

## **PRE-COMPLAINT DISPOSITION AGREEMENT**

This Agreement, made this 8<sup>th</sup> day of February, 2018, by and between David W. Mitchell, former IT Program Manager with the Maryland Health Care Commission, and William J. Colquhoun, Esq., Staff Counsel to the State Ethics Commission (hereinafter "Staff Counsel").

The State Ethics Commission ("the Commission") is the executive agency of the State of Maryland established by Chapter 513, Acts 1979 for the purpose of enforcing the Maryland Public Ethics Law (General Provisions Article, Title 5, Annotated Code of Maryland (hereinafter the "Public Ethics Law")) including the provisions of Subtitle 5, Conflicts of Interest.

### **AGREED STATEMENT OF FACTS**

1. David W. Mitchell was at all times relevant to this matter an employee of the Maryland Health Care Commission ("MHCC"), an executive unit of the State of Maryland, and was subject to the conflict of interest provisions of the Public Ethics Law. On December 31, 2016, Mr. Mitchell retired from State service; his retirement was unrelated to the facts giving rise to this Agreement.

2. In July 2017, the Maryland Department of Health Office of the Inspector General (the "OIG") presented information to the Commission relating to potential procurement irregularities and violations of the Public Ethics Law involving four health care regulatory boards and their dealings with a limited liability company in which Mr. Mitchell held a financial interest. In response to the information provided by the OIG, the Commission directed its Staff Counsel to conduct a preliminary inquiry into the allegations. Staff Counsel and other Commission staff spent numerous hours interviewing witnesses and reviewing documents in this inquiry. During the inquiry of this matter, the OIG staff cooperated and provided assistance to Commission staff.

3. Mr. Mitchell was employed as an IT Manager for MHCC. Mr. Mitchell's duties on behalf of MHCC included web programming, web development, and technical assistance. Occasionally, MHCC loaned Mr. Mitchell to the health care regulatory boards to perform information technology services. One such service related to the creation of online renewal application systems for the health care regulatory boards. MHCC and the health care regulatory boards are, for the purposes of the Public Ethics Law, part of the same governmental unit, the Maryland Department of Health.

4. Beginning in 2015, an employee of one of the health care regulatory boards, on behalf of that board and other boards, requested that MHCC provide them with information technology assistance in creating online initial application systems. As noted above, MHCC had previously provided assistance to the health care regulatory boards in creating their online renewal application systems. On or about March 22, 2016, a member of MHCC staff informed the health care regulatory boards that MHCC could not, at that time, provide them with assistance in creating the online initial application

systems, but would consider at a later date whether it had the ability to provide the assistance.

5. On or about May 16, 2016, at the request of some of the health care regulatory boards, Mr. Mitchell made a presentation demonstrating how a limited liability company, in which he had an interest, could provide services to create separate online initial application systems for each of the boards. In the demonstration, Mr. Mitchell used the Board of Physical Therapy Examiners as an example of an online initial application system he could create.

6. Shortly thereafter, the limited liability company, in which Mr. Mitchell held an interest, entered into a contract<sup>1</sup> with the Board of Physical Therapy Examiners to create an online initial application system. The limited liability company performed and was compensated for its services prior to Mr. Mitchell's retirement from State service.

7. On or about December 22, 2016, employees from the Board of Physicians began negotiations on a contract with the limited liability company, in which Mr. Mitchell held an interest, to provide the board with information technology services.

8. Section 5-502(b)(1)(ii) of the Public Ethics Law prohibits a State employee from holding a financial interest in an entity that negotiates or enters into a contract with the employee's governmental unit. "Financial interest" is defined in § 5-101(n)(2)(i)(2-3) as ownership of more than 3% of a business entity by an employee or the spouse of an employee.

9. Section 5-506(a)(1)(i) of the Public Ethics Law prohibits a State employee from intentionally using the prestige of their office or public position for the gain of that employee or the private gain of another individual.

10. Multiple employees of the health care regulatory boards were aware that Mr. Mitchell was an employee of MHCC, and that he had previously performed information technology services for those boards in his role as an employee of MHCC. In fact, several employees noted that Mr. Mitchell's limited liability company was selected because he had previously performed services as an MHCC employee and had knowledge of their operations. Additionally, Mr. Mitchell informed an employee of MHCC of his financial interest in the limited liability company, and that it would be performing services similar to those that he performed as an employee of MHCC. None of the employees raised the potential conflict of interest issues with Mr. Mitchell or sought the advice of the Commission as to the appropriateness of the contracts.<sup>2</sup>

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<sup>1</sup> No written contract exists. However, the facts and circumstances indicate that an implied contract exists between the Board of Physical Therapy Examiners and the limited liability company.

<sup>2</sup> The Commission staff provided informal advice regarding the application of the Public Ethics Law in over 600 matters in calendar year 2017. Additionally, the Commission's four attorneys consulted with hundreds of individuals who had questions regarding the Public Ethics Law within the same calendar year that were not tracked as informal advice.

11. Mr. Mitchell fully cooperated in Staff Counsel's inquiry into this matter.
12. Mr. Mitchell has been advised that he has the opportunity to be represented by counsel pursuant to the regulations of the Commission, and he has decided not to be represented by counsel.
13. Mr. Mitchell is voluntarily entering into this agreement to admit certain violations of the Public Ethics Law, to accept certain sanctions, and to resolve the matter now pending against him without the issuance of a complaint and a hearing before the Commission.

