



STATE OF NEW YORK
OFFICE OF THE STATE INSPECTOR GENERAL
Final Report
January 27, 2009

SUMMARY OF FINDINGS/RECOMMENDATIONS

The New York State Inspector General determined that Antonia Novello, former Commissioner of the New York State Department of Health (DOH), habitually abused the services of three DOH employees and one contract employee by requiring them to serve as her personal chauffeurs for non-work activities during her tenure as commissioner. The Inspector General found that the drivers were required to work over 2,500 hours of overtime directly related to Novello's personal activities, for which the state paid approximately \$48,000 in supplemental compensation to the three DOH employees. Furthermore, Novello grossly underestimated the taxable benefit she obtained from her personal use of the drivers and the state vehicle on her annual filing with the Department of Health. Novello's underreporting was then reflected in the federal W-2 form prepared for her by the state.

ALLEGATIONS

On July 5, 2007, the wife of a former DOH employee complained to the Inspector General that former Commissioner Antonia Novello used DOH security personnel for personal purposes unrelated to her official duties as Health Commissioner but was never held accountable. Specifically, the complainant alleged that DOH employees were required to serve as Novello's personal chauffeurs, providing transportation for her personal errands and trips.

SUMMARY OF INVESTIGATION

Prior to entering state service Antonia Novello was a physician in the public and private sectors. Novello had served as United States Surgeon General between 1990 and 1993, having been appointed to that position by President George H. W. Bush. Novello served as commissioner of the New York State Department of Health between June 15, 1999, and December 31, 2006. Novello was recently appointed vice president of Women and Children Health and Policy Affairs at Disney Children's Hospital at Florida Hospital, in Orlando, Florida.

The state Department of Health is responsible for a vast array of health, licensing, insurance and health care-related issues. The agency is based in Albany, and has offices throughout the state. As DOH commissioner, Novello was responsible for all agency

operations, earning an annual salary of \$136,000. During her tenure as commissioner, Novello also served as President of the Board for the not-for-profit Health Research Institute, which paid her \$60,000 annually, bringing her total yearly earnings to \$196,000. As head of a state agency, Novello was provided a state-owned vehicle.

I. Methodology

The Inspector General interviewed Security Guards Charles Williams and Thomas Generalli, who served as Novello's primary drivers during her tenure as DOH commissioner. Confidential Aide Raymond Gaul, who was hired in 2005 after Generalli transferred to another position, and Noreen Schifini, who served as Novello's driver in New York City, also were interviewed. The Inspector General also interviewed DOH executive staff and other security and secretarial employees who served the executive staff.

In conjunction with testimony from witnesses, the Inspector General examined state records to identify instances in which drivers worked overtime unrelated to state business. Investigators cross-referenced the drivers' time sheets with Novello's official calendar, credit card records, E-Z Pass records, travel vouchers, telephone records, vehicle use logs, and security access card records for the DOH offices and parking garage. Through interviews with secretarial and administrative staff in the commissioner's office, the Inspector General confirmed that Novello's business appointments and events all were recorded on Novello's calendar. The drivers' time sheets are available beginning in the year 2000, but Novello's calendar, which was maintained electronically at the agency, was only available for the final three years of her tenure, from January 1, 2004, to December 31, 2006.

The Inspector General calculated the cost to the state of Novello's inappropriate use of agency staff for personal business using the Comptroller's records of the employees' salaries and the meal allowances permitted by the employees' union contract. As Novello's calendar was unavailable for the years 2000 - 2003, the Inspector General estimated the cost to the state of Novello's abuses during that time based on the drivers' testimony that the frequency of Novello's personal use of the drivers was the same as during the latter years.

II. Background

As noted above, DOH assigned a car to Commissioner Novello. Although DOH has not employed a driver for the commissioner since the early 1980's, various security and mail room staff were assigned to drive the commissioner and other executive staff for official business. The security guards assigned to the executive offices served as Novello's primary drivers since she took office in July 1999. In 2005, DOH hired a confidential aide, whose primary responsibility was to drive the commissioner.

