

**State of New York
Office of the Inspector General**



**Investigation of Employee Misconduct
at the New York State Department of Health
Bureau of Narcotics Enforcement**

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Background and Introduction

In New York State, the Department of Health is charged with overseeing the lawful distribution of controlled substances. As part of its mission, the Department of Health's Bureau of Narcotics Enforcement (BNE) employs investigators to enforce the relevant laws and to combat the illegal diversion of controlled substances.

State law provides regulatory and enforcement powers to BNE so that it may monitor distribution of drugs via prescription and detect any unlawful diversions. Pharmacies report all dispensations of narcotics to BNE, and must identify and report to BNE patients who have attempted to fill prescriptions written by more than five doctors. In addition, BNE inspects facilities that dispense controlled substances and oversees the destruction of excess or expired controlled substances in pharmacies and other facilities. BNE investigators have access to prescriptions, medical records, and other documents produced by healthcare institutions. BNE also oversees the distribution of prescription pads and conducts public health outreach.

BNE investigators conduct certain types of investigations, such as tracing the origins of forged prescriptions, uncovering drug diversion rings, and identifying medical professionals who unlawfully steal or dispense narcotics. BNE investigators are designated in the Public Health Law and the Criminal Procedure Law as peace officers, which endows them with limited law enforcement powers, including the authority to make warrantless arrests and conduct warrantless searches as required to fulfill their statutory responsibilities.

James Giglio is the Director of BNE and is based at BNE's headquarters in Troy, New York. Section Chief Michael Moffett, formerly the chief of the Schenectady Police Department, supervises the investigators and is also based in Troy. In addition to its Troy headquarters, BNE has field offices in Syracuse, Rochester, Buffalo, and Manhattan. The senior investigators at the field offices of Syracuse, Rochester, and Buffalo report directly to Chief Moffett.

The Metropolitan Area Region Office (MARO) is located in Manhattan and has jurisdiction over the southern region of the state, including New York City. As the largest of the field offices, MARO employs additional supervisory staff, and the lines of reporting to Troy are not as direct as with the other regional offices. Specifically, the BNE investigators at MARO report to BNE Program Director for MARO Paul Nadel, a licensed pharmacist, in addition to Moffett in Troy. Neither Nadel nor any of his recent predecessors had any law enforcement experience prior to coming to BNE. Although Nadel is the BNE program director for MARO, he does not report directly to Giglio, the statewide BNE director. Instead, he reports to a New York City-based deputy commissioner.

MARO's daily operations differ significantly from those of the other offices. While BNE investigators in the three other regions focus primarily on cases involving

drug diversion by healthcare professionals and institutions, MARO allots the vast majority of its resources to arresting those trying to fill unlawful prescriptions.

Experience and Training of BNE Investigators

Depending on the seniority of the position, a BNE investigator is required to have three to seven years of prior experience conducting criminal investigations or investigations related to health care or controlled substances. For an applicant with a college degree, education may substitute for some investigatory experience. Once hired, a BNE investigator participates in state-mandated peace officer training. The training is a general course offered to all peace officers statewide and consists of 35 hours of instruction on topics ranging from evidence collection to interview procedure. The New York State Division of Criminal Justice Services establishes the training guidelines. An additional 40 hours of firearms training is required for a peace officer to carry a weapon. Within BNE there is no formal training regarding the specific duties of a narcotics investigator; instead, new investigators learn on the job.

BNE investigators who work within New York City are issued a restricted carry permit by the New York City Police Department. The permit allows them to carry their weapons at their places of employment and when traveling between their residences and their places of employment. Investigators are given safety lockers in which to secure their weapons at home.

DOH Policies Governing BNE Investigators

The Department of Health's Peace Officers Policies and Procedures Manual applies to BNE investigators, as well as Institution Safety and Security Officers charged under the Public Health Law with protecting "the grounds, buildings and patients" of Department of Health hospitals. The manual was prepared in 1994 and has not been updated since. In the manual, BNE is referred to as the Bureau of Controlled Substances, which no longer exists. The text of the manual is 31 pages, plus appendices citing various provisions of law.

The manual includes topics such as chain of command, use of weapons, and arrest procedure. The special duties of the Department of Health's peace officers are defined, and the manual warns that the department's peace officers "are not expected to be auxiliary police, nor are they expected to perform any duties outside of their special duties as defined herein."

The special duties of BNE investigators are defined as "the enforcement of provisions of Public Health Law Article 33 and Part 80 of the administrative rules of the Department of Health and the following related provisions of the Penal Law: Sections 170.10, 170.25, 170.05-170.10, 190.25, 220.03-220.60, 220.63 and Article 110." The manual continues, "Such peace officers are also authorized to seize controlled substances, hypodermic syringes and needles which have been manufactured, distributed, dispensed or acquired in violations of provisions of Public Health Law Article 33."

As referenced in the special duties detailed above, Public Health Law Article 33 and the accompanying administrative rules address the lawful distribution of controlled substances within the state, and prohibit diversion or unlawful use of controlled substances. The listed provisions of the penal law impose criminal penalties for unlawful use or sale of controlled substances, or for forgeries and frauds aimed at securing controlled substances unlawfully.

