

STATE OF OHIO  
**OFFICE OF THE INSPECTOR GENERAL**

RANDALL J. MEYER, INSPECTOR GENERAL

**REPORT OF  
INVESTIGATION**



**AGENCY: OHIO DEPARTMENT OF REHABILITATION AND CORRECTION  
FILE ID NO.: 2013-CA00011  
DATE OF REPORT: NOVEMBER 20, 2014**

## The Office of the Ohio Inspector General ... The State Watchdog

*“Safeguarding integrity in state government”*

The Ohio Office of the Inspector General is authorized by state law to investigate alleged wrongful acts or omissions committed by state officers or state employees involved in the management and operation of state agencies. We at the Inspector General’s Office recognize that the majority of state employees and public officials are hardworking, honest, and trustworthy individuals. However, we also believe that the responsibilities of this Office are critical in ensuring that state government and those doing or seeking to do business with the State of Ohio act with the highest of standards. It is the commitment of the Inspector General’s Office to fulfill its mission of safeguarding integrity in state government. We strive to restore trust in government by conducting impartial investigations in matters referred for investigation and offering objective conclusions based upon those investigations.

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Randall J. Meyer  
Ohio Inspector General



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RANDALL J. MEYER, INSPECTOR GENERAL

**REPORT OF INVESTIGATION**

**FILE ID NUMBER:** 2013-CA00011

**SUBJECT NAME:** John F. Gardner

**POSITION:** Regional Nurse Practitioner

**AGENCY:** Ohio Department of Rehabilitation and Correction

**BASIS FOR INVESTIGATION:** Complaint

**ALLEGATIONS:** Conflict of Interest;  
Misuse of State Resources;  
CPI Violations

**INITIATED:** February 19, 2013

**DATE OF REPORT:** November 20, 2014

## **INITIAL ALLEGATION AND COMPLAINT SUMMARY**

On February 15, 2013, the Ohio Department of Rehabilitation and Correction (ODRC) reported that John F. Gardner, a regional nurse practitioner for the ODRC Bureau of Medical Services (BOMS), used the Franklin Medical Center's (FMC) laboratory for personal use; specifically, that Gardner used the laboratory for his personally owned medical clinic. The Franklin Medical Center is an ODRC-operated facility. According to ODRC, an invoice was printed on February 6, 2013, in the amount of \$39.26 for Family Medical Clinic & Laser Skin Solutions.

On February 19, 2013, the Office of the Ohio Inspector General initiated a preliminary inquiry and based upon the findings of confidential personal information (CPI) violations and the misuse of state resources, an investigation was opened on April 3, 2013.

## **BACKGROUND**

### *Ohio Department of Rehabilitation and Correction<sup>1</sup>*

The ODRC is charged with the supervision of felony offenders in the custody of the state, including providing housing following their release from incarceration, and monitoring the individuals through the parole authority. The department also oversees the community control sanction system that provides judges with sentencing options to reduce the inmate population. There are currently 31 correctional institutions throughout the state. The director of ODRC is appointed by the governor and confirmed by the Ohio Senate. ODRC is funded through General Revenue Funds, federal funding, and revenue earned through sales from the Ohio Penal Industries.

The Franklin Medical Center Laboratory (FMC lab), located in Columbus, provides ancillary services to state facilities and selected community agencies. The FMC lab is certified and licensed by the federal government and is accredited by the Commission on Laboratory Accreditation. The FMC lab performs more than 3.5 million clinical laboratory tests per year. The FMC lab previously worked in conjunction with Laboratory Corporation of America (LabCorp) as its reference laboratory. Beginning on July 15, 2013, the FMC lab changed from an ODRC-operated facility to a contract lab with LabCorp.

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<sup>1</sup> Source: Biennial budget documents, the FMC Laboratory's customer service manual and proposed business plan.

Ohio Secretary of State records revealed that Family Medical Clinic & Laser Skin Solutions was incorporated by John Gardner on August 15, 2012. Family Medical Clinic & Laser Skin Solutions is located at 44 South 29<sup>th</sup> Street, Newark, Ohio, in Licking County.

