

State of New York
Office of the Inspector General



Investigation into Misconduct by Former
Office of Medicaid Inspector General Employee
Joseph Flora

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EXECUTIVE SUMMARY

In April 2013, the New York State Inspector General commenced an investigation into possible ethics violations by Joseph “Jeff” Flora, who at the time was Director of the Bureau of Third Party Liability at the Office of the Medicaid Inspector General (OMIG). Specifically, it was alleged that Flora had accepted a paid trip to Texas and an offer of employment from Health Management Systems (HMS), a company then under contract with OMIG to provide services to identify and recover Medicaid overpayments, while he was the senior staff manager at OMIG overseeing the HMS contract.

This investigation substantiated that allegation and further established a longtime pattern of ethical misconduct by Flora in his dealings with HMS, all of which appear to have violated the New York State Public Officers Law. The Inspector General determined that from at least 2011 until his conduct became public knowledge in spring of 2013, Flora routinely received gifts and rewards from HMS employees. The Public Officers Law prohibits state employees from accepting gifts of more than “nominal value” from companies doing business with the state. The gifts and rewards that Flora received from HMS included cocktails and meals and culminated in a flight to Texas and an offer of employment.

Based on data received from HMS, the Inspector General determined that in 2011, Flora received over \$850 in food and beverages from HMS; in 2012, Flora received almost \$600 in food and beverages from HMS; and in January 2013 alone, HMS paid for over \$180 in food and beverages for Flora.

In February 2013, HMS paid for a round trip flight to Texas at a cost of \$1034.60 for Flora to participate in an employment interview. On March 14, 2013, HMS offered Flora employment at a salary of \$135,000 per year and an \$18,000 signing bonus. Flora signed the contract on March 18, 2013, and on the same day, he advised OMIG that he was accepting employment with HMS with a commencement date of April 15, 2013. Due to Flora’s acceptance of an offer of employment from HMS while still overseeing the agency’s contract, OMIG placed Flora on administrative leave on April 2, 2013. The Inspector General advised

OMIG of her preliminary findings on August 28, 2013, and on October 11, 2013, OMIG served Flora with a Notice of Discipline. On December 31, 2013, OMIG and Flora entered into a Stipulation of Settlement whereby Flora agreed to forfeit 15 vacation days and in return would be permitted to retire with full benefits. After the agreement was executed, however, OMIG failed to deduct the 15 days from Flora's accrued vacation balance. As a result, when Flora retired from state service on January 29, 2014, he essentially went undisciplined by OMIG.¹

In addition, for the entire period that Flora was receiving gifts of food, beverages and alcohol, he also provided HMS with testimonials touting its services on blogs or in response to email inquiries from Medicaid collection entities across the United States. Specifically, he advised other entities that OMIG, a state agency, used HMS's services and identified himself as an OMIG employee. Sometimes Flora drafted the recommendation for HMS; on other occasions HMS personnel wrote Flora's testimonial for him, which Flora either posted to a blog or forwarded by email to the inquirer.

HMS's conduct also apparently violated the Public Officers Law, and its contract with OMIG specifically cites to the Public Officers Law and requires HMS employees to be aware of and comply with its requirements.² Furthermore, HMS employees also disregarded their own code of conduct, which requires them to abide by the ethical obligations of government employees.

The Inspector General has referred these findings to the Joint Commission on Public Ethics (JCOPE).

INTRODUCTION AND BACKGROUND

The Office of the Medicaid Inspector General (OMIG) is empowered to conduct investigations and enforcement actions to recover Medicaid overpayments and prevent fraud

¹ After the Inspector General's Office identified this oversight, OMIG eventually recouped this money from Flora.

² HMS also may have violated State Lobbying Act, Article 1-A, Section 1-m, which imposes certain restrictions on registered lobbyists and their clients in providing gifts and rewards to public officials. The Lobbying Act also imposes penalties for violation of these prohibitions.

within the Medicaid program. OMIG employs approximately 460 employees to further this goal, and also retains 15 outside vendors to assist in uncovering fraud and recovering monies due New York State.

One of the vendors employed by OMIG is Health Management Systems (HMS). Since at least 2006, HMS has worked under successive contracts with OMIG to provide services to identify and recover Medicaid overpayments. The current contract commenced on January 7, 2009, and terminated on January 6, 2015, but was extended to allow OMIG time to solicit proposals for a new vendor. By the terms of the contract, HMS is paid a percentage of gross Medicaid recoveries that it identifies and recovers. This contract between OMIG and HMS has a maximum reimbursable contract value to HMS of \$120,000,000.