Although the manual grants seemingly broad powers to BNE officers with regard to controlled substances, both Giglio and Moffett emphasized that the primary responsibility of BNE should be to identify and apprehend those healthcare professionals and institutions involved in drug diversion, as opposed to focusing on street-level narcotics dealing. Giglio testified to the Inspector General that he views BNE primarily as a regulatory agency charged with overseeing the institutional distribution of controlled substances, not as a law enforcement agency whose primary goal is apprehending suspected criminals. Other BNE employees noted that, while any local police department has the jurisdiction to apprehend an individual for possession of a controlled substance, only BNE has the statutory authority to examine the health professionals and institutions that are often responsible for diverting controlled substances.

In the event that a BNE officer makes an arrest, the Policies and Procedures Manual instructs the department's peace officers to seek assistance from the local police. BNE Director Giglio emphasized to the Inspector General that he strongly encourages BNE investigators to seek the assistance of local police when conducting law enforcement operations. In addition, BNE's policies require that BNE peace officers contact local law enforcement "as soon as possible" after an arrest is made in order to arrange a transfer of custody of the arrestee and so that the police can transport the subject to police headquarters.

When an arrest is made, BNE investigators are bound by state and federal laws affecting the rights of defendants. Like the police, BNE investigators must read an arrestee his Miranda rights before conducting a custodial interrogation, and must discontinue questioning if the arrestee requests that an attorney be present.

Louis Crisafi

This report focuses primarily on the actions of Louis Crisafi, a BNE investigator assigned to MARO. Until recently, Crisafi was a supervising investigator, having been one of only two investigators in MARO with prior law enforcement experience. Crisafi is currently assigned to office duty.

Allegations

On March 22, 2007, the *New York Times* published an article detailing the abuse of government-issued parking placards in New York City. The article featured a photograph of a Corvette allegedly using a New York City Police parking placard to park

in the same Battery Park City parking space for over a year. The Inspector General learned that the car's owner, Louis Crisafi, was a Senior Investigator employed by the Bureau of Narcotics Enforcement and based at MARO.

During the Inspector General's investigation, it was alleged by various witnesses that Crisafi committed a number of other violations related to his employment as a BNE investigator.

Most seriously, Crisafi's coworkers alleged that, on more than one occasion, Crisafi violated a suspect's right to have an attorney present during custodial questioning. In addition, other BNE investigators described an undercover operation directed by Crisafi on the night of January 2, 2008, that was poorly-executed and put both officers and suspects at risk.

In addition, it was alleged that Crisafi committed a number of other abuses, including: using a Schedule II controlled substance while on duty and while carrying his state-issued firearm; installing lights and sirens on his state vehicle without the proper approval or training and conducting outside employment during the work day. Finally, BNE employees alleged that Crisafi failed to submit a required report of an accidental discharge of his firearm.

Investigation

The Inspector General found that Crisafi abused his position as a state employee in many ways. In addition, Crisafi violated laws and departmental procedures in his conduct in the field, putting others at risk. Crisafi was generally unwilling to adhere to the regulations set forth in the Department of Health Peace Officers Policies and Procedures Manual. Crisafi's misconduct often went unchecked due to wide latitude granted him and the lack of adequate supervision by his superiors at MARO and at BNE's headquarters in Troy.

Methodology

The Inspector General interviewed Louis Crisafi and numerous other employees of BNE, including all of the investigators currently employed in MARO. The Inspector General also interviewed the Director of BNE James Giglio, BNE Chief of Investigations Michael Moffett, the past and current Program Directors of MARO, past employees of MARO, and the investigator responsible for firearms training for the bureau. The Inspector General reviewed all existing policies and procedures currently guiding the conduct of BNE investigators as well as documentation pertaining to several arrests executed by Crisafi. The Inspector General also contacted police officers and district attorneys who had interacted with Crisafi in the course of his work as a BNE investigator.

Crisafi's Qualifications

The Inspector General's investigation disclosed that Crisafi did not have the required experience for his position at the time he was hired by BNE.

Crisafi was hired by BNE in 2002 as a Narcotic Investigator 1, after passing the relevant civil service examination. The job posting required the following:

Five years of experience as a peace officer or police officer conducting criminal investigations, handling evidence, testifying in criminal proceedings and writing investigative reports or in investigatory experience in one or more of the following areas: the professional conduct of licensed health care professionals; controlled substance trafficking diversion; surveillance activities in a health care licensure/regulatory program or other program regulated by the New York State Department of Health; and/or experience in a governmental setting where the primary responsibility is conducting criminal investigations. In addition, at least two years of this experience must have included significant responsibility for the investigation of controlled substance trafficking/diversion.

The applicant could substitute at least three years of the required experience with a bachelor's degree in a related field. The job posting specifies that "routine police patrol and traffic enforcement duty will NOT be considered qualifying experience" and that "experience in which criminal investigation is only an incidental part of the job will NOT be considered qualifying experience" (emphasis original).

