



STATE OF NEVADA

BEFORE THE NEVADA COMMISSION ON ETHICS

In the Matter of the Third-Party Request
for Opinion Concerning the Conduct of
Donna Lopez, Quality Control Officer,
Public Employees' Benefits Program,
State of Nevada,

Request for Opinion No. **15-73C**

Subject. /

STIPULATED AGREEMENT

1. **PURPOSE**: This Stipulated Agreement resolves Third-Party Request for Opinion ("RFO") No. 15-73C before the Nevada Commission on Ethics ("Commission") concerning Donna Lopez ("Lopez"), Quality Control Officer for the Public Employees' Benefits Program ("PEBP"), and serves as the final opinion in this matter.

2. **JURISDICTION**: At all material times, Lopez was employed as a Quality Control Officer at PEBP, a public employee as defined in NRS 281A.150. The Ethics in Government Law ("Ethics Law") set forth in NRS Chapter 281A provides the Commission jurisdiction over elected and appointed public officers and public employees whose conduct is alleged to have violated the provisions of NRS Chapter 281A. See NRS 281A.280. Accordingly, the Commission has jurisdiction over Lopez in this matter.

3. **PROCEDURAL HISTORY BEFORE COMMISSION:**

a. On or about December 3, 2015, the Commission received this RFO from a private citizen, alleging that Lopez:

- 1) Failed to avoid conflicts of interest between her public and private interests by designating a longtime personal friend as a PEBP consultant (NRS 281A.020(1));
- 2) Accepted gifts which would tend improperly to influence a reasonable person in her position to depart from the faithful and impartial discharge of her public duties (NRS 281A.400(1));

- 3) Used her position as Quality Control Officer to gain an unwarranted advantage for a friend (NRS 281A.400(2));
 - 4) Failed to disclose a conflict of interest (NRS 281A.420(1)); and
 - 5) Failed to abstain from acting on a matter in which abstention is required (NRS 281A.420(3)).
- b. As required by NAC 281A.410, the Commission provided Lopez with notice of the RFO by mail on December 16, 2015. Lopez was provided an opportunity to respond to the RFO and requested an extension of time to submit a response through her legal counsel, Mark Mausert, Esq. An extension was granted and the response was due on February 29, 2016. A response was not submitted and no additional extensions of time were requested.
 - c. Pursuant to NRS 281A.440, on March 16, 2016, a two-member Investigatory Panel of the Commission reviewed the RFO, the Executive Director's recommendation and other evidence.
 - d. A Panel Determination issued on March 23, 2016 concluded that:
 - 1) Credible evidence supports just and sufficient cause for the Commission to conduct a public hearing and render an opinion regarding whether Lopez violated NRS 281A.020(1) and 281A.400(1) with regard to acceptance of gifts; and
 - 2) The facts do not establish credible evidence to substantiate just and sufficient cause for the Commission to conduct a public hearing and render an opinion regarding the alleged violations of NRS 281A.400(2) and NRS 281A.420(1) and (3). Accordingly, these allegations were dismissed.
 - e. The Commission notified Lopez of the time and place set for a Commission hearing in this matter. In lieu of a full hearing, Lopez now enters into this Stipulated Agreement acknowledging her duty as a public employee to commit herself to protect the public trust and conform her conduct to Chapter 281A of the Nevada Revised Statutes.

4. **STIPULATED FACTS:** This Stipulated Agreement is premised upon the record before the Commission which includes, without limitation, the following stipulated facts:¹

Overview

- a. Donna Lopez was the Quality Control Officer for PEBP, and therefore is a public employee pursuant to NRS 281A.150.
- b. PEBP is a state agency as defined in NRS 281A.145.
- c. PEBP is the state agency that manages the group health insurance program for State and certain other public employees. PEBP currently administers various insurance plans, including: health; life; accidental death and dismemberment; long-term disability; and other voluntary insurance coverages.
- d. PEBP operates under the direction and oversight of the Public Employees' Benefits Program Board ("PEBP Board"), a ten-member board appointed by the Governor. NRS 287.041. The PEBP Board appoints an Executive Officer who oversees the day-to-day operation and management of the agency. NRS 287.0424.
- e. PEBP is comprised of the following sections: Operations, Quality Control, Public Information, Accounting and Information Technology.
- f. The Quality Control Section of PEBP coordinates the contracting process for all contracts PEBP enters into, including managing the Request for Proposal ("RFP") process, contract negotiations, contract maintenance and contract extensions. The Quality Control Officer is therefore responsible for managing many aspects of PEBP's contracting needs. The position also assists the Executive Officer with overseeing the administration of PEBP benefits by providing regular vendor performance reports and coordinating vendor audits to ensure vendors are complying with their contract requirements.
- g. PEBP contracts for a variety of services including actuarial, PPO networks, HMO, management of large claims cases, utilization review, and audit

