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3 **FAIR POLITICAL PRACTICES COMMISSION**
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8 BEFORE THE FAIR POLITICAL PRACTICES COMMISSION
9 STATE OF CALIFORNIA
10
11

12 In the Matter of) FPPC No. 13/945
13)
MARCELLA FAYE GALLAGHER,)
14) STIPULATION, DECISION and
Respondent.) ORDER
15)
16)
17)

18 Complainant, the Enforcement Division of the Fair Political Practices Commission, and
19 Respondent Marcella Faye Gallagher agree that this Stipulation will be submitted for consideration by
20 the Fair Political Practices Commission at its next regularly scheduled meeting.

21 The parties agree to enter into this Stipulation to resolve all factual and legal issues raised in this
22 matter and to reach a final disposition without the necessity of holding an administrative hearing to
23 determine the liability of the Respondent, pursuant to Section 83116 of the Government Code.

24 Gallagher understands, and hereby knowingly and voluntarily waives, any and all procedural
25 rights set forth in Sections 83115.5, 11503 and 11523 of the Government Code, and in Sections
26 18361.1 through 18361.9 of Title 2 of the California Code of Regulations. This includes, but is not
27 limited to, the right to personally appear at any administrative hearing held in this matter, to be
28 represented by an attorney at Gallagher's own expense, to confront and cross-examine all witnesses

1 testifying at the hearing, to subpoena witnesses to testify at the hearing, to have an impartial
2 administrative law judge preside over the hearing as a hearing officer, and to have the matter judicially
3 reviewed.

4 It is further stipulated and agreed that Marcella Faye Gallagher violated the Political Reform
5 Act when, after termination of her state employment, for compensation, she aided, advised, consulted,
6 or assisted Kaiser in responding to a Department of Managed Healthcare survey, the same proceeding
7 in which she participated while a state administrative official, in violation of Government Code Section
8 87402 (1 count). This count is described in Exhibit 1, which is attached hereto and incorporated by
9 reference as though fully set forth herein. Exhibit 1 is a true and accurate summary of the facts in this
10 matter.

11 Gallagher agrees to the issuance of the Decision and Order, which is attached hereto. Gallagher
12 also agrees to the Commission imposing upon her an administrative penalty in the amount of \$3,000.
13 A cashier's check from Gallagher, in said amount, made payable to the "General Fund of the State of
14 California," is submitted with this Stipulation as full payment of the administrative penalty, to be held
15 by the State of California until the Commission issues its decision and order regarding this matter. The
16 parties agree that in the event the Commission refuses to accept this Stipulation, it shall become null
17 and void, and within fifteen (15) business days after the Commission meeting at which the Stipulation
18 is rejected, all payments tendered by Gallagher in connection with this Stipulation shall be reimbursed
19 to Gallagher. Gallagher further stipulates and agrees that in the event the Commission rejects the
20 Stipulation, and a full evidentiary hearing before the Commission becomes necessary, neither any
21 member of the Commission, nor the Executive Director, shall be disqualified because of prior
22 consideration of this Stipulation.

23
24 Dated: _____
25 Galena West, Chief of Enforcement
26 Fair Political Practices Commission

27 Dated: _____
28 Marcella Faye Gallagher, Respondent

1 **DECISION AND ORDER**

2 The foregoing Stipulation of the parties “In the Matter of Marcella Faye Gallagher ,” FPPC No.
3 13/945, including all attached exhibits, is hereby accepted as the final decision and order of the Fair
4 Political Practices Commission, effective upon execution below by the Chair.

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6 IT IS SO ORDERED.

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8 Dated: _____

Joann Remke, Chair
Fair Political Practices Commission

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EXHIBIT 1

INTRODUCTION

Respondent Marcella Faye Gallagher was Staff Counsel III at the California Department of Managed Healthcare, prior to accepting a position as Health Plan Regulatory Consultant IV with Kaiser Permanente (“Kaiser”) in July of 2012.

The Political Reform Act (the “Act”)¹ places restrictions on the actions of former state officials after they leave state service. In this matter, Gallagher violated the Act by assisting Kaiser in responding to a California Department of Managed Health Care (“DMHC”) mental health services audit that she helped to conduct while working for DMHC.

SUMMARY OF THE LAW

An express purpose of the Act is to ensure that public officials, whether elected or appointed, should perform their duties in an impartial manner, free from bias caused by their own financial interests or the financial interests of persons who have supported them.²

Permanent Ban

No former state administrative official, after the termination of his or her employment or term of office shall for compensation aid, advise, counsel, consult or assist in representing any other person in any proceeding in which the official would be prohibited from appearing under Section 87401.³

Section 87401 states: No former state administrative official, after the termination of his or her employment or term of office, shall for compensation act as agent or attorney for, or otherwise represent, any other person before any court or state administrative agency or any officer or employee thereof by making any formal or informal appearance, or by making any oral or written communication with the intent to influence, in connection with any judicial, quasi-judicial or other proceeding if both of the following apply: (a) the State of California is a party or has a direct and substantial interest and (b) the proceeding is one in which the former state administrative official participated.

“State administrative agency” means every state office, department, division, bureau, board and commission, but does not include the Legislature, the courts or any agency in the judicial branch of government.⁴

¹ The Political Reform Act is contained in Government Code Sections 81000 through 91014. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations.

