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EXPLOITING MEDICAID THROUGH A SHELL  
NOT-FOR-PROFIT CORPORATION:  
*THE CASE OF SPECIAL NEEDS PROGRAM, INC.*

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NYSCOMMISSION  
ON QUALITY OF CARE  
FOR THE MENTALLY DISABLED

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## PREFACE

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This report is about how a husband and wife team conspired to exploit a not-for-profit mental hygiene agency licensed by the Office of Mental Retardation and Developmental Disabilities (OMRDD) by usurping control of its board of directors and improperly using its money for personal gain. Joseph Fricano became the executive director of Special Needs Program, Inc. (SNP) in late 1986 and was serving in that position and later as president of its board of directors until mid-1997 when, upon commencement of the Commission's investigation, he abruptly left the agency. His wife, Mary Ann Fricano, also an SNP employee and board member, simultaneously resigned from her respective positions.

The nature of the scheme was primarily to give the false appearance that a legitimate board was overseeing the operations of SNP although there actually was no independent board as required by law. Without a real board, the Fricanos had unfettered access to agency funds with no one to evaluate their job performance or approve agency expenditures including their own compensation levels. What actually happened in this case is that, while they used public monies to provide reasonably good services, they singly or jointly used substantially large amounts of the not-for-profit agency funds to pay themselves exorbitant salaries or for personal purposes. They were able to do this without seriously impacting the care and treatment provided to SNP's developmentally disabled recipients because the Medicaid rate of \$100,000 annually for each of its ten residents was simply too high.

Many fraudulent documents were generated by the Fricanos which allowed them to bilk the medical assistance program and to maintain their ill-gotten command over SNP. Annual government filings under the signature of Joseph Fricano which were the basis for continued Medicaid funding contained false listings of board members and misreported that large portions of SNP administrative salaries were resident care expenses. Numerous board minutes signed by Mary Ann Fricano asserted that certain individuals participated in meetings and board resolutions even though these individuals were not board members. Furthermore, a document filed with Fleet Bank by the Fricanos to transact business on behalf of the agency contained a forged signature of a fictitious board vice-president. (pp. 3-5)

The Commission's review of SNP's finances found that during the last three and one-half years the Fricanos ran the agency (January 1994 through July 1997) they withdrew \$752,000 (Appendix A) for their personal benefit, mainly through excessive wages and preferential fringe benefits.

- Joseph Fricano's wages from 1987 to 1997 totaled over \$1.1 million. His annual pay dramatically increased from a base of \$40,840 in 1987 to \$153,712 in 1996, and was projected to reach \$189,429 in 1997 had he not suddenly left the agency when the Commission began its investigation. (p. 6)
- Mr. Fricano's spiraling wages were a combination of unauthorized pay increases, most recently from \$50 to \$68 per hour, and frequent charges for overtime pay (even though staff estimated that he only worked at most 20 hours per week). (pp. 6-7)
- Joseph Fricano's pay was significantly higher than comparable salaries of executives running similar agencies. (pp. 8-9)
- The Fricanos enjoyed fringe benefits not available to other employees, including: a special disability policy; family health, dental and eyeglass coverage; payments for tuition and books; and, exclusive

use of two agency vehicles. Mr. Fricano fabricated agency policy manuals as part of efforts to retroactively legitimize preferential benefits he and his wife had been receiving. (pp. 9-13)

- Joseph Fricano used agency funds to obtain two "mail order" degrees – a Ph.D. in Holistic Nutrition and a Doctor of Divinity. (pp. 11-12)
- The Fricanos received about \$6,000 for mileage reimbursements even though they had agency-funded vehicles and were not using their personal vehicles for agency business. (p.14)
- Joseph Fricano engaged in related party transactions with the agency through the purchase and sale of several vehicles which were processed through local car dealerships. (pp.14-15)
- As part of the scheme to mislead the state and defraud the medical assistance program, the agency's certified public accountant (CPA), who prepared the financial reports submitted to the state, was supplied with false board minutes, fabricated personnel manuals, and inaccurate information on time spent by executives for inclusion on cost reports used ultimately by OMRDD to set Medicaid rates. (pp.17-18)
- The Fricanos incurred thousands of dollars in unnecessary costs in order to operate an administrative office out of a remote location which disguised the extent and nature of the services they performed. (pp. 19-20)
- There were many transactions which lacked supporting documentation and/or did not appear necessary or related to the business purposes of SNP, including:
  - unnecessary purchases of over \$7,000 for collectibles and memorabilia, many of which could not be located upon the Fricanos' departure (p.20);
  - over \$10,000 in questionable credit card billings, including purchases of jewelry, airfares, and numerous unspecified charges (pp. 20-21); and
  - over \$11,000 in unsupported direct payments/reimbursements to the Fricanos (p.21).

SNP's financial condition was so jeopardized by the misapplication of agency funds that liens were placed upon its property due to delinquent payroll taxes, and other payments, including a New York State facility tax, were delayed. In fact, the Fricanos at times found it necessary to lend the agency funds, at 8 or 9 percent interest, to keep the operations afloat. (pp.16-17)

At the onset of the Commission's investigation, when the Fricanos resigned their positions and fled the agency, Joseph Fricano filed for disability benefits and is now collecting \$75,000 a year under the special policy paid for by SNP. Yet, he was already receiving disability income under a previous claim with the City of New York which he collected while working at SNP by filing false statements to the City attesting that had no other income.

On October 29, 1997, the Commission based on its preliminary findings brought to the OMRDD Commissioner's attention that there was good cause to believe the SNP was operating as a sham not-for-profit corporation, was providing false information to OMRDD about its operations, and was siphoning off Medicaid funds through excessive salaries and other improper expenses. The Commissioner agreed that as the state regulatory agency OMRDD needed to act quickly to monitor SNP operations. The Commission agreed to cooperate with OMRDD by giving it the information it needed to make appropriate decisions about the continuance of this agency and its programs, and to make available information and records needed to understand the above events.

During the pendency of the Commission's review, OMRDD regularly monitored the care at the agency and worked to assure that there was a properly constituted board, including appointing an

OMRDD Commissioner designee to the board. OMRDD has also indicated in its response to a draft copy of this report that Medicaid rates for intermediate care facilities are being restructured based on resident disability levels and efficiently delivered services and that it will be providing new training to members of boards of directors. (Appendix B)

SNP in response to a draft of this report outlines the affirmative steps it has taken to have a legally constituted board and to improve its oversight of this agency and assure its fiscal integrity. (Appendix C) While SNP agreed overall with the factual content of the Commission's investigative findings, some minor modifications were made to the final report.

Pursuant to its statute requiring that the Commission give notice to the "appropriate law enforcement official," which in this case is the United States Attorney for the Northern District of New York, when the Commission accumulated sufficient evidence to conclude that crimes may have been committed, the Commission gave notice of its findings to the U.S. Attorney who along with the Federal Bureau of Investigation cooperated with the Commission in this investigation.

This report represents the unanimous opinions of members of this Commission.



Gary O'Brien  
CHAIR



Elizabeth W. Stack  
COMMISSIONER

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# INTRODUCTION

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## Background

This report confirms allegations of misappropriation, misuse and mismanagement at a Medicaid-funded residence for ten persons with mental retardation in Columbia County, New York. Special Needs Program, Inc. (SNP) was incorporated as a not-for-profit corporation on April 2, 1981. Its legally authorized purposes were to develop programs and services and to foster learning and growth for persons with mental retardation and developmental disabilities; and, to construct and operate housing for these citizens pursuant to operating certificates issued by the state Office of Mental Retardation and Developmental Disabilities (OMRDD). SNP's corporate charter provided that "it is not formed for pecuniary profit or financial gain, and no part of the assets, income or profit of the corporation is distributable to, or enures to the benefit of its members, directors, officers, or any private person."<sup>1</sup> However, SNP deviated from the legitimate purposes of the corporation and was converted into a personal profit-making machine for its executive director and his wife.

SNP operated out of three locations: the Mildred Elliott residence, an agency-owned Intermediate Care Facility (ICF) with a certified capacity of ten beds at 400 Town Hall Drive, Greenport, New York; a leased transportation facility and office at 98 Green Street, Hudson, New York; and, until mid-1997, a leased administrative office at 101 Main Street, Philmont, New York.

SNP has been receiving about \$1 million annually from Medicaid to run its OMRDD-licensed ICF for individuals with autism and other disabilities and \$200,000 to \$300,000 annually from counties, school districts and day treatment providers to transport individuals with disabilities to and from educational facilities and day treatment programs.

## Scope of Commission's Review

The Commission's inquiry was initially based on a complaint alleging that SNP was "over diagnosing" residents to receive higher Medicaid residential and transportation reimbursement rates. The complainant alleged further that SNP's executive director was rarely seen at the agency and that all direct contacts were with a program director who had little or no decision-making authority.

Almost immediately, a serious conflict of interest was discovered at the agency, potentially undermining its public purpose. The 1995 financial filing with the Internal Revenue Service (Form 990) showed that the executive director and his wife were the only two board members. This meant that there was not a legally constituted board of directors to exercise the fiduciary responsibility for overseeing the agency: Joseph Fricano, the executive director of SNP, was listed as board president, treasurer and chief executive officer; his wife, Mary Ann Fricano, also an employee of SNP, was listed as board secretary. Mary Ann Fricano handled certain payroll functions for the agency. Among the potential conflicts of interest in having employees as the only board members is their inability to legally

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<sup>1</sup> Under the Internal Revenue Code §501 (c) (3), tax exempt corporations such as SNP are expected to be organized and operated exclusively for a charitable or public purpose rather than a private purpose. Organizations that engage in business dealings with their own board members or officers run a serious risk of violating the inurement prohibition and private benefit restriction of the Code.

evaluate their own performance and fix their own compensation. Pursuant to the New York Not-For-Profit Corporation Law §702 (hereinafter N-PCL), it takes at least three members to constitute a legitimate board. Therefore, it did not come as a surprise that Mr. Fricano's 1995 compensation of \$142,272 reported on the Form 990 appeared unusually high. Then, when the existence of their agency-provided vehicles and other perquisites were discovered, it became evident to the Commission that the Fricanos were using their control or influence to exact personal gain from this publicly-funded agency.

Another issue of concern to the Commission was the accuracy of SNP's cost reports which are filed annually with OMRDD as a condition for receiving Medicaid reimbursement for services rendered to the ten residents living in its ICF. The state's Medicaid Management Information System (MMIS) showed that SNP received \$100,000 annually for services for each ICF resident and from \$58 to \$149 daily to transport each resident to day treatment programs in Albany and Rensselaer counties.<sup>2,3</sup> Since providers should be reimbursed through rates that are sufficient to meet only the costs of efficiently provided services, the Commission sought to determine how the agency could excessively compensate its executives while still providing good care.