¹ Stipulated Facts do not constitute part of the "Investigative File" as that term is defined by NRS 281A.440(17). All statutory and common law protections afforded to the Investigative File shall remain and are not affected by this Stipulated Agreement.

services. In addition, PEBP contracts with a third-party administrator to pay medical and dental claims, and a pharmacy benefits manager to access drug discounts and to pay claims.

- h. Hometown Health and HealthSCOPE Benefits (“HealthSCOPE”) are two of PEBP’s largest vendors.

Involved Parties and Policies

- i. One of the vendors at issue in this matter is the Chief Medical Officer of Hometown Health (hereafter referred to as “Hometown Health representative”), which operates the Medical Utilization Management & Case Management Services for PEBP’s Consumer Driven High Deductible Plan (“CDHDP”), administers the statewide PPO Network for the CDHDP and operates PEBP’s Northern Nevada Health Maintenance Organization (“HMO”).
- j. Another vendor at issue in this matter is the President of HealthSCOPE (hereafter referred to as “HealthSCOPE representative”), the claims administrator/third-party administrator for PEBP’s CDHDP, PPO Dental Plan, Health Savings Account, PPO-Health Reimbursement Arrangement and Flexible Spending Accounts.
- k. PEBP’s policies outline prohibited conduct, permissible gifts, and progressive discipline procedures associated with certain acts of misconduct by PEBP employees, including the acceptance of gifts, particularly “from any individual, firm, or organization doing business with PEBP or the State when the employee is responsible for making any recommendations or decisions affecting their business activities without approval of the Executive Officer.”

Gift: The Purse

- l. In or around September 2014, a Hometown Health representative gave Lopez a Coach-brand woman’s purse that she had purchased for herself and no longer wanted.
- m. Lopez accepted the Coach purse and re-gifted it to her assistant in September of 2014, approximately one week after Lopez accepted the purse from the Hometown Health representative.

- n. A PEBP employee who reported directly to Lopez at the time recalls that Lopez told her she had received a Coach purse from a Hometown Health representative sometime in late fall or early winter of 2014.
- o. The Hometown Health representative does not remember the exact purchase price of the Coach purse, which she purchased at a Coach outlet store. She recalls that it cost no more than \$100.
- p. On eBay, Coach purses of a similar color and with the same serial number as the purse Lopez received from the Hometown Health representative were recently priced at about \$130.

Gift: Free Lunches

- q. Between April and September of 2015, Lopez met with a HealthSCOPE representative for lunch at least three times. These lunches typically occurred in Carson City, Nevada the day before or the day of PEBP Board meetings.
- r. The HealthSCOPE representative paid for the three lunches. Cumulatively, these lunches totaled approximately \$45.00.
- s. The days after Lopez accepted free meals from the HealthSCOPE representative in May and September, respectively, that same representative appeared before the PEBP Board on behalf of HealthSCOPE to provide a response to first and second quarter audit reports of HealthSCOPE being reviewed by the Board.
- t. Lopez's job responsibilities included coordinating quarterly audits of HealthSCOPE with PEBP's auditor.

Favor: The Suitcase

- u. PEBP's RFP for Statewide/Regional HMO Services ("HMO RFP") was released to vendors on September 8, 2015.
- v. Lopez, in her capacity as Quality Control Officer, is responsible for implementing, monitoring and coordinating the RFP process for PEBP contracts, which includes her participation in contract RFP response evaluations.

- w. On October 7, 2015, a Hometown Health representative purchased a child's suitcase for \$107.35 as a favor for Lopez during a PEBP tour of the Renown Medical Center.
- x. Hometown Health was one of four vendors to submit a proposal to the HMO RFP, which was open at the time this representative purchased the suitcase.
- y. At a closed session at the November 19, 2015 PEBP Board meeting, Lopez explained the circumstances regarding the Hometown Health representative's purchase of the suitcase on October 7, 2015 as follows:

A vendor purchased the luggage that I was getting for my granddaughter because I was running late to a meeting. I didn't have my check book with me and told her I would pay her back later. Because of what was going on at PEBP, I completely forgot, but always planned on reimbursing the vendor.

