

IN THE MATTER OF JOSEPH FLORA,  
Former Director of the Bureau of Third Party Liability  
at the Office of the Medicaid Inspector General.

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SUBSTANTIAL BASIS INVESTIGATION REPORT  
AND SETTLEMENT AGREEMENT

Case No. 14-084

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 any violations of the Public Officers Law have occurred, to issue a report of its findings of fact and conclusions of law, and to impose penalties for any violation;

WHEREAS, Joseph Flora ("Respondent") was employed as the Director of the Bureau of Third Party Liability at the Office of the Medicaid Inspector General ("OMIG") from in or about 2006 to his retirement on January 29, 2014;

WHEREAS, under the Medicaid Match and Recovery Project, OMIG contracted with Health Management Systems, Inc., ("HMS"), to provide services to identify and recover Medicaid overpayments. The current contract initiated in January 2009, continues through December 2015 and is referred herein as the "Contract";

WHEREAS, under the terms of the Contract, HMS receives fees on recoveries, paid solely on a contingency basis, with HMS 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, Respondent was the senior staff manager at OMIG who oversaw the services provided under the Contract from January 2009 through March of 2013;

WHEREAS, OMIG and the Office of the Inspector General conducted an investigation and referred this matter to the Commission for its consideration;

WHEREAS, on August 21, 2014, a letter was sent to Respondent alleging violations of Public Officers Law §§73(5)(a) and (b), and §§74(3)(d),(f), and (h), which afforded Respondent fifteen (15) days to respond;

WHEREAS, on October 10, 2014, a Notice of Substantial Basis Investigation was issued;

WHEREAS, on June 24, 2015, HMS entered into a settlement agreement with the Commission resolving the Commission's inquiry into violations of Article 1-A of the Legislative Law and agreed to the payment of \$75,000 to resolve the matter;

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;

NOW THEREFORE, in consideration of the mutual covenants made herein, as the final settlement of this matter, the parties stipulate and agree that:

1. Under the Contract, HMS and OMIG staff, including Respondent, worked together frequently in order to maximize recoveries, which mutually benefited New York State and HMS. During the term of the Contract, Respondent had regular contact with HMS' executives and employees on matters directly related to the Contract.
2. HMS regularly consulted and worked with Respondent on pending regulatory and legislative matters impacting HMS and OMIG.
3. Respondent frequently served as a reference for HMS and endorsed and recommended Respondent to other potential government clients.
4. Respondent admits that between 2010 and 2013, while overseeing the Contract in his role as an OMIG employee, he accepted multiple gifts from HMS's employees, paid for through HMS's expense account, in the form of meals and beverages in excess of \$15. The same HMS employees communicated to Respondent that future employment with HMS was a possibility.
5. Respondent further admits that on March 18, 2013, while still overseeing the Contract in his role as an OMIG employee, Respondent accepted an offer of employment from HMS for a position to commence on April 15, 2013, which provided for an annual salary of \$135,000 and a sign-on bonus of \$18,000. Subsequently, with Respondent's consent, HMS rescinded the offer and Respondent never received the bonus.
6. Respondent further admits that, by his conduct described above, he violated Public Officers Law §73(5)(a) which provides that no statewide employee shall directly or indirectly solicit, accept or receive any gift having more than a nominal value.
7. Respondent agrees to pay to the Commission the amount of fourteen thousand dollars (\$14,000.00) in settlement of said violation, through a payment of seven thousand dollars (\$7,000.00) within sixty (60) days of the execution of this Agreement, and a payment of an additional seven thousand dollars (\$7,000.00) within one hundred and twenty (120) days of the execution of this Agreement.
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, Kevin Luibrand, Esq.

Dated: *November 17, 2015*

*Dan J. Horwitz*

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Daniel J. Horwitz  
Chairman  
New York State Joint Commission on Public Ethics

ACCEPTED AND AGREED TO  
THIS 9<sup>th</sup> DAY OF November 2015

Respondent

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

Name: Joseph Flora

Approved:

Daniel J. Horwitz  
Chair

Hon. Joseph Covello  
Marvin E. Jacob  
Seymour Knox, IV  
Hon. Eileen Koretz  
Gary J. Lavine  
David A. Renzi  
Michael A. Romeo, Sr.  
Michael K. Rozen  
George H. Weissman

Absent:

David Arroyo  
Hon. Mary Lou Rath  
Dawn L. Smalls  
Hon. Renee R. Roth

Members