According to his own testimony, Crisafi joined the San Diego County Sheriff's Department in 1981. As a new police officer Crisafi would have been assigned to patrol duties, and would have performed the type of investigative work required by the BNE job posting. After approximately 14 months, Crisafi moved to the National City Police Department but resigned shortly thereafter. Crisafi remained in California working as a private investigator. In 1995, Crisafi joined a private investigations firm in the New York City area focusing on insurance.

Beginning in 1997, Crisafi held a series of peace officer positions within New York State. He worked at the City University of New York conducting campus security for one year. His duties did not involve conducting criminal investigations.

He later worked at the New York City Department of Corrections for 15 months. For approximately seven months of this time, Crisafi was assigned to the gang intelligence unit, during which he collected intelligence on gang activity at the Riker's Island jail.

For the three years immediately prior to his employment at BNE, Crisafi worked as a beverage control investigator for the New York State Liquor Authority.

Crisafi never received a college degree, although his resume states that he attended a “post-baccalaureate lawyer assistant program” at the University of San Diego. As Crisafi did not obtain a college degree, he could not substitute any coursework for the required experience in the BNE job posting.

Failure to Produce Evidence of GED

When questioned about his education, Crisafi stated that, although he did not graduate from high school, he received a Certificate of General Educational Development (GED) while serving in the United States Marine Corps. However, the military discharge papers Crisafi provided at the Inspector General’s request indicated that he did not receive his GED in the military. When questioned about the discrepancy, Crisafi stated that he received his GED after his discharge from the military, in 1980, from Chula Vista Adult School in San Diego County, California.

The Inspector General obtained Crisafi’s personnel records from the Department of Health and the State Liquor Authority. Neither of the files included a copy of Crisafi’s GED certificate. Crisafi’s personnel records from his prior public employment in New York were unavailable. Crisafi stated that he could not produce a copy of his GED certificate.

Falsification of Employment Application

On February 21, 2002, Crisafi signed a two-page employment application for the New York State Department of Health beneath the following statement:

I hereby affirm that this application contains no willful misrepresentations or falsifications and that this information given by me is true and complete to the best of my knowledge and belief. I am aware that should investigation at any time disclose any misrepresentation or falsification, my application will be disapproved and my appointment may be rescinded. I am also aware that a false statement is punishable under law by fine or imprisonment or both.

Question Two of the application asks whether the applicant ever “resigned in lieu of dismissal.” Crisafi checked the box next to the word “No.” However, when questioned about his departure from the National City Police Department, Crisafi admitted that he did resign in lieu of termination. According to Crisafi, he resigned because his supervisors found his actions to be “out of the scope of...being a peace officer,” explaining that he had used information from what some considered to be a questionable source. He added, “Bottom line is I was dating a...exotic dancer, and they felt that that was not proper.”

BNE Failed to Conduct Background Checks or Verify Candidate Eligibility

The Inspector General determined that BNE did not conduct full background checks of its narcotics investigators, and wrongly assumed that the Department of Health's personnel department and the New York State Department of Civil Service were verifying applicants' experience.

As noted above, the Inspector General determined that Crisafi did not have five years of relevant experience as required for the position for which he was hired, and BNE never obtained evidence that Crisafi had obtained a GED. Crisafi's resume, as submitted for the position, is vague regarding the dates of his various assignments and whether they involved public or private work. The Inspector General requested BNE's records regarding verification of Crisafi's qualifications. The records consisted of one page – a letter from Crisafi thanking a Department of Health official who had interviewed him. On the upper left corner were handwritten notes listing the names of two of Crisafi's supervisors at the State Liquor Authority and their phone numbers, and the name of one supervisor at the Department of Correction with the notation "WAITING FOR #" next to the name. On the upper right corner is handwritten "REF CHECK."

Notably, during the course of the investigation, the Inspector General identified one other investigator who did not appear to have the required experience when hired as a Narcotics Investigator I. Investigator Frederick Boettcher's prior experience did not include criminal investigations in the relevant areas or any prior experience as a peace officer or police officer. Unlike Crisafi's misleading resume, the resume Boettcher presented to BNE clearly indicated that he did not have the experience required.

The Inspector General questioned BNE Director Giglio and Section Chief Moffett regarding BNE's procedures for determining the required qualifications for BNE investigator positions and verifying that applicants have those qualifications. Giglio informed the Inspector General that he, in cooperation with representatives of New York State Department of Civil Service, determines the qualifications required for the narcotics investigator positions. Applicants believing they have the required experience then apply to the Department of Civil Service to take an examination, which is offered periodically. According to Giglio, the Department of Civil Service ensures that an applicant has the necessary experience before allowing the applicant to take the examination. The names of applicants who pass the examination are forwarded on a list to BNE, which chooses one of the applicants on the list for the open position. Giglio added that BNE reviews applicant resumes and conducts reference checks, and stated that the Department of Health's personnel department verifies an applicant's qualifications.

When asked how Boettcher was hired despite lacking the required experience, Giglio stated that those reviewing Boettcher's resume, including Chief Moffett, must not have noticed the missing qualifications. Giglio later added that Boettcher was hired because he was the most qualified applicant at the time.

