

MAY 29A, 2019, GRAND JURY

LIST OF RETURN TO LOWER COURT

FILED: JUNE 27, 2019

DRAKSIN, GEORGE  
325 ROWLAND ST.  
SYRACUSE NY 13204,03/31/1987  
INDEX # 19-5141  
DR#INV. 19-360 (19-340211)  
PRACTIS#  
NYSID #  
DOA:

WILLFULL VIOLATION OF HEALTH LAWS  
SECTION: PHL 12-b (1CT)(UM)

06/15/2018-06/05/2019  
CITY OF SYRACUSE

SEMPLE, JASON  
103 NOTTINGHAM RD.  
SYRACUSE NY 13210,02/23/1958  
INDEX # 19-5141  
DR#INV. 19-360(19-340211)  
PRACTIS#  
NYSID #  
DOA:

WILLFULL VIOLATION OF HEALTH LAWS  
SECTION: PHL 12-b (1CT)(UM)

06/15/2018-11/12/2018  
CITY OF SYRACUSE

POTTER, LARAE  
815 CLARKWAY AVE.  
EDEN NC 27288,08/02/1962  
INDEX # 19-5141  
DR#INV. 19-360 (19-340211)  
PRACTIS#  
NYSID #  
DOA:

WILLFULL VIOLATION OF HEALTH LAWS  
SECTION: PHL 12-b (1CT)(UM)

08/10/2017-07/30/2018  
CITY OF SYRACUSE

BASTIEN, STANLEY  
93 ALLEN ST.  
NEW YORK NY 10002,10/02/1973  
INDEX # 19-5141  
DR#INV. 19-360 (19-340211)  
PRACTIS#  
NYSID #  
DOA:

WILLFULL VIOLATION OF HEALTH LAWS  
SECTION: PHL 12-b (1CT)(UM)

06/15/2018-11/16/2018  
CITY OF SYRACUSE

KRUPA, KATHERINE  
20 HORSESHOE DR.  
HONESDALE PA 18431,03/26/1980  
INDEX # 19-5141  
DR#INV. 19-360 (19-340211)  
PRACTIS#  
NYSID #  
DOA:

WILLFULL VIOLATION OF HEALTH LAWS  
SECTION: PHL 12-b (1CT)(UM)

08/13/2018-06/05/2019  
CITY OF SYRACUSE

**MAY 29A, 2019, GRAND JURY**

**LIST OF RETURN TO LOWER COURT**

**FILED: JUNE 27, 2019**

**NGUYEN, TRACY  
6042 MARIGOLD LN  
CICERO NY 13039,04/28/1982  
INDEX # 19-5141  
DR#INV. 19-360 (19-340211)  
PRACTIS#  
NYSID #  
DOA:**

**WILLFULL VIOLATION OF HEALTH LAWS  
SECTION: PHL 12-b (1CT)(UM)**

**07/28/2018-06/05/2019  
CITY OF SYRACUSE**

**FUDGE, DAVID  
PO BOX 1086  
SYRACUSE NY 13201,04/09/1962  
INDEX # 19-5141  
DR#INV. 19-360 (19-340211)  
PRACTIS#  
NYSID #  
DOA:**

**WILLFULL VIOLATION OF HEALTH LAWS  
SECTION: PHL 12-b (1CT)(UM)**

**10/27/2017-06/05/2019  
CITY OF SYRACUSE**

STATE OF NEW YORK  
COUNTY OF ONONDAGA          COUNTY COURT

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IN THE MATTER OF A CONFIDENTIAL  
INVESTIGATION REGARDING LEAD POISONING  
OF ONONDAGA COUNTY RESIDENTS

INDEX # 19-5103

INVESTIGATION NO. 18-819

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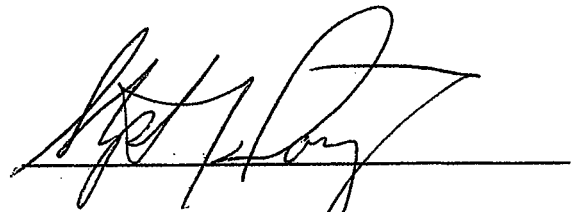
Dougherty, J.