In May 1997, the Commission's program staff reviewed the conditions and the quality of SNP's residential services and found them to be good. SNP had a clean and safe environment with ample food and adequate staffing. However, the Commission learned the executive director was rarely seen at the facility. On June 17, 1997 the Commission sent a letter to the SNP executive director announcing its plans to conduct a formal financial review of the program. When it became apparent the executive director was unavailable to establish an audit starting date, a copy of the engagement letter was sent by facsimile transmission to the agency's director of program operations, Timothy Hime. On July 8, 1997, the Commission began its on-site review of the SNP's accounting records generally for the period January 1, 1994 through July 31, 1997, albeit board governance and compensation issues were examined for earlier periods as well.

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<sup>2</sup> These sums do not include costs of day treatment, medical and other charges for these residents by other providers.

<sup>3</sup> Effective July 1, 1996, the per diem transportation rates paid directly to SNP through the MMIS system ended when day treatment provider rates were raised to include transportation costs and they became responsible for reimbursing transportation agencies such as SNP. The rates negotiated to transport SNP residents were lowered to about \$30 per day.



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## FINDINGS

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### Fricanos' Departure From the Facility

Throughout the course of its financial review of SNP, Commission fiscal staff never had any contact with either the executive director or his wife. Joseph Fricano went on disability leave when the Commission began its audit work at the facility's office in Hudson, N.Y.<sup>4</sup> Mary Ann Fricano never gave notice but simply ceased reporting to work. However, a written notice, dated June 25, 1997 and signed by Joseph and Mary Ann Fricano, was sent to the agency stating that they were resigning as board members and officers because "we plan to leave New York." Although it had been known for some time that the Fricanos planned upon moving to Florida sometime later that year, the departure of the Fricanos was described by SNP staff as "surprising" and "out-of-character." When Commission fiscal staff on July 21, 1997 gained access to SNP's remote office located in Philmont, New York, a rented, home-like office paid for by Medicaid funds for the near-exclusive use of the Fricanos, it found the office had been "ransacked" (i.e., papers, litter, and cans strewn about, computer files deleted).

The timing and nature of the Fricanos' departure naturally raised new suspicions. For example, being unable to question the Fricanos directly would make it much more difficult to understand corporate transactions, given that the Fricanos clearly financially benefitted significantly from corporate funds.

### Phantom Board of Directors

Consistent with the statutory norm [N-PCL §701(a)] that management of a not-for-profit corporation is vested in the board, in its engagement letter to Mr. Fricano the Commission made it clear that "(w)e would like to talk to you about the oversight role of the Board of Directors."<sup>5</sup> However, when it became clear that Joseph Fricano, president of the board, was not available to interview, it was necessary to rely on the board minutes, which should be a complete and accurate record of meetings and sufficiently detailed to reflect all discussions and decisions. A cursory review of the minutes showed that the board meetings were usually attended by only one other member besides the Fricanos, raising the question of how the Fricanos' compensation levels could have been fixed by a majority vote of disinterested board members as required by law.<sup>6</sup> When the Commission contacted these other members, it soon found that none of the individuals identified as attending many of the board meetings had actually done so despite what was reflected in the minutes.

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<sup>4</sup> The Commission began its field work at the Hudson office on July 8, 1997. According to SNP's director of program operations, Joseph Fricano called in on that day stating he was going on disability. The records of the insurer, The Paul Revere Life Insurance Company, indicate that Joseph Fricano's disability under this policy began on July 7, 1997.

<sup>5</sup> Board members stand as fiduciaries to the corporation and under N-PCL §717 are expected to act in good faith to promote the best interests of the corporation. Given the dominating and controlling positions of the Fricanos as members and officers of its board, as key employees, and as husband and wife the presumption that they would unbiasedly act for the interests of the corporation diminishes.

<sup>6</sup> N-PCL §§ 708 (d) and 715 (b) and (f).

For example, although the board minutes show one member attending six meetings between January 1996 and June 1997, the member said that he did not in fact become a board member until July 14, 1997, after he had been asked to attend by Joseph Fricano.<sup>7</sup> A second member listed in the minutes as attending four meetings from November 1995 to January 1997 in fact attended her first board meeting on July 14, 1997 after she was asked to do so a week earlier by Joseph Fricano. These July 1997 invitations to the two members appeared to be an attempt by Mr. Fricano at an *ex post facto* legal justification to coverup wrongdoing. It is surely not coincidental that his actions were taken with the onset of the Commission's investigation. A third member listed as attending eleven meetings from July 1993 to May 1995 said she had no contact with the agency since the late 1980s. (A fourth and final board member, who was listed on filings to OMRDD as a board member but never recorded as attending a meeting, affirmed that he had never been a board member.)

Given the seriousness of these findings, there are questions about the legitimacy of the actions allegedly taken by the board as reflected in the following excerpts:

"A review was made of policies and salaries and all those who performed good service would receive compensation." (March 21, 1997).

"A review of all salaries, benefits and raises was made as well as review of the policy manual. All those employees due raises would receive them." (May 7, 1996).

"Mr. Fricano requested that staff should be considered for raises this year as our budget reflected this increase." (March 7, 1996).

"Raises were discussed for all employees." (March 24, 1994).

Notwithstanding, whether board business was properly conducted, even these references were inadequate and vague without specific discussions regarding individual compensation levels. For example, although Mr. Fricano received a 36 percent pay increase from \$50 to \$68 per hour in February 1996, the board minutes not only failed to describe his compensation but also are bereft of any indication that the matter was even discussed at any previous board meeting.<sup>8</sup>

Indeed, more than erroneously and illegally set, these salaries might be fraudulent because board members recorded as present in the minutes at these meetings said that they were not members of the board at that time. Joseph Fricano was obligated to be aware of the legal requirement that boards of directors consist of at least three members because the SNP Certificate of Incorporation, which he signed, contains language to that effect. Falsification of the board membership would give the Fricanos absolute control over the agency. Although the minutes record that members made various motions and

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<sup>7</sup> This member said that at his first meeting on July 14, 1997 he was shocked to learn that board minutes indicated he had attended prior meetings. When it seemed he was being "set up" for something at this meeting and he became aware of inappropriate actions, he immediately resigned from the board.

<sup>8</sup> Of particular concern was the apparent failure to have a board in place to evaluate the performance of the Fricanos and set the pay level for Joseph Fricano. Under N-PCL §202(a)(12) the board has the power "To elect or appoint officers, employees and other agents of the corporation, define their duties, *fix their reasonable compensation* and the reasonable compensation of directors, and to indemnify corporate personnel. Such compensation shall be *commensurate with services performed*." (emphasis supplied)

resolutions at SNP board meetings, the Fricanos' compensation was not legally valid since it was not fixed by a legitimate board and the board minutes were fabricated to shield from public scrutiny, government oversight, and the legitimate corporate authorities the fact that SNP was a sham corporation.<sup>9</sup>

The Commission also found that a Certificate of Authority submitted to Fleet Bank authorizing Joseph Fricano to transact business on behalf of SNP (sign checks, obtain credit, etc.) was forged. The authorizing signature of the board vice-president (C.H.) was fake. This bank document dated March 8, 1995 asserts that the SNP board voted to give Mr. Fricano sole signature authority over SNP finances. It shows signatures of Joseph Fricano as President, C. H. as Vice President, and Mary Ann Fricano as Secretary/Treasurer. However, Commission staff spoke with C. H. and showed her the bank form. Although she was involved with the agency during the late 1980s when SNP first opened its ICF, she was not a board member in 1995 and firmly denied that the signature was hers.

Other official documents were falsified and sent to OMRDD.<sup>10</sup> As a condition of program certification, both state law and federal regulations require periodic disclosure of the current members of the corporate board of directors.<sup>11</sup> From 1993 to 1997, SNP submitted annual filings to OMRDD which purportedly contained a listing of SNP board members. The filings each contained a list of four names, two of whom were always the Fricanos. The other names listed were C.H. (1993-1997), E. K. (1993-1996) and P. C. (1997). They told the Commission that they had never sat on the board during the periods indicated.

In sum, the Commission found evidence that the following documents were falsified in some important aspect: (1) minutes of the board of directors; (2) a Certificate of Authority filed with Fleet Bank; and, (3) Disclosure of Ownership and Control Interest Statements filed with OMRDD.

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<sup>9</sup> The Commission learned that board minutes, reportedly drafted by Joseph Fricano, were brought to the agency and typed *en masse* just prior to the annual audit performed by the agency's independent accounting firm which reviewed these documents as part of its audit. Mrs. Fricano signed the typed minutes as board secretary.

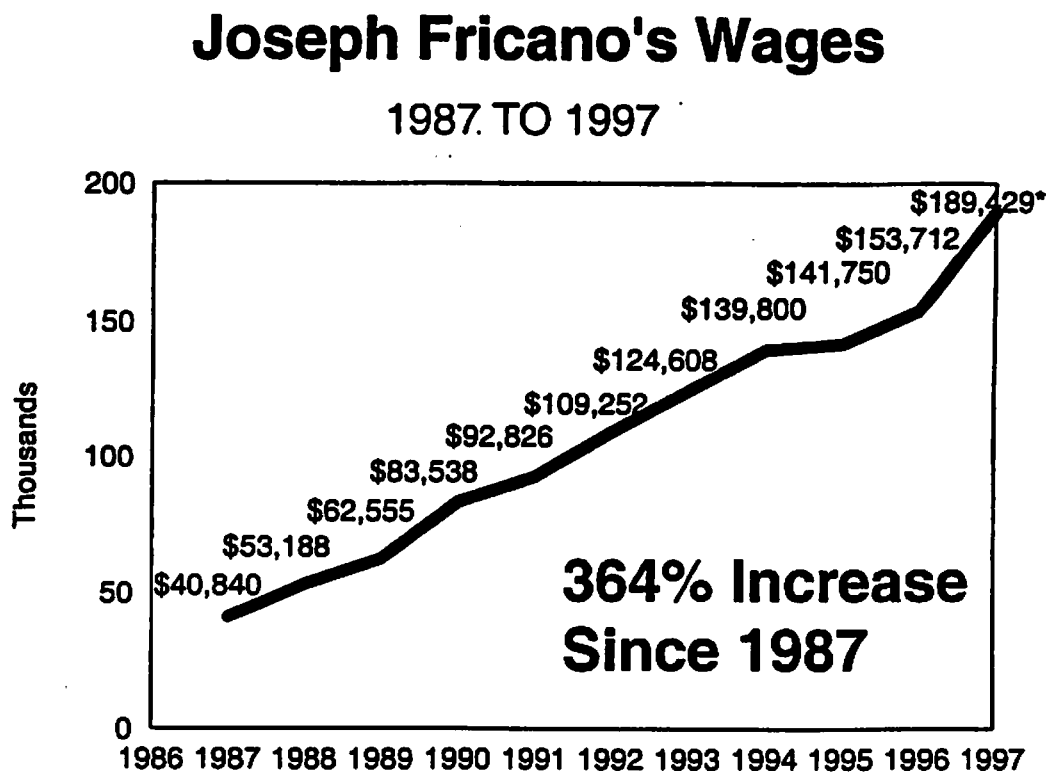
<sup>10</sup> "Disclosure of Ownership and Control Interest Statement," Department of Health and Human Services, Health Care Financing Agency, Form HCFA-1513.

