

OFFICE OF STATE ETHICS

DOCKET NUMBER 2014-06	:	OFFICE OF STATE ETHICS
	:	
IN THE MATTER OF A	:	18-20 TRINITY STREET
	:	
COMPLAINT AGAINST	:	HARTFORD, CT 06106
	:	
CRAIG J. LUBITSKI	:	
CONSULTING, LLC	:	APRIL 9, 2015

STIPULATION AND CONSENT ORDER

Pursuant to the Code of Ethics, General Statutes § 1-79, et seq., Thomas K. Jones, Ethics Enforcement Officer for the Office of State Ethics (“OSE”), issued a Complaint against the Respondent Craig J. Lubitski Consulting, LLC (“Respondent”) for alleged violations of the Code of Ethics, General Statutes § 1-86e (a). Based on the investigation by the Enforcement Division of the OSE, the Ethics Enforcement Officer finds there is probable cause to believe that the Respondent, a former state contractor, violated the Code of Ethics as set forth in the Complaint.

The Parties have entered into this Stipulation and Consent Order following the issuance of the Complaint, but without any adjudication of any issue of fact or law herein.

I. STIPULATION

The Office of State Ethics and the Respondent stipulate to the following facts:

1. At all times relevant hereto, Respondent was a limited liability company organized and existing under Connecticut state law, with its principal place of business located at 225 Pitkin Street in East Hartford, Connecticut.

2. From on or about 2001, and continuing to on or about July 2013, Respondent entered into, and worked under, a contract with the state Department of Social Services (“DSS”) under which it assisted DSS in its rate setting activities by conducting “desk reviews” and “field audits” for nursing and residential care facilities.

3. In conducting “desk reviews” and “field audits” under the contract, Respondent received and reviewed reimbursement requests submitted to DSS by the facilities and, upon review and consultation with the state, made recommendations on which costs would be reimbursed, and the rate at which the costs would be reimbursed. By law, DSS is responsible for final issuance of all reimbursement rates.

4. From on or about 2001, and continuing to on or about June 2013, Respondent was a “person hired by the state as a consultant or independent contractor,” as those terms are used in General Statutes § 1-86e (a).

5. From on or about 2001, and continuing to on or about June 2013, Respondent acquired confidential information in the performance of, and/or by virtue of, its contract with DSS.

6. Respondent’s contract with DSS ended on or about June 30, 2013 and was not renewed.

7. Beginning on or about February 2014, Respondent began privately representing nursing and residential facilities before DSS.

8. The nursing and residential facilities being privately represented by Respondent were facilities on which Respondent had previously performed “desk reviews” while under contract with the state.

9. Respondent's private representation of facilities before DSS included challenging the reimbursements and rates (1) for the same facilities on which Respondent had performed desk reviews while under contract with DSS; and, (2) that were based, in part, on work Respondent had previously performed.

10. Respondent's private representation of facilities before DSS was to obtain financial gain.

11. General Statutes § 1-86e (a) provides in pertinent part:

No person hired by the state as a consultant or independent contractor shall (1) use . . . confidential information acquired in the performance of the contract, to obtain financial gain for the person . . .

II. FINDINGS

The Office of State Ethics was prepared to demonstrate at a probable cause hearing:

1. In its private representation of facilities before DSS, Respondent used confidential information acquired in the performance of its contract with DSS.

2. By using confidential information acquired in the performance of its contract with DSS, in order to obtain financial gain for itself, Respondent violated General Statutes § 1-86e (a).

III. RESPONDENT'S POSITION

1. Respondent admits to the facts in the Stipulation but does not believe that the information it used in representing private nursing and residential facility clients before DSS constituted "confidential information" under the statute. Respondent states that its execution of this Stipulation and Consent Order represents its desire to fully and finally resolve the subject matter of the Complaint. Respondent states that, in its private representation of nursing and

residential facilities before DSS, Respondent intended to use only information that was publicly available, and that it does not believe that it used any confidential information.

2. Respondent states that the rates challenged by the Respondent which brought rise to this inquiry were ultimately calculated by a different contractor based, in part, on Respondent's work. The challenged rates were provided by the contractor to DSS several months after the Respondent's contract had concluded and were issued by DSS thereafter.

3. Respondent states that it contacted the OSE prior to the end of its contract with the state to seek guidance from the OSE. Respondent states that it believed that the advice it received allowed it to engage in the conduct alleged in the Complaint.