On June 7, 2019, the Onondaga County Grand Jury, impaneled by this Court on March 20, 2019, submitted a report proposing recommendations for legislative, executive or administrative action in the public interest based upon stated findings.

The Court has examined the report and the minutes of the grand jury. The Court is satisfied that the grand jury report complies with the provisions of *Criminal Procedure Law § 190.85[1]* and that the report is based upon facts revealed in the course of an investigation authorized by *Criminal Procedure Law § 190.55*. The report is supported by the preponderance of the credible and legally admissible evidence and is not critical of an identified or identifiable person. It is therefore

**ORDERED**, that the grand jury report is accepted and hereby filed as a public record in accordance with the provisions of *Criminal Procedure Law § 190.85[2]*.

Dated: June 26, 2019



Hon. Stephen J. Dougherty  
Onondaga County Court Judge

STATE OF NEW YORK  
COUNTY OF ONONDAGA                      COUNTY COURT

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IN THE MATTER OF A CONFIDENTIAL  
INVESTIGATION REGARDING LEAD POISONING  
OF ONONDAGA COUNTY RESIDENTS

INDEX # 19-5103

INVESTIGATION NO. 18-819

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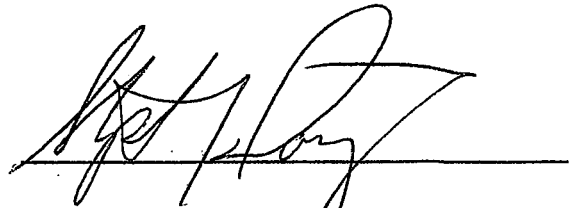
Dougherty, J.

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Dated: June 26, 2019



Hon. Stephen J. Dougherty  
Onondaga County Court Judge

STATE OF NEW YORK  
COUNTY OF ONONDAGA

COUNTY COURT

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IN THE MATTER OF A CONFIDENTIAL  
INVESTIGATION REGARDING LEAD  
POISONING OF ONONDAGA COUNTY  
RESIDENTS

INVESTIGATION NO. 18-819

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**ONONDAGA COUNTY GRAND JURY  
MARCH 20, 2019 'B' TERM**

**REPORT OF THE GRAND JURY  
CRIMINAL PROCEDURE LAW  
SECTION 190.85(1)(c)**

**ONONDAGA COUNTY GRAND JURY  
GRAND JURY REPORT  
CRIMINAL PROCEDURE LAW § 190.85(1)(c)**

**PRELIMINARY STATEMENT**

The Honorable Stephen J. Dougherty, Judge of the Onondaga County Court impaneled this Grand Jury for the March 20, 2019 'B' term. Under this authority, and pursuant to Criminal Procedure Law Sections 190.85 and 190.55, the Grand Jury conducted an investigation into high rates of elevated levels of lead in the bloodstreams of residents of Onondaga County, particularly children.

During its investigation, the Grand Jury heard testimony from five witnesses, and considered two exhibits. As a result of this investigation, this Grand Jury adopts the following findings of fact and recommendations. This Grand Jury has adopted this report pursuant to New York Criminal Procedure Law Section 190.85(1)(c) and respectfully submits its findings and recommendations to the Onondaga County Court.

**FINDINGS OF FACT**

Lead poisoning began to emerge as a public health problem in the early 1970s. In cities such as Chicago, Philadelphia, Baltimore, and Cincinnati, child victims of lead poisoning were presenting with symptoms such as brain swelling, convulsions, blindness, and developmental delays. These victims had extremely high levels of lead in their blood. The main concern at that time was the sometimes fatal disease of lead encephalopathy. Onondaga County established a Lead Poisoning Prevention program to address this public health issue. These extreme symptoms were not being seen in

Onondaga County, where every child tested demonstrated elevated blood levels, but not to the level seen in those suffering from lead encephalopathy.

