
**Thomas P. DiNapoli
COMPTROLLER**



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**OFFICE OF THE
NEW YORK STATE COMPTROLLER**

**DIVISION OF STATE
GOVERNMENT ACCOUNTABILITY**

DEPARTMENT OF HEALTH

**OVERSIGHT OF THE
SPINAL CORD INJURY
RESEARCH TRUST FUND**

Report 2007-S-32

AUDIT OBJECTIVES

One objective of our audit was to determine whether there was adequate support for expenses charged to grants obtained from the Department of Health's Spinal Cord Injury Trust Fund. Another objective was to determine if there was adequate oversight to ensure that grants obtained from the Trust Fund achieved expected objectives.

AUDIT RESULTS - SUMMARY

On July 14, 1998, Title 4 of the Public Health Law (Law) created the Spinal Cord Injury Research Board (Board) within the New York State Department of Health (Department). One of the Board's primary responsibilities is to administer the Spinal Cord Injury Research Trust Fund (Trust Fund). The purpose of the Trust Fund is to provide leading scientists, physicians, and other experts with grants for use in finding a cure for spinal cord injuries.

The Trust Fund is financed through General Fund revenues arising from a surcharge on drivers who receive traffic tickets. From inception through May 31, 2007, the Trust Fund received \$63.9 million. The Fund disbursed \$40.9 million, which included a transfer of \$13.5 million back to the State's General Fund.

We found that there was adequate support for expenses charged to grants from the Trust Fund. For example, when we reviewed 20 vouchers charging seven grant contracts a total of \$4.2 million, we found that the required list of expenditures was attached in support of the charges. Furthermore, when we reviewed records at three of these grantees, we found that all three had adequate records showing that the listed expenses pertained to the purpose of the grants. Because of an inconsistency between certain

grant-related documents, we did find one grantee was inappropriately reimbursed \$64,269 for a tuition expense. [Pages 4-5]

We also found that adequate oversight had not been provided to ensure that grant objectives were being attained. When we reviewed all of the 58 grant contract files that were active or closed as of August 21, 2007, we observed that the Department had not obtained from grantees 56 percent of the progress reports, 40 percent of the final reports and none of the statistical/qualitative reports or seminar documentation required to demonstrate grant performance. [Pages 4-5]

In reviewing the contract files, we noted inconsistencies between the Requests For Applications (RFAs) and contract language within the files. For example, two RFAs required grantees to submit progress reports semi-annually while the associated contracts required reports be submitted quarterly or every nine months. In addition, some contracts stated seminars were required while others stated seminars may be required. [Page 5]

During our audit we also noted that the Department has not awarded all the funds available and that grant contracts were not awarded timely. The State Legislature transferred \$13.5 million from the Trust back to the General Fund because the Department had not awarded all the funds. Furthermore, \$8.5 million was never deposited into the Trust Fund's account for fiscal year 2006-07. Another \$8.5 million in funding for fiscal year 2007-08 was not transferred into the Trust Fund as of October 10, 2007. Of the awards that were granted, we found the Department did not award the contracts until between six months to one year and four months after the RFAs were issued. Department officials attributed this, in part, to vacancies on the Board and quorum issues

resulting from low Board member attendance. [Pages 5-6]

Our audit report contains four recommendations.

This report, dated June 25, 2008, 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

BACKGROUND

According to the National Spinal Cord Injury Association, between 250,000 and 400,000 people have spinal cord-related injuries. The conventional wisdom has long been that most people with spinal cord injuries could be rehabilitated to some extent, but that the damage to neural tissue could not be reversed. That view has changed dramatically. Researchers in Sweden, the United States, and Britain have demonstrated that there are no fundamental biological barriers to repairing damaged spinal cord neural tissue and that the possibility of effective regenerative therapies for human neural cell injury is no longer speculation but a realistic goal.

On July 14, 1998, legislation was enacted to create the Spinal Cord Injury Research Board (Board) within the New York State Department of Health (Department). The Board consists of 13 members appointed by the Governor and State Legislative leaders. One of the Board's primary responsibilities is to administer the Spinal Cord Injury Research Trust Fund (Trust Fund). The Trust Fund is operated by the Wadsworth Center's Office of Research Guidance. The purpose of the Trust Fund is to provide leading scientists, physicians, and other experts with grants for

use in finding a cure for spinal cord injuries. The Department is responsible for overseeing the Trust Fund.

