

IN THE MATTER OF HEALTH MANAGEMENT SYSTEMS, INC. ("HMS")

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**SUBSTANTIAL BASIS INVESTIGATION REPORT  
AND SETTLEMENT AGREEMENT**

Case No. 14-084a

WHEREAS, the Joint Commission on Public Ethics ("Commission") is authorized by Executive Law §94 to conduct an investigation to determine whether a substantial basis exists to conclude that a violation of Article 1-A of the Legislative Law ("Lobbying Act") has occurred, to issue a report of its findings of fact and conclusions of law, and to impose penalties for any violation;

WHEREAS, under the Medicaid Match and Recovery Project, the New York Office of the Medicaid Inspector General ("OMIG") contracts with HMS ("Respondent") to provide prepayment insurance verification updates and third-party liability, payment integrity, and trauma recoveries. The current contract, initiated in January 2009, continues through December 2015 and is referred to herein as the "Contract";

WHEREAS, under the terms of the Contract, Respondent receives fees on recoveries, paid solely on a contingency basis, with Respondent receiving 5.25% of all recoveries up to \$125 million in a calendar year, and with recovery activity beyond \$125 million subject to the contingency fee percentage plus 1.5%;

WHEREAS, since at least 2006, Respondent has been a client of a registered lobbyist and is therefore subject to the jurisdiction of the Commission and the proscriptions set forth in the Lobbying Act;

WHEREAS, in April 2013, the New York State Office of the Inspector General ("IG") commenced an investigation into whether Joseph Flora ("Flora"), the OMIG employee and senior staff manager who oversaw the services provided under the Contract since it commenced in 2009, may have violated the Public Officers Law by accepting impermissible gifts from Respondent;

WHEREAS, (i) in 2006, Respondent acquired Benefits Solutions Practice Area ("BSPA"), a division of Public Consulting Group, Inc. ("PCG"); (ii) through this acquisition, Respondent assumed BSPA's contract with OMIG, as well as BSPA's employees, including Sean Curtin; (iii) Sean Curtin was one of the employees of Respondent who played a principal role in the conduct described herein; (iv) Curtin is now an employee of PCG; and (v) on information and belief Flora is a consultant to PCG;

WHEREAS, on July 28, 2014, Commission investigators met with representatives of the IG and were provided documentation from the IG's investigation of Flora;

WHEREAS, Flora, at all times relevant herein, was a public official as defined in Lobbying Act §1-c(1);

WHEREAS, on August 27, 2014, a letter was sent to Respondent alleging violations of Lobbying Act §1-m, which letter afforded Respondent 15 days in which to respond to the allegations in writing;

WHEREAS, Lobbying Act § 1-m and the applicable regulations set forth in 19 NYCRR Part 934 prohibit the client of a registered lobbyist from offering or giving gifts to a public official unless under the circumstances it is not reasonable to infer the gifts were intended to influence the public official, or were intended to reward the public official for official action on his part;

WHEREAS, Respondent has fully and voluntarily cooperated with the Commission in providing relevant and requested information;

WHEREAS, Respondent similarly fully and voluntarily cooperated with the earlier investigation conducted by the IG;

WHEREAS, Respondent voluntarily undertook a number of remedial steps, including revising its Code of Conduct in a manner designed to fully reflect the requirements of the Lobbying Act and other applicable law, providing all of its employees with training that reflects the revised Code of Conduct, and developing and implementing compliance policies and procedures. Respondent's expense reporting system now contains a reminder that Respondent's Code of Conduct prohibits the giving of gifts to a government employee or paying for a government employee's meals or entertainment. Further, voluntarily and at the request of OMIG in 2014, Respondent agreed to institute a training program regarding the New York Public Officers Law that was approved by OMIG (the "OMIG Training Program") and given to all employees who work on the Contract;

WHEREAS, Respondent and the Commission, the parties to this Settlement Agreement ("Agreement"), have agreed to resolve this matter in a manner that avoids additional administrative and/or adjudicatory proceedings with the Commission, or sanctions or penalties by the Commission, except as provided below;

NOW THEREFORE, in consideration of the mutual covenants made herein, as the final settlement of this matter with respect to Respondent, the parties stipulate and agree the following relevant facts, terms and conditions:

1.

- (a) Under the Contract, Respondent and OMIG staff, including Flora, worked together frequently in order to maximize recoveries, which mutually benefited New York State and Respondent. During the term of the Contract, Respondent's executives and employees necessarily had regular contact with Flora on matters directly related to the Contract.
- (b) Prior to and during the term of the Contract, Respondent retained lobbyists for both procurement and non-procurement lobbying before the State legislature, the Executive

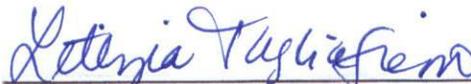
Chamber, the Department of Health, and OMIG on issues related to Medicaid, third party liability, insurance, and business preservation and development.