Until his suspension on April 2, 2013, Joseph “Jeff” Flora was the senior staff manager at OMIG overseeing the HMS contract. Flora first began working for New York State in 1981. In January 1998, he commenced employment with the Department of Health (DOH) working on Medicaid recoveries. Until 2006, DOH investigated allegations of Medicaid abuse. However, following the creation of OMIG, Flora transferred to the new agency to continue working on Medicaid recoveries. Because Medicaid is a payer of last resort, the Bureau identifies insurers or third-party payers who are liable for payments for medical services rendered to Medicaid recipients. During the period examined in this report, Flora held the position of OMIG Director of the Bureau of Third Party Liability.

THE INSPECTOR GENERAL UNCOVERS UNETHICAL CONDUCT BY FLORA

The Laws, Regulations and Policies Governing Flora’s Conduct

The Inspector General’s investigation of Flora’s misconduct spans 2011 through January 2013. For most of this period, the Joint Commission on Public Ethics (JCOPE), which has oversight over both the Executive and Legislative branches of New York State government, has

been the agency charged with ensuring compliance with the state's ethics and lobbying laws.³ To this end, JCOPE promulgates regulations to effectuate the statutory provisions of the Public Officers Law, issues advisory opinions and engages in audits, investigations and enforcement proceedings. On June 18, 2014, JCOPE issued new regulations regarding, among other topics, gifts to state employees and legislators.⁴ However, the misconduct discussed herein precedes their promulgation and the new regulations are, therefore, inapplicable. Accordingly, this report addresses Flora's misconduct under the law, regulations and advisory opinions in effect at the time.

The Public Officers Law

New York State Public Officers Law directs all state employees to avoid conflicts of interest. Public Officers Law section 74(2) states:

No officer or employee of a state agency, member of the legislature or legislative employee should have any interest, financial or otherwise, direct or indirect, or engage in any business or transaction or professional activity or incur any obligation of any nature, which is in substantial conflict with the proper discharge of his duties in the public interest.

To assist state employees in avoiding conflicts of interest and impermissible conduct, the Public Officers Law code of ethics contained in section 74(3), delineates, in pertinent part:

d. No officer or employee of a state agency, member of the legislature or legislative employee should use or attempt to use his or her official position to secure unwarranted privileges or exemptions for himself or herself or others, including but not limited to, the misappropriation to himself, herself or to others of the property, services or other resources of the state for private business or other compensated non-governmental purposes.

* * *

f. An officer or employee of a state agency, member of the legislature or legislative employee should not by his conduct give reasonable basis for the impression that any person can improperly influence him or unduly enjoy his favor in the performance of his

³ JCOPE was created by the Public Integrity Reform Act of 2011, which was signed into law on August 15, 2011. Prior to that date, the Commission on Public Integrity (COPI) regulated compliance with the state's ethics laws.

⁴ 19 NYCRR Part 933.

official duties, or that he is affected by the kinship, rank, position or influence of any party or person.

h. An officer or employee of a state agency, member of the legislature or legislative employee should endeavor to pursue a course of conduct which will not raise suspicion among the public that he is likely to be engaged in acts that are in violation of his trust.

Moreover, the Public Officers Law contains specific enumerated prohibitions applicable to all state employees, one of which bars public employees from receiving gifts in any way related to their status as public employees, and bars companies and their employees doing business with the state from offering such gifts. Specifically, Public Officers Law §73(5) states:

No statewide elected official, state officer or employee . . . shall, directly or indirectly: (a) solicit, accept or receive any gift having more than a nominal value, whether in the form of money, service, loan, travel, lodging, meals, refreshments, entertainment, discount, forbearance or promise, or in any other form, under circumstances in which it could reasonably be inferred that the gift was intended to influence him, or could reasonably be expected to influence him, in the performance of his official duties or was intended as a reward for any official action on his part. No person shall, directly or indirectly, offer or make any such gift to a statewide elected official, or any state officer or employee, member of the legislature or legislative employee under such circumstances.