As the head of a state agency, Novello was required to be available at all times. Accordingly, state regulations permitted her to use the vehicle for both business and

personal purposes. However, Novello, like all state employees, was not permitted to use other state resources, including state employees, for personal benefit. Further, federal and state tax laws require that state employees, including agency heads, record and report any personal use of state resources, including the vehicle and driver, if any.

Nonetheless, employees reported that Novello's use of DOH staff for personal business was a recurring topic of discussion at the agency. Karen Westervelt, who served as the Director of Executive Office Operations between 1995 and her retirement in 2005, testified that during the several years prior to her retirement, conversations were held between executive staff and Novello regarding her inappropriate personal use of state workers. Westervelt testified that Novello was made aware of the permissible use of her state vehicle and the drivers. She indicated that the drivers occasionally complained to her about what Novello required them to do and that one security guard complained that Novello asked him to drive her in his personal vehicle. Westervelt stated that it was known throughout the office that the drivers frequently drove Novello on personal shopping trips.

Kelly Seebald, who succeeded Westervelt as Director of Executive Office Operations in 2005, testified that she believed that Novello used the drivers for inappropriate purposes, and that the problem pre-dated Seebald's arrival at DOH. Secretary to the Commissioner Mary Ellen Jacobson also testified that she was aware of the many personal demands Novello made of the drivers, which included sending them grocery shopping and accompanying her on extended shopping excursions. Jacobson further testified that at Novello's request she watered plants in Novello's home while Novello was out of town. Security Guard Charles Williams testified that he and other DOH drivers transported office staff to Novello's house to water her plants.

On March 14, 2001, an anonymous complainant claiming to be a former state employee informed the Inspector General that he had observed Novello shopping at Stein Mart in Latham, N.Y., that day between 11 a.m. and 12.p.m., while her state vehicle and driver were parked outside the entrance. The Inspector General referred the allegation to then-Director of State Operations James Natoli.

On June 30, 2003, the Inspector General received a second allegation regarding Novello. A former employee of DOH alleged that DOH's security desk was frequently unmanned because of Novello's inappropriate use of security guards as drivers. In December 2003 the Inspector General met with DOH General Counsel Donald Berens and referred the allegation to DOH to handle as an administrative matter. Berens reported the Inspector General's referral to then-DOH Executive Deputy Director Dennis Whalen.

According to Whalen, in June 2003 when he became aware of complaints regarding Novello's personal use of drivers, he broached the subject with Novello. In response, Novello requested a written memorandum outlining applicable laws, rules, and regulations governing her use of the state vehicle and driver, among other things. The memorandum, dated July 29, 2003, and initialed by then-Director of Executive Operations Karen Westervelt, advised Novello to avoid using staff for personal business:

When you are not in official travel status, and when you are not acting in your official capacity as the State Health Commissioner, avoid the use of the drivers or state staff.

Never under any circumstances request or direct that an employee perform a personal (non-state) service for you or conduct personal business on your behalf.

Whalen informed the Inspector General that, subsequent to this memo, he was notified on several occasions that Novello was continuing to use the security guards to drive her on personal errands. Whalen stated that he gave additional verbal warnings to Novello against such personal use of state employees or resources on these occasions, but to no avail.

Whalen stated that Novello responded to his warnings by repeatedly stating that, upon her appointment, the governor's office had promised her the use of a driver because she was not familiar with the area. Deborah Konopko, former Deputy Secretary for Health and Human Services to Governor George E. Pataki, informed the Inspector General that she did not authorize Novello to use state employees as drivers for personal business, is not aware of any such agreement, and is confident that no other member of the Governor's staff would give Novello permission to use a state employee as her personal chauffeur.