Applicable Laws and Policies

Ohio Revised Code §5120.135(B) states:

The department of rehabilitation and correction may provide laboratory services to the departments of mental health and addiction services, developmental disabilities, youth services, and rehabilitation and correction. The department of rehabilitation and correction may also provide laboratory services to other state, county, or municipal agencies and to private persons that request laboratory services if the department of rehabilitation and correction determines that the provision of laboratory services is in the public interest and considers it advisable to provide such services. The department of rehabilitation and correction may also provide laboratory services to agencies operated by the United States government and to public and private entities funded in whole or in part by the state if the director of rehabilitation and correction designates them as eligible to receive such services.

Ohio Revised Code §102.03(D) states:

No public official or employee shall use or authorize the use of the authority or influence of office or employment to secure anything of value or the promise or offer of anything of value that is of such a character as to manifest a substantial and improper influence upon the public official or employee with respect to that person's duties.

Ohio Revised Code §1347.15 (B) requires each state agency to adopt rules in accordance with Chapter 119 of the Revised Code which regulates access to the confidential personal information (CPI) the agency maintains, whether electronically or on paper. The rules must include criteria to determine which employees of the agency may access CPI, and which supervisory employees of the agency may grant those employees access to confidential information. Also included in

the rules must be a list of valid reasons for which only employees of the agency may access confidential personal information.

To comply with this requirement, ODRC implemented the following policies, which were reviewed as part of this investigation:

ODRC Policy Number 31-SEM-02 *Standards of Employee Conduct* states, in part:

CONFIDENTIALITY – The Department of Rehabilitation and Correction employees have access to official information ranging from personal data concerning other staff and inmates to information involving security related issues. Because of the varying degrees of sensitivity, employees may only release information as required in the performance of their job duties or upon specific authorization from an individual with delegated authority to release official information. The Director or his designee in the Operation Support Center and the Appointing Authorities or their designees in the institutions are the only individuals authorized to release official information.

PUBLIC INFORMATION – Staff members will not use, or release for use, official information for private purposes unless this information is available to the general public. ... Staff members will not remove from file, or make copies of records or documents, except in accordance with established procedures or upon proper authorization.

GOVERNMENT PROPERTY – Employees shall only use government property, including but not limited to automobiles, supplies, equipment, computers, e-mail accounts, internet/intranet access, telephones, and facilities, for official purposes.

OUTSIDE EMPLOYMENT – An employee shall not have a direct or indirect financial interest or other interest that conflicts with or appears to conflict with his/her government duties and responsibilities. This would prohibit acceptance of consideration, without approval of the Appointing Authority, from a person or organization doing business with the Department of Rehabilitation and Correction. All outside employment and income producing rental property must

be reported in writing to the employee's Appointing Authority or designee for approval.

Additional information on the issue of conflict of interest may be found in Chapter 102 and 2921 of the Ohio Revised Code. Copies of these provisions are available for inspection in the Personnel Office or through the State of Ohio website.

ODRC Policy Number 07-ORD-05 *Cooperation with Court and Interagency Records Requests* states, in part:

Pursuant to Revised Code §5120.21(C)(2), certified copies of inmate medical records may be released if two distinct and separate documents are received:

- i. The signed written request of the inmate or former inmate to whom the records pertains, designating a licensed attorney or licensed physician to receive the records; and
- ii. The signed written request on letterhead stationery of either the licensed physician or licensed attorney designated by the inmate or former inmate.

ODRC Policy Number 07-ORD-11 *Access and Confidentiality of Medical, Mental Health, and Recovery Services Information* states, in part:

It is the policy of the ODRC to ensure the restricted access to, safekeeping, and confidentiality of medical records.

Ohio Revised Code §5120.21 and Department Policy 07-ORD-05, *Cooperation with Court and Interagency Record Requests*, govern all other access to medical files. Health record information is transmitted to specific and designated physicians or medical facilities in the community upon the written request or authorization of the offender.

ODRC Policy Number 07-ORD-13 *Inmate Master Record* states, in part:

It is the policy of the Ohio Department of Rehabilitation and Correction to compile, manage, maintain, and update each inmate master record accurately and in a standardized manner.

No employee of the Department shall copy any document from the inmate master record except when it is in their official capacity to do so.

ODRC Policy Number 05-OIT-04 *Information Classification, Storage, Retrieval, and Release* states, in part:

Non-Public Records (See Rules/Code Reference ORC 149.43) may be made available at the discretion of the Director, subject to other restrictions on such access as may be provided by law or rule.