<sup>11</sup> N.Y. Mental Hygiene Law §13.39 states that "the executive director, chairperson or president of a voluntary, not-for-profit corporation or facility which is subject to the jurisdiction of the office of mental retardation and developmental disabilities shall furnish annually to the commissioner a list of the names and addresses of the current members of the board of directors or trustees of such facility or corporation. Failure to furnish such annual list shall remove such facility or corporation from consideration for recertification." Similar disclosure requirements are contained in federal regulation 42 CFR 455.104 as a condition for participation in the Medicaid program.

## Excessive Executive Compensation

### Wages

While the essential size of Special Needs Program Inc. has been relatively stable since the opening of its ten-bed ICF in October 1986, Joseph Fricano's wages have dramatically increased from a base of \$40,840 in 1987 to \$153,712 in 1996. Mr. Fricano's 1997 wage was projected to reach \$189,429 had he not abruptly departed. Figure 1 traces his wage growth (364 percent) for the eleven-year period.



**Figure 1**

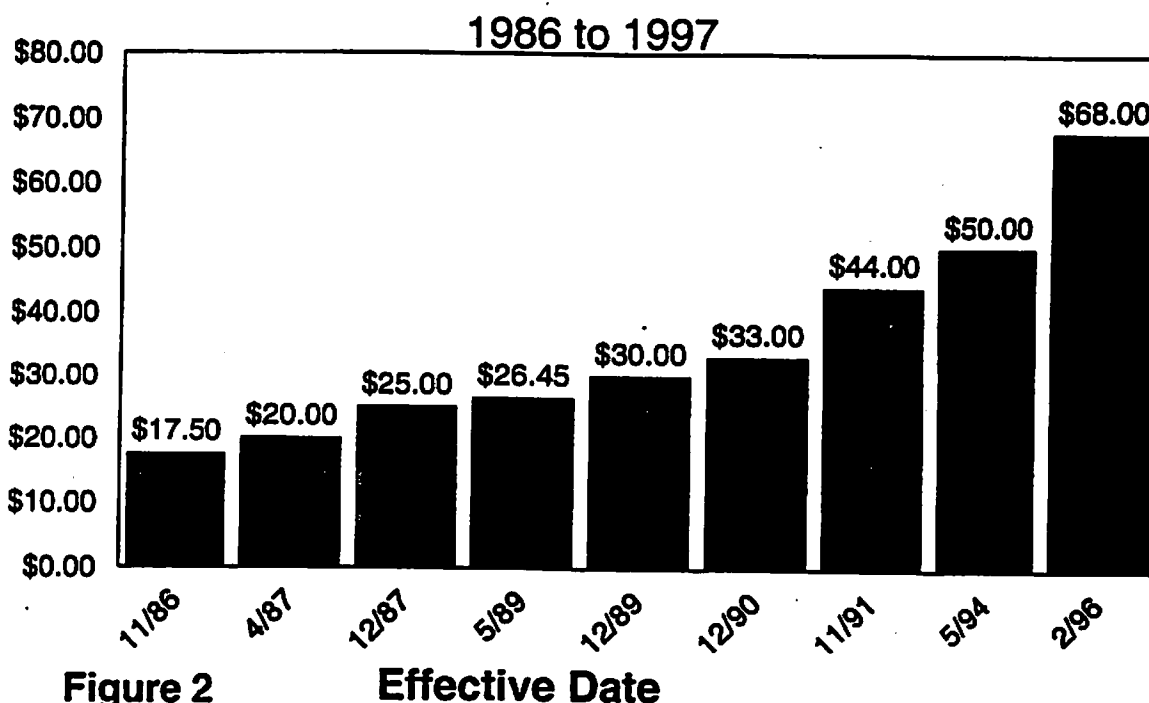
\* Annualized (i.e., projected based upon \$102,000 wages paid in the first 28 weeks of 1997)

Mr. Fricano's dramatic earnings growth was facilitated by the practice of compensating himself on a hourly basis with workweeks frequently exceeding 40 hours. Yet, Mr. Fricano appeared to be working only part-time as indicated by interviews with SNP staff and the part-time office hours maintained at the Philmont administration facility. The Commission compiled weekly payroll records which showed that Joseph Fricano's pay was greatly enhanced by extending his reported workweek beyond 40 hours. For most of the years after 1989, his paycheck reflected that he was reporting over 50 hours per week. As a result, his total pay was often 25 percent or more higher than his base salary (assuming a 40-hour week).

Year	1987	1988	1989	1990	1991	1992	1993	1994	1995	1996	1997
Average Hours Paid	38.6	40.4	45.1	51.9	51.0	49.7	54.5	56.5	54.3	44.7	53.6

The other component affecting the growth of his earnings was increases in his hourly rate of pay. Figure 2 traces the changes in Mr. Fricano's rate of pay from 1986 when the ICF first opened and he was paid \$17.50 until February 1996 when his hourly pay rose from \$50 to \$68. This one raise alone generated an additional \$37,500 for Mr. Fricano in 1996, which was more than the annual earnings of any other agency employee except the director of program operations who earned \$48,111. Had Mr. Fricano not resigned in July 1997, it is estimated on an annualized basis he would have been enriched by over \$50,000 in 1997 from this single hourly pay increase.

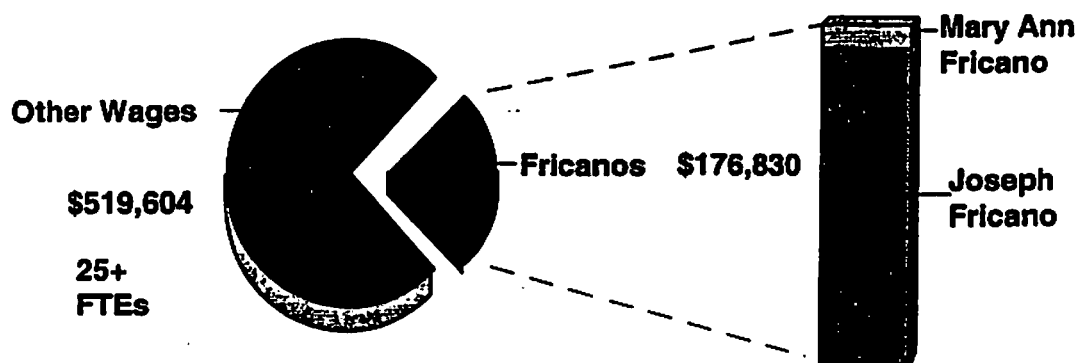
## Hourly Pay Rate Joseph Fricano



While Mr. Fricano's pay nearly quadrupled during the first ten years SNP operated its ICF, pay scales for direct care, support, and clinical employees at SNP saw much smaller increases. The Commission performed an analysis of SNP pay rates from 1987 to 1996 and found that the average pay for support, clinical and direct care staff increased by 21.9 percent (from \$7.30 to \$8.90 per hour) when the Consumer Price Increase (CPI) increased 38.1 percent. The factor used by OMRDD to "trend forward" (i.e., to increase due to inflation and other factors) ICF rates increased by 49.8 percent during this period. Thus, at a time when direct care and other staff wages lagged well behind inflation, Mr. Fricano received large pay raises unauthorized by any valid actions of the board of directors. Indeed, if Mr. Fricano had limited himself to the same percentage as the increase for other staff from 1987 to 1996, his rate of pay for 1996 would have amounted to about \$25.00 rather than \$68.00 per hour. The implication of these actions are perhaps best reflected in the fact that during this time period when more monies were misappropriated by Mr. Fricano the staffing levels for the ICF decreased by more than ten percent.

Joseph Fricano's gross earnings for 1996 (\$153,712) alone accounted for 22 percent of SNP's total payroll expenditures. When Mrs. Fricano's wages are considered, 25 percent of SNP's payroll went to the Fricanos and 75 percent to SNP's other 25 full-time-equivalent employees (Figure 3).

## SNP 1996 Wages



**Figure 3**

Not surprisingly, while the Fricanos were being generously rewarded for ill-defined and part-time services through salary and perquisites, the financial condition of the agency steadily weakened. The Commission found that SNP had to borrow funds to meet cash flow, deferred payment of facility taxes to OMRDD, and deferred payment of its bills including payroll withholding taxes. Particularly troublesome was delinquent federal and state tax payments which led to penalties being assessed and liens being placed on the ICF property during 1996 and 1997. Also, while the Fricanos were exploiting the agency's finances, on several occasions from 1994 to 1996 they loaned the agency tens of thousands of dollars at 8-9 percent interest to keep the agency afloat, thus further enhancing their personal gain from SNP.

In order to determine how excessive the wage payments to Mr. Fricano were, the Commission, using 1996 as a reference point, looked at the compensation of executive directors for eight OMRDD providers in the upstate region with revenues ranging from \$2.8 to \$13.3 million. This examination revealed that executive director salaries in much larger programs (average revenues \$8,350,000) ranged from \$62,700 to \$101,940 with an average of \$78,847. During this period, Joseph Fricano's wages were almost double the average at \$153,712 to operate the smaller \$1.3 million agency.

The Commission also evaluated Joseph Fricano's salary using a study of 1992 executive compensation for not-for-profit mental hygiene agencies in New York State. This study found that in the Capital District the median salary of executives for agencies with revenues of \$1 to \$5 million was

\$50,787.<sup>12</sup> During that same period, Joseph Fricano's wages totaled \$109,252, or 115 percent higher. In conclusion, the remuneration provided to Joseph Fricano was not legally authorized and was not legally reasonable because it was not commensurate with the salaries paid to executives at similar agencies. Ultimately, it put SNP in grave financial jeopardy.

## Fringe Benefits

Wages were not the only area of SNP spending that brought personal gain to the Fricanos. Over the years they enjoyed preferential fringe benefits which were not available to all employees, including: a special disability policy; family health, dental and eyeglass coverage; and, coverage for tuition and related publications. They also had the exclusive use of two agency-leased vehicles—a 1995 Chevrolet Blazer and a 1995 Chevrolet Lumina. And, even though the agency paid the full operating costs for these vehicles (gas, repairs, insurance etc.), they inappropriately billed the agency for mileage as though they were operating their own vehicles on agency business [i.e., at or near the IRS personal car mileage rates (e.g., 30 cents/mile)].

Agency personnel policy manuals which describe employee benefits were labeled "Reviewed/Revised: (date) By the Special Needs Program, Inc. Board of Directors" under the signature of Joseph Fricano. Not only did these policies often favor the Fricanos but also, in some instances, they were worded in such a manner to benefit themselves exclusively. At other times, substantial benefits were taken by the Fricanos absent any written policy. The Commission also discovered some policies added to the facility's manual were backdated by Joseph Fricano to cover benefits that had already been paid. The Commission believes that the manuals were part of a larger scheme by Joseph Fricano to cover up his unilateral control over SNP by making it appear that a full board was overseeing agency policies and procedures.

