

June 21, 2001

Hon. Harold O. Levy
Chancellor
New York City Public Schools
110 Livingston Street; Room 1010
Brooklyn, NY 11201

Re: Franklin Simon
SCI Case #2001-1638

Dear Chancellor Levy:

An investigation conducted by this office has substantiated that, in September 2000, sixty-year-old Franklin Simon was hired as a biology teacher and assigned to Murry Bergtraum High School (“Bergtraum”) in Manhattan, despite having lost his license to practice medicine because of misconduct, including sexual misconduct, a fact readily available on the New York State Department of Health’s Internet site.¹ In obtaining his position within the public school system, Simon did not provide a résumé, left blank his list of prior employers and, in fact, lied on his application for a provisional teaching license. Moreover, we found that the Board of Education (“BOE”) currently has no uniform procedure in place to review an applicant’s employment record or check a license history. Consequently, Simon’s background went undetected and he was allowed access to schoolchildren on a daily basis.

This investigation began when this office received anonymous correspondence alleging that Franklin Simon, a former physician, who had a history of sexual incidents with at least two patients, was working as a teacher for the BOE.

¹ After our investigators informed Deputy Superintendent Steve Gutman that we had a serious case of misconduct against Simon, effective June 6, 2001, he was assigned to the office of the Superintendent for Manhattan High Schools. On June 8th, Simon’s employment was terminated because he “failed to notify the Board of Education of a material fact that pertains to [his] license.”

We quickly verified both aspects of the complaint. Simon was teaching biology at Bergtraum and had lost his license to practice medicine as a result of misconduct. This latter information was obtained easily by contacting the Office of Professional Medical Conduct at the New York State Department of Health (“DOH”). Moreover, we learned that information about final disciplinary actions taken against physicians, including Simon, was available at the DOH web site.² In fact, we also uncovered this history by using a popular search engine to look for information about “Franklin Simon MD.”

The conduct that led Simon, a psychiatrist, to be disciplined and, ultimately, to lose his license was disturbing. Following a hearing in 1978 and 1979, Simon was found guilty of professional misconduct including the fraudulent practice of medicine, the grossly incompetent and grossly negligent practice of medicine, the practice of medicine while impaired by mental illness, and moral unfitness. The conduct underlying the charges included sexual advances toward patients, attempts to induce patients to perform “lewd and lascivious” acts under the guise of marriage counseling and treatment, and displaying a pistol while purportedly treating patients. As a result, in 1981, by order of the Commissioner of Education, Simon’s license was revoked, only to be modified in 1983 by stay of revocation and a period of probation for five years.

That was not the end of Simon’s disciplinary history, however. In 1996, Simon applied to surrender his license after new charges were brought. This time, the Board for Professional Medical Conduct issued several varied allegations and specifications. First, that Simon’s mental illness – manic-depressive disease – continued to impair his practice of medicine. Next, that he knowingly and with intent to deceive made false statements in the practice of medicine. Specifically, he answered “no” to questions about having a mental health condition, being found guilty of misconduct, being dismissed from employment, and resigning from employment rather than facing dismissal. Moreover, he had asserted that no complaints about his medical practice had been lodged prior to or after his “manic episode” in 1976 and 1977. Third, the conduct board alleged that, in 1995, Simon had a patient sit on his lap, that he kissed, bit, and touched the patient on the buttocks, and that he massaged her back under her shirt. Finally, Simon was charged with attempting to disrobe another doctor, touching her in a sexual manner, exposing his genitals, masturbating in the presence of this doctor, and making lewd propositions to her.

Even after agreeing to surrender his license, Simon failed to do so. According to Rhona Wilson of the New York State Office of Professional Medical Conduct, she has repeatedly requested that Simon relinquish his license, but in response received a letter, which was not notarized, indicating he “could not locate” it.

² Information on action taken against physicians and physician assistants from 1992 to the present can be found at www.health.state.ny.us. Click first on “Information for Consumers” or “Information for Providers” then click on “Professional Misconduct & Physician Discipline.”

How is it possible that the BOE found Simon to be a suitable candidate for a teaching position? The simple answer is that no review was performed to determine his fitness – or lack thereof – for the job. He was not required to provide a résumé, was allowed to ignore a request for prior employment history, was not asked for references, and his responses to answers about his background – which were lies – were not verified. Although the one item he was required to produce – his transcript – should have prompted questions about his medical career, his professional and license histories were not checked.

Given his track record as a doctor, it should come as no surprise that Simon lied on his BOE application for a provisional teaching certificate. He answered “no” to the questions:

- ?? Have you ever been discharged or required to resign from any position?
- ?? Have charges ever been preferred against you by an employer?
- ?? Were the charges sustained?
- ?? Have you ever resigned as an alternative to facing charges or dismissal?
- ?? Have you ever had any professional certificate or license...revoked...by any government agency as a result of your record?

What is surprising is that no one conducted a background check to verify Simon’s application. According to Caryl Cohen, Director of the Center for Recruitment and Professional Development for the BOE, recruiters/counselors, who are located both at the BOE offices at 65 Court Street and at some district offices, ensure that applicants have provided all pertinent information. However, the recruiters/counselors neither ask applicants about their prior employment nor review that portion of the application. According to Cohen, the recruiters/counselors ensure that applicants answer the eleven questions in Section 18 of the application which elicit responses about criminal and employment charges brought against them, but take no steps to verify the accuracy of the answers. Cohen asserted that the Office of Personnel Investigations (“OPI”) handles all issues regarding an applicant’s employment history.

However, according to Lawrence Becker, the Chief Administrator of OPI, currently there is no uniform procedure to check the information provided by applicants about licenses and former places of employment. Becker asserted that his office is looking into ways to do background reviews.

According to Steven Catalano, Chief Administrator of Licensing, the Office of Personnel Assessment and Licensing follows up on applicants who fail to provide

employment histories by sending out a letter requesting such information. However, if the applicant – who could already be an employee – does not respond, the issue is dropped because they have “no recourse.” Catalano explained that the BOE has no procedure in place requiring applicants to provide information about former employment. Moreover, according to Catalano, failure to provide an employment record is not a basis to deny a license, no matter the age or former profession of the applicant. In fact, Simon did not provide information about prior employment and, in November, he was sent a follow up letter requesting the information – but did not respond. However, he had already received his provisional license in October.

Min Choi, the Personnel Director for the Office of the Superintendent for Manhattan High Schools, helped Simon complete the process to fill the biology teacher vacancy at Bergtraum. Choi did not recall meeting Simon, but found his transcript on file. Choi explained that all that is required to teach is a transcript which proves the applicant has the necessary educational background. Although he asks for a résumé, one is not required and, apparently, Simon never provided his because none is on file. According to Choi, neither he nor any of the recruiter/counselors on his staff check an applicant’s employment history.

No one at the school knew much about Simon either. According to Assistant Principal Marian Zachowski, she heard about Simon from a trusted colleague at A. Philip Randolph High School who had met Simon when he applied for a position there.³ The colleague, who had no prior or personal knowledge about Simon, described him as “a good candidate.” Zachowski explained that she was eager to fill the position and, while Simon had no prior high school teaching experience, “he knows his science.”

In September 2000, Bergtraum Assistant Principal Thomas Zarillo was responsible for directing all new teachers at the school, including Simon, to the district office to begin the processing of paperwork. Zarillo explained that because they needed to fill the position and Simon had all the appropriate documentation, they hired him. According to Zarillo, at his level in the hiring process, no background check is conducted. In fact, he assumed an applicant’s history was reviewed and references were contacted “centrally:” at the district or at BOE headquarters.

Principal Grace Julian echoed Zarillo’s assumption. According to her, because he arrived at Bergtraum with the appropriate BOE papers, she believed Simon had been “cleared” to teach. She knew nothing else about him and did not even have a copy of his résumé.

³ Our investigator spoke with that colleague who remembered interviewing Simon and that he was a “retired doctor.” Although she believed he provided a résumé, when she checked her file, none was there.

Through his attorney, Franklin Simon declined the opportunity to speak with our investigators.

Obviously, any review of Franklin Simon's disturbing history would have determined that he was not fit to be hired as a teacher. We note that his employment was terminated and he was placed on the ineligible list after we informed school officials about our investigation. It is the recommendation of this office that he continue to be barred from working in the public school system and that this matter be considered should Simon ever apply for any type of reemployment with the BOE.

This is not the first time that an individual with a questionable, if not outright scandalous, background has been put in a classroom with New York City public schoolchildren. In 1994, *The Final Report of the Joint Commission of the Chancellor and the Special Commissioner for the Prevention of Child Sexual Abuse* noted the BOE's failure to check employment histories when screening prospective employees and recommended systemic changes.⁴ Then, in 1999, we released *Recurring Nightmares: An Investigation Into The Repeated Hiring Of Substitute Teachers Unfit To Care For Children* which described the outrageous stories of eight individuals who had no business being teachers, but were hired without any review of their histories. Again we urged that the backgrounds of prospective employees be more closely scrutinized.⁵

Simon's employment illustrates that the BOE continues to place students in jeopardy by failing to take even minimal efforts to check an applicant's credentials. In this case, a simple telephone call to the DOH or a visit to its web site would have disclosed Simon's bizarre and frightening background. It is the recommendation of this office that the Chancellor and the Board of Education develop a procedure to probe an applicant's background, check prior employment, and verify professional licenses. Moreover, it must be clear where responsibility for performing this review lies so that no one "assumes" it occurred "centrally" or "at the district."

⁴ **RECOMMENDATION:** The Board should extend its present screening procedure. Prospective employees should be required to answer specific application questions that inquire whether the individual has been found guilty of or is currently the subject of a substantiated case of child sexual abuse or harassment. It should be mandatory for personnel in charge of hiring to follow up the prospective employee's responses by contacting employment references and specifically making the same inquiries. Personnel in charge of hiring should also note patterns of movement which may indicate that the applicant is a "mobile molester," and at a minimum should ask the references – and the applicant – to explain the reasons for the many job changes." *The Final Report of the Joint Commission*, October 1994, at pages 9-10.

⁵ "While administrators and those designated to employ substitutes must be required to use the ineligible list as a hiring tool, it should by no means be the only check to determine whether the individual is qualified to teach and come into contact with schoolchildren. It is therefore the recommendation of this office that reference checks and interviews be required. While we recognize that these tasks will consume time in an already tightly stretched administrator's schedule, these elementary safeguards are necessary to exclude those who have been fired from teaching positions or who are otherwise unfit for the classroom." *Recurring Nightmares*, January 1999, at page 31.

We are forwarding a copy of this letter and of our report concerning this investigation to the Office of Legal Services. We are also forwarding our findings to the State Education Department for whatever action it deems appropriate. Should you require a copy of our report, or have any inquiries regarding the above, please contact First Deputy Commissioner Regina Loughran, the attorney assigned to the case. She can be reached at (212) 510-1426. Please notify Ms. Loughran within thirty days of receipt of this letter of what, if any, action has been taken or is contemplated regarding the recommendations made here. Thank you for your attention to this matter.

Sincerely,

EDWARD F. STANCIK
Special Commissioner
Of Investigation for the
New York City School District

By:

Regina A. Loughran
First Deputy Commissioner

EFS:RAL:gs

c: Chad Vignola, Esq.