III. Novello's Improper Use of DOH Employees as Personal Drivers

The Inspector General determined that between January 1, 2004, and December 31, 2006, DOH employees were required by Novello to work overtime for inappropriate purposes on 260 separate occasions. In total, three employees worked approximately 1,100 hours of overtime during this period. Although employees reported that Novello ordered DOH employees to drive her for personal business with the same frequency during the earlier years of her tenure, DOH could not provide records of Novello's official activities for this earlier period. Accordingly, the Inspector General could not perform an exact calculation of improper overtime for the earlier portion of her term.

During the three-year period beginning January 1, 2004, Security Guard Thomas Generalli worked 164 hours of overtime to drive Novello for non-state business. Security Guard Charles Williams worked 879 hours of overtime devoted to Novello's non-state business. In total, the state paid at least \$22,500 to these employees for overtime worked in support of Novello's personal pursuits during the three-year period. Based on the average frequency of Novello's personal use of the drivers, the Inspector General estimated that DOH paid Novello's drivers over \$48,000 for unnecessary overtime during Novello's tenure as commissioner.

A third DOH employee, Raymond Gaul, was hired in 2005 after Generalli requested reassignment. Gaul was a retired City of Albany employee whose salary was capped according to rules of the New York State Retirement System. Although Gaul worked approximately 52 hours of overtime devoted to Novello's personal business during an 18-month period, he was not compensated above his regular salary.

Finally, the Inspector General determined that Novello inappropriately employed contract employee Noreen Schifini to be her driver when she was in New York City. Although Schifini was hired to perform Medicaid fraud investigations, she testified that because of her duties as the commissioner's driver she was unable to carry her own case load of Medicaid fraud investigations.

Security Guard Thomas Generalli

Security Guard Thomas Generalli informed the Inspector General that his assigned shift at DOH was 7 a.m. to 3 p.m., but that he regularly worked for Novello every other weekend between March 2000 and his transfer to another position in April 2005. Generalli testified that, for the first few months of Novello's term, before Security Guard Charles Williams was hired, he worked every weekend. Because such weekend duty was not part of Generalli's regular work assignment, he was credited for, and received payment for the weekend hours he devoted to driving Novello. Generalli also accumulated overtime working the security desk during the evenings if Williams, whose shift was 11 a.m. to 7 p.m., was driving the commissioner. Generalli was paid at the rate of 1.5 times one's ordinary hourly wage when working overtime.

Generalli testified that most of the driving he performed during the workday, including picking Novello up at her home between 8:30 a.m. and 9 a.m., was related to DOH business. However, Generalli estimated that approximately half the driving he performed on weekends was devoted to Novello's personal business, including frequent shopping trips to Colonie Center, Crossgates Mall, and Stuyvesant Plaza. Generalli would drive Novello both to and from these excursions, and Novello often asked him to carry her shopping bags. When driving back to Albany from the New York City office, Novello and Generalli would stop at Woodbury Common Premium Outlets.

Novello also required Generalli to perform personal errands for her in the state vehicle while she was not present in the car. Novello required Generalli to pick up her friends and family at the airport when they came to visit Albany. He recalled picking up one of Novello's close friends at the Albany airport 15 to 20 times without Novello present in the car. Novello also contacted him at home and instructed him to make trips to stores and deliver purchases to Novello's home. He recalled one incident when he was summoned to Novello's home to drive Novello's friend to the pharmacy.

In addition to driving the state vehicle on errands for Novello, Generalli performed other types of chores. When Novello was out of town, she would frequently assign Generalli to run errands for her, such as picking up a purchase and delivering it to Novello's or another person's house. He was also required to pick up her dry cleaning.

Generalli said other executive support staff and fellow security guard and driver Charles Williams also performed these types of tasks.

Generalli stated that he “pretty much did what they told me to do... It kept the peace all the way down the line, from her [Novello] all the way down to the girls [secretaries in the office] to us [the drivers].” Generalli added that he “was not going to ask the Commissioner of Health why she’s going” to a particular location. However, Generalli was concerned that people saw him take Novello shopping. He said that when he reported his concerns to his immediate supervisors, he was told, “When she asks you to take her somewhere, take her.”