### (a) Disability Policy

As discussed earlier, the Commission believes that it was not coincidental that Mr. Fricano went on disability right after a letter announced its planned audit of SNP's finances. Subpoenaed records from the Paul Revere Insurance Company showed that SNP, while maintaining the state mandatory disability coverage for all employees (including Joseph Fricano), was paying \$4,000 annually for a disability policy exclusively for the benefit of Joseph Fricano. SNP's 1988 application indicated that Joseph Fricano's annual pay was \$55,000 and the policy premium was \$1,558. Over the years, options to increase the coverage were exercised based upon increases in Mr. Fricano's pay. The 1997 premium of \$4,000 would entitle the then 51-year old Joseph Fricano to a \$75,000 yearly benefit until he reaches age 65.

The Paul Revere application signed by Joseph Fricano appears to contain false statements. He stated that he had not been receiving any disability or pension benefits but in fact Mr. Fricano was receiving disability retirement payments of over \$10,500 annually relating to a different pre-existing injury received while employed as a corrections officer for New York City in the late 1970s. The Commission found further that Mr. Fricano periodically submitted documents to New York City which falsely reported he had no other income. Had he disclosed

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<sup>12</sup> *Department of Mental Hygiene, Study of Compensation in Not-For-Profit Corporations*, Report 93-D-29, State of New York, Office of the State Comptroller, Division of Management Audit, February 1994.

his salary at SNP, this income would have been used as an offset against his disability benefits. The prior existing disability raises serious questions about the legitimacy of Mr. Fricano's coverage with Paul Revere, his claim under this policy, and the propriety of the benefits received from New York City.

**(b) Family Health Insurance**

According to SNP policy manuals, the agency provides health benefits for only its full-time employees--which the manuals defined as working 30 or more hours per week. However, an exception was made for Mary Ann Fricano for years when she was not an employee of SNP or worked less than full time. Although not full-time until July 1994, Mrs. Fricano received health coverage as part of family coverage for Joseph Fricano, costing the agency \$4,000 yearly--more than double the cost of individual coverage.<sup>13</sup> The policy manual made no reference to family coverage until a June 1995 revision which stated that "Full-time employees who are married and whose spouse works for the Agency are eligible for Family medical benefits with no additional deductions from their payroll."

**(c) Dental and Eyeglass Payment/Reimbursement**

During 1994 and 1995, SNP paid over \$5,000 to cover dental work that was done for Joseph Fricano and his family. The following is a summary of the paid dental bills:

	1994	1995
Joseph Fricano	\$2,760	\$1,730
Mary Ann Fricano	362	75
Liz Fricano (daughter)	75	0

SNP had no written policy regarding dental coverage until June 1995, after most of the above expenses were incurred. The SNP policy manual dated June 22, 1995 added the following paragraph under the section describing additional benefits:

**b. Dental                      Revised 10/19/87**

All necessary dental work is available to employees with 5 or more years of full-time service and those employees with family benefits who have 5 or more years of service. Employee can choose the dentist. If a situation exists where an employee needs this benefit they must make a request for special consideration.

Although the 1995 manual stated that this section was last revised October 19, 1987, the Commission examined all available prior policy manuals (1989 to 1994) and found no mention

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<sup>13</sup> The Commission found only part-time payroll payments to Mrs. Fricano from 1990 to mid-1994 and found no payroll records of payment prior to 1990. Yet, SNP was paying for the Fricanos' family health coverage since late 1988.



of dental coverage or a pre-existing agency dental policy. Because the 1995 manual was provided to the agency's CPA as part of its audit of 1994 records, the backdating of this policy could be viewed as an attempt to validate yet another unauthorized arrangement by Mr. Fricano to exact personal gain from this not-for-profit entity. (The Commission noted a few other SNP administrative employees who worked closely with Joseph Fricano had dental reimbursements, albeit they were significantly less than the \$5,000 benefit to the Fricanos.)

Similar to the dental policy, an eyeglass reimbursement policy was initiated in 1995 and backdated to 1987. From 1994 to 1997, SNP paid over \$2,200 for eyeglasses for the Fricanos, much of which was paid prior to the 1995 policy. As usual, the Fricanos benefitted the most from such reimbursements, with only a few administrative staff also receiving limited funds.

#### **(d) Retirement Benefits**

During 1996, the Fricanos were reportedly openly discussing their plans to retire to Florida sometime during the following year. In apparent anticipation of this, Joseph Fricano amended the 1996 personnel manual by adding retirement benefits which would have provided lifetime benefits exclusively for himself and his family (e.g., family health, dental, eyeglass coverage, life insurance) because only they qualified under the self-chosen criteria. According to the updated manual, "All full time employees with 15 years of service may retire after the age of 50 and collect all benefits listed in this manual. If the policy changes, the retiree shall be grandfathered." Since both Fricanos turned 50 that year and had just attained 15 years of service according to SNP seniority lists, this transaction with the corporation on behalf of themselves had the potential of generating an array of lifetime benefits to these relatively young individuals.<sup>14</sup>

The updated manual also added a pension plan "for those who qualify" and referred to a separate pension manual for eligibility rules. The Commission and SNP staff could not locate the separate manual. However, given the pattern of behavior, it seems likely that this pension plan would have benefitted the Fricanos at the expense of SNP.

#### **(e) Tuition Reimbursement**

The agency's policy manual provides (since 1991) that "Full-time employees may request to have the Agency contribute toward the cost of college tuition for courses only related to the employee's job at Special Needs. Approval must be made by the Director of Agency (sic) and at the discretion of the Director." The 1995 manual deleted the language "for courses only related to the employee's job at Special Needs" and added, "The availability of the benefit is based on the budget, length of service of the employee, the probability of staying with the agency and if the courses will benefit the Agency." The 1996 manual further restricted the reimbursement benefit based on the grade received and required validated receipts which needed

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<sup>14</sup> Prior to opening the ICF in 1986, SNP reportedly operated a summer camp program. The 1996 seniority lists prepared by SNP indicated that Mr. and Mrs. Fricano began working for the agency in April 1981 when it first incorporated. The seniority lists show that when the retirement policy was implemented in 1996, only the Fricanos attained 15 years of service, all other employees had less than ten years of service and nearly all other employees had less than five years of service.

to be submitted along with the grade prior to reimbursement. Throughout this period, no dollar limits were placed on the amount of this benefit.

Despite an absence of documentation justifying course work, the agency paid for Joseph Fricano to obtain mail order degrees from two correspondence schools specializing in "non-traditional education:" (1) a Ph.D. in Holistic Nutrition from the Clayton College of Natural Health, Birmingham, Alabama and, (2) a Doctor of Divinity from the American Institute of Holistic Theology, Youngstown, Ohio. Both programs focus on "health and healing" through natural substances and the environment. They appear also to relate to health care spas which Mr. Fricano was establishing in the State of Florida (*See, infra*, Discussion at p. 20). Also noted were payments on behalf of Mr. Fricano to the Mind Extension University, Englewood, Colorado, the Southern California University For Professional Studies, Santa Ana, California and the North American University, Scottsdale, Arizona. The total of SNP payments for tuition, books and fees from May 1993 to May 1997 for these various schools was over \$13,000. Additionally, during this same period, there were over \$5,000 in books and publications paid for by SNP, many of which appear related to course work taken. During the Commission's investigation, most of these books were not found at the agency.

Although SNP's books and records contain scant documentation of education benefits provided, the Commission found that only one other employee benefitted from tuition reimbursement. In 1994, the Clayton School was paid \$1,040 for Mr. Fricano's former executive assistant for "cont ed" expenses. In this case, as was the case generally, the cost was paid in advance by the agency with no documented assessment by SNP of the relatedness of the course work to the agency's mission. The executive assistant worked only a short time for SNP and left the agency without completing the course work.

## **(f) Automobiles**

During its review of SNP, the Commission became aware of other fiscal abuses by corporate officers and others which were contrary to the legitimate public purpose of this corporation. These transactions included the leasing of vehicles for agency senior executives, the failure to follow IRS regulations in reporting compensation for employer-provided vehicles, reimbursements to the Fricanos for the miles they traveled in employer-provided vehicles, and the less-than-arm's-length purchase and sale of vehicles between Joseph Fricano and the agency.

### **(1) Employer-Provided Automobiles**

SNP provided both Joseph and Mary Ann Fricano with leased automobiles. These automobiles were available for both business and personal use and all costs including fuel, maintenance, and insurance were paid using agency funds.

During the period examined, SNP supplied Joseph Fricano with two different vehicles. In April 1992, SNP provided Joseph Fricano with a 1992 Ford Explorer with an estimated value of \$24,000. This vehicle was leased under a four-year agreement with \$2,976 down plus monthly payments of \$475. When the lease expired in April 1995, and the vehicle returned to the dealer, Mr. Fricano was provided with a 1995 Chevy Blazer with an estimated cost of \$27,000. This was a luxury four-wheel-drive vehicle equipped with leather interior, cellular phone and custom bodywork. Lease payments totaled \$5,400 per year for three years. The Blazer was surrendered in July 1997 after Mr. Fricano left the agency.

Including down payments, the total lease cost of the two vehicles for Mr. Fricano was \$31,423.

Commission investigators analyzed insurance records and fuel purchases for the two vehicles dating back to 1994. These records showed that for the period January 1994 through July 1997, insurance premiums paid on behalf of Mr. Fricano totaled over \$5,600. Additionally, each vehicle was assigned a Getty fleet fueling card, allowing Mr. Fricano to purchase fuel on an agency account at a local gas station. For fuel purchases outside the local area, Joseph Fricano was issued a Sunoco credit card. For the period 1994 through July 1997, the Commission determined that Joseph Fricano charged \$2,348 in fuel on these accounts.

SNP also provided Mary Ann Fricano with a leased automobile. In January 1995, Mary Ann Fricano was assigned a 1995 Chevy Lumina valued at \$20,000. This vehicle was leased under a three-year agreement with lease payments totaling \$4,187 annually. The total lease costs paid on behalf of Mary Ann Fricano were \$10,817 through July 1997. Over this same period, insurance premiums and fuel costs paid on behalf of Mary Ann Fricano totaled \$3,661 and \$1,067, respectively.

A summary of the costs of the leased vehicles provided to the Fricanos from 1994 to mid-1997 is as follows:

Year	Cost of Vehicle Fringe Benefit *	
	Joseph Fricano	Mary Ann Fricano
1994	\$8,145	-
1995	\$7,966	\$5,942
1996	\$7,922	\$5,997
1997	\$4,612	\$3,606

\* Includes lease payments, amortized down payments, insurance and fuel.