4. Respondent states that it contacted the American Institute of Certified Public Accountants ("AICPA") prior to the end of its contract with the state to seek guidance. Respondent states that it believed that the advice it received from AICPA allowed it to engage in the conduct set forth in the Complaint.

5. Respondent states that, based on the guidance received from OSE and AICPA, it informed DSS on July 2, 2013 of its intention to represent long-term care providers and described the proposed parameters that it intended to impose on itself in order to avoid any conflict of interest. Respondent states that, although its July 2, 2013 communication requested that DSS inform Respondent of any objections, Respondent did not receive any objection from DSS until February of 2014. Respondent believes that DSS should have objected to Respondent's conduct prior to February 2014, and believes that such a timely objection would have altered its conduct.

6. Respondent states that it no longer represents any facility in any rate appeal before DSS regarding any reimbursement or rate based on any adjustment or disallowance made

during the period for which it performed a desk review, or other rate analysis, while under contract with the state. Respondent states that any current facility representation regarding any cost reports, rate appeals or challenges before DSS is limited to newly proposed revisions, disallowances, adjustments or changes in circumstance.

7. Respondent states that is has been fully cooperative and responsive to any and all requests by OSE regarding this matter.

IV. JURISDICTION

1. The Ethics Enforcement Officer is authorized to investigate the Respondent's acts as set forth herein, to issue a Complaint against the Respondent, and to enter into this Stipulation and Consent Order.

2. The provisions of this Stipulation and Consent Order apply to and are binding upon the Respondent.

3. The Respondent hereby waives all objections and defenses to the jurisdiction of the Office of State Ethics over matters addressed in this Stipulation and Consent Order.

4. The Respondent waives any rights it may have under General Statutes §§ 1-80, 1-82, 1-82a, 1-87 and 1-88, including the right to a hearing or appeal in this case, and agrees with the Office of State Ethics to an informal disposition of this matter as authorized by General Statutes § 4-177 (c).

5. The Respondent consents to jurisdiction and venue in the Connecticut Superior Court, Judicial District of Hartford, in the event that the State of Connecticut seeks to enforce this Stipulation and Consent Order. The Respondent recognizes that the Connecticut Superior

Court has the authority to specifically enforce the provisions of this Stipulation and Consent Order, including the authority to award equitable relief.

6. The terms set forth herein are in addition to, and not in lieu of, any other existing or future statutory, regulatory, or other legal obligation that may be applicable to the Respondent.

7. The Respondent understands that it has the right to counsel and has been represented by counsel throughout the investigation of this matter and the negotiation of this Stipulation and Consent Order.

V. ORDER

NOW THEREFORE, pursuant to General Statutes § 4-177 (c), the Office of State Ethics hereby **ORDERS**, and the Respondent agrees, that:

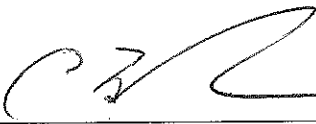
1. Pursuant to General Statutes § 1-88 (a) (1), the Respondent will heretofore cease and desist from any future violation of General Statutes § 1-86e (a).

2. Pursuant to General Statutes § 1-88 (a) (1), the Respondent will heretofore cease and desist from representing any facility in any rate appeal, filed pursuant to General Statutes § 17b-238 (b), concerning any rates established or desk reviewed during the period that Respondent was under contract with DSS.

3. Pursuant to General Statutes § 1-88 (a) (3), the Respondent will pay a civil penalty to the State in the amount of ten thousand dollars (\$10,000) for its violations of General Statutes § 1-86e (a) as set forth in the Complaint.

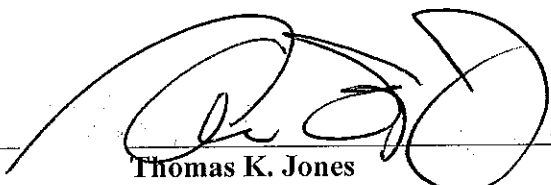
WHEREFORE, the Ethics Enforcement Officer and the Respondent hereby execute this Stipulation and Consent Order dated April 9, 2015.

Dated: 4/9/15



Craig J. Lubitski
Craig J. Lubitski Consulting, LLC

Dated: 4/10/15



Thomas K. Jones
Ethics Enforcement Officer
Connecticut Office of State Ethics
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Hartford, CT 06106
(860) 263-2390