Security Guard Charles Williams

Charles Williams was assigned to the security desk from 11 a.m. to 7 p.m., but also served as Novello’s driver whenever requested. Like Generalli, Williams worked every other weekend as Novello’s driver and earned overtime compensation of 1.5 times his ordinary pay rate for doing so. DOH employees, including all three drivers, agreed that Novello preferred to have Charles Williams as her driver. Of the three drivers whose time records were examined in this report, Williams incurred the most overtime working on Novello’s personal business.

Williams testified that his duties for Novello consisted of continuous shopping excursions to the Christmas Tree Shops, Macy’s and other stores. Williams stated that Novello’s fondness for shopping was so well known that employees in the office would give her sales fliers or coupons to encourage her to leave the office so that they would not have to work late. However, Williams lamented that in these instances he would have to work late accompanying Novello on her shopping trips.

Like Generalli, Williams ran numerous errands for Novello, such as picking up purchases and delivering them to Novello’s home. Novello also instructed Williams to return items to stores for her, for which he had to sign credit card receipts on her behalf. Novello often called him at home on his state cell phone, ordering him to pick up and deliver an item. If Williams ignored these calls, Novello would call his home telephone. Williams testified that he carried Novello’s shopping bags to her apartment, shopped for her groceries, and moved furniture into and around her apartment, which at times required the help of his teenage son. Although Williams was paid overtime by the state for the chores he performed for Novello, his son was not compensated for helping Novello move furniture. Once, after Novello purchased a heavy statue of Buddha on a shopping trip in Troy, Williams was required to carry it into her apartment and, a few days later, move it because Novello was dissatisfied with its location.

Although Novello owned a car and had a valid driver’s license, she always asked DOH employees to chauffeur her for her personal business. On the one instance that Williams recalled Novello driving her own car, she requested that Williams meet her in Harriman, N.Y., one weekend in the state vehicle and escort her back to Albany. After arriving in Albany, Williams took Novello’s personal car to have the air conditioning

repaired. At Novello's request, Williams then stored her car in his own garage and attempted to sell it on her behalf.

Like Generalli, Williams recalled making several trips to the Albany airport to pick up Novello's friends and family. At least annually, he was required to drive to the Newark airport, about 150 miles from Albany, to pick up and drop off Novello's mother. Williams also drove Novello to and from Newark and Albany airports for her personal travel. Between 2004 and 2006, Williams made 11 round trips to the Newark airport so Novello could fly direct to Puerto Rico for personal business. Williams made an additional 20 trips to Albany airport so that Novello could fly to Washington, D.C., or Michigan to visit friends.

After requesting and receiving Whalen's detailed memorandum instructing her not to use state employees for personal benefit, Novello undertook efforts to disguise the extent of her abuses. Williams testified that Novello called him into a conference room "and said she had been questioned on my hours and that we needed to calm down." Williams testified that Novello instructed him to spread his overtime hours out over the work week, so as not to attract attention.

Novello also instructed Williams to park the state car in discreet locations while waiting for her outside stores and other locations. On several occasions, she asked him to drive her in Williams's personal vehicle. Novello did not reimburse him for gas when she used his car, nor was he permitted to request reimbursement from DOH. On one occasion, Williams refused to use his car to take Novello and her family and friends sightseeing to Cooperstown, N.Y. Williams drove the group to Cooperstown in the state vehicle.

Williams's final assignment was on December 25, 2006, when Novello ordered him to leave his home at 1 a.m. on Christmas morning to drive her to the Newark airport for a flight to Puerto Rico. When she returned in early January 2007, he refused to pick her up in Newark because she was no longer DOH Commissioner. Williams testified that Novello had urged him to take vacation leave and use his personal vehicle to chauffeur her, but that he refused. Williams expressed concerns regarding this refusal in a December 2006 e-mail to Westervelt. He related to Westervelt his fears that Novello could negatively impact his employment at DOH as well as his wife's employment at another state agency. Nonetheless, Williams said it felt good to finally say no to Novello. Westervelt, who had left state employment, forwarded Williams's e-mail to Whalen.