- (c) Respondent consulted and worked with Flora on pending regulatory and legislative matters impacting Respondent and OMIG.
  - (d) Requests for proposals issued by governmental entities routinely require bidders to submit the names of government references. Flora frequently served as a reference for Respondent and endorsed and recommended Respondent to other potential government clients.
  - (e) Between 2010 and 2013, Respondent's employees paid for, through Respondent's expense account, meals and beverages for Flora that were in excess of \$15. The total value of these meals and beverages was approximately \$1,592.10;
  - (f) Respondent's same employees communicated to Flora that future employment with the Respondent was a possibility;
  - (g) In March 2013, Respondent offered Flora a position with an annual salary of \$135,000 and a sign-on bonus of \$18,000. Later that month, at its own initiative, Respondent rescinded the job offer and signing bonus.
2. Respondent acknowledges that Lobbying Act §1-m prohibits the offering or providing of gifts from an individual or entity required to be listed on a statement of registration (as defined in Lobbying Act §1-e) to a public official unless under the circumstances it is unreasonable to infer the gift was intended to influence such official.
  3. Respondent agrees to pay to the Commission the amount of seventy-five thousand dollars (\$75,000) in full resolution of the conduct described herein within thirty (30) days of the execution of this Agreement.
  4. Respondent agrees to cooperate fully with any related investigation by the Commission, including but not limited to, providing any and all relevant documents and providing truthful testimony in any future investigations or proceedings related to this matter.
  5. Respondent has revised its Code of Conduct in a manner designed to fully reflect the requirements of the Lobbying Act and other applicable law, and has provided all of its employees with an ethics training course that reflects the revised Code of Conduct, and agrees to continue to provide this course. Respondent also has instituted a training program regarding the New York Public Officers Law that was approved by OMIG and given to all employees who work on the Contract.
  6. Respondent agrees to continue giving all employees who work on the Contract the OMIG Training Program. In addition, Respondent agrees that all employees who regularly interact with OMIG employees and the employees of other New York State agencies must complete the Commission's online training *Ethics for Lobbyists*, which is available through the New York Statewide Learning Management System, within ninety (90) days of the execution of this Agreement.

7. Respondent further agrees to provide written documentation to the Commission that all employees described in paragraph 6 have completed *Ethics for Lobbyists*.
8. The Commission has agreed to the terms of this Agreement based on, among other things, the representations made to the Commission by Respondent. To the extent that representations made by Respondent are later found by the Commission to be materially incomplete or inaccurate, Respondent shall be in breach of this Agreement.
9. If the Respondent fails to timely perform any conditions set forth in the Agreement, Respondent shall be in breach of this Agreement.
10. Respondent agrees not to take any action or to make, permit to be made, authorize, or agree to any public statement denying, directly or indirectly, any finding in this Agreement, or creating the impression that this Agreement is without factual basis. Nothing in this paragraph affects Respondent's: (a) testimonial obligations; or (b) right to take legal or factual positions in defense of litigation or other legal proceedings to which the Commission is not a party. A violation of this Paragraph constitutes a breach of this Agreement by Respondent.
11. Upon a breach of this Agreement, the Commission shall have sole discretion to deem the Agreement null and void in its entirety, issue a new Substantial Basis Investigation Report, which may include additional charges against Respondent, and proceed with an enforcement action. As to any new Substantial Basis Investigation Report or enforcement action by the Commission pursuant to this paragraph: (1) Respondent waives any claim that such action is time-barred by a statute of limitations or any other time-related defenses; and (2) Respondent expressly acknowledges and agrees that the Commission may use any statements herein, or any other statements, documents or materials produced or provided by Respondent prior to or after the date of this Agreement, including, but not limited to, any statements, documents, or materials, if any, provided for the purposes of settlement negotiations or in submissions by Respondent or by counsel on behalf of Respondent, in any proceeding against Respondent relating to the allegations herein.
12. Respondent shall upon request by the Commission, provide all documentation and information reasonably necessary for the Commission to verify compliance with this Agreement.
13. Respondent understands and acknowledges that the Commission may investigate any other conduct, not covered by this Agreement, by Respondent and take any appropriate action.
14. Respondent waives the right to assert any defenses or any challenges to this Agreement, as well as any right to appeal or challenge the determination or conduct of the Commission relating to this matter in any forum.
15. This Agreement and any dispute related thereto shall be governed by the laws of the State of New York without regard to any conflict of laws principles.
16. Respondent consents to the jurisdiction of the Commission in any proceeding to enforce this Agreement.

17. It is understood that this Agreement is not confidential and will be made public within 45 days of its execution in accordance with Executive Law §§94(14) & (19).
18. This Agreement constitutes the entire agreement between the parties and supersedes any prior communication, understanding, or agreement, whether oral or written, concerning the subject matter of this Agreement. No representation, inducement, promise, understanding, condition or warranty not set forth in this Agreement has been relied upon by any party to this Agreement.
19. Any amendment or modification to this Agreement shall be in writing and signed by both parties.
20. This Agreement shall become effective upon execution by the Commission or its designee.
21. In the event that one or more provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision of this Agreement.
22. By signing below, Respondent acknowledges reading this Agreement in its entirety, understanding all terms and conditions of this Agreement, and having done so, knowingly, voluntarily, and freely enters into this Agreement. Respondent was represented by counsel, Zuckerman Spaeder LLP.

Dated: June 24, 2015

  
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Letizia Tagliaferro  
Executive Director  
New York State Joint Commission on Public Ethics

ACCEPTED AND AGREED TO  
THIS 28th DAY OF May, 2015

Respondent

By: \_\_\_\_\_  


Name: William C. Lucia  
Chief Executive Officer

Approved:

Daniel J. Horwitz  
Chair

David Arroyo  
Hon. Joseph Covello  
Marvin E. Jacob  
Seymour Knox, IV  
Gary J. Lavine  
Hon. Mary Lou Rath  
David A. Renzi  
Michael A. Romeo, Sr.  
Hon. Renee R. Roth  
Michael K. Rozen  
Dawn L. Smalls  
George H. Weissman

Members