**NOW THEREFORE**, in consideration of the agreed facts contained herein, and effective on the date of the Commission's acceptance of the terms of this Agreement, David W. Mitchell and William J. Colquhoun, Staff Counsel, agree as follows:

- A. That Mr. Mitchell violated § 5-502(b)(1)(ii) of the Public Ethics Law when the limited liability company in which he has a financial interest negotiated or entered into contracts with the Board of Physical Therapy Examiners and the Board of Physicians.
- B. That Mr. Mitchell violated § 5-506(a)(1)(i) of the Public Ethics Law when on May 16, 2016, he made a presentation to the health care regulatory boards regarding work to be performed by the limited liability company in which he has a financial interest.
- C. That Mr. Mitchell understands that violations of the conflict of interest provisions of the Public Ethics Law may result in civil fines pursuant to § 5-902 of the Public Ethics Law. The Respondent further agrees to pay, in lieu of potential fines, the sum of \$2,000 for the above admitted violations of the law. That said sum will be paid by check or money order made payable to the State of Maryland in care of the State Ethics Commission on or before March 1, 2018. The fee shall be distributed to the Fair Campaign Finance Fund established under § 15-103 of the Fair Campaign Finance Article. If the fee is not paid, it is agreed that the matter will be transferred to the Maryland State Central Collection unit for the purposes of collecting the monies owed. Mr. Mitchell also agrees that he will not provide any further services for compensation to the Board of Physical Therapy Examiners; the Board of Physicians; the Board of Social Work Examiners; and the Board of Examiners in Optometry, either individually or through an entity in which he has a financial interest.
- D. That the Commission will issue a reprimand to Mr. Mitchell effective the date of the Commission's acceptance of this Agreement.
- E. That the Commission will transmit a copy of this Agreement to the Governor and the Secretary for the Maryland Department of Health.

- F. That in the future, Mr. Mitchell will obtain the advice of the Commission prior to his seeking, either individually or through a company with which he is affiliated, contracts or employment involving the Maryland Department of Health or its affiliated units or divisions.
- G. That Mr. Mitchell waives any formal proceedings and hearing in this matter if the Commission accepts this Agreement, and agrees that acceptance of this Agreement by the Commission constitutes a final action and finding of violation by the Commission.
- H. Mr. Mitchell further agrees that this Agreement and materials related to this matter are not subject to the confidentiality provisions of the Public Ethics Law and will be public information unless otherwise protected.
- I. That upon execution of this Agreement by Mr. Mitchell, Staff Counsel will recommend that the Commission suspend any further proceedings against Mr. Mitchell. Should Mr. Mitchell fail to comply with the terms of this Agreement, and after written notice is issued to him, the Commission reserves the right to open an investigation and issue a Complaint for violations of § 5-502(b)(1)(ii) and § 5-506(a)(1)(i) of the Public Ethics Law.
- J. That in the event the Commission declines to accept this Agreement, both Mr. Mitchell and Staff Counsel are relieved of their respective obligations hereunder, and neither this Agreement, nor any admission it may contain, shall be admissible in any subsequent proceeding by the Commission.
- K. That Mr. Mitchell and Staff Counsel are entering into this Agreement for the sole purpose of resolving the matters involved in the Commission's preliminary inquiry matter and for no other purpose.

**IN WITNESS WHEREOF**, David W. Mitchell and William J. Colquhoun, Staff Counsel, State Ethics Commission, have hereunto set their hands.

[Redacted]  
William J. Colquhoun, Staff Counsel  
State Ethics Commission  
45 Calvert Street, 3<sup>rd</sup> Floor  
Annapolis, Maryland 21401  
(410) 260-7770

[Redacted]  
David W. Mitchell

State of Maryland  
County of: Anne Arundel, to wit:

Before me, the undersigned, a Notary Public in and for the State and County aforesaid, personally appeared David W. Mitchell, who made oath in due form of law on this 8<sup>th</sup> day of February, 2018, that the matters and facts hereinabove set forth in this Pre-Complaint Disposition Agreement are true to the best of his knowledge, information and belief, it is his voluntary act, and that he executed this document for the purpose set forth herein.

[Redacted]  
Notary Public

My Commission Expires: 6-20-21

(Notary Seal)



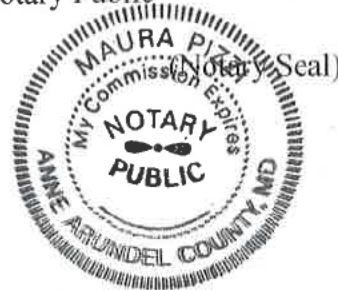
State of Maryland,

County of: Anne Arundel, to wit:

Before me, the undersigned, a Notary Public in and for the State and County aforesaid, personally appeared William J. Colquhoun, Staff Counsel to the State Ethics Commission, who made oath on this 8<sup>th</sup> day of February, 2018, in due form of law that he executed this Agreement for the purposes therein contained.

[Redacted Signature]  
Notary Public

My Commission Expires: 6-20-21



Accepted by the Commission

[Redacted Signature]  
Janet E. McHugh, Chair  
for the Commission

Date: 2/15, 2018