Williams told the Inspector General that the non-state business he performed for Novello was known within DOH. He stated, "Other people knew. I mean it was no secret that she had me doing stuff that I really shouldn't...be doing." Williams said that people routinely saw him at the shopping mall with Novello, who would verbally abuse him in public. She "always yelled" if she bought expensive items and he didn't carry or handle them correctly. "(S)he would embarrass you anywhere," he said.

Like Generalli, Williams testified that he was never comfortable with the personal tasks Novello ordered him to perform. But, on the occasions when he would complain to his supervisors, he said that nothing was done about it. Williams said he felt that any further complaining would be fruitless and he did not want to jeopardize his job.

Confidential Aide Raymond Gaul

Gaul was hired by DOH as a confidential aide specifically to drive Novello. As Novello's driver Gaul performed tasks similar to those of Williams and Generalli. Gaul's position was non-union, and as a retired employee of the Albany City Fire Department, Gaul was not entitled to earn overtime. According to Director of Executive Office Operations Seebald, Gaul was hired as a driver because DOH could not incur any overtime expenses if Novello required him to work overtime. Gaul testified that while Novello was shopping, he would "wander through the mall" or go home and wait for her to call him to pick her up. Secretary to the Commissioner Jacobson testified that DOH's Operations Management Group, which supervised the drivers and approved their time cards, devised the strategy of hiring Gaul to reduce the agency's overtime expenses. However, Williams continued to be Novello's preferred driver.

Contract Employee Noreen Schifini

Novello employed contract investigator Noreen Schifini, who had been hired as a Medicaid fraud investigator, to serve as her driver when Novello was working in New York City. Schifini stated that, because of her duties to the commissioner, she was unable to carry her own case load of Medicaid fraud investigations. When Novello was not present in New York City, Schifini could only assist others' investigations by performing clerical work. Schifini recalled that, in addition to driving Novello for business-related activities, she picked up Novello's friends and family at airports and other locations at Novello's request. Schifini also drove Novello to major New York City department stores such as Macy's and Saks Fifth Avenue. Schifini testified that on one occasion she was asked by Novello to drive Novello's nieces from one location to another without Novello present in the vehicle. Schifini stated that she refused the assignment because she was uncomfortable being responsible for the two minor age girls.

IV. Novello's Underreporting of Taxable Benefit

Although state regulations permit certain agency heads, who must be available at all times, to use their state-assigned vehicles for personal business, federal tax guidelines require that the personal benefit gained from such use be reported as taxable income. The Inspector General obtained copies of the Employee Worksheets filed with the Department of Health by Novello for the purposes of imputing the taxable benefit she received from the use of the state vehicle during each year. These documents reveal that Novello grossly understated the benefit she gained from the personal use of a state vehicle, declaring only an average of 395 personal or commuting miles per year. One round trip to Newark Airport alone is approximately 300 miles. In addition, Novello did

not disclose any benefit in relation to having DOH employees drive her for personal business or perform errands for her. She left that portion of the form blank.

FINDINGS AND RECOMMENDATIONS

The Inspector General calculated that, between March 30, 2000, and December 31, 2006, New York State Health Commissioner Novello habitually abused her authority by requiring state employees work up to 2,547 hours of overtime in furtherance of her personal affairs, costing the state as much as \$48,000. In addition, Novello urged an employee to falsify his time sheets; to use his own vehicle, gas money and labor to work for her at the state's expense; and to sign credit card receipts on her behalf. Finally, the investigation found that Novello grossly understated the taxable benefit she received from the personal use of a state vehicle on official state documents during her entire time in office.

The Inspector General has forwarded the findings of this report to the Albany County District Attorney's Office for potential felony charges, including Defrauding the Government, Offering a False Instrument for Filing, etc.