FAIR POLITICAL PRACTICES COMMISSION
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January 25, 2010

Mr. Darc Keller

REDACTED

Warning Letter Re: FPPC No. 07/335, Darc Keller

Dear Mr. Keller:

The Fair Political Practices Commission (the "FPPC") enforces the provisions of the Political Reform Act (the "Act"),[1] found in Government Code section 81000, et seq. This letter is in response to an investigation begun against you by the FPPC in response to a referral by the Office of the Inspector General for the California Department of Corrections and Rehabilitation (CDCR) that alleged you were in violation of the Act's conflict of interest provisions while serving as the Assistant Secretary of Health Care Policy at the CDCR.

The FPPC has completed its investigation of the facts in this case. Specifically, the FPPC found that you participated in and used your official position to influence a governmental decision in which you had a material financial interest. However, we also determined that the interest in the governmental decision in which you participated was removed well before the decision was finalized. Specifically, we found that the company in which you had a material financial interest in, Mobile Medical International Corporation (MMIC), was removed from the CDCR contract in question as a sub-vendor before the contract was finalized. Additionally, MMIC received no financial benefit from the decision, and you were not the person who made the final decision in question.

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[1] The Political Reform Act is contained in Government Code sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

The Act provides that public officials, which include certain contractors, are prohibited from making, participating in making or influencing governmental decisions in which the official has a material financial interest. Specifically, Section 87100 of the Act states: "No public official at any level of state or local government shall make, participate in making, or in any way attempt to use his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest."

To determine whether an individual has a disqualifying conflict of interest, the FPPC generally employs the following sequenced analysis: 1) was the individual a public official; 2) did the official make, participate in making, or use or attempt to use his official position to influence a governmental decision; 3) what are the public official's economic interests; 4) was the economic interest affected by the decision, either directly or indirectly; 5) was the economic interest materially affected by the decision; 6) was it reasonably foreseeable that the economic interest would be materially affected by the decision. (See Regulation 18700.)

Regulation 18703.1 defines an economic interest with regard to business entities to include a public official with a direct or indirect investment in the business entity worth $2,000 or more. A business is directly affected by a decision if it is a named party in the proceeding concerning the decision before the official's agency. A person is the subject of a proceeding if a decision involves the issuance, approval, or denial of a contract with the subject person. Regulation 18704.1 An economic interest in a business entity directly involved in a government decision is presumed to be material. The presumption may be rebutted by proof that it is not reasonably foreseeable that the governmental decision will have any financial effect on the business entity. Regulation 18705.1

Your actions violated the Act. In this case, you were serving as a public official as the Assistant Secretary of Health Care Policy. You participated in making, and used your official position to influence, a governmental decision, specifically a proposed contract between the CDCR and the Medical Development International (MDI) company that listed MMIC as a sub-vendor. During the time you participated in and influenced this decision, you owned stock in MMIC, your former employer, which was valued at more than $25,000, and gave you an economic interest in MMIC. As a named party in the contract decision before CDCR, MMIC was directly affected by the decision. MMIC would have been materially affected by the decision, as demonstrated by the inclusion in the eventual pilot program that was funded by

CDCR of a billing schedule for the type of services provided by MMIC in excess of $60,000 per month. However, MMIC was removed from the contract after CDCR staff alerted other CDCR officials of a potential conflict of interest.

Due to the mitigating circumstances previously identified, we have decided to close this case with a warning letter. This letter serves as a written warning. The information in this matter will be retained and may be considered should an enforcement action become necessary based on newly discovered information or future conduct. Failure to comply with the provisions of the Act in the future will result in monetary penalties of up to $5,000 for each violation.

A warning letter is an FPPC case resolution without administrative prosecution or fine. However, the warning letter resolution does not provide you with the opportunity for a probable cause hearing or hearing before an Administrative Law Judge or the Fair Political Practices Commission. If you wish to avail yourself of these proceedings by requesting that your case proceed with prosecution rather than a warning, please notify us within ten (10) days from the date of this letter. Upon this notification, the FPPC will rescind this warning letter and proceed with administrative prosecution of this case. If we do not receive such notification, this warning letter will be posted on the FPPC's website ten (10) days from the date of this letter.

Please feel free to contact me with any questions you may have regarding this letter.

Sincerely,

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GARY S. WINUK
Chief, Enforcement Division