Finally, while the Commission was unable to perform a detailed analysis of maintenance costs for the above vehicles, through discussions with agency personnel, it was learned that all maintenance was routinely paid for by SNP.<sup>15</sup>

The director of program operations, Timothy Hime, was also provided a vehicle as part of his compensation package. In August 1996, Mr. Hime was assigned a 1996 Chevy Blazer valued at \$30,000. This vehicle was leased under a three-year agreement with lease payments totaling \$6,000 annually. While SNP paid all maintenance and insurance costs, Mr. Hime purchased his own fuel. The annual insurance premium for this vehicle is approximately \$1,700. Before the Chevy Blazer, SNP assigned Timothy Hime a 1995 Ford Taurus purchased by SNP in October 1994 for \$20,500. Annual insurance premiums on this vehicle were approximately \$1,400.

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<sup>15</sup> While SNP maintained detailed maintenance records for most of its fleet vehicles, no maintenance records were found for the vehicles used by the Fricanos.

## **(2) IRS Reporting Requirements**

The Commission found that the value of the vehicles provided to both the Fricanos and Timothy Hime was not reported to the IRS as required. According to IRS Code any fringe benefits received by an employee, unless specifically excluded by some Code provision, must be included in gross income of the recipient.<sup>16</sup> Generally, the amount to be included is equal to the fair market value of the benefit minus any payment made by the employee. An examination of SNP's payroll records revealed that no amounts for personal use of automobiles were included in the employees compensation reported to the IRS. Because the Commission found no written evidence supporting automobile business use, it believes the costs of these vehicles, approximately \$6,000 to \$8,000 annually (see discussion above), should have been included as compensation on the individual's W-2 forms.<sup>17</sup>

## **(3) Duplicate Mileage Reimbursements**

Despite having agency-provided leased vehicles for their exclusive use, both Joseph and Mary Ann Fricano would periodically bill the agency for mileage. In the case of Mary Ann Fricano, a detailed list showing the dates and destinations would often be submitted to support her monthly reimbursement request. Most of the trips listed on these forms were for local travel between SNP's Philmont office and the agency's ICF or transportation office. In the case of Joseph Fricano, there typically was no substantiation for the mileage claimed. Mr. Fricano simply wrote himself checks for the mileage he claimed. From 1994 to mid-1997, the Fricanos received reimbursement for over 20,000 miles totaling about \$6,000. Employees interviewed confirmed that the Fricanos rarely used their personal automobiles for SNP business. Thus, the Commission concludes that the mileage reimbursements were in essence a "double billing," that is, being paid again for the use of agency automobiles that had already been paid for by SNP.

## **(4) Related Party Transactions**

Another finding relating to automobiles was the discovery that two vans owned by SNP were formerly owned by Joseph Fricano and one of his personal cars was previously owned by SNP. In none of these transactions was there any disclosure in the agency's financial statements that the sale involved a related party. In fact, this self-dealing was concealed in all three cases by transferring the vehicles through a local car dealer, thereby giving the appearance of an arm's-length transaction.

A routine check of Department of Motor Vehicles records revealed that in July 1993 Joseph Fricano traded in a 1991 Ford conversion van on the purchase of a new 1993 Dodge Grand Caravan Conversion Van from Village Dodge in Hudson N.Y. On the same day,

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<sup>16</sup> IRC Sec. 61(a)(1)

<sup>17</sup> In certain circumstances the IRS allows an "annual lease value" to be used as an alternative method to value employer provided automobiles. The Commission believes, however, that the use of this method would not significantly differ from actual costs discussed above.

SNP purchased this same Ford conversion van from Village Dodge for \$18,900. Then in February 1996, Joseph Fricano traded in the 1993 Dodge Grand Caravan at Adams Chevrolet in East Greenbush, N.Y. On that same date, SNP purchased the Dodge van for \$23,250.

While the Commission found no independent appraisals and thus was unable to determine the exact value of these vans when purchased by SNP, the agency did pay amounts well in excess of the NADA book value. The NADA book value of a 1991 Ford E150 van was \$11,175 as compared to the \$18,900 paid by SNP. The NADA book value of the 1993 Dodge Caravan was \$15,275 while SNP paid \$23,250. While both of these vans were equipped with "high-top" conversion packages which may have increased their value, this optional equipment was completely unnecessary for use in SNP's transportation program. In fact, both of these vehicles were equipped with wheelchair lifts which had to be removed at the agency's expense in order for them to be used by the transportation program. It should also be noted for comparison purposes that SNP purchased a brand new 1995 Dodge Caravan for its transportation program at cost of \$20,800, substantially less than the \$23,250 paid for the three-year old Dodge Caravan previously owned by Mr. Fricano.

The Commission also found that one of Joseph Fricano's personal cars was previously owned by SNP. As with the two transactions described above, the purchase of this car was similarly processed through a local car dealership, thereby concealing the related-party nature of the transaction. On May 28, 1992, SNP traded in a 1990 Buick Estate Wagon with an original cost of \$22,302 on a 1992 Ford Explorer from Latham Ford. SNP received a trade-in allowance of \$10,046 on the car which had a book value of \$11,975. On or about that same day, Joseph Fricano purchased the Buick Wagon personally.

### **Excess Benefit Transactions**

On July 30, 1996, new federal legislation was signed into law to curb financial abuse among tax-exempt groups.<sup>18</sup> This law allows the IRS to retroactively apply an excise tax "equal to 25 percent of the excess benefit" on a "disqualified person" with respect to each "excess benefit transaction" occurring on or after September 14, 1995.<sup>19</sup> An excess benefit transaction is defined by the IRS as any transaction in which an economic benefit provided by a not-for-profit to a disqualified individual exceeds the value of the consideration (including the performance of services) received for providing such benefit.<sup>20</sup> In other words, if the value of a disqualified individual's compensation is not deemed reasonable in comparison to the value of the services he or she provides to an organization, the IRS can impose as a penalty a 25 percent excise tax on the transaction.

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<sup>18</sup> Public Law 104-168, H.R. 2337 (104<sup>th</sup> Congress, 2<sup>nd</sup> session).

<sup>19</sup> A disqualified individual is defined in IRC §4958(f)(1) as any person who is in a position to exercise substantial influence over the organization (i.e., an insider or someone with a particular relationship to an insider of a charitable organization).

<sup>20</sup> IRC §4958(c)(1)

In determining reasonableness of compensation for the purposes of this statute, the IRS will consider the following three factors:<sup>21</sup>

- was the compensation arrangement approved by a board of directors (or committee thereof) independent of the disqualified individual?
- did the board rely on comparable data of similar organizations for similar positions in the geographic area?
- did the board adequately document the basis for its determination?

In the case of SNP where there was no legitimate board of directors and, at times when Joseph Fricano's salary was clearly excessive in comparison to the compensation for executive directors at comparable programs, these conditions could not have been met.

While this federal legislation focuses primarily on excessive wages, the following benefits may also be subject to the 25 percent excise tax, especially if the organization or the individual fails to properly report them:

- deferred compensation;
- life insurance premiums;
- personal use of employer-provided automobiles;
- personal expenses;
- tuition and related educational expenses; and
- bargain purchases or exchanges from an organization.

Again, because many of the Fricanos' perquisites were not properly reported, disclosed and approved, they are likely subject to these and other possible IRS sanctions.

## **Loans From Fricanos**

During the Commission's review of SNP, investigators found a significant number of loans made by Joseph and Mary Ann Fricano to SNP. During the three-year period 1994-1996 these loans totaled over \$65,500. Despite having a relatively high Medicaid reimbursement rate for its ICF, the Fricanos' lavish spending so depleted the agency's cash reserves that these loans were required in order for SNP to meet its legitimate expenses such as payroll taxes. In addition, the agency was forced on several occasions to ask OMRDD to suspend recoupments of various start-up costs and the Medicaid facilities tax.

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<sup>21</sup> H. Rep. No. 104-506, 104<sup>th</sup> Cong., 2<sup>nd</sup> Sess., pp. 56-57.

The following table summarizes the loan activity including an overpayment of \$1,500 to the Fricanos in 1995.

Year	Loans to SNP	Principal Repayments to Fricanos	Balance
1994	\$36,000	\$12,000	\$24,000
1995	-	\$25,500	(\$1,500)
1996	\$29,540	\$29,540	(\$1,500)

All loans were short-term, bearing interest at either 8 or 9 percent per annum. For the three year period 1994-1996, the total interest paid on these loans was \$1,714.

As noted in the above chart, Joseph and Mary Ann Fricano were overpaid by \$1,500 in 1995. The overpayment appeared to be due to a bookkeeping error. However, when informed of the amount due, Joseph Fricano refused to return the overpayment and it has been written off on SNP books as a bad debt.

### Cost-Reporting Misrepresentations

Joseph Fricano engaged in an elaborate and extensive effort to conceal his compensation on the Consolidated Fiscal Report (CFR) filed with OMRDD. SNP's 1995 CFR is one illustration of this point. An important schedule, the "Governing Board and Compensation Summary" was incorrect and in part left blank. Joseph Fricano's name and total compensation were not reported as required in the section titled "highest paid employees whose salary is in excess of \$50,000." Moreover, even though the schedule was marked "N/A" on the top of the page, the box was falsely answered: "No" in response to the question "Do any employees of your agency also serve on the governing authority?"

More direct concealment of his total compensation occurred in the reporting of 1995 personal services. On the agency administration schedule, only \$56,651 (for 1,121 hours) of the SNP executive director's \$142,272 accrued wages was listed. Additional portions were concealed on separate schedules as part of program administration (program director - \$37,767 for 747 hours) and direct care (resident director - \$23,604 for 472 hours), even though he was rarely seen at the ICF. The final portion, \$24,250 for 485 hours, was allocated to the transportation program. Similar fragmentation was noted in prior CFR submissions as well.

The Commission found other payroll-related discrepancies, designed to exaggerate the amount of money needed for direct client care, recorded on the CFR which were based upon representations made by Joseph Fricano to SNP's certified public accountant (CPA). One misstatement charged a majority (\$36,779 of \$43,446) of the director of program operations' salary to direct care (resident director) instead of to program administration. Further, secretaries/receptionists were commonly charged to the clinical expense category rather than administration by calling them "clinical records specialists." The Commission calculated that \$37,454 of 1995 salaries which belonged in administration were instead classified as clinical because of this misnomer. In summary, total overstatement of client care (direct care, clinical) and corresponding understatement of administration costs amounted to \$97,837 for 1995. These misreported items, which similarly occurred in prior years, would mislead OMRDD by making it appear that more funds are being spent on client care than SNP actually spent in these areas.

The 1996 CFR affirmed these prior year findings. For the 1996 CFR, which was completed after the Commission brought this issue to the attention of the agency's CPA, wages were reclassified to more accurately report personal services. Key changes included charging the full amount of the executive director's salary to agency administration, the full amount of the director of program operations to program administration, and the "clinical records specialists" wages to agency or program administration. The transportation director, originally classified to the ICF as a "clinical records specialist" was reclassified to the separate transportation program.