The Inspector General contacted BNE's liaison in the Department of Health personnel department, who stated that the personnel department does not review applicant resumes to ensure that the qualifications listed meet the criteria in the job posting, nor does the department contact previous employers or do any type of background check. The personnel department does verify educational attainment by obtaining copies diplomas or transcripts. As noted, Crisafi's file does not contain a copy of his GED certificate, although it does contain some evidence of non-degree college-level work.

The Inspector General also spoke to an official of the Department of Civil Service, who stated that the department may contact an applicant if information requested in the application is missing, or if the applicant indicates he has a felony conviction. However, she stated that the department does not ensure that the applicant's experience as stated meets the criteria of the job posting, nor does it conduct any sort of background check to verify the accuracy of the claims on the application.

Crisafi Abused His State-Issued Parking Placard

Crisafi was issued a parking placard for use on official business in his state-assigned vehicle, but the Inspector General found that Crisafi had obtained a second placard from then-MARO BNE Program Director John Russell. The second placard had been assigned to a BNE investigator who no longer works at the agency. For nearly a year, Crisafi used one of his placards to avoid moving his personal vehicle from in front of his apartment building during scheduled street cleaning hours.¹

The March 22, 2007, article in the *New York Times* discussing parking placard abuses by government workers featured a Web site entitled, "nyc.uncivilservants.org," where readers post photographs of allegedly illegally parked vehicles with government-issued parking placards. One such photograph, taken in January 2007, pictured a Corvette covered by a tarpaulin. A police parking placard issued by BNE was displayed through a small window in the tarpaulin. The Inspector General determined that the Corvette in question belonged to Crisafi.

Both Crisafi's neighbors and traffic officials assigned to patrol the area told the Inspector General's office that Crisafi regularly kept his private vehicle parked in front of his apartment building with the parking placard on display. When interviewed by the Inspector General's office, Crisafi stated that, although he received no instructions on the permissible uses of his placard, he understood that it was intended for parking when on official duty. Crisafi initially denied that he had intentionally placed the placard on his windshield, claiming that if it was left there, it was done so "inadvertently." However, when asked later by investigators if it was possible that he had deliberately left his placard in his front window so that it was visible from the outside, Crisafi answered "yes."

¹ In New York City, each block is scheduled for street cleaning at least once per week during a window of approximately one and one half hours. Posted signs prohibit parking during those times.

When asked how he gained possession of the second parking placard, he stated that he obtained it from Russell one day when he had accidentally left his assigned placard at home. He never returned the extra placard, but instead placed it in his personal vehicle. He stated that he originally placed the extra placard in his personal vehicle when he drove it to Albany for training, but claimed that he accidentally left it there afterwards. However, neither of Crisafi's placards was valid for parking outside of New York City, so Crisafi would have had little reason to place one in his car for a trip to Albany.

Shortly after the publication of the *New York Times* article, BNE officials requested that Crisafi return his parking placard. However, the officials were unaware that he possessed two placards. A few months later, after being informed by the Inspector General that Crisafi still retained a BNE parking placard, BNE officials revoked the second placard.

Despite the loss of both of his parking placards, Crisafi continued to abuse his position to retain the parking space for his Corvette. On Tuesdays and Fridays, the days on which parking on Crisafi's street is prohibited between 9:00 am and 10:30 am, Crisafi continued to park his state-assigned vehicle directly behind his Corvette until street cleaning was complete. Although Crisafi's state vehicle is unmarked, it is equipped with police lights and sirens, making it readily identifiable as a law enforcement vehicle. On one occasion, the Inspector General observed Crisafi using his state vehicle and/or credentials to compel another driver to move a car from behind Crisafi's Corvette so that Crisafi could position his state vehicle there in anticipation of the street cleaning truck.

When approached by a traffic enforcement agent during the prohibited parking hours, Crisafi would signal to the agent from his state vehicle that the Corvette was his. In the event that the street cleaning truck did come, Crisafi would move both vehicles temporarily so that the street cleaner could pass.

Other Abuses Involving Crisafi's State-Assigned Vehicle

Lights and Sirens

Crisafi was assigned a state vehicle for use while conducting BNE-related business. The Inspector General learned that, Crisafi had emergency lights and sirens installed on the car at his own expense.

The Department of Health's peace officers manual states, "No peace officer shall make or permit to be made any modification to the standard equipment of an official vehicle unless the written authorization and approval of the Bureau of Management Services has been obtained in advance of such modification." In violation of this policy, Crisafi installed the lights and sirens without receiving the necessary approval. Both Director Giglio and Chief Moffett testified that they never approved, nor were they aware of, any modifications to Crisafi's car. Moffett also stated that Crisafi did not obtain the necessary training before outfitting his vehicle with lights and sirens.

Summonses

Although BNE investigators may use parking placards to park in certain no parking zones during official business, many parking spaces are nonetheless off-limits. The Inspector General learned that, between June 2006 and March 2008, Crisafi accrued \$1,310 in New York City parking summonses for improper parking of his state vehicle, but did not pay any of them as required by BNE's policy and procedures manual. During some of this time, Crisafi did not have a parking placard, as it had been confiscated by his BNE supervisors.