Advisory Opinions and Guidance

In addition to the mandates of the Public Officers Law, JCOPE maintains a website containing advisory opinions, guidance, and enforcement actions to aid state employees, entities engaging in business with the state, and the public regarding the Public Officers Law, and its requirements.⁵ According to one advisory opinion in effect during Flora's employment at OMIG,⁶ state employees should not, directly or indirectly, solicit a gift even of nominal value from a "disqualified source," nor should a disqualified source, directly or indirectly, give a gift of even of nominal value to a state employee.⁷ A disqualified source, broadly speaking, is any

⁵ <http://www.jcope.ny.gov/>

⁶ Advisory Opinion 08-01 was issued by COPI.

⁷ JCOPE regulation 19 NYCRR Part 933 notes that it supersedes prior advisory opinions to the extent they are inconsistent with it. Relevant to the instant analysis, the regulation replaces the term "disqualified source" with

person or entity that conducts business with a state agency.⁸ Nominal value is not defined in the Public Officers Law, but the advisory opinion construed it to mean a small amount that could not reasonably be interpreted to influence a state employee or public official.⁹ No requirement exists that the person giving the gift intended to sway the recipient's decision or that the gift resulted in such a change of decision. Rather, a violation occurs if a third party viewing the transaction could reasonably infer that the gift was given in order to influence a public employee.

OMIG Ethics Policy

OMIG's current ethics policy, in effect since November 2009, notes that for OMIG employees and officials "the Public Officers Law . . . is the minimum standard and all the provisions must be followed," and then delineates certain particularly relevant sections. In addition, on May 13, 2009, the Commission on Public Integrity (COPI), empowered at that time to enforce the state's ethics laws, conducted a training session at OMIG regarding the constraints of the Public Officers Law, which Flora attended. The training included, among other areas of the Public Officers Law, a discussion of the meaning of "gifts" within the law, and specifically noted that an offer of employment may constitute a gift.

Gifts to Flora from HMS Employees and Testimonials by Flora on Behalf of HMS

Flora spent almost a decade working with numerous HMS employees under successive contracts between DOH and then OMIG and HMS and its predecessor company. During that time period, Flora and a number of HMS employees became well acquainted, and in some instances, developed friendships. These long-term relationships included gifts to Flora from HMS employees and testimonials by Flora on behalf of HMS, in apparent violation of the Public Officers Law. These relationships ultimately led to an offer of employment by HMS to Flora under circumstances that also appear to violate the Public Officers Law.

"interested source," but the definitions are substantially similar. The new regulation considers gifts from interested sources to be "presumptively impermissible."

⁸ Of note, the definition of disqualified sources was discussed at the 2009 COPI training session at OMIG.

⁹ JCOPE regulation 19 NYCRR Part 933 defines "nominal value" as "an item or service with a fair market value of fifteen dollars or less."

Food and Alcohol

According to testimony of numerous HMS employees, Flora met with out-of-town HMS executives when they travelled to Albany, and had meals and/or cocktails with them at Capital Region bars and restaurants. He also met with Albany-based HMS employees for dinner and cocktails. These alcoholic beverages and meals were often paid for by HMS.

For instance, Christopher Haley, an Albany-based HMS employee, frequently had cocktails and food with Flora. Haley claimed that sometimes he paid the check at the restaurant, and sometimes Flora did. According to Haley's testimony, even when the two discussed business, Flora sometimes paid for the meal. Haley admitted, however, that every time he submitted an expense voucher, he paid the entire bill. It is impossible to determine with certainty how many times the two met to socialize in local establishments, but, from 2011 to March 2013, Haley submitted expenses for reimbursement to HMS on 21 separate occasions. Haley denied that he was trying to influence Flora by buying him meals and drinks, and claimed that when he took Flora out using the HMS expense account he was merely "sharing."¹⁰

Haley also argued that he and Flora became close friends over their approximately 14-year working relationship¹¹ and that he was not trying to influence Flora with the numerous HMS-expensed outings. As noted earlier in this report, employees of disqualified sources were prohibited from providing gifts to state employees and state employees were prohibited from accepting them to avoid even the appearance of impropriety: the intent to influence the state employee was wholly irrelevant. In addition, at the 2009 COPI training provided to OMIG and attended by Flora, the trainers specifically advised that despite any claim of friendship between a government worker and a vendor employee, "gifts treated as a business expense by the donor will not be considered a gift based on a family or personal relationship." However, Haley attended Flora's son's graduation party and gave him a substantial gift, a card containing \$500 in cash. Haley did not submit an expense report for this \$500 gift.