## **Substandard CPA Work**

Given that the state relies on the vigilance of independent accountants as an integral part of its system to monitor the state-licensed provider network, the Certified Public Accountant (CPA) makes a vital contribution in meeting the need for independent, impartial, and expert opinion on the financial representations of agency management. With regard to SNP, the Commission believes that while the fake board minutes and personnel manuals previously discussed were likely prepared to deceive the auditors, the CPA's audit work was nevertheless deficient -- particularly in the area of payroll. Because of the significant amount typically expended on personal services (in the case of SNP, payroll comprised over half of its expenses), CFR audit guidelines require a "comprehensive payroll test." The guidelines specifically call for the testing of a sample of payroll payments for existence, authorization, time worked, accuracy of rates and distribution to the appropriate program with tracings to time sheets and approved pay schedules. The Commission reviewed workpapers prepared by the CPA firm Karp, Ackerman, Skabowski & Hogan and found no documents indicating that such testing was performed.

Another aspect of the firm's work that the Commission believes was faulty pertained to the 1992 audit-- the first audit that Karp, Ackerman, Skabowski & Hogan (KASH) performed for SNP (prior year audits were performed by a different CPA firm). KASH appears to have violated generally accepted auditing standards which prohibit the issuance of an audit opinion when the CPA firm is not independent. KASH issued an unqualified opinion on the 1992 SNP financial statements despite the fact that until March 9, 1992 the wife of KASH partner David Ackerman occupied a key financial position as controller for SNP. Under the circumstances, even though Mr. Ackerman was not the engagement partner for SNP, the Commission believes that the CPA firm's independence was impaired and therefore it should not have accepted the 1992 engagement.

## **ICF Rate Appeals**

SNP has submitted several requests to OMRDD for higher rates of reimbursement known as "rate appeals." The first two appeals for years 1986 and 1988 were combined by OMRDD and generated a rate increase to approximately \$200 per day per person -- one of the highest ICF rates in the state outside New York City. Through OMRDD's rollover process this appeal award has been recurring in all of SNP's rates since 1988, which along with increases for inflation bring the current rate to about \$300 per day. The primary purpose of the 1988 appeal funds granted by OMRDD was to provide extra direct care/support and clinical staffing above standards to accommodate the unique staffing problems presented by school age residents. However, since that time these residents have aged and the agency has transferred these funds away from their original purposes and into administration salaries and perquisites. Thus, even though the appeal award was designed to provide additional funds for intensive staffing, the agency continued to receive the funds without any condition that the extra funds be spent



as originally intended, allowing SNP to instead cover large excesses in administration including the Fricanos' salaries and perquisites.<sup>22</sup>

### Philmont Administrative Office

In April 1993, SNP began renting a separate office in Philmont, New York at a cost of \$9,000 annually. The Fricanos' offices were located in this converted home which is about nine miles from the transportation office and ICF, both of which are about a mile apart in Hudson and Greenport, respectively. Throughout the Commission's review, it questioned the need for the Philmont facility and its effectiveness given the remote location.

The Commission's review found an unusually high level of security/privacy at this site. On the front door was a sign "Open By Appointment Only!" while many interior doors were posted with signs saying "No Admittance Authorized Employees Only." Various SNP memos and personnel policies warned staff not to contact the administration office in person and/or by phone under threat of disciplinary action including termination of employment. The Philmont office was mainly devoted to office space for the Fricanos. They each had separate offices which were kept locked when they were not present. In addition to Joseph Fricano's "inner" office there was a large outer room furnished as a lounge with a couch and cable TV. Reportedly, SNP staff were strictly forbidden from entering Joseph Fricano's office areas. On July 21, 1997, when Commission staff gained access to Mr. Fricano's inner office two weeks after he went out on disability, it was littered with garbage and in total disarray.

Documentation showed that the Philmont office was only open three days a week; yet, Mr. Fricano was being paid for long workweeks calling into question the legitimacy of his payroll hours, especially considering that Mr. Fricano was rarely seen at the other SNP locations and much of the administrative work was handled by the director of program operations, Timothy Hime. The Commission sought to examine the Fricanos' time and attendance records but could find no support for the weekly totals reported to the payroll processing firm, although all other SNP employees were maintaining daily time records (time clock cards or daily attendance sheets). Mrs. Fricano submitted the weekly total hours for payroll processing but, because of her departure from the agency, the Commission could not learn whether the Fricanos kept records of their attendance.

Not only does the Commission have reason to question the true amount of time spent at the Philmont facility, but also there are concerns about the nature of the activity occurring on that site. In May 1995, Joseph Fricano signed a lease obligating SNP to rent the second floor apartment at the same Philmont location for an additional monthly rent of \$400. The second floor was then fully furnished at SNP's expense as a one-bedroom apartment, including the purchase of furnishings directly from

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<sup>22</sup> See, also, *Safeguarding Public Funds, A Review of Spending Practices in OMRDD Rate Appeals*, January 1995, where the Commission pointed out that appeals have been indirectly funding excessive administration costs in rollover periods as exemplified in the text above. This past report also discussed how appeal funds may indirectly fund excessive administration costs in not just the rollover periods but also in the appeal period itself. The Commission has since found that this second "loophole" had not been addressed when, in 1997, OMRDD awarded \$8,300 to SNP even though reported administration costs were \$103,000 above screen limits that are designed to keep funding at an efficient and economic level.

• Joseph Fricano.<sup>23</sup> Yet, the Commission could find no reason that the apartment was needed nor any instances it was utilized by the SNP program operations despite the significant investment of SNP funds.

• Another reason to question the nature of Joseph Fricano's work activities is based upon a review of the SNP long distance telephone charges. There were a significant number of calls to New York City and Florida which might be personal or related to health spa businesses the Fricanos were setting up in Florida. Similarly, the Philmont office location was listed in the Florida health spas incorporation papers as the mailing address for its directors – Joseph Fricano, Mary Ann Fricano and Carolee Fricano (reportedly, Joseph Fricano's sister).<sup>24</sup> After the Fricanos departed from SNP, the Commission noted that mail was being delivered to the Philmont address which clearly related to the Fricanos' health spas.

Logistically, there was no discernable business reason to locate the SNP administration office in Philmont since the only two SNP programs were based in or near Hudson NY. The intensity of privacy and security at this site, moreover, raises a question about whether by design it was far removed from agency operations to shield the true extent and nature of the Fricanos' work activities and hours unrelated to the business of SNP. After the Fricanos left, SNP vacated the Philmont premises and moved all of its administrative functions to the Hudson, N.Y. facility.

## Other Questionable Expenditures

### (a) Collectibles/Memorabilia

- From 1992 to 1994 SNP spent over \$7,000 to decorate its administrative office with various collectibles and memorabilia including over \$2,000 in sports memorabilia, almost \$2,000 in Star Trek collectibles over \$1,000 in Coca Cola collectibles and over \$1,000 in Franklin Mint collectibles. Many of these items could not be located at the agency. Notwithstanding that some collectibles remained at SNP, these purchases are not a proper use of public funds, especially since they were being enjoyed mostly by the Fricanos and not the residents.

### (b) Corporate Credit Card Charges

There were thousands of dollars in credit card charges (American Express and GE Visa) which lacked documentation and were questionable in nature. Most credit card charges lacked supporting documentation and some of the SNP payments were not even supported by the credit card company bill. The Commission obtained copies of the bills from American Express

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<sup>23</sup> In June and July 1995, proximate to the time the second floor was furnished, five SNP checks were written to Joseph Fricano totaling \$1,850. Four checks totaling \$1,550 were labeled "furniture" (\$300, \$450, \$400, \$400); one \$300 check was labeled "equipment." Although the Commission found no supporting documentation for these checks, the bookkeeper specifically recalled that \$400 was paid to Mr. Fricano for a sofa.

<sup>24</sup> From incorporation records obtained from the Florida Secretary of State, the Commission was able to determine that the following corporations were established in Florida during 1996: Atlantic Coastal Corporation, JOMAR Development Corporation, 21<sup>st</sup> Century Fitness Inc. and Blue Harbor Corporation. Joseph Fricano is listed as director of these corporations with either Mary Ann Fricano or Carolee Fricano as co-director.

and GE Visa. These records showed the vendors but typically lacked enough detail to determine the specific product being purchased and whether it related to the programs or legitimate business of SNP. In a few instances, the Commission was able to get further information directly from the vendor. For example, by contacting QVC the Commission obtained documents showing that SNP paid for several items of jewelry as well as some of the Star Trek collectibles already discussed. The following is a sample of items which did not appear to be necessary or related to the business purposes of the SNP corporation:

Vendor	Amount	Items Purchased
QVC	\$655.22	Jewelry
Staatliche Lotterie (Germany)	\$441.48	Unknown
US Air	\$558.50	Florida Airfare (2 trips)
National Car Rental	\$879.37	5 Florida Car Rentals
Home Shopping Network	\$165.43	Unknown
American Tourister	\$144.73	Unspecified Luggage/Acc
C. Keath Ltd.	\$401.50	Unspecified Apparel & Gifts
Leather Loft	\$386.85	Unspecified Leather Accessories
Vitamin Shoppe	\$266.02	Health Food/Products
Westgate Fitness	\$409.40	Fitness Equipment
Ross-Simon	\$279.90	Unspecified Jewelry/Fine China
<b>Total</b>	<b>\$4,588.40</b>	

In addition to the above items totaling \$4,588.40, the Commission found over \$6,000 in other credit card charges which lacked supporting documentation and were questionable in nature.

### (c) Undocumented Payments to the Fricanos

During its investigation, the Commission noted a significant number of non-payroll checks written directly to Joseph and Mary Ann Fricano for which no supporting documentation could be found. These SNP checks were typically labeled with vague descriptions such as "petty cash", "furniture," or "supplies." Following a thorough review of these disbursements for the period January 1, 1994 through June 30, 1997, checks totaling \$11,277 lacked any supporting documentation as summarized below:

Petty Cash	\$ 4,065
Furniture & Equipment	3,423
Supplies & Other	<u>3,789</u>
Total	<u>\$11,277</u>

#### **(d) Corvette Raffle**

The agency's 1995 IRS Form 990 shows a fund raising disclosure titled "Corvette Raffle" with \$17,700 in revenue, \$17,200 in expense and a resulting gain of \$500. This makes it appear that the agency raffled off a car and made \$500 as a result. In actuality, the car was not raffled off, but rather, it was sold. Moreover, SNP lost \$2,000 on the transaction rather than making \$500 as reported.

The Commission found that under Joseph Fricano's direction, SNP purchased a classic 1964 Corvette on August 8, 1995 supposedly as a fund raising prize. Yet, raffle tickets were not ordered until a month later and were not distributed until mid-October. On November 2, 1995, the car was advertized for sale despite the fact that the tickets called for a May 23, 1996 drawing date. The car was sold on December 7, 1995 for \$17,700 and bank records show that \$145 of raffle receipts were refunded.

Despite months of SNP ownership, the Commission found no evidence that the vehicle was displayed anywhere to promote a raffle. Also puzzling is the lengthy delay in acquiring raffle tickets and the abrupt decision to sell the car. Furthermore, the 1995 financial reporting of this transaction improperly classified \$2,500 of related costs such as auto insurance, auto loan interest, ticket printing and vehicle maintenance, thereby disguising the fact that the agency incurred a net loss of \$2,000 on this venture.