Crisafi testified on March 11, 2008, that he had never seen any of the 14 summonses that had been placed on his vehicle's windshield, and that he assumed that BNE's Troy office would notify him if he received any parking violations. However, Crisafi was also aware that his state car was outfitted with special law enforcement plates that parking enforcement officials at the New York City Parking Violations Bureau cannot trace to the agency. Therefore, BNE's main offices could not have been notified of the summonses Crisafi received.

Crisafi returned to the Inspector General's office on August 13, 2008. Crisafi acknowledged having been informed by the Inspector General of summonses to his car, but insisted, "You folks addressed this issue of summonses. I told you I'm not aware of summonses. I haven't heard another thing about this." When asked whether he made any attempt to obtain or pay the summonses after being told of them by the Inspector General, Crisafi rejected the Inspector General as a credible source of information, stating, "I have no idea what the truth of that is. I have no idea what the number of summonses is. I don't know when they've been issued. I don't even know if I had the car. Give me the summonses, tell me what's going on with it, we'll deal with it." As of the date of this report, Crisafi's summonses are still unpaid.

Notably, Crisafi is not the only BNE investigator to ignore parking summonses. Investigator Victor Zambrano has been issued 11 summonses, totaling \$1,015, for improper parking. Although Zambrano, like Crisafi, was informed of the outstanding summonses by the Inspector General, Zambrano's summonses are also unpaid as of the issuance of this report.

Narcotic Use

Several of Crisafi's fellow investigators witnessed Crisafi using Actiq, a prescription narcotic substance, at work. One witness informed the Inspector General that he witnessed Crisafi carrying his firearm at the time. Crisafi also drove his state-issued vehicle on that day. Given that Actiq is a strong narcotic substance, Crisafi violated the Department of Health's policy prohibiting peace officers from reporting to work while experiencing "drowsiness, agitation and/or motor function impairment or sensory distortion resulting from the use of controlled or non-controlled substances."

Crisafi claimed to the Inspector General that he was using Actiq for pain related to a back injury. Actiq, or fentanyl, is a Schedule II narcotic pain reliever, prescribed primarily to patients who have developed resistance to first-line opioid pain treatments. The following warnings are posted on Actiq's web site:

ACTIQ is indicated only for the management of breakthrough cancer pain in patients with malignancies who are already receiving and who are tolerant to opioid therapy for their underlying persistent cancer pain. Patients considered opioid tolerant are those who are taking at least 60 mg morphine/day, at least 25 mcg transdermal fentanyl/hour, at least 30 mg of oxycodone daily, at least 8 mg oral hydromorphone daily or an equianalgesic dose of another opioid for a week or longer.

ACTIQ is intended to be used only in the care of cancer patients and only by oncologists and pain specialists who are knowledgeable of and skilled in the use of Schedule II opioids to treat cancer pain.

Because life-threatening hypoventilation could occur at any dose in patients not taking chronic opiates, ACTIQ is contraindicated in the management of acute or postoperative pain. This product must not be used in opioid non-tolerant patients.

In addition, the advisories included with the Actiq packaging warn of side effects including dizziness, drowsiness, and confusion. Actiq is administered orally, and is packaged as a lozenge on a stick.

A former BNE investigator testified that, in the spring of 2006, the former investigator and a second investigator witnessed Crisafi move an Actiq "lollipop" between his gums and cheeks, the manner in which Actiq's makers recommend administering the drug. Later that same day, a third investigator found opened Actiq packaging in Crisafi's garbage can. The investigator who retrieved the Actiq wrapper notified Chief Moffett of the discovery.

The use of a Schedule II narcotic while carrying a firearm poses significant risks. Senior BNE officials, including the director of firearms training and MARO's former program director, all agreed that an individual using Actiq should not carry his or her weapon.

When BNE officials confronted Crisafi about his alleged narcotic use, he claimed, first to Giglio and later to investigators from the Inspector General's office, that he had notified his immediate supervisor at the time, John Russell, prior to his use of Actiq. According to Crisafi, he and Russell had agreed that Crisafi would come into the MARO office while using Actiq but would leave his firearm and state car at home. In a subsequent interview with the Inspector General, Crisafi claimed that he never used Actiq at work, only while off-duty.

Russell, however, testified that Crisafi never approached him beforehand about the potential use of a prescribed narcotic while at work. Instead, Russell testified, an investigator saw Crisafi using Actiq in the MARO office and notified Russell, who in turn confronted Crisafi. According to Russell, Crisafi then admitted to using Actiq. Russell testified that upon this admission he warned Crisafi against using Actiq at work.

Unapproved Outside Employment and Time Abuse

Two witnesses separately informed the Inspector General's office that Crisafi had conducted private consulting work during his state work day, and had brought the two witnesses to assist him one occasion. The witnesses, both former MARO investigators, were new to BNE and were supposed to be receiving BNE-related training from Crisafi at the time.

The witnesses stated that, in March 2006, Crisafi directed them to a hospital in Brooklyn to assist him with a self-defense class for hospital staff. The three traveled there in two state vehicles and transported mats, knee and shin pads, dummies, and other material related to the self-defense class. The class lasted approximately 90 minutes.