² Section 81001, subdivision (b).

³ Section 87402.

⁴ Section 87400, subdivision (a).

“State administrative official” means every member, officer, employee or consultant of a state administrative agency who as part of his or her official responsibilities engages in any judicial, quasi-judicial or other proceeding in other than a purely clerical, secretarial or ministerial capacity.⁵

“Judicial, quasi-judicial or other proceeding” means any proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest or other particular matter involving a specific party or parties in any court or state administrative agency, including but not limited to any proceeding governed by Chapter 5 (commencing with Section 11500) of Division 3 of Title 2 of the Government Code.⁶

“Participated” means to have taken part personally and substantially through decision, approval, disapproval, formal written recommendation, rendering advice on a substantial basis, investigation or use of confidential information as an officer or employee, but excluding approval, disapproval or rendering of legal advisory opinions to departmental or agency staff which do not involve a specific party or parties.⁷

SUMMARY OF THE FACTS

DMHC refers to its audits as “medical surveys,” and the audited entities as “plans.” The purpose of a medical survey is to ensure that a plan is complying with the requirements of California’s Knox-Keene Act.

A medical survey begins with DMHC defining the scope of work. DMHC then sends the scope of work to the plan. The purpose of issuing the scope of work is to allow DMHC to begin requesting documents from the plan prior to a site investigation.

After the on-site investigation, DMHC drafts a preliminary report, which identifies any deficiencies revealed in the investigation (e.g. with timely access to services). It is common for DMHC to engage in a dialogue with the plan at this point, in terms of asking follow-up questions. That draft is then reviewed by the DMHC legal team, who conducts a law to fact application and has the final say over whether certain facts should be classified as a deficiency under the Knox-Keene Act.

Once completed, the preliminary report is sent to the plan, which then has 45 days to provide “corrective action plans” (“CAPs”) in response to the deficiencies highlighted in the preliminary report. The plan’s CAPs are reviewed by the DMHC legal team to determine whether the deficiencies identified in the preliminary report have been corrected.

A final report is issued after the CAPs have been received and analyzed. The plan then has ten days to draft additional information or a response that will be added to the final report.

⁵ Section 87400, subdivision (b).

⁶ Section 87400, subdivision (c).

⁷ Section 87400, subdivision (d).

While working as Staff Counsel III at the DMHC, Gallagher worked on the Kaiser mental health survey for approximately six months, from January through June of 2012. During that time, she helped pick the survey team, developed the scope of work, counselled the survey analysts, advised on documents to be requested from Kaiser, and advised on how to add value to the survey. This was the first DMHC survey focusing solely on mental health. Gallagher also reviewed and edited the preliminary survey report.

Gallagher started with Kaiser in July of 2012. While working for Kaiser, she provided both verbal and written feedback on the CAPs that other Kaiser employees were developing in response to the DMHC's preliminary report.

VIOLATION

Count 1: Permanent Ban

After termination of her state employment, for compensation, Marcella Gallagher aided, advised, consulted, or assisted Kaiser in responding to a Department of Managed Healthcare survey, the same proceeding in which she participated while a state administrative official, in violation of Government Code Section 87402.

CONCLUSION

This matter consists of one count of violating the Act, which carries a maximum administrative penalty of \$5,000.

In determining the appropriate penalty for a particular violation of the Act, the Commission considers the typical treatment of a violation in the overall statutory scheme of the Act, with an emphasis on serving the purposes and intent of the Act. Additionally, the Commission considers the facts and circumstances of the violation in the context of the factors set forth in Regulation 18361.5, subdivision (d)(1)-(6): the seriousness of the violations; the presence or lack of intent to conceal, deceive or mislead; whether the violation was deliberate, negligent, or inadvertent; whether the respondents demonstrated good faith in consulting with Commission staff; whether there was a pattern of violations; and whether respondent voluntarily amended.

The Commission also considers penalties in prior cases involving similar violations. Although there have not been any recent cases involving violations of the permanent ban, Section 84701, there have been cases involving the violation of Section 87407, a related provision that prohibits the negotiation of prospective employment. These include:

- *In the Matter of George Sanen*, FPPC No. 13/268. In this case, Sanen, a Project Manager at Lawrence Berkeley National Laboratory, participated in making governmental decisions regarding modifications to a \$137,960 contract between the Lawrence Berkeley National Laboratory and M+W Group, USA at a time when he was negotiating, or had an arrangement concerning, prospective future employment

with M+W Group, USA. On April 4, 2014, the Commission approved a penalty of \$3,500 for the violation.

In mitigation, Gallagher cooperated fully with the investigation, and does not have a history of violating the Act. Also, Gallagher consulted with DMHC's ethics officer at the time she was offered an interview with Kaiser, and followed the guidance she was provided. At the time, she contends that she was advised only of the ban on influencing prospective employment and the one year ban on appearing before her former agency for the purpose of influencing official action. Gallagher complied fully with these restrictions. Finally, when Gallagher and Kaiser learned that Gallagher's limited participation in reviewing a Corrective Action Plan was potentially a violation of the Act, she immediately ceased all work relating to the survey and, in an abundance of caution, several other surveys.

PROPOSED PENALTY

After considering the factors listed above, a penalty of \$3,000 is recommended.