A major source of the lead poisoning problem was gasoline. Every person who breathed gasoline fumes had elevated lead levels in their bloodstream. When lead was removed from fuel in the early 1970s, the average level of lead in an individual's blood stream dropped by one third almost immediately. The other major identifiable source was in paint. All commercially sold paint prior to 1978 contained lead, as it both increased the durability of the paint and made its colors more vibrant. However, over time, the lead breaks down into a fine dust that cannot readily be seen and is easily inhaled and ingested.

Lead is the leading recognized environmental poison for children in New York State, and it is a completely preventable condition. Average blood lead levels among children have declined steadily in Onondaga County and nationwide. Yet in some communities, especially those suffering from poverty, lead poisoning remains a significant problem. Moreover, growing knowledge about the toxicity of lead has demonstrated that even levels of lead once thought to be safe can have serious detrimental effects on young children.

A child that is exposed to lead can experience lifelong health issues, including difficulty with cognitive and behavioral development, heart problems, anemia, hearing loss, diminished skeletal growth, delayed pubertal development, tooth decay, hypertension, osteoporosis, and fertility issues. Many of the consequences of lead poisoning may persist throughout adulthood. Recently a link has been discovered between lead poisoning and children who are on the autism spectrum. Children on the

spectrum have a high prevalence of pica behavior where non-food items are put into the mouth, even into adolescence.

In pregnant women, exposure to lead has been linked to hypertension, preterm birth, low birth weight, and miscarriages. Lead is a potent neurotoxin and is especially detrimental to the vulnerable developing nervous system of babies and young children. Only a small amount of ingested lead is needed to raise a child's blood lead level. Because lead accumulates in the body, toxicity depends on the amount of lead one is exposed to and the duration of the exposure. Lead readily crosses the placenta, thus a developing fetus may be exposed to lead in the mother's bloodstream. Once absorbed, lead is carried in the blood and absorbed by all other tissues of body.

Other groups that have been identified as high risk are new Americans and refugees. Some of these people come from places that use leaded gasoline or have not banned lead paint. Some come from places where lead is present in spices and cosmetics. Any child under the age of 16 coming to live in the United States from another country is mandated to have their blood level tested for lead.

There is no "safe" level of lead in the bloodstream. Center for Disease Control's current reference value for a public health response for a child identified with lead exposure is 5 µg/dL (micrograms per deciliter) of lead in the bloodstream. In 2017, 678 Onondaga County children, or 5.9% of the tested population, demonstrated a blood lead level over 5 µg/dL. Eighty-eight percent, or 601 of the children in Onondaga County identified with a blood lead level greater than 5 µg/dL reside in the City of Syracuse. Approximately two thirds of the population is tested in this County, so the actual number of children with elevated levels of lead in the blood is likely much higher. The one third of children who go untested are likely the children most at-risk for exposure to



lead dust. Ninety four percent of the homes in the City of Syracuse were built prior to 1978, when lead paint was banned, and are therefore likely to be potential exposures of lead.

Dusting, flaking, and peeling residential lead paint is by far the most significant source of lead exposure to children. Even when housing is properly and regularly maintained, some deterioration of paint occurs. As paint deteriorates, it is converted into dust-sized particles. Children living in dilapidated older houses or an older house undergoing renovations are at particular risk for lead poisoning due to lead contaminated dust and debris. Deteriorated exterior paint poses a similar threat to children who regularly play outside in soil near the structure. The extreme differences between winter and summer weather in Upstate New York contribute to the faster deterioration of painted surfaces, particularly exterior surfaces.

In 1992, New York State passed legislation requiring all children to be tested for elevated levels of lead in the blood at both ages one and two. The County Lead Poisoning Prevention Program works with medical providers to ensure that children are being tested as required. It monitors and follows up with any child that has an elevated test result. These ages were selected for testing so that lead exposure could be identified and treated early.

However, blood testing alone cannot determine the source of the lead exposure. Determining the source requires an assessment by the primary care provider and/or the health department. When a child tests with an elevated blood level, the County sends a team to do an environmental risk assessment of the home to attempt to locate the possible sources of the exposure and remediate them. In such cases, the health department will contact the family and send a public health nurse and a risk assessor to

determine the source or sources of the lead contamination. Every painted surface in the household which appears to have disturbed or disrupted paint is tested. If the team is unable to gain access to perform the test for any reason, an attempt is made to relocate the family to another location to stop the exposure.