¹⁰ HMS's Travel and Expense policy limits the use of its reimbursement procedure to business expenses only. The policy specifically prohibits the use of its American Express card for personal use. Business meals are defined as "meals taken with clients, prospects, or associates where a specific business discussion takes place."

¹¹ Haley worked for a company that was subsumed by HMS that had previously worked on Medicaid contracts with the state. At that time, Flora was employed by DOH.

On several occasions, Flora attended conferences also attended by HMS employees. Before arriving at those conferences, Flora and an HMS employee would plan to meet, and HMS would pay for the drinks and/or meals. For example, in September 2012, Flora attended a Medicaid program conference in Oklahoma City with Kimberly Glenn, HMS Senior Vice President. Flora sent an email to Glenn and attached an invitation from one of HMS's competitors inviting Flora to visit its booth. Flora wrote to Glenn, "Man. Getting beat up with invites," to which Glenn responded:

whatever, you will fly in, meet me at the bar for cocktails, go to the event, help me welcome everyone as HMS is hosting, wear your cowboy boots, find an after dinner drink back at the bar at the hotel and put your lameness in bad [sic] by 11 as you have to be up for the breakfast at 7:30:)

Indeed, Glenn's expense report for the trip indicates that Flora followed her direction. The Inspector General found four expenses on Glenn's expense account for a total of \$91.76¹² attributed to Flora: one expense at the Oklahoma airport, two expenses at the Renaissance hotel, and an additional expense at the Bricktown Brewery in Oklahoma City.

Based on data received from HMS, the Inspector General's investigation determined that in 2011,¹³ Flora received a total of \$799.88 in meals and alcoholic beverages from HMS. In 2012, Flora received a total of \$560.98 in meals and alcoholic beverages. In January 2013 alone, HMS paid for Flora to attend a party at Jack's Oyster House in Albany for \$113.10, took him to Recovery Sports Grill for \$34.91, and bought him a bottle of Jim Beam for \$35.39.

Travel

Public Officers Law section 73(5) specifically lists travel among the types of proscribed gifts. In 2009, HMS offered Flora an all-expense paid trip to its offices in Texas for a site visit

¹² The amount of money included in this report is based on monies expensed by various HMS staff for the benefit of Flora. To arrive at the figure, HMS's expense software divided each bill submitted by the HMS employee for reimbursement by the number of people present at the event. The HMS employee listed the names of the attendees on the receipt upon submission to HMS. Thus, if the HMS bill was \$100, and four people including Flora were present, \$25 was attributable to Flora.

¹³ HMS was unable to produce records for years earlier than 2011.

and to meet in-person staff that he had met only by telephone. Flora asked his supervisor, Thomas Meyer, if he could accept the offer to go to Texas. Meyer thought the trip a worthy endeavor, but referred the matter to OMIG's ethics officer who, in turn, referred the matter to the Commission on Public Integrity (COPI), the precursor to JCOPE, to determine whether HMS could pay for the trip. COPI responded to OMIG by email advising that COPI deemed this offer of a trip an impermissible gift within the meaning of Public Officers Law §73(5). COPI told OMIG that Flora could attend the trip as long as OMIG paid for it. When OMIG submitted the expenditure to the New York State Division of the Budget for preapproval, the request was denied. Flora was told that he could not go to Texas, but no evidence exists that he was ever told the basis for that decision, or even that OMIG had inquired of COPI regarding the issue.

In 2013, HMS again offered Flora a trip to Texas, but this time for an employment interview. Meyer testified to the Inspector General that Flora informed him about the trip but had claimed he was taking a vacation to Texas, and that he "may" visit HMS's offices while in the area. Meyer testified that he recalled telling Flora he should not do so. Meyer stated that Flora never told him that he was travelling to Texas to interview for employment with HMS. Meyer, however, conceded that he should have been savvier as to what Flora was intending at the time Flora informed him of his travel plans. Upon Flora's return, Meyer did not follow up with Flora or HMS to see if he had in fact visited the Texas offices. No other OMIG employee interviewed by the Inspector General was aware in February 2013 that Flora had travelled to Texas, nor was anyone aware at that time of Flora's possible offer of employment.

According to HMS records, the company paid for Flora's round trip flight to Texas at a cost of \$1034.60, but had no record of any other expense.