- z. Lopez wrote a check reimbursing the Hometown Health representative for the suitcase on November 20, 2015.

5. **TERMS OF AGREEMENT / CONCLUSIONS OF LAW:** Based on the foregoing, Lopez and the Commission agree as follows:

- a. Each of the stipulated facts enumerated in section 4 of this Stipulated Agreement is deemed to be true and correct.
- b. At all relevant times, Lopez was a public employee of PEBP, which is a state agency.
- c. As a public employee, the Ethics Law applies to Lopez's conduct and Lopez must commit herself to avoid both actual and perceived conflicts between her private interests and those of the public she serves. *See In re Public Employee, Comm'n Op. No. 10-73A (2011)*. Specifically, Lopez must not seek or accept any gift, service or favor which would tend improperly to influence a reasonable person in her position to depart from the faithful and impartial discharge of her public duties. NRS 281A.400(1).
- d. The prohibitions of NRS 281A.400(1) are in addition to established policies of a government agency and serve the public's interest in objective, impartial and effective government by preventing a public officer or employee from violating

- the public trust by taking official action in exchange for a personal benefit (i.e., a *quid pro quo*). See *In re Kenny*, Comm'n Op. No. 00-54A (2001).
- e. Lopez's acceptance of a Coach purse from a Hometown Health representative violated NRS 281A.020 and NRS 281A.400(1) because it was a gift of material value of the type that would tend improperly to influence a reasonable person in Lopez's position. See *In re Public Employee*, Comm'n Op. No. 11-62A (2010). The purse was accepted by Lopez as a personal gift, as there was no "state benefit" associated with receipt of the gift, and the purse, with a value of approximately \$100, cannot be considered a trinket or nominal gift. The representative's reasons for giving the purse to Lopez are irrelevant because a violation of NRS 281A.400(1) does not require a finding of improper motive or intent to influence a public employee or public officer.
 - f. Lopez's acceptance of multiple free lunches from a HealthSCOPE representative violated NRS 281A.020 and NRS 281A.400(1) because a reasonable person in Lopez's position would be improperly influenced by the acceptance of repeated free meals from a vendor when PEBP, and specifically, Lopez in her capacity as Quality Control Officer, provide oversight of the performance and quality of services being delivered by that vendor. The Ethics Law prohibits this type of conduct because it creates a perception of impropriety or favoritism for a contracted state vendor and erodes the public's trust in state government.
 - g. Lopez's acceptance of the child's' suitcase purchased by a representative of Hometown Health constitutes acceptance of a favor, not a gift, because Lopez later provided reimbursement for the suitcase. This favor, as it occurred in this case with the intention for immediate reimbursement, would not be the type of favor that would tend improperly to influence a reasonable person in Lopez's position, in violation of the Ethics Law. However, the favor was offered to Lopez during a work-related event while PEBP's HMO RFP was open for bidding, Hometown Health was one of the vendors actively bidding on the RFP and Lopez, as the Quality Control Officer, helped draft the HMO RFP. Under these circumstances, a public employee's acceptance of any personal favor from a

contracted state vendor representative can create the appearance of impropriety and be construed as creating a *quid pro quo* expectation of preferential treatment or competitive advantage. Public employees who work in a highly competitive business environment involving multi-million dollar contracts must be diligent in avoiding such situations.

- h. Lopez now understands that she should not have accepted the Coach purse and lunches from representatives of contracted PEBP vendors and she should have been more circumspect in her acceptance of a favor from a contracted vendor that was either bidding on an open PEBP RFP or defending audit findings. The preponderance of evidence establishes that acceptance of the purse and lunches are the type of gifts that would tend improperly to influence a public employee in Lopez's position to depart from the faithful and impartial discharge of the public employee's public duties because of the value of the gifts, the identity of the donors and/or the timing of the gifts. *See In re Public Employee*, Comm'n Opinion No. 11-62A (2010) (*citing In re Wood*, Comm'n Op. No. 95-51 (1997)). Lopez's acceptance of gifts from vendors under the circumstances identified herein creates a perception of *quid pro quo* between vendors and the state agency responsible for ensuring the public trust associated with contracts that involve expenditure of public funds.
- i. Under the specific circumstances of this matter, Lopez's conduct constitutes a single course of conduct resulting in a single violation of the Ethics Law, implicating NRS 281A.020(1) and 281A.400(1).
- j. Based upon the consideration and application of the statutory criteria set forth in NRS 281A.475, the Commission concludes that Lopez's violation should be deemed "willful" pursuant to NRS 281A.170 and there are no mitigating factors to justify a non-willful violation.
- k. Although Lopez may not have intended to violate the Ethics Law, her violation of NRS Chapter 281A was willful because she acted intentionally and knowingly, as those terms are defined in NRS 281A.105 and 281A.115, respectively.