While neither investigator saw money exchanged between the hospital staff and Crisafi, Crisafi commented to one investigator, "these people," referring to the hospital, "pay really good money" for the self-defense class.

Failure to Report Accidental Discharge of a Firearm

In early 2007, after bringing an individual to the Manhattan Detention Complex, a facility run by the New York City Department of Corrections, Crisafi accidentally discharged his state-issued firearm. The accidental discharge occurred while Crisafi was reloading the weapon, which he had previously unloaded as required upon entering the facility. The Peace Officers Manual specifies that "any drawing (unholstering) or discharge of any issued weapon by a peace officer, whether on-duty or off-duty," must be reported to a supervisor. Crisafi acknowledged to the Inspector General that the accidental discharge had occurred, and that he did not report the incident to his superiors at BNE. Giglio informed the Inspector General that he would have expected to be informed of such an incident, but was not.

Unsafe Undercover Operation

Testimony from numerous witnesses indicates that Crisafi, without notifying Chief Moffett or Director Giglio, ran an undercover operation on January 2, 2008, that put both other BNE officers and two arrestees at risk. In violation of required procedures, Crisafi refused the assistance of the New York City Police, and failed to follow basic safety precautions to protect his fellow officers.

On January 2, a pharmacy notified the New York City Human Resources Administration (HRA) of a potential Medicaid fraud involving a forged prescription for Oxycontin. HRA in turn notified BNE of the forged prescription. Crisafi traveled to the pharmacy with other investigators. The BNE investigators witnessed the transaction and arrested a female who was attempting to fill the prescription.

After transporting the arrestee to the nearby 44th precinct of the New York City Police Department, BNE investigators interviewed her. She admitted that she had forged a prescription on a stolen prescription pad. She stated that she had intended to sell the Oxycontin to a female relative, who would in turn sell it to a male street-level dealer.

The BNE investigators sought to arrest the intended recipients of the Oxycontin. The female arrestee agreed to allow the investigators to observe her selling the drugs to her female relative. Although BNE investigators are required by departmental policies to request assistance from local police departments, a lieutenant in the 44th precinct told the Inspector General's office that Crisafi violated the policy in this case. Not only did Crisafi fail to request assistance from the police, he refused the lieutenant's offer of assistance.

The female arrestee was outfitted with a recording device and she arranged to meet her female relative under the supervision of BNE investigators. Six BNE investigators and two HRA investigators participated in the operation. The two HRA investigators were not armed, and two of the BNE investigators, being new to the agency and not yet having received their firearms permits, were also unarmed.

The drugs were returned to the arrestee, who proceeded to make the sale, as planned, to her female relative. Although the conversation was monitored via the recording device, the conversation took place in Spanish, a language that neither of the monitoring investigators could understand. Had the situation become dangerous for the participating arrestee or the investigators, the investigators monitoring the conversation may not have become aware of a problem until it was too late.

BNE investigators apprehended the female relative and returned both suspects to the 44th precinct. Within an hour, the female relative was in the same position as the first arrestee – under surveillance by the same team of investigators and making a street sale to a third suspect. Documents related to the arrest indicate that BNE investigators failed to obtain the results of a fingerprint check prior to returning the female relative to the street. Consequently, investigators did not determine whether there were any outstanding warrants for her arrest or confirm her true identity. Lacking this information, investigators could not make an informed decision about whether it was appropriate to use this person in an undercover operation. The second drug sale proceeded, and a third suspect, a male, was arrested.

Several of Crisafi's fellow investigators, as well as his supervisors, criticized the operation Crisafi supervised on January 2, 2008. The BNE investigator who installed the recording device, who was the only individual on the team with prior experience as a

narcotics detective, called it a “fly by the seat of your pants” operation. He went on to say that the operation was “ill-conceived, ill-planned” and conducted with “no real consideration for safety.” This investigator, although having more law enforcement experience than Crisafi, was new to BNE at the time and was subordinate to Crisafi. Likewise, the police lieutenant from the 44th precinct told the Inspector General’s office that he believed that the operation proceeded too quickly.

The Inspector General identified other safety risks involved in the operation. First, although there were eight investigators at the scene, the participants communicated by telephone rather than radio. Had there been an emergency, or if one or more of the investigators had been placed in danger, the entire team could not have been instantaneously notified. In addition, an investigator communicating by cell phone is unable to use police channels to call for assistance. Secondly, none of the investigators involved in the operation had been authorized to have lights and sirens on his car, nor had they received the training required by BNE for use of lights and sirens. As noted above, Crisafi had lights and sirens on his car, but had not received the required training.

Section Chief Moffett told the Inspector General that he was “disturbed” by Crisafi’s decision to decline NYPD assistance. Moffett and Crisafi’s other supervisors, including Director Giglio, also raised concerns about the presence of unarmed investigators at the scene, the failure to have the operation authorized by Giglio or Moffett, and the “integrity of the investigation” itself.