Testimonials

Public Officers Law §74(2) bars a state employee from having "any interest, financial or otherwise, direct or indirect, or engag[ing] in any business or transaction or professional activity . . . which is in substantial conflict with the proper discharge of his duties in the public interest." Furthermore, Public Officers Law §74(3)(d) bars a state employee from using "his . . . official

position to secure unwarranted privileges or exemptions for himself . . . or others . . . for private business . . .” A state employee also is required to “pursue a course of conduct which will not raise suspicion among the public that he is likely to be engaged in acts that are in violation of his trust.”¹⁴

While advisory opinions relating to testimonials are limited, one advisory opinion specifically restricted the use of the state’s “imprimatur” in any endorsement of a product.¹⁵ In this opinion, the state employee was permitted to endorse a device and present himself as an expert in its use but could neither identify himself as a state employee nor divulge that the device was used by a state agency.

After a forensic review of Flora’s state email and computer, the Inspector General uncovered numerous testimonials, from as early as December 2009, provided by Flora for the benefit of HMS. Flora provided testimonials for HMS through discussion groups and other communications with Medicaid collection entities across the United States in apparent violation of this advisory opinion and the Public Officers Law. Specifically, he advised other entities that OMIG, a state agency, used HMS’s services and identified himself as an OMIG employee. Sometimes Flora drafted the recommendation for HMS; on other occasions HMS personnel wrote Flora’s testimonial for him, which Flora either posted to a blog or forwarded by email to the inquirer. In all instances, Flora identified himself as the Director, Bureau of Third Party Liability for OMIG, and on numerous occasions described how OMIG was utilizing HMS’s services.

For example, in January 2011, the State of Oregon was interested in trying to identify new insurance information for newly eligible Medicaid recipients. Flora noted the question on a closed Medicaid discussion group for government agencies that was not accessible to companies like HMS and forwarded the inquiry to Glenn and two other HMS employees with a one word message, “Response.” On January 18, 2011, at 2:14 p.m., an HMS employee emailed Flora, with a copy to Glenn, the following message:

¹⁴ Public Officers Law §74(3)(h).

¹⁵ Advisory Opinion 04-1 was rendered by the New York State Ethics Commission, a precursor to COPI.

How about this as a response:

HMS currently matches all 4.6 million enrollees in NY to their third party eligibility database. They verify the coverage to ensure accuracy and does a batch upload directly to NY MMIS every Friday.

This work is performed as a supplement to what our local districts are doing. In the past state fiscal year, HMS uploaded 270K third party insurance segments coming behind the local districts which generated additional cost avoidance savings of \$1.2 billion.

At 3:32 p.m. on the same day, Flora posted, verbatim, what HMS had written and added a postscript:

HMS currently matches all 4.6 million enrollees in NY to their third party eligibility database. They verify the coverage to ensure accuracy and does a batch upload directly to NY MMIS every Friday.

This work is performed as a supplement to what our local districts are doing. In the past state fiscal year, HMS uploaded 270K third party insurance segments coming behind the local districts which generated additional cost avoidance savings of \$1.2 billion. Since we started what we call PPIV – Pre Payment Insurance Verification – we have loaded over 2 million policy segments.

Using paid claim data does not work.

Flora used his state email account to submit the response and listed his name, state title, and state address in the signature line. He forwarded his posting from the discussion group to Glenn, Haley and another HMS employee. Haley responded, “I think you need a foot rub or something. THANK YOU!” Glenn also sent Flora a thank you to which Flora responded, “As always . . . covering your a-- (or the HMS collective [*sic*] hive).”

When the Inspector General questioned Glenn about Flora’s testimonials for HMS, she not only admitted that he performed this task but also declared that she “appreciated” him doing so and considered it “part of his job.” Haley further admitted that Flora also provided references for HMS on HMS bids. Haley even listed Flora on his resume among his references for

submission to HMS prospective clients. Bill Lucia, HMS's Chief Executive Officer, testified that he also was aware that Flora had provided numerous testimonials for HMS, but did not believe such conduct was improper. Lucia admitted, however, that HMS employees should not have written the testimonials for him.

Several emails between Flora and certain HMS employees suggest a connection between these testimonials and the rewards of food, alcohol and trips and ultimately an offer of employment from HMS to Flora. For example, on September 24, 2010, Glenn emailed Sean Curtin, a former HMS Vice President, and Haley with the subject "Can you bring Jeff out for a Beer Tonight" and the message, "He single handedly closed a sale for me today with the Early Intervention Program in NYS for COB." Haley then forwarded the email to Flora. Haley could not recall if he took Flora out for the beer, and HMS does not maintain expense records from 2010.