Publicly owned computer hardware and software will be used only for official business in the performance of daily work responsibilities. The use of publicly owned hardware and software for personal or private business functions is prohibited and any violation will be reported to the Chief of the Bureau of Information and Technology Services (BITS) through an Incident Report.

This policy defines levels of confidentiality as public, limited access, and restricted. The policy defines restricted as:

... applies to information, the release of which is prohibited by state or federal law. This label also applies to records that an agency has discretion to release under public records law exceptions but has chosen to treat the information as highly confidential.

ODRC Policy Number 05-OIT-10 *Internet, Electronic Mail, and Online Services Use* states, in part:

Employees and other individuals with DRC system asset accounts, such as the internet, electronic mail, online services and the VPN shall not:

- Use any system asset for operating a business or for personal gain.
- Use a DRC account or any non-DRC information system account for non-business purposes to access personal or confidential information about an individual.

### **INVESTIGATIVE SUMMARY**

The Office of the Ohio Inspector General requested and reviewed the invoice created by FMC for the Family Medical Clinic & Laser Skin Solutions and the lab submission requests from ODRC. ([Exhibit 1](#)) The invoice, which was printed on February 6, 2013, by FMC for Family Medical Clinic & Laser Skin Solutions totaled \$39.26 and listed three separate patient identification numbers and requisition numbers with the following amounts:

- Requisition # B-31747749 for \$10.74
- Requisition # B-31747750 for \$25.02
- Requisition # B-31747751 for \$3.50

The lab submission requests for these three patient identification numbers list Gardner as the “ordering physician,” and two of the three requests listed the Family Medical Clinic as the referring clinic.

During an interview conducted by the Office of the Ohio Inspector General on May 6, 2014, Ed Murphy, health planning administrator for ODRC, explained that the lab functioned on a rotary fund, meaning the lab had to be self-sustaining. Murphy said he was responsible for monitoring the rotary fund to ensure there were funds to pay the bills. According to Murphy, the lab was permitted to perform lab work for other patients or providers under the condition they were not third-party payers.<sup>2</sup> Murphy explained the customers of the FMC lab were the institutions, the departments of health and youth services, and private correctional companies that now operate some of the former state institutions. Murphy stated that the FMC lab was seeking business with private entities, but could not compete with other labs’ pricing. Murphy said the FMC lab

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<sup>2</sup> A third-party payer is someone other than the patient or provider that compensates the provider for services rendered, typically a private or public insurance company.

currently did not have any additional customers other than state agencies and the private correctional companies that run former state institutions.

Murphy stated that Gardener had started a “neighborhood clinic” and was seeking a company to perform lab work for his clinic. Murphy said Gardner asked him if the FMC lab could perform the lab work for his clinic and Murphy said, “Yes.” Murphy explained that he charged Gardner the same price all customers are charged for the lab work. Murphy admitted to giving Gardner approval to submit the lab work to the FMC lab, and added that he believed it was not an issue because Gardner was charged the same pricing as the lab’s other customers. Murphy said he viewed the situation as extra income for the FMC lab. Murphy said there was no written contract between Gardner and the FMC lab, just a verbal agreement. Murphy noted that Stuart Hudson, managing director of health care and fiscal operations for ODRC, was not aware of the agreement at that time.

During an interview conducted by the Office of the Ohio Inspector General on May 6, 2014, Stuart Hudson stated he did not become aware that Gardner was submitting lab work from his private medical clinic to the FMC lab until he received an email on February 13, 2013, from Steve Sroufe, business administrator at FMC. Hudson did not recall ever discussing the FMC lab reaching out to private entities for work, and said he was not aware that Murphy was seeking business for the FMC lab from private entities. Hudson did recall discussing reaching out to county jails and other county agencies to bring business into the FMC lab.

On February 13, 2013, Hudson sent an email to Gardner directing him to discontinue use of the FMC lab. ([Exhibit 2](#))

Hudson stated any contract entered into by FMC would require the signature of the warden at FMC, because the warden is the appointing authority. Hudson stated that ODRC never enters into verbal contractual agreements and that neither Murphy nor Dan Kelly, former FMC lab manager, had the authority to enter into contracts on behalf of FMC.