The Board is responsible for developing general policies and procedures for soliciting and selecting proposals to be recommended for funding by the Trust Fund. To fulfill these responsibilities, the Board issues Requests for Applications (RFAs) that are then reviewed by an external contractor, Constella Group, LLC, using the National Institute of Health style of scientific merit peer review process. Constella hires scientific evaluators to perform application reviews and make recommendations for the awarding of grants. The second stage of the RFA review process is done by the Board when it compares the responses to projects already funded, and reviews how they fit into the larger picture of spinal cord injury research. The Board's recommendations are given to the Commissioner of Health for final approval to award contracts for grantees to obtain grant funds.

The Trust Fund is financed through General Fund revenues arising from a surcharge imposed on drivers who receive traffic tickets. The State Finance Law states that the Trust Fund can receive up to \$8.5 million per year from the General Fund. The State Legislature controls how much of these funds are given to the Trust Fund. From inception through May 31, 2007, the Trust Fund received \$63.9 million. The Fund disbursed \$40.9 million, which included a transfer of \$13.5 million back to the State's General Fund.

Since the inception of the Trust Fund, the Board has issued seven RFAs, resulting in 80 contracts being awarded for a total of \$54.9 million. As of September 30, 2007, there were 52 active and 28 completed contracts.

AUDIT FINDINGS AND RECOMMENDATIONS

Reimbursements

Grantees are required to submit vouchers along with a list of expenditures before they can be reimbursed for expenses. The expenditures must relate to spinal cord research and be in accordance with contract provisions. However, the Department does not require supporting documentation (e.g., invoices) for the expenditures to be reimbursed.

To determine whether expenditures were submitted with vouchers, we reviewed 20 vouchers totaling \$4.2 million from seven contracts. We found all had the required list of expenditures attached. To determine whether expenditures submitted were supported by receipts and were properly related to the grants, we conducted site visits at three grantees: Albany Medical College, the Center for Research Excellence at the Burke Medical Research Institute, and the University of Rochester-School of Medicine. We reviewed three contracts each at Albany Medical College and the University of Rochester-School of Medicine, and one at Burke Medical Research Institute. For each contract, we reviewed the most recent year of paid vouchers and requested that the grantees provide us with the appropriate supporting documentation. We found that Albany Medical College, the University of Rochester-School of Medicine, and the Burke Medical Research Institute had adequate records to support claimed expenses and to show that these expenses were properly related to the grants.

We note that Trust Fund officials told us that they have never visited a grantee or reviewed support documentation to determine if expenditures claimed on vouchers were

adequately supported. We believe site visits are an important part of oversight to ensure grants are being spent appropriately.

Recommendation

1. Conduct periodic site visits to grantees to review supporting documentation and to verify funds are being spent in accordance with contract terms.

Oversight of Program Operations

The Department is required to verify that grants are awarded appropriately and are spent in accordance with contract terms. This includes confirming that contract deliverables are received, appropriate research progress is being made, and that grantees are reimbursed only for those expenditures allowed by the contract visited. As previously noted, the Department has not periodically visited grantees to review supporting documentation for claimed expenses. We also found that the Department was not monitoring that grant deliverables were being completed in support of grant objectives.

To determine whether the Department provided adequate oversight of contract deliverables, we reviewed all 58 contract files that were either active or closed as of August 21, 2007. (We did not review the 22 contracts that began on April 1, 2007, as deliverables were not yet required as of our review date.) Each contract requires certain reports to be provided to the Trust Fund at specific times such as progress, statistical/quantitative, and final reports. In addition, some contracts require grantees to sponsor one-to-two spinal cord injury-related seminars at the grantee's institution.

For the 58 contracts we found:

- A total of 192 progress reports were required to be submitted, but 108 (56 percent) were not in the contract files.
- 28 contracts required final reports, but 11 (40 percent) of them were not in the contract files.
- None of the files had statistical/quantitative reports.
- None of the files contained documentation indicating that seminars were conducted.