- l. For an act to be intentional, NRS 281A.105 requires that Lopez acted voluntarily or deliberately. The definition further states that proof of bad faith, ill will, evil or malice is not required. Lopez's acceptance of gifts and/or favors was not accidental or inadvertent.
 - m. NRS 281A.115 defines "knowingly" as "import[ing] a knowledge that the facts exist which constitute the act or omission." NRS Chapter 281A does not require that Lopez had actual knowledge that her conduct violated the Ethics Law, but it does impose constructive knowledge when other facts are present that should put an ordinarily prudent person upon inquiry. See *In re Stark*, Comm'n Op. No. 10-48C (2010).
 - n. For the willful violation, Lopez will pay a civil penalty of \$1,000.00, pursuant to NRS 281A.480, not later than 90 days after her receipt of the fully executed Stipulated Agreement in this matter. Lopez may pay the penalty in one lump sum payment or in monthly installment payments as negotiated with the Commission's Executive Director.
 - o. This Stipulated Agreement applies only to the specific facts, circumstances and law related to this RFO now before the Commission. Any facts or circumstances that may come to light after its entry that are in addition to or differ from those contained herein may create a different resolution of this matter.
 - p. This Stipulated Agreement applies only to these matters before the Commission and is not intended to be applicable to or create any admission of liability for any other proceeding, including administrative, civil, or criminal regarding Lopez.
6. **WAIVER:**
- a. Lopez knowingly and voluntarily waives her right to a full hearing before the Commission on the allegations in this RFO (No. 15-73C) and any and all rights she may be accorded pursuant to NRS Chapter 281A, the regulations of the Commission (NAC Chapter 281A), the Nevada Administrative Procedure Act (NRS Chapter 233B) and any other applicable provisions of law.

b. Lopez knowingly and voluntarily waives her right to any judicial review of this matter as provided in NRS Chapter 281A, NRS Chapter 233B or any other provision of Nevada law.

7. **ACCEPTANCE:** We, the undersigned parties, have read this Stipulated Agreement, understand each and every provision therein, and agree to be bound thereby. The parties orally agreed to be bound by the terms of this Stipulated Agreement during the regular meeting of Commission on October 19, 2016.

DATED this 2 day of November, 2016.



Donna Lopez, Subject

The above Stipulated Agreement is approved by:

FOR DONNA LOPEZ, Subject

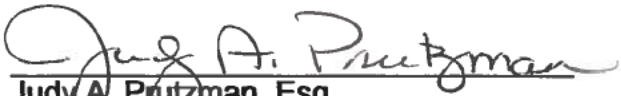
DATED this 7 day of Nov., 2016.



Caren C. Jenkins, Esq.

FOR YVONNE NEVAREZ-GOODSON, ESQ.
Executive Director, Commission on Ethics

DATED this 7th day of November, 2016.



Judy A. Prutzman, Esq.
Associate Counsel

Approved as to form by:

FOR NEVADA COMMISSION ON ETHICS

DATED this 14TH day of November, 2016.



Tracy L. Chase, Esq.
Commission Counsel

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The above Stipulated Agreement is accepted by the Commission.²

DATED October 19, 2016.

By: /s/ Cheryl A. Lau
Cheryl A. Lau, Esq.
Chair

By: /s/ Magdalena Groover
Magdalena Groover
Commissioner

By: /s/ Brian Duffrin
Brian Duffrin
Commissioner

By: /s/ Barbara Gruenewald
Barbara Gruenewald, Esq.
Commissioner

² Vice-Chair Weaver and Commissioner Stewart participated in the Panel hearing and are therefore precluded from participating in this Stipulated Agreement pursuant to NRS 281A.220(4).