Population groups at high risk for elevated levels of lead in the blood are identified using mapping technology and children's blood test data. Often particular neighborhoods tend to show clusters of individuals with elevated levels of lead in the blood. The data also demonstrates a direct connection between poor quality of housing and elevated blood lead levels. The two zip codes identified as the highest areas of concern are 13204 and 13205, located in the southwest quadrant of the City of Syracuse, followed by 13203, 13207, and 13208, located on the north and south sides of the city.

The Federal Housing and Urban Development Department administers lead hazard control grants that provide funding to the county and city for primary prevention of lead poisoning. In 2007, the New York State Assembly and Senate passed legislation creating the Department of Health's Childhood Lead Poisoning Primary Prevention Program, with the goal being to move from a response to a prevention mindset. There is no medical treatment that can undo the harm caused by lead. This is why it is absolutely critical to take action before a child is exposed. This approach is called "primary prevention."

Testing a child after exposure is a secondary prevention method. It is not unlike when coal miners used canaries as an early warning system for carbon monoxide poisoning. Miners would bring a caged canary down into the coal mine. If the canary died, the miners knew that there was too much carbon monoxide and they needed to exit the mine immediately. Having a child get tested after exposure is similar to using the

child to test for the presence of lead dust. On the other hand, primary prevention involves identifying housing likely to contain lead, and instituting a preemptive inspection and enforcement process. The idea is to check the homes for lead before a family moves in, and if any is present, to remediate so that the child is not exposed in the first place.

In order to accomplish this, the Onondaga County Health Department has partnered with several agencies, including the Syracuse City Department of Neighborhood and Business Development, code enforcement, the city law department, as well as the Onondaga County District Attorney's Office.

The City of Syracuse's Code Enforcement division handles rental violations within the City. While it does handle violations relating to chipping and peeling paint, New York State Building Code does not allow for the inspectors to test for the presence of lead paint. Inspections by the Division of Code Enforcement take place through the rental registry program or due to tenant complaints. Most complaints are for significant health and safety violations such as no heat or hot water, backed up sewers, or structural issues. While the inspectors are there, they are trained to look for the presence of chipping and peeling paint, particularly at high use areas like doors and windows. In some circumstances, the City Code Enforcement Division can perform joint inspections with the County Lead Prevention Program, but this only happens when a unit has been identified as a hazard and other methods of enforcement have not worked.

Obtaining landlord compliance through the City's Code Enforcement division has had somewhat mixed results. Citations are difficult to enforce and have been largely ineffective. Approximately ten to fifteen percent of landlords in Syracuse have been totally unresponsive and refuse to comply with citations or communicate with the

department at all. In 2009, the Common Council passed an ordinance establishing a rental registry, requiring that all non-owner occupied homes in Syracuse register with the city and receive an inspection. This would apply to approximately sixty percent of the homes in the City of Syracuse. Due to multiple legal challenges, the rental registry has not been successful, with only approximately one third of the required housing units registered and inspected at present, a decade after its inception.

When landlords refuse to comply with code enforcement, they are referred to the City Law Department for adjudication. Local landlords are brought to Syracuse City Court, while landlords who do not live in either Onondaga County or an adjacent county are brought to State Supreme Court. However, there are only two housing attorneys assigned to handle an enormous backlog of unaddressed violations. As a result, some experienced landlords seem to purposely ignore citations as they have learned that ignoring the problem is sometimes easier, less expensive and without consequence.

To address this issue, Syracuse has followed the example of Buffalo, Rochester, and Yonkers in establishing the Bureau of Administrative Adjudication. The BAA is supposed to expedite the administrative process after a landlord is cited for a code violation; the procedure is much faster and fines are handed out swiftly. These fines can double if they go unpaid or are not successfully appealed. Furthermore, the State Assembly and Senate last year passed a bill allowing for such fines to be added to the tax bill for a given property.

Historically, part of the issue of lack of compliance with Code Enforcement citations has been the adversarial nature between landlords and the division. The office has always been complaint driven; in other words, it took action when someone such as a tenant or neighbor called and lodged a complaint against a given property. Often a

landlord only became aware of a problem after receiving a citation for it. The philosophy of the Code Enforcement division is now to open the lines of communication. When it receives a complaint about a given issue, it contacts the property owner to make them aware and to give them an opportunity to remediate prior to an inspection and potential citation.

The Code Enforcement division is also currently attempting to implement a “grid” system rather than the quadrant system that is currently employed. In the past, four to six inspectors were each assigned to quadrants within the city. Today, the division seeks to divide the city into 21 distinct neighborhoods in a grid fashion, and each would be assigned an individual inspector. This would give each inspector a smaller area to cover which they could become familiar with, and walk the area and spot issues before they are reported. Furthermore, landlords in each neighborhood will become familiar with their individual inspector and build a relationship with them which is collaborative rather than adversarial.

The County Health Department also seeks to work closely with property owners and managers to make sure they are on the same page regarding safely correcting identified violations and the type of maintenance required going forward. The federal Environmental Protection Agency released Lead Safe Work Practices, and the County Health Department seeks to ensure that people who work in home renovation or construction are appropriately trained in techniques that reduce the amount of dust produced by renovation activities. EPA's Lead Renovation, Repair and Painting Rule requires that anyone performing renovation, repair, and painting projects that disturb lead-based paint in homes built before 1978 is certified by EPA, uses certified renovators

who are trained by EPA-approved training providers, and follows lead-safe work practices.

Onondaga County's Lead Prevention Program is a part of the Division of Community Health, and contains a team of case management staff, outreach workers, and a program coordinator. There are also risk assessors who work in the Environmental Health Division who help support the program. The program is funded by two New York State grants, the first specifically dedicated to case management and follow-up with children who test with elevated levels of lead in the blood. The second grant is dedicated to primary prevention activities, such as outreach to groups identified as high risk for lead exposure, increased awareness of lead poisoning and how to prevent it, improvement of testing rates, and addressing barriers to testing.

New York State Public Health Law mandates that the Lead Prevention Program respond when a child has a blood lead test result over 5  $\mu\text{g}/\text{dL}$ . The response level was lowered from 10  $\mu\text{g}/\text{dL}$  in 2015 by the Center for Disease Control. It is quite possible that the CDC could lower the level once again, dramatically increasing the case load of the Program and likely requiring additional resources to adequately respond.

Since there is no statewide lead ordinance allowing cities to test for the presence of lead, some cities have begun to enact their own citywide ordinances to address the problem. Rochester has experienced success with such an ordinance, and Syracuse is currently in the study phase of enacting a similar law. This would allow code inspectors to test and issue citations for the presence of lead dust. Currently, city code inspectors can issue citations for cracked and chipped paint, but legally cannot test for the presence of lead dust, which cannot be seen by the naked eye.

The test is administered by the collection of a dust wipe sample, which involves merely wiping the suspected surface and sending it in for laboratory testing to identify contaminants. The ordinance has been drafted and the city's engineering department is currently conducting an environmental impact study as required by law. The study is expected to be completed in six months to one year. There will then be a period for public commentary on the measure before the Syracuse Common Council considers the new ordinance for an up or down vote.

A challenge to this additional testing is that it will take each inspector 15-30 minutes longer to inspect each unit. The new ordinance will greatly increase the number of inspections needed to be performed. At the same time, the longer inspection process will decrease the number of units that can be inspected in a single day. The Code Enforcement Division will require additional resources to adequately address these issues.

Total abatement of lead paint within a home is impractical for a number of reasons. This process involves the total removal of all paint from all painted surfaces in the home, inside and out. The median property value in Onondaga County, NY was \$146,700 in 2017, which is about two thirds of the national average of \$217,600. It can cost between \$25,000 and \$65,000 to completely abate a housing unit of lead paint. An average two family home on the west side of Syracuse is assessed at a value of only \$40,000. It is cost prohibitive for a property owner to pay for complete abatement when the value of the property is the same or below the cost of the repairs.

Accordingly, remediation is more practical and has become the preferred method for bringing housing units into compliance. Remediation involves encapsulating existing lead paint, or replacing painted items which would be susceptible to wearing away the

material used to cover the offending surface. When a surface tests positive for the presence of lead, it can be painted. Window sills and door jambs, which are more likely to wear away encapsulating layers of paint, should be replaced. These types of repairs typically only cost a couple hundred to a couple thousand dollars, and there are programs available to assist landlords to achieve compliance in this fashion.

These programs are funded through community development grants to Home Headquarters, which directs both the Green and Healthy Homes Initiative and the Syracuse Landlord Property Improvement Program. Both have been successful in assisting landlords with housing repairs in this community. However, applying for assistance can be cumbersome and time consuming. The landlord is required to complete materials including a lengthy application which asks for information which may not necessarily be readily available, including personal information about the tenants and their families.

### **RECOMMENDATIONS**

Based upon the stated finding of fact and the evidence heard by the Grand Jury, the following recommendations for legislative, executive, or administrative action based upon the public interest are made by this Grand Jury. These recommendations are supported by the preponderance of the credible and legally admissible evidence.

- (1) The Grand Jury recommends that all agencies and groups involved in the prevention of lead poisoning continue to move to a more proactive, primary prevention mindset. Identification and treatment of children with elevated blood lead levels



remains critical, but all parties must do everything possible to reduce and eliminate the number of homes with lead hazards prior to children being exposed to lead.

(2) The Grand Jury recommends that the Syracuse Common Council pass an ordinance regarding this issue as soon as possible after the environmental impact study is completed and reviewed. This ordinance must empower the Division of Code Enforcement to perform dust wipe testing in both the interior and exterior of all rental properties. It must also require that a housing unit may not be rented until the City has issued a rental registry certificate.

(3) In recognition that it may take time to draft, pass, and implement this new city ordinance, but in an effort to deal with this issue proactively, the Grand Jury recommends that all involved agencies; the County Health Department's Lead Poisoning Prevention Program and Environmental Health Program, as well as the City Department of Neighborhood and Business Development, including the Division of Code Enforcement, begin to prepare for the implementation of this ordinance immediately, rather than wait until it is passed. In this way, all involved agencies can strengthen their partnerships and be ready to maximize the potential of the new ordinance at the moment it is enacted. This will include planning for additional necessary manpower to complete the higher caseload of inspections, securing budgetary resources, and strategic planning between inspecting agencies. The Lead Poisoning Prevention Program should also continue partnering with the city law department and the District Attorney's Office to hold resistant and defiant landlords accountable through civil and criminal means.

(4) The Grand Jury recommends that the Division of Code Enforcement continue to work in a collaborative fashion with landlords, so that landlords will be more likely to trust code enforcers as a partner in bettering city properties. Increased focus must be put on making landlords aware of available resources to assist in abatement and remediation efforts, and the landlord's application process must be streamlined, making it easier to obtain these resources. The Division of Code Enforcement should increase efforts to seek consent from landlords to test for lead so that they may obtain rental registry certificates as soon as possible. The Grand Jury also recommends launching an awareness campaign, so that all landlords are informed of what to expect of the new procedures and can plan accordingly, or ideally, bring their properties into compliance ahead of the new law. This should be done through traditional postal mail as well as through e-mail where possible. Upon responding to a code complaint, code inspectors should also inform tenants that they can request a lead inspection from the County Health Department and, if desired, make a direct referral on their behalf.

(5) The Grand Jury recommends that the Syracuse Common Council and Onondaga County Legislature each begin the process of securing the financial and human resources required to properly address the above findings and recommendations of this critical community health problem. It is the least we can do for the future generations of Onondaga County.

Respectfully submitted,

Mar Eisenauer

GRAND JURY FOREMAN

Subscribed and sworn to before me  
this 20<sup>th</sup> day of May 2019

Patricia Dineen

NOTARY PUBLIC, Onondaga County, NY  
Commission Expires 7/18/22