Hudson admitted that he was aware of Gardner's private practice and that Gardner asked permission from Hudson to open the clinic. Hudson recalled signing a secondary employment form for Gardner for his private practice. Neither ODRC nor Gardner was able to produce a signed copy of the secondary employment agreement.

During an interview with the Office of the Ohio Inspector General conducted on May 7, 2014, Dan Kelly, former FMC lab manager reported that he and Murphy were approached by Gardner about the FMC lab doing the lab work for Gardner's private clinic. Kelly stated that he and Murphy gave Gardner approval to use the FMC lab for Gardner's private business. Kelly also said he did not know whether he or Murphy had authority to enter into contracts on behalf of ODRC or the FMC lab. Kelly was unsure if the FMC lab was permitted to seek business and do business with private entities.

During a previous interview with the Office of the Ohio Inspector General conducted on March 1, 2013, Kelly specifically noted that the lab workup for requisition number B-31747750 required the test be sent to ODRC contractor LabCorp, which was for pediatric lead blood work and was billed to FMC's account. The Office of the Ohio Inspector General obtained a copy of the LabCorp bill which revealed that FMC was billed \$6.00 for the pediatric blood test.

[\(Exhibit 3\)](#) Later, FMC generated an invoice for \$7.00 and sent it to Gardner for payment. Kelly recalled receiving emails from Gardner's ODRC email account regarding the lab work for his private business.

The Office of the Ohio Inspector General conducted a forensic analysis of Gardner's ODRC email account which identified several instances when Gardner used his ODRC email account for his private business.

The Office of the Ohio Inspector General issued a subpoena to Gardner and the Family Medical Clinic & Laser Skin Solutions for the billing records related to the lab work that Gardner submitted to the FMC lab. Based on the response provided by Gardner, the Office of the Inspector General was unable to determine the amount Gardner billed for the lab services conducted by the FMC lab on requisition numbers B-31747750 and B-31747751. Gardner's

records on requisition number B-31747749, which were handwritten notes on the lab results, indicated Gardner charged the patient \$21.49 for the lab work. A comparison of the amount Gardner was charged by the FMC lab for that specific lab specimen and the amount Gardner billed the patient revealed that Gardner charged the patient \$10.75 more than the amount Gardner was billed by the FMC lab.

During the Office of the Ohio Inspector General's forensic analysis of Gardner's email account, it was discovered Gardner used his ODRC email account to attach a file containing a former inmate's medical records to an email message. The email message was then sent to Gardner's personal email address.

ODRC records revealed that Inmate A was released from ODRC on February 23, 2013. On March 20, 2013, Gardner sent an email from his ODRC account to his personal account with a file attachment "2013-03-20.pdf," containing a list of Inmate A's current medications. On March 23, 2013, Gardner sent an email containing Inmate A's 30-page patient care summary from his ODRC account to his personal account.

The Office of the Ohio Inspector General requested information from Quest Group, Ltd., who was contracted with ODRC to develop and support the Patient Oneview system.<sup>3</sup> Quest Group, Ltd. confirmed that Inmate A's "current medications" were accessed at 1:14 p.m. on March 20, 2013, and that Inmate A's patient care summary was accessed on March 23, 2013, at 9:05 a.m. Quest Group, Ltd. stated that users who have access to patient records are granted levels of permission within the system as required by job duties. Quest Group, Ltd. confirmed that Gardner had access to Patient Oneview.

Quest Group, Ltd. was asked to explain the meaning of the file attached to the email named "*Attachments: ... 2013-03-20.pdf.*" Quest Group, Ltd. sent an email response to investigators and stated:

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<sup>3</sup> Patient Oneview is an interface that pulls together medical information from several other medical information systems for convenience of use. The interface includes information about an inmate patient to include, but not limited to: laboratory results, pharmacy reports, diagnostic imaging reports, Ohio State University Medical Center encounters, demographic information, commissary purchase records, and medical/dietary restrictions. It is a view-only system with no data input available.

“... 2013-03-20.pdf,” is consistent with the default filename generated by the web server for this report. However, the user is free to edit and save the PDF document to any valid filename permitted by the user’s local workstation. The filename during the process of saving a document is not under the control of the web server. So, the filename is consistent with a user editing default filename (like the URL above) to shorten it to just the inmate number and date.