Director Giglio went on to express concerns about whether BNE should be conducting this type of operation at all. Giglio’s concerns were shared by the senior investigator responsible for firearms training, who explained, “You don’t want your people going and doing things that we’re not capable of handling... We don’t have the manpower to do stuff like that... If you don’t have a weapon you shouldn’t be anywhere near it.”

These concerns are partly based on the fact that many BNE investigators have limited law enforcement experience, and may not be appropriately trained to execute an undercover drug operation. In this instance, of the eight BNE investigators present that night, only the individual who operated the recording device had prior experience as a police officer in narcotics enforcement.

During his interview with investigators from the Inspector General’s office, Crisafi acknowledged that, as a supervisor, he was responsible for the safety of the other investigators during operations such as this one. However, Crisafi failed to accept responsibility for ensuring that his fellow investigators had the required experience and training. Crisafi stated, “If you get the job, as far as I’m concerned, you’ve got the experience.” As noted above, a BNE investigator is required to have obtained experience in criminal investigations. There is no requirement for experience with undercover operations or street-level narcotics arrests.

Violations of Suspect's Rights

The most serious findings of the Inspector General's investigation relate to Crisafi's outright flouting of suspect's rights on two known occasions. The Inspector General immediately notified the appropriate district attorneys upon learning of the improprieties. When questioned by the Inspector General on March 11, 2008, Crisafi denied that either of these incidents had occurred.

November 16, 2007

On November 16, 2007, MARO Investigators Crisafi, Thomas D'Amicantonio and Brendan Vallely arrested a male suspect for impersonating a doctor in order to fraudulently obtain controlled substances. During transport to a police precinct for processing, the suspect informed D'Amicantonio that he wanted an attorney. D'Amicantonio relayed this information to Crisafi who responded, "We never had this conversation." Upon arrival at the local police precinct, the suspect was placed in an interview room.

Because the suspect had requested an attorney, the investigators were legally prohibited from questioning him further without an attorney present. Crisafi nonetheless entered the interview room alone and took a statement from the suspect without an attorney present. The suspect admitted to impersonating a doctor in order to fill prescriptions of hydrocodone, a Schedule II narcotic, and to filling prescriptions for narcotics written by his father, a doctor on Long Island.

After the statement was signed by the suspect, Crisafi, who was Vallely's supervisor, requested that Vallely sign a form indicating that he had witnessed Crisafi informing the suspect of his Miranda rights. At the time, Vallely had been working at BNE for approximately nine months. Vallely signed the Miranda sheet indicating that he was a witness, although he had not witnessed Crisafi informing the suspect of his Miranda rights, nor had he been present when the suspect signed the form indicating that he had been informed of his rights.

August 31, 2007

On August 31, 2007 Investigators Crisafi and Vallely arrested a suspect in Brooklyn for attempting to illegally obtain controlled substances. After the suspect was transported to the local precinct for processing, Vallely advised him of his Miranda rights and asked if he would like to give a statement. Vallely recalled that the suspect declined to speak to investigators and requested an attorney. Vallely noted on a Miranda sheet that the suspect did not wish to give a statement.

When Vallely informed Crisafi that the suspect did not wish to give a statement, Crisafi replied, in reference to the Miranda sheet, "Get rid of that paper; this didn't happen." Vallely did not destroy the document as instructed, but rather placed in the case file. According to Vallely, Crisafi then entered the interview room whereupon the

suspect emphatically requested an attorney. Crisafi ignored the request and attempted to take a statement from the suspect, who declined.

Lack of Supervision of Crisafi and MARO

As noted in this report's introduction, BNE's MARO office is distinct from the other field offices in that it employs a Program Director with no prior law enforcement experience to supervise the investigators in conjunction with the Director Giglio and Chief Moffett in Troy. In interviews with the Inspector General, many former and current BNE employees discussed the divide between MARO and BNE headquarters. According to one investigator, MARO has "divorced" itself from BNE, creating a "bizarre dynamic" in which MARO operates with a large degree of autonomy. Approval of law enforcement operations has fallen to the MARO BNE Program Director, currently a licensed pharmacist, rather than Chief Moffett, who supervises investigations in the rest of the state.

BNE employees interviewed by the Inspector General also testified that the lack of supervision over MARO and the lack of a program director with prior law enforcement experience permitted Crisafi to attain an inappropriate degree of power within the office, even before he was temporarily promoted to the position of senior investigator in 2006. One investigator stated that both the former and current program directors ceded a great deal of their authority to Crisafi. According to virtually all of the employees in MARO, Crisafi set the tone for the office, a dynamic which has resulted in a particularly high rate of turnover among its employees. According to one employee, five of the investigators currently employed at MARO have expressed their desire to leave the office, primarily because of Crisafi. One investigator has since left, citing Crisafi as the reason. One senior investigator described the people employed in MARO as "disgruntled," while another employee testified that "Troy has been stymied" in its attempts to handle Crisafi. Officials at BNE headquarters were also aware of the high rate of turnover among MARO employees and suspected that Crisafi provided the impetus for many departures.

Crisafi was described by his colleagues as a "bully," "confrontational," sometimes "inappropriate" and "unprofessional" when interacting with healthcare professionals, and as having an "arrogant and narcissistic personality" that is "sometimes" offset by his job performance. While some thought of Crisafi as a competent investigator, even those colleagues described him as "abrasive."

In addition to allowing Crisafi to operate without effective supervision, the lack of a direct supervisory connection between supervisors at BNE's headquarters and MARO has resulted in a lack of cohesive policy direction for BNE. While the other BNE field offices focus on investigating the ways in which prescription medication is unlawfully diverted from the healthcare system, the MARO office focuses primarily on apprehending those trying to obtain controlled substances illegally. Consequently, MARO reports many more arrests of individuals for possession and sale of controlled substances. MARO does engage in some preventative action such as inspecting new

facilities and overseeing drug destruction, but the bulk of its resources are focused upon non-institutional drug diversion cases.

While it is within MARO's statutory authority to conduct this type of operation, it differs from Director Giglio's and Chief Moffett's stated goals for BNE. Both Giglio and Moffett emphasized that the primary responsibility of BNE should be to identify and apprehend those healthcare professionals and institutions involved in drug diversion. According to Moffett, "our priorities are healthcare people, doctors, physicians, pharmacists, et cetera. They're our highest priority." However, the priorities of Giglio and Moffett have not made their way to MARO.

Recommendations

Louis Crisafi was promoted to senior investigator in 2006. Crisafi's promotion was subject to a one-year probationary period, which was extended into March 2008 because Crisafi was absent from work for some months during this time. At the conclusion of the probationary period, Crisafi was not permanently promoted to senior investigator. Although the Inspector General lacks the authority to impose, and normally does not recommend, specific disciplinary action to be taken against a state employee, one would be hard-pressed to justify the retention of Crisafi in state employment given the multiple instances of misconduct described in this report, for which Crisafi is openly unrepentant.

This report notes several other problems within BNE, in addition to the inappropriate behavior of Crisafi. Primarily, the lack of appropriate supervision of Crisafi and the BNE investigators based at MARO is partly a function of a command structure in which the chief investigator does not have direct control over the MARO investigators. The chief investigator and the director of BNE must establish more direct control over the investigators at MARO to ensure the integrity and safety of law enforcement operations, and that the investigators are pursuing the goals of the agency as set forth by its policymakers. Appropriate supervision also can ensure that officers participating in an operation are adequately trained and equipped, and that the agency's procedures are followed.

The Department of Health's Peace Officers Policies and Procedures Manual was last revised in 1994. BNE should review the applicable sections to determine whether they should be updated. Possible additional subjects to be included in the manual are use of the parking placard, reporting use of a prescription controlled substance to a supervisor, and necessary approvals before conducting certain types of law enforcement operations.

Investigator Valley was relatively new to BNE at the time he was instructed by his supervisor, Crisafi, to falsely sign that he had witnessed a suspect's Miranda warnings. However, having previously obtained a master of criminal justice degree and having worked as an investigator for the Unified Court System's Inspector General, Valley should have recognized that Crisafi's request was improper. Accordingly, the

Inspector General recommends that BNE take appropriate disciplinary action against Vallely. In addition, training regarding federal and state law applicable to the questioning of a suspect in a potential criminal matter should be mandatory for all new investigators. Refresher and update courses also should be provided to existing employees.

The Inspector General makes the following additional recommendations based on the findings in this report:

1. BNE should ensure that all parking fines incurred by its officers are promptly paid.
2. BNE should verify the qualifications of all candidates for peace officer through a background check.

A copy of this report was forwarded to the New York County District Attorney's Office for its review.

Department of Health Implementing Recommendations

In a November 21, 2008, letter, Department of Health Commissioner Richard F. Daines, M.D., advised the Inspector General that the report's recommendations are being implemented.

Daines advised that disciplinary action will be taken against Crisafi and the conduct of Vallely will be reviewed to determine appropriate action. Daines also advised that the Department of Health will take immediate actions to strengthen the accountability, performance, and day-to-day supervision of MARO's narcotics investigative programs, with all MARO's BNE staff reporting to the Director of the Albany bureau. In addition, the Department of Health will undertake a comprehensive review of the program to identify the most appropriate reporting structure for the future.

Daines also advised that BNE is conducting a review of its Policy and Procedures Manual, and that a number of policies have been updated. BNE is also updating the manual to address the use of parking placards, the reporting of prescription controlled substance use to a supervisor, and the Section Chief approvals required to perform certain types of law enforcement activities. Training regarding federal and state law applicable to suspect questioning is mandatory for all new investigators, and will continue to be part of regular quarterly training.

Daines also advised that the Department of Health will establish a process by which its Office of Management Services is notified on a regular basis by the Department of Motor Vehicles of parking violations related to Department of Health vehicles. Upon such notification, the Department of Health will ensure that such fines are brought to the attention of the employee and promptly paid.

Daines also advised that BNE will re-examine its hiring practices in conjunction with its Bureau of Personnel Management and the Department of Civil Service to verify that candidates for narcotics enforcement positions meet minimum qualifications. BNE will continue to perform background checks on all of its investigative candidates.