If effective oversight was in place, these instances of noncompliance with contract terms would have been detected and corrected. Further, the lack of adequate oversight of grantee compliance impedes the ability of the Department to assess the performance of grantees and to measure whether they are achieving stated goals.

Department officials said that in the past they did not track the submission of the progress reports or final reports, or whether seminars were conducted. The Program Director has now created a tracking system to verify that progress and final reports are received when due. In addition, Trust Fund officials said that they never required grantees to submit the statistical/quantitative reports but the language was in the contracts because it was standard Department language for contracts. We note that the Trust Fund removed the statistical/quantitative language for contracts entered into as of April 1, 2007.

In reviewing the contract files, we noted inconsistencies between the RFAs and contract language within the files. For example, two contract files had RFAs requiring progress reports to be submitted on a semi-annual basis. However, one of the contracts for this RFA required reports to be submitted on a quarterly basis and another

contract required reports to be submitted every nine months. In addition, contract language was inconsistent regarding the seminars with some requiring seminars and others stating seminars may be required.

In another example, inconsistencies between the RFA and contract resulted in a subcontractor being reimbursed \$64,269 for tuition. The RFA specified that tuition was not an allowable expense. However, the signed contract did not specify this. Therefore, the subcontractor was reimbursed the full amount.

The inconsistencies make it difficult for grantees to comply with contract terms, and for the Department to monitor compliance.

Recommendations

2. Provide effective oversight to ensure grantees are adhering to contract terms, including the submission of all progress and final reports.
3. Review the RFAs and contracts and correct any inconsistencies between the documents.

Unused Funds and Timeliness of Awards

According to the Public Health Law, the Board is responsible for ensuring that funds are used for spinal cord injury research and not diverted for any other use. We found that the Department has not awarded all of the funds, resulting in unused funds being taken back by the State Legislature.

We found that, since the Department did not expend all of the funds, \$13.5 million was taken back by the State Legislature and transferred to the State's General Fund. Furthermore, \$8.5 million was never deposited into the Trust Fund's account for

fiscal year 2006-07. Another \$8.5 million in funding for fiscal year 2007-08 was not transferred into the Trust Fund as of October 10, 2007.

We reviewed the Department and Board's process for awarding grant contracts. We found that contracts were awarded from six months to 487 days (approximately one year and four months) after the RFAs were issued. We attribute this, in part, to vacancies on the Board and low Board member attendance. We recommend that the Department and Board evaluate the grant award process to determine if the award process can be completed in a more timely manner.

In responding to our preliminary audit findings, Department officials stated that although the legislation to establish the Trust Fund was passed in 1998, the first research contracts did not start until March 2001. As such, there was a two-year surplus of funds in the Trust Fund. Officials agreed that Board vacancies and quorum issues greatly hampered the ability of the program to issue RFAs and award funds in a timely manner.

Department officials identified steps they have taken to address these issues. For example, they are developing two new RFAs which they anticipate will enhance research funding opportunities in the coming years.

Recommendation

4. Evaluate the grant award process to determine if the award process can be completed in a more timely manner.

AUDIT SCOPE AND METHODOLOGY

We conducted our audit in accordance with generally accepted government auditing standards. Our audit period was from April 1, 2005 through October 10, 2007.

To accomplish our objectives, we reviewed New York State Public Health Law and State Finance Law. We reviewed the Trust Fund's policies, procedures, the annual reports, and Board of Director's meeting minutes. We also interviewed Trust Fund officials. In addition, we reviewed the seven RFAs issued since the Fund's inception. We reviewed 58 contract files to determine if contract deliverables were received.

We visited three institutions that received grants from the Trust Fund. We reviewed three contracts at Albany Medical College, three contracts at the University of Rochester-School of Medicine, and one contract at Burke Medical Research Institute. These institutions were selected based on the number of contracts, dollar value of grants received, geographic diversity, and submittal of contract deliverables. We then selected a judgmental sample of 20 vouchers totaling \$4.2 million from the 7 contracts. For each contract, we reviewed the most recent year of paid vouchers. For Albany Medical College, we reviewed all expenditures on the vouchers. For Burke Medical Research Institute and the University of Rochester, we judgmentally sampled voucher expenditures due to the high volume of transactions. For each paid voucher, we compared expenditures claimed with the supporting documentation maintained at each institution to determine if the expenditures claimed were documented properly and appeared reasonable for a scientific grant. We also reviewed the same six contracts at Albany Medical College and the University of Rochester-School of Medicine used for our site visits for

consistency in contract deliverable requirements.