Quest Group, Ltd. was asked to explain the meaning of the file attached to the email named “Attachments: ... 2013-03-23.pdf.” Quest Group, Ltd. stated that it is a file name that used the Universal Resource Locator (URL) created by the Patient Oneview web application when a Patient Care Summary Report is generated. It contains the inmate number of the patient. However, this file name appears to be slightly altered since there is an extra digit at the end of the inmate’s number. Possibly there was an error in copying the URL or editing out the inmate name. The user could have saved the PDF with the default filename (indicated by the unmodified URL), or edited the filename, and then attached that PDF document to an email.

During an interview with the Office of the Ohio Inspector General on May 17, 2013, Carolyn Young, assistant chief of the ODRC bureau of records management, stated a former inmate’s medical records can only be released when ODRC has received a signed release from the former inmate. Young explained that all requests for records are processed by the document management section. Young searched the record request database for any medical record requests for Inmate A and found that there were no records requests made for Inmate A’s medical records. Young confirmed that Inmate A’s medical records had not been scanned and, therefore, concluded that Inmate A’s medical records had not been requested since Inmate A’s release. Young explained that once an inmate’s records are requested, the records are scanned into the system and the original file is destroyed. Young confirmed that Inmate A’s medical records had not been requested by searching the database for the records warehouse, which revealed that Inmate A’s master record was still at the ODRC central warehouse and had never been checked out since his release.

In the interview conducted with Hudson on May 6, 2014, Hudson confirmed that ODRC must receive a signed release by the inmate or former inmate to release any medical records. Hudson stated that ODRC would never release those records without a signed release. Hudson stated that ODRC has already made changes that prevent employees from accessing a former inmate's records.

The Office of the Ohio Inspector General made several attempts to locate and interview former Inmate A, but all messages went unanswered.

The Office of the Ohio Inspector General attempted to interview Gardner, but at the advice of his attorney, Gardner declined.

## **CONCLUSION**

The investigation found that Family Medical Clinic & Laser Skin Solutions is a private business operated by John Gardner. Gardner did notify ODRC of his secondary employment as required by ODRC policies.

The investigation determined that Gardner did submit lab specimens from three separate patients of his private practice to the FMC lab for testing. In response to a subpoena, Gardner provided inadequate billing records which failed to show what two of the three patients were charged by Gardner for the lab work submitted to the FMC lab by Gardner. The records did show that one patient was charged \$21.49 for lab work, although the FMC lab only charged Gardner \$10.74, resulting in a profit for Gardner of \$10.75.

Forensic analysis conducted by the Office of the Ohio Inspector General found several instances where Gardner in his capacity as a regional nurse practitioner used his ODRC email account for his private business. The forensic analysis further revealed that Gardner accessed confidential personal information when obtaining a former inmate's medical records in Patient Oneview. Gardner converted the medical records to a PDF file and then used the ODNR email system to send the PDF file to his personal email account.

**Accordingly, the Office of the Ohio Inspector General finds reasonable cause to believe that a wrongful act or omission occurred in this instance.**

### **RECOMMENDATION(S)**

The Office of the Ohio Inspector General makes the following recommendations and asks the director of the Ohio Department of Rehabilitation and Correction to respond within 60 days with a plan detailing how the recommendations will be implemented. The Ohio Department of Rehabilitation and Correction should:

1. Review the conduct of John Gardner and determine whether administrative action is warranted.
2. Determine if additional or remedial training is warranted for Gardner to address proper handling of confidential personal information.
3. Consider providing refresher training to employees on the ethics laws and accessing confidential personal information, reminding them of the requirements of related ODRC policies.

### **REFERRALS**

This report of investigation will be provided to the Columbus City Attorney's Office and the Ohio Ethics Commission for consideration.

**[\(Click here for Exhibits 1 – 3 combined\)](#)**



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**OFFICE OF THE INSPECTOR GENERAL**

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RANDALL J. MEYER, INSPECTOR GENERAL

**NAME OF REPORT: Ohio Department of Rehabilitation and Correction**

**FILE ID #: 2013-CA00011**

**KEEPER OF RECORDS CERTIFICATION**

**This is a true and correct copy of the report which is required to be prepared by the Office of the Ohio Inspector General pursuant to Section 121.42 of the Ohio Revised Code.**

**Jill Jones**  
**KEEPER OF RECORDS**

**CERTIFIED**  
**November 20, 2014**

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