#### **(e) Donations to Unrelated Charities**

- From 1994-1996, SNP donated about \$2,500 to charities which appear to have no relation to the charitable purpose under which SNP was incorporated. Moreover, these donations were often made during periods when SNP had borrowed money from the Fricanos or were pleading with OMRDD for more program funding. NY Mental Hygiene Law, §16.32, prohibits spending of public assistance funds received by licensees for charitable contributions.

#### **Program Care and Treatment**

In May 1997, Commission program staff conducted an unannounced visit to SNP's Mildred Elliot Residence to assess basic living conditions and resident care, and to follow up on the allegation that the agency was over-emphasizing consumers' disabilities in order to enhance its Medicaid reimbursement rate. During the afternoon and evening visit, Commission staff toured the residence, reviewed records and observed routine household activities and staff-resident interactions.

With the exception of only minor housekeeping problems (e.g., some stained tiles and a musty odor in one bathroom, and a stained carpet and patched walls in need of paint in one bedroom), the residence was clean, adequately furnished and attractively decorated. Commission staff noted no safety hazards and observed that all fire extinguishers and alarms were in working order. It was also noted that the residence was amply supplied with food, cleaning products, recreation/leisure time supplies and other necessities. In short, the residence offered a warm, safe and comfortable environment for the ten men and women who called it home.

A review of residents' records revealed that they were substantially up to date with appropriate service planning and delivery documents, and behavioral plans where needed. The same was true of

medication records, and Commission staff were impressed with the degree to which the agency's clinical staff had reduced the consumers' reliance on psychotropic medications.

During the course of the site visit, residents came home from their various day programs. They were all appropriately dressed in clean, well-fitted clothing and spent the afternoon and evening in appropriate skill-building and leisure-time activities with the five staff on duty. Activities in which residents participated included helping prepare dinner, cleaning up afterwards, going on a walk locally, and some going on a trip to a state park. Staff helped clients in need of assistance in these activities in a professional and caring manner.

As one of the allegations concerning SNP was that the agency attempted to make its residents appear more disabled than they were in order to increase its reimbursement rate, while on-site Commission staff obtained copies of the residents' Developmental Disability Profiles (DDPs) completed by SNP to compare with the DDPs completed by the residents' day programs — which are operated by other agencies. The DDP is a standard descriptive rating tool completed by service providers. It provides information concerning a consumer's abilities and disabilities, as assessed by the service provider, in such areas as intellectual functioning, medications required, health concerns, adaptive and maladaptive behavior, etc.

Based on the comparisons of DDP scores from SNP and the day programs serving SNP residents, — it could not be concluded that SNP downgraded the functioning levels of its residents. While two clients attending a particular day program were rated by SNP as more impaired in certain domains than by their day program, the remaining residents were rated as higher functioning by SNP than their day programs.

It should also be noted that the instruction manual for the DDP indicates that the same individual — might receive different DDP ratings from different service providers since the providers see the individual in a different light or environment, e.g., a six-hour, five-day a week program vs. a seven-day a week residence where the individual spends a majority of his time.

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## CONCLUSION

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Special Needs Program, Inc. is a ten-bed intermediate care facility licensed by the State of New York that has been used by its former executive director and his wife for their personal unjust enrichment.

- Obviously, this money was meant for the care of residents with developmental disabilities. Joseph and Mary Ann Fricano elaborately concealed and distributed excessive, undocumented and unreasonable personal expenses to themselves. This not-for-profit agency did not have a lawful existence of its own given its failure to meet the basic requirement of the Not-For-Profit Corporation Law (e.g., a board with at least three persons who unbiasedly promote the best interests of the corporation). The Fricanos exercised complete control over it while they withdrew public resources at will and for their own benefit. They hid their actions behind a corporate veil, which was simply a facade for them to conduct improper and unlawful personal transactions and activities. In this sense, they used SNP like a "laundry" to convert Medicaid monies to their personal use rather than the welfare of clients for which SNP was formed. During a three and one-half year period examined by the Commission the Fricanos withdrew over \$750,000 (Appendix A). This husband wife team singly or jointly:

- misrepresented to government agencies, their accountant and a bank that the agency was being overseen by a properly constituted board of directors;
- supplied their accountant with inaccurate information or instructions to inflate expenses related to resident care;
- approved or wrote all the checks for improper expenses and did not keep documentation to explain some of the more questionable outlays benefitting themselves;
- operated from a remote location which concealed the true extent and nature of the services for which they were compensated;
- fabricated agency policy manuals in an apparent *ex post facto* attempt to cover-up preferential benefits;
- distanced themselves from possible culpable explanations of how expenses and agency transactions were handled by departing from the facility prior to the Commission's audit;
- misapplied Medicaid receipts by paying non-*bona fide* wages to themselves;
- passed along to other staff less than half of the money granted to the agency annually for cost-of-living increases; and,
- filed false instruments to obtain disability benefits.

→ The fundamental responsibilities of a board of directors of a not-for-profit corporation are to ensure that the charitable purposes for which the organization was formed are fulfilled and the assets of the agency are properly protected. This report demonstrates the need for a properly constituted and independent board of directors to effectively oversee program operations and to prevent the misuse of public funds for private enrichment.

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## RECOMMENDATIONS

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Based on the findings of this report, the Commission makes the following recommendations and has or will refer the findings of its investigation to the following agencies for follow-up actions:

### ■ Referrals

- **The Office of Mental Retardation and Developmental Disabilities:** to ensure that there is a properly constituted board of directors at this not-for-profit corporation which performs necessary oversight responsibilities including setting the compensation and evaluating the performance of the agency's senior management; obtain accurate cost information to ensure the proper expenditure of public funds, including reviewing the per diem rate for SNP; and, provide training to boards of directors so that they are knowledgeable of their duties and responsibilities including the legal requirements for setting executive compensation.
- **The U.S. Attorney for the Northern District of New York; Federal Bureau of Investigation:** for investigation of a possible criminal conspiracy to misappropriate medical assistance funds; filing of false cost reports to inflate medical assistance payments; forgery and fraud in presenting a Certificate of Authority to conduct business with a bank; and, filing of false instruments to obtain disability benefits.
- **Internal Revenue Service:** for possible imposition of a 25 percent excise tax on the former SNP executive director for each "excess benefit transaction" and for other possible IRS infractions.
- **New York State Insurance Department; Workers' Compensation Board; New York City Inspector General:** for possible criminal violations and civil recoupments relating to false disability claims and fraudulent receipt of disability retirement benefits.
- **New York State Department of Law:** for possible violations of the N.Y. Penal Law and N.Y. Not-For-Profit Corporation Law to recover funds that have been misappropriated.
- **Special Needs Program, Inc.:** for possible civil recoupment of misappropriated funds.

### ■ Statutory Changes

- A state law similar to federal statute 18 USC 666 (a) (1) (A) should be adopted to make it a crime at the state level to knowingly convert or intentionally misapply public monies. ✓
- Mental Hygiene Law/regulations should be amended to prohibit relatives of senior executives of not-for-profit corporations from serving on the boards of directors of these same corporations. ✓

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## APPENDIX A

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**SNP Costs**  
**Benefiting the Fricanos**  
**January 1994 to July 1997**

	<u>1994</u>	<u>1995</u>	<u>1996</u>	<u>Jan. to July</u> <u>1997</u>	<u>Total</u>
<b>A. Wages</b>					
Joseph Fricano	\$ 139,800	\$ 141,750	\$ 153,712	\$ 102,000	\$ 537,262
Mary Ann Fricano	18,509	22,820	23,118	12,600	77,047
<b>B. Social Security &amp; Medicare (Employer Portion)</b>					
Joseph Fricano	5,784	5,857	6,135	5,549	23,325
Mary Ann Fricano	1,416	1,746	1,769	964	5,895
<b>C. Supplemental Disability Insurance</b>					
Joseph Fricano	3,629	4,027	4,087	2,392	14,135
<b>D. Health Insurance</b>					
Joseph Fricano	2,077	2,073	2,170	1,313	7,633
Mary Ann Fricano	2,076	2,074	2,169	1,314	7,633
<b>E. Dental</b>					
Joseph Fricano	2,760	1,730	-	-	4,490
Mary Ann Fricano	362	75	-	-	437
Liz Fricano	75	-	-	-	75
<b>F. Eyeglasses</b>					
Joseph Fricano	534	325	450	540	1,849
Mary Ann Fricano	230	-	163	-	393
<b>G. Life Insurance</b>					
Joseph Fricano	1,638	1,688	2,139	1,726	7,191
Mary Ann Fricano	54	75	208	137	474
<b>H. Tuition</b>					
Joseph Fricano	5,705	3,090	1,200	900	10,895
<b>I. Employer Provided Vehicles</b>					
(a) Lease Payments					
Joseph Fricano	6,444	5,670	5,412	3,157	20,683
Mary Ann Fricano	-	4,187	4,187	2,443	10,817
(b) Fuel					
Joseph Fricano	605	618	684	441	2,348
Mary Ann Fricano	-	318	388	361	1,067
(c) Insurance					
Joseph Fricano	1,096	1,678	1,826	1,014	5,614
Mary Ann Fricano	-	1,437	1,422	802	3,661
(d) Mileage					
Joseph Fricano	816	1,247	1,371	394	3,828
Mary Ann Fricano	-	903	873	374	2,150
<b>J. Interest on Loans to SNP</b>	22	1,445	247	-	1,714
<b>K. Overpayment on Loans to SNP</b>	-	1,500	-	-	1,500
<b>TOTAL</b>	<u>\$ 193,632</u>	<u>\$ 206,333</u>	<u>\$ 213,730</u>	<u>\$ 138,421</u>	<u>\$ 752,116</u>

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## APPENDIX B

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STATE OF NEW YORK  
OFFICE OF MENTAL RETARDATION AND DEVELOPMENTAL DISABILITIES

44 HOLLAND AVENUE  
ALBANY, NEW YORK 12229-0001  
(518) 473-1997 • TDD (518) 474-3694

November 25, 1998

Gary O'Brien  
Chair  
Commission on Quality of Care  
for the Mentally Disabled  
99 Washington Avenue, Suite 1002  
Albany, New York 12210-2895

Dear Chairman O'Brien:

Thank you for sending me the draft of the Commission's review of the programmatic and financial practices of Special Needs Program, Inc. (SNP). Based on information in our files, we have no reason or basis to disagree with your representation of the factual matters contained in your report. Some of your report's factual statements can, however, only be confirmed from information or documentation contained in Commission work papers.

With regard to your recommendations, please be advised that on May 8, 1998, OMRDD ensured there was a properly reconstituted Board by appointing, pursuant to a provision in SNP's Bylaws, Ms. Barbara Wurtz as the commissioner's designee to the Board. Subsequent to Ms. Wurtz's appointment as the sole board member of SNP, additional individuals were then elected to the Board on May 18, 1998 to complete the Board's reconstitution. The new Board has been successfully performing all necessary oversight responsibilities required of a not-for-profit corporation board. In addition, a limited fiscal review conducted by my staff indicates that SNP is now on a relatively sound basis for ongoing fiscal viability.