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

The 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 Department officials for their review and comment. Department officials disagreed with our interpretation of the Board's responsibilities, and expressed concerns on our comments on the issue of unused transit funds. Department officials agreed with our recommendations, and described actions they have taken or will take to implement them. Their comments were considered in preparing this report and are included as Appendix A. Appendix B contains State Comptroller Comments that address matters contained in the Department's response.

Within 90 days of the final release of this report, as required by Section 170 of the Executive Law, the Commissioner of the Department of 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 therefor.

CONTRIBUTORS TO THE REPORT

Major contributors to this report include William Challice, Al Kee, Ed Durocher, Michael Cantwell, Andrew Davis, Sally Perry, and Sue Gold.

APPENDIX A - AUDITEE RESPONSE



Coming Tower The Governor Nelson A. Rockefeller Empire State Plaza Albany, New York 12237

Richard F. Daines, M.D.
Commissioner

Wendy E. Saunders
Chief of Staff

May 9, 2008

William P. Challice, Audit Director
Office of the State Comptroller
Division of State Government Accountability
123 William Street
New York, New York 10038

Dear Mr. Challice:

Enclosed are the Department of Health's comments on the Office of the State Comptroller's draft audit report 2007-S-32 on "Oversight of the Spinal Cord Injury Research Trust Fund."

Thank you for the opportunity to comment.

Sincerely,

A handwritten signature in black ink that reads "Wendy Saunders".

Wendy E. Saunders
Chief of Staff

Enclosure

cc: Stephen Abbott
Randall Griffin
Sandra Pettinato
Robert W. Reed
Lawrence S. Sturman, M.D., Ph.D.

**Department of Health
Comments on the
Office of the State Comptroller's
Draft Audit Report 2007-S-32 on
"Oversight of the Spinal Cord Injury Research Trust Fund"**

The following are the Department of Health's (Department) comments in response to Office of the State Comptroller (OSC) draft audit report 2007-S-32 on "Oversight of the Spinal Cord Injury Research Trust Fund", including general comments followed by responses to the specific recommendations contained in the report.

General Comments:

The Department generally agrees with the report's recommendations regarding administration of the Spinal Cord Injury Research Program ("Program") and attributes the underlying causes to an inadequate level of experienced staffing. This has since been rectified following the appointment of a new Director to lead the Program in October 2006. The subsequent filling of another critical position resulted in the creation of the Extramural Grants Administration office, followed by the hiring of other additional staffing to support this office, specifically, as well as overall Program operations. Additionally, two of the vacancies on the Spinal Cord Injury Research Board ("Board") were filled during 2007, seating eleven of the thirteen membership positions.

However, the Department does not agree with the OSC's interpretation of the Board's responsibilities, which, in regard to oversight, performance assessment and compliance monitoring of contractors, are defined in Public Health Law, Article 2, Title 4, section 251 (2) and (3). The Department acknowledges the Board's important role and welcomes and values its input. While Board members are routinely provided status reports on various Program aspects including contractor monitoring and compliance, responsibility for contract oversight resides with the Department and not with the Board.

Additionally, the Department takes exception to the report's implication that the Board did not fulfill its duties, where it states (in the last paragraph on page 2), "The State Legislature transferred \$13.5 million from the Trust back to the General Fund because the Board had not awarded all the funds. Furthermore, \$8.5 million was never deposited...for fiscal year 2006-07. Another \$8.5 million in funding for fiscal year 2007-08 was not transferred into the Trust Fund as of October 10, 2007." To clarify, while the Board was created in 1998, the inaugural Request for Applications (RFA) was not released until 2000, resulting in an accumulation of cash during the early years. Funds are appropriated annually, with any unused authority carried forward (reappropriated) to the following fiscal year regardless of the level of actual cash deposited. Should the level of cash in the Trust Fund be insufficient to support Program obligations, the Department would consider seeking additional appropriation authority to ensure that authorized research activities are appropriately supported. In

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Comment
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Comment
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*See State Comptroller's Comments, page 12

fact, consistent with past practice, the 2008-09 enacted budget includes the continuing reappropriation of a \$13.5 million fiscal year 2002-03 General Fund appropriation provided as a contingent appropriation for Trust Fund expenses. As a result, although the cash balance was lowered, the spending power of the Program was not affected.

