy of space at the Institute which warrant treating them differently. The School of Public Health and OMH do not have an affiliation, do not share a common mission, do not share a leadership structure, and have distinct faculties unlike the Department of Psychiatry and NYSPI. The location of OMH in premises owned and occupied by the School of Public Health does not serve any interest of the School of Public Health or the Columbia University Medical Center or the Columbia Department of Psychiatry. Columbia owns the building free and clear of any deed restrictions on its use. From a legal perspective, OMH's location in the School of Public Health is the equivalent of occupying a building owned by a private landlord with no connection to Columbia and from whom one would expect no concessions.

From the inception, NYSPI/OMH and CU have interpreted the "sharing" provision in the agreement and in the deed covenants to apply to the resources of NYSPI as a whole and not only to those located on the particular land at issue in the particular deed. When NYSPI outgrew its original building and was re-located, there simply was never an intention on the part of any party to change the way in which the affiliation operated or the amount of costs any party would be expected to assume. For all these reasons, OMH believes that it would be detrimental to the affiliation, and thus detrimental to NYSPI's mission, to pursue rent for the space occupied at NYSPI by Columbia psychiatry employees.

#### **Patent Ownership**

NYSPI agrees that an improved dissemination and training plan with regard to the OMH Patent Policy will better ensure that all employees know of its provisions and understand their obligations. Better training will prevent the improper disclosure of inventions to Columbia under its policy when disclosure under the OMH policy instead or in addition is the appropriate course of action.

The OSC report correctly asserts that "inventors and developers patent their products to establish their legal rights of ownership, usage and rights to any associated revenues from the use of the products" and that New York State has "interests in patentable inventions and technologies that are developed by NYSPI employees during the course of their employment." The OSC audit team did identify two pending patents for technologies developed at the Institute using Institute equipment that were being registered jointly by the applicable researchers and Columbia. Regarding these two patents, the OSC report concludes "the Institute is not receiving the ownership and royalty rights for certain patented technologies developed on its premises and/or by its employees..."

OMH is determining whether the State has a viable legal claim to one of the two inventions. With respect to the other, OMH and Columbia have agreed that it was developed, in part, with funds from federal grants received by the Research Foundation for Mental Hygiene, Inc. (RFMH) and that, consequently, Columbia, RFMH and the State have ownership interests. It is the parties' intention that that invention shall be made subject to the terms of a comprehensive technology transfer agreement currently under negotiation.

Of note, until three years ago, no State or agency policy addressed these State interests or guided investigators with regard to the steps necessary to pursue patent or related agreements. Under its policy, Columbia claims an interest in ownership and royalty rights when faculty develops patentable products. Columbia, in contrast to NYS, has for many years operated a state-of-the-art program that assists investigators at every stage of development to promote technology transfer and commercialization. It is our hope that the result of current discussions between NYS and Columbia will yield an agreement that will serve to protect and advance the State's interests and make Columbia's well-developed Technologies Ventures resources available to NYSPI employees who are Columbia Faculty.

## **NYSPI RESPONSE TO OSC RECOMMENDATIONS**

### **OSC Recommendation No. 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.

### **NYSPI Response**

Dually salaried employees (NYSPI and Columbia University) will be required to attest to the State activities they have performed. This attestation will be co-signed by a supervisor who is an OMH employee. However, it is not practical for NYSPI to require that the supervisor work solely for OMH because most of the supervisory personnel at NYSPI are also salaried Columbia faculty and all NYS employees are permitted to engage in outside employment subject to the terms of State policy. All NYSPI employees report through NYSPI supervisory staff to the Executive Director of NYSPI who reports to OMH's Chief Medical Officer (as designee of the Commissioner) in respect to any matter pertaining to State employment.

### **OSC Recommendation No. 2**

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

### **NYSPI Response**

The actual work activities of the eleven employees cited in the report have been reviewed and it was determined that all payments were appropriate.

### **OSC Recommendation No. 3**

Periodically review 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.

### **NYSPI Response**

A periodic audit will be conducted to ensure that salary payments are commensurate with time and effort.

**OSC Recommendation No. 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.

**NYSPI Response**

NYSPI will formalize the use of space arrangements between NYSPI and Columbia. NYSPI will pursue negotiation of a lease with Columbia for the space occupied by employees of the Columbia Department of Psychiatry Business Office but not for Columbia employees whose work is part of the affiliation as set forth in the deed covenant.

**OSC Recommendation No. 5**

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

**NYSPI Response**

OMH is determining whether the State has a viable legal claim in one of the technologies identified by OSC. Columbia has acknowledged the State's ownership rights in the other and it is the parties' intention to ensure the State's rights by application of the terms of the agreement which is currently under negotiation.

**OSC Recommendation No. 6**

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

**NYSPI Response**

NYSPI will ensure that all research staff employed by the State receive the OMH Invention and Technology Transfer Policy and an opportunity to ask any questions they may have about its requirements.

**OSC Recommendation No. 7**

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

**NYSPI Response**

NYSPI will establish a process to monitor compliance with its Technology Transfer policy.

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## **State Comptroller's Comments**

1. Our conclusions regarding the safeguarding of the State's personnel service costs (staffing) are based on more than whether the project the employee was working on at the time of our interview could be traced back to a State-financed project. We asked Institute officials for any and all time and attendance records, staff assignment sheets, or any other form of documentation maintained during our two-year audit period that would support the hours these employees were required to provide to the State. None was provided.
2. Our final report was revised to reflect this affidavit and its effect on our conclusions.
3. Our final report has been revised to note OMH's intent to pursue a lease with Columbia as they deem appropriate.