With respect to rate setting issues, OMRDD instituted efficiency measures effective July 1, 1996 which impacted SNP as well as all other ICF/DD providers. Transportation reimbursement was incorporated into day program rates (CQC refers to this fact in note three on page 2 of the report) to promote transportation efficiencies and administrative efficiency rate adjustments were implemented to promote administrative efficiencies. These efficiencies continue.

OMRDD will shortly be utilizing a cost period base of 1994/1994-1995 rather than 1986/1986-1987 in the computation of ICF/DD rates. This rebasing will be effective January 1, 1999 for upstate providers, including SNP, and July 1, 1999 for New York City providers. Not only will the methodology update promote cost efficiencies by allowing OMRDD to reimburse ICF/DD providers based upon more recent cost information, but the

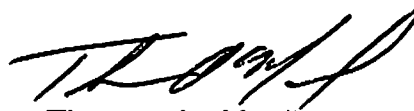
methodology will continue the administrative efficiencies which were implemented on July 1, 1996, and will continue the restriction on outside billing for medical trips. The methodology update will also incorporate the use of a more sensitive consumer disability assessment instrument. This assessment tool, which is the Developmental Disabilities Profile, will allow a greater correlation in the 1999 ICF/DD reimbursement rates between reimbursement for direct care expenses and consumer specific disability levels.

With regard to your recommendation on training, OMRDD will be providing a new training program for members of boards of directors. This training will be scheduled in the Spring of 1999.

We concur with your findings that the quality of care at the program was good. During the period of CQC's review as well as during our internal investigation, Central Office and Taconic DDSO regularly visited and monitored care at the ICF more frequently than usual to verify that care continued at the same high level.

Thank you for providing us with the opportunity to comment on the draft report. If you or your staff have any questions regarding our comments, please contact Jan Abelseth, Interim Deputy Commissioner, at 474-3625.

Sincerely

A handwritten signature in black ink, appearing to read 'T. Maul', is written over the printed name.

Thomas A. Maul  
Commissioner

TAM/JA

cc: Dr. Abelseth  
Mr. R. Johnson

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## APPENDIX C

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## SPECIAL NEEDS PROGRAM, INC.

98 GREEN STREET  
HUDSON, NEW YORK 12534

Tel. (518) 822-1054

Fax (518) 822-0739

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*Services to Challenged Individuals and Their Families by a Non-Profit Organization*

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**Certified Mail P 345 583 960**

November 17, 1998

Gary O'Brien, Chair  
NYS Commission on Quality of Care for  
the Mentally Disabled  
99 Washington Avenue, Suite 1002  
Albany, NY 12210-2895

Dear Mr. O'Brien:

The Board of Directors for Special Needs Program, Inc. met on November 11, 1998 to review and comment on the draft report dated 10/98 entitled, "A Review of Special Needs Program, Inc.". The Board would like to thank the Commission for giving us this opportunity prior to the publication of the report. The following comments are provided for clarifications on some issues and for added information. We realize some of our comments will not change your assumptions or conclusions, but may shed further insight.

Our responses will be made according to the topics of the report.

### **INTRODUCTION**

Background: No comments.

Reason/Scope of Commission Review: There were two allegations made alleging SNP was over diagnosing residents and the Executive Director was rarely seen. In regards to the later, the Board has no comments. However, in regards to "over diagnosing," Mr. Hime, CEO, has informed us of the following. The Client Services Coordinator servicing the individuals at the ICF during the time of initial allegation and visit by CQC, was constantly arguing with the administration over how to assess the individuals in terms of functional levels. This information is documented in employee's personnel file. We do feel the report adequately addressed this issue in the section entitled, "Program Care and Treatment". There are no further comments under this section.

### **FINDINGS**

Fricanos' Departure from the Facility: No comments.

Phantom Board of Directors: The Board has no comments on the information as reported. However, it should be indicated SNP does currently have a new legally constituted Board of Directors.

Excessive Executive Compensation:

#### **WAGES:**

In general, the Board has no comments on the Fricanos' wages. However, the comments

made on Page 7 in regards to the effects the high wages had on the pay of the support, clinical, and direct care staff, we take objection to. We do not feel the direct care staffs' pay or staffing level was affected. Support and clinical may have been. The direct care staffing level has been a 1:2 ratio for the past 11 years and their pay has been on or above the average for direct care pay in this geographic area. Furthermore, part of the annual Trend Factor each year was used to increase the benefit package to employees (it was split between wages and benefits).

#### **FRINGE BENEFITS:**

The Board has no comments on sections a, b, c, d, and e under this title. Under section f(1), the Board would like to provide the following information on behalf and in support of Mr. Hime's use of Agency's vehicles. Though it is true Mr. Hime was assigned vehicles for his personal use, they were also assigned to the transportation department for its use. Most vehicles were DOT inspected and certified for use as a school bus. His vehicles were also identified as belonging to SNP by decals on the vehicles. According to contracts, SNP is required to have a back up vehicle. Mr. Hime's vehicles were the back up. Per Mr. Fricano's orders, the 1996 Blazer was never DOT certified, but was used by staff to attend workshops and/or doctor appointments. It has subsequently been DOT'd. As far as the board knows, the vehicles assigned to the Fricanos were totally for their use only. We feel this distinction should be made in the report. Under section f(2), the Board would like to make the following clarifications. Mr. Hime never had just one assigned vehicle for an entire year. (He was directed to rotate vehicles in order to keep mileage down. See attached listings.) This would affect the actual costs incurred by SNP for Mr. Hime's assigned vehicles and in turn affect the amount of wages reported on his W-2 forms. The Board feels the Commission should make it clearer that the information in the chart on Page 14 is the actual cost incurred by SNP and not what should be indicated as wages on W-2 forms as indicated in narrative. This data could be used by SNP to calculate FMV in order to use the automobile lease rule described in IRS Publication 35, "Business Expenses".

Excess Benefit Transactions: No comments.

Loans From Fricanos: No comments.

Substandard CPA Work: No comments.

ICF Rate Appeals: It is our understanding, the rules in 1986 and 1988 were based on the number and intensity of behavior incidents occurring in the ICF along with accommodating the unique staffing problems presented by school age residents. As reported in this draft, SNP has provided optimum care and treatment to our individuals resulting in the reduced use of psychotropic medications. We will not contest some of the appeal awards may have been transferred into administration salaries but not at the cost of the individuals we serve.

Philmont Administrative Office: No comments.

#### Other Questionable Expenditures:

##### **a) COLLECTIBLES/MEMORABILIA:**

On Mr. Hime's behalf, we do not feel it is fair to group him in with the Fricanos for the following reasons:

- 1) All of the Star Trek items are accounted for and at the Agency. 2) The items were located at the Philmont office until just several months prior to your site visit, at which time Mr. Fricano had the items sent over to Mr. Hime's office. As stated previously in the report, few people had access to the Philmont office, including Mr. Hime.

Also for clarification, the Coca Cola collectibles are also accounted for and at the Agency. The unaccountable collectibles are those which the Fricanos collected for themselves. We feel this distinction should be made and Mr. Hime's name not be used.

b) CORPORATE CREDIT CARD CHARGES: No comments.

c) UNDOCUMENTED PAYMENTS TO THE FRICANOS: No comments.

d) CORVETTE RAFFLE: No comments.

e) DONATIONS TO UNSOLICITED CHARITIES: No comments.

**Program Care and Treatment:** As previously stated under the introduction section, the Board feels the report adequately addressed the issues of concern. However, we feel the report should indicate more strongly the alleged misappropriation of funds did not have a negative affect on the care and treatment of the individuals we serve.

## **CONCLUSION**

The Board has no comments on the conclusion stated in report. However, we feel in order to be a balanced report on "A Review of Special Needs Program, Inc.", the changes and corrective action SNP have taken during your investigation to correct and insure most, if not all, of the inappropriate actions/deficiencies addressed do not occur again. The following is a list of actions ← taken to date:

- ▶ A new Board of Directors has been legally constituted with a director being appointed by the Commissioner of OMRDD, and consisting of 6 members.
- ▶ SNP's Articles of Corporation have been revised to increase the legitimate purposes of the corporation.
- ▶ The Board of Directors' bylaws have been revised to insure oversight and accurate attendance records.
- ▶ A new Controller has been hired to oversee the financial department separate from CEO.
- ▶ A new CPA firm has been hired as independent accountants.
- ▶ SNP has consolidated their administration offices into one building.
- ▶ The CEO has been hired under contract as a salary exempt employee. The Board took into consideration the 3 factors the IRS would consider when determining reasonableness of compensation.
- ▶ New agency policies and procedures have been developed for accounting and record keeping to ensure accurate cost reporting and wage reporting.
- ▶ The Board is consistently reviewing the budget to ensure funds are appropriately expended and for intended purposes.
- ▶ The agency has canceled all unnecessary and/or inappropriate charges and credit cards.
- ▶ The Board has developed a 4-year strategic plan, which includes a mission statement, vision statement, guiding values and appropriate fund raising activities.

The Board of Directors fully understands its personal and legal responsibilities in fulfilling its mission and visions while abiding by its guiding values. Special Needs Program, Inc. has always



provided a high quality of care and treatment to the individuals we serve, regardless of the alleged past fiscal improprieties and it will continue to do so. The Board of Directors feels they have taken all appropriate action necessary to ensure compliance with all Federal, State, and Local laws and with all pertinent provisions of Federal Regulation 442, Title 14, Commissioners Rules and Regulations. One last additional comment, the Board feels it should be noted in the report the cooperation Mr. Hime and his staff provided to the auditors during the investigation.

If you have further questions with our response, please contact Timothy Hime, CEO, at the address and phone number on letterhead. We appreciate this opportunity provided to us.

Sincerely,

A handwritten signature in black ink, appearing to read "Dale Desnoyers", written over the printed name.

Dale Desnoyers  
President

DD/cl

cc: Timothy Hime

**LISTING OF  
MR. HIME'S VEHICLES**

<b>JANUARY 1995 - OCTOBER 1995</b>	<b>1995 FORD TAURUS (DOT)</b>
<b>OCTOBER 1995 - MAY 1996</b>	<b>1992 FORD EXPLORER (DOT)</b>
<b>MAY 1996 - AUGUST 1996</b>	<b>1995 FORD TAURUS</b>
<b>AUGUST 1996 - JULY 1997</b>	<b>1996 CHEVROLET BLAZER</b>
<b>JULY 1997 - NOVEMBER 1997</b>	<b>1995 CHEVROLET BLAZER</b>
<b>NOVEMBER 1997 - DECEMBER 1997</b>	<b>1995 CHEVROLET LUMINA</b>
<b>DECEMBER 1997</b>	<b>1996 OLDSMOBILE CIERA (DOT)</b>