Recommendation #1:

Conduct periodic site visits to grantees to review supporting documentation and to verify funds are being spent in accordance with contract terms.

Response #1:

The Department agrees with the recommendation and plans to fully develop its site visit monitoring tool, utilizing the new staff in the Extramural Grants Administration office. The Department anticipates implementing this process along with finalizing a Program-wide procedures manual by the fall of 2008. Additionally, commencing summer 2008, contractors will be required to submit backup documentation to support their voucher reimbursement requests.

Recommendation #2:

Provide effective oversight to ensure grantees are adhering to contract terms, including the submission of all progress and final reports.

Response #2:

Since appointing the new Program Director in October 2006, the Department has initiated several policy and procedural changes that have resulted in more effective grantee oversight. These changes are designed to ensure grantees are adhering to the contract terms, and include implementation of a mechanism to track all progress and final report submissions. In addition, reports are currently tracked and reviewed for scientific merit and completeness prior to the associated voucher payment being authorized. Additionally, the new staff additions permits dedicated Contract Management Specialists to be assigned to each contract throughout the term of the award, resulting in more familiarity with individual contract specifics and enhancing the Department's ability to anticipate, and thereby avoid, potential problems

Recommendation #3:

Review the RFAs and contracts and correct any inconsistencies between the documents.

Response #3:

The Department notes that the contracts reviewed by the OSC were all finalized prior to the appointment of the new Program Director and the employment of other

additional staff. The Department will ensure that all contracts with a start date on or after April 1, 2007 include language that is consistent with the corresponding RFA. In addition, the Department has implemented procedures to require multiple staff review of the terms of each RFA and contract revision to ensure consistency.

Recommendation #4:

Evaluate the grant award process to determine if the award process can be completed in a more timely manner.

Response #4:

The Department attributes the timeliness issues identified by the audit directly to the staffing issues that have since been rectified. It has already initiated evaluation of the grant award process to determine if it can be completed timelier, although it does not agree, as the report implies, that this recommendation is the responsibility of the Board. Program staff are working closely with other Department personnel developing strategies for expeditious completion of the various steps necessitated by State procurement requirements, including use of project management tools. A new RFA has already been developed that combines several research funding mechanisms into one. The Department expects this RFA will be the basis for an annual RFA release, bringing stability and adding efficiencies to the process. The Department additionally expects these changes will result in an increase in the number and the quality of RFAs presented to the Board for approval.

In addition, scheduled Board meetings were often cancelled in the past because the quorum required by the Open Meetings Law was not met, delaying the Board's ability to make funding recommendations to the Commissioner of Health. Utilizing the new program staffing, Board meetings are now scheduled well in advance, along with assurances that a sufficient number of members will be in attendance barring unforeseen clinical or personal emergencies. Additionally, although two seats currently remain vacant, the recruitment and appointment of new members to two other seats by the Governor and legislative leaders during 2007 raised the number of members seated to eleven. With these additions, the required quorum of seven should be more easily met, resulting in RFAs and awards being approved expeditiously.

* Comment 1

APPENDIX B - STATE COMPTROLLER COMMENTS ON AUDITEE RESPONSE

1. We agree that responsibility for contract oversight and performance assessment resides with the Department and not with the Board and, as such, have revised our report accordingly.
2. We acknowledge that Trust Fund monies withheld by the Legislature have been re-appropriated. However, we maintain that

the Department had not taken the steps necessary to award available Trust funds in a timely manner. As stated in our report, we found that contracts were awarded late, from six months to 487 days after RFAs were issued. If the contracts had been awarded timely, some of the unused Trust funds could have been expended.