More recently, on January 18, 2013, HMS announced internally that it had secured new work from the State of Nevada. Upon receiving that email, Glenn forwarded the announcement to Lucia and HMS Chief Marketing Officer Maria Perrin, and copied to Flora, with an accompanying note saying:

Bill and Maria

Jeff did a LOT to help this...

Thank you jeff:)

Glenn denied taking Flora to restaurants and bars as a quid pro quo for the testimonials and recommendations Flora provided. She admitted, however, that she had Flora sent a bottle of Jim Beam for the Nevada testimonial.

Lucia admitted that the value of the Nevada work to HMS amounted to approximately \$200,000 in the first calendar year. He also conceded that he was advised of Flora's work for HMS on this account approximately two weeks before his scheduled meeting with Flora, which Lucia described as Flora's employment interview.

Offer of Employment

Offers of future employment may also be deemed gifts under Public Officers Law §73(5), according to an advisory opinion issued by COPI. The 2009 ethics training by COPI which Flora attended specifically advised, “There are ethical restrictions on talking to potential employers while still in state service.” The training materials continued:

The solicitation of post-government employment by a state employee with any entity or individual that has a **specific pending** matter before the state employee is prohibited.

The 30 day “Cooling Off” Period

The employee **may** solicit an employment opportunity 30 days from the time the matter is closed, the matter is reassigned or recusal by the employee. [Emphasis supplied].¹⁶

If an employee receives an unsolicited offer of employment from such a person or organization, the employee must advise his or her supervisor and the agency’s ethics officer of the communication.¹⁷

Notwithstanding this training regarding offers of employment, as early as 2011, Flora began hinting to his HMS contacts that he may be interested in gaining employment with the company. For instance, on January 6, 2011, in an email exchange between Glenn and Flora after he had provided a recommendation to a potential client regarding HMS services, Glenn wrote, “Do I need to send you a commission? Maria loves you.” Flora responded:

Need a rac coordinator? All the good jobs will be gone by the time
I want to go. Maybe someone to head pi that actually knows pi?

On January 21, 2012, Curtin wrote to Flora and asked him to complete a certain task so that he would be able to “push for you to leave the state and join us?” At about this same time, Curtin started pressing Lucia to hire Flora. On September 12, 2012, Flora, from his state email, asked Curtin, “Anything new” and Curtin responded:

¹⁶ This information was based on Advisory Opinion 06-01.

¹⁷ Advisory Opinion 06-01.

Kim [Glenn] is on board - met with her today. Bill [Lucia] has my org chart with your name (as previously discussed with him) front and center. I am meeting with him at noon tomorrow to discuss. Unless something crazy comes into the mix my guess is that we have offer, etc. working before the month is out. I will get push back about who's replacing you - big concern on my end, but push back by me (and Kim [Glenn] now) is that you're leaving anyway. I'm also going to mention the risk of losing you to a competitor if push back comes outside of Bill [Lucia].

In January 2013, Curtin left HMS to pursue employment elsewhere, but by this time, HMS remained committed to hiring Flora, and by February 2013, employment negotiations between HMS and Flora were proceeding in earnest. During the course of this investigation, the Inspector General learned that Lucia met with then Medicaid Inspector General James Cox. Unbeknownst to Cox, Lucia had met with Flora at 8:30 the same morning so that Flora could coach Lucia on his meeting with Cox¹⁸ and to discuss Flora's future employment with HMS. After the meeting, using his state email account, Flora advised Lucia that he was going on vacation and provided his personal email and telephone number. Lucia responded to Flora's state email account stating, "We need someone to lead the data mining group . . . so that's where they are focused. The projects we discussed fit there as well."

While attempting to obtain employment with HMS, Flora, using his work email, directed HMS to use both his state and personal emails on February 11, 2013, stating, "Go ahead and send my stuff to me at work as well as home. Hate to get home and find out I got more mail problems." On February 12, 2013, Flora flew to Irving, Texas, and met with several HMS executives the following day. He returned on February 13.

On March 14, 2013, HMS, via Flora's personal email, offered Flora employment at a salary of \$135,000 per year and an \$18,000 signing bonus. Flora signed the contract on March 18, 2013, and returned it to HMS. On the same day, Flora advised OMIG that he was accepting

¹⁸ In his interview, Lucia admitted that he had never met Cox before this meeting and wanted to gain insight into Cox from Flora. Lucia testified, "This is very common in any of our states. If we don't know a more senior official is we would ask our contractor, can you tell me a little bit about the individual, what their interests are in terms of our contract."

employment with HMS with a commencement date of April 15, 2013. Flora wrote to Lucia using his personal email the following day: “All set to start April 15. Paperwork completed yesterday afternoon and i broke the news here. Went very well after the initial shock...”

Despite Flora’s representation to Lucia, OMIG staff immediately became concerned about Flora’s previously unknown employment negotiations. On March 22, 2013, Meyer sent an email to staff directing them not to communicate with Flora regarding the HMS contract. Meyer then removed Flora from his duties administering the contract. On March 26, 2013, Flora requested permission to take a leave of absence from April 15, 2013, until April 14, 2014, during which he would turn 55 and could retire with full pension and health insurance benefits. On March 28, 2013, OMIG denied Flora’s requested leave of absence; that same day, HMS rescinded its offer of employment. On March 30, 2013, Flora’s conduct became public knowledge after the *Times Union* published an article concerning Flora’s trip to Texas and HMS’s offer of employment.¹⁹ On April 2, 2013, OMIG placed Flora on administrative leave. The Inspector General advised OMIG of her preliminary findings on August 28, 2013, and on October 11, 2013, OMIG served Flora with a Notice of Discipline. On December 31, 2013, OMIG and Flora entered into a Stipulation of Settlement whereby Flora agreed to forfeit 15 vacation days and in return would be permitted to retire with full benefits. After the agreement was executed, however, OMIG failed to deduct the 15 days from Flora’s accrued vacation balance. As a result, when Flora retired from state service on January 29, 2014, he essentially went undisciplined.

As soon as Flora began discussions with HMS regarding future employment, he should have advised his supervisor of the negotiations. Rather than advise his supervisors and the OMIG ethics officer of his employment negotiations with HMS and risk being removed from the account, Flora did not inform anyone at OMIG until after he had executed his employment agreement with HMS.

Not only did Flora fail to advise OMIG of his employment negotiations, HMS also concealed the discussions from OMIG. Lucia conceded that he never told Cox during their

¹⁹James M. Odató, “Door Slams on Job Offer,” *Times Union*, March 30, 2013.

meeting about his discussion with Flora about Flora's future employment at HMS, even though he met with Flora for that very purpose just moments before.

HMS's Apparent Violation of the Public Officers Law, the Terms of its Contract with the State, and its Code of Conduct

As noted earlier in this report, the Public Officers Law imposes similar restrictions on disqualified sources who offer or provide gifts to state employees as the restrictions imposed on state employees who accept gifts.

The Public Officers Law section 73(5) directs: "No person shall, directly or indirectly, offer or make any such gift to a statewide elected official, or any state officer or employee, member of the legislature or legislative employee under such circumstances."

In addition, the bid solicitation for the 2009 Medicaid Match & Recovery Project, the \$120,000,000 contract under which HMS worked with Flora, specifically states under the section entitled, "Offerer Certification Requirements":

PUBLIC OFFICERS LAW

All successful Offerers and Offerer employees must be aware of and comply with the requirements of the New York State Public Officers Law, all other appropriate provisions of New York State Law, and all resultant codes, rules and regulations from State law establishing the standards for business and professional activities of State employees, and governing the conduct of employees of firms, associations and corporations in business with the State. In signing the proposal, each Offerer has guaranteed knowledge and full compliance with those provisions for this and any other dealings, transactions, sales, contracts, services offers or relationships involving the State and/or State employees. Failure to comply with those provisions may result in disqualification from the bidding process and in other civil or criminal proceedings as required by law.

Notwithstanding the Public Officers Law and the specific language of the bid solicitation²⁰, HMS executive staff asserted that they assumed that Flora was properly handling his ethical obligations and claimed that their gifts were permissible.²¹

In addition to the statutory and contractual language requirements, HMS seems to have violated its own code of conduct, which specifically states:

When the U.S. Government or a government entity is our client, or when the government is the ultimate client (when we are a subcontractor), special laws and rules apply that are considerably stricter than those applicable to commercial clients. Any employee or officer working on government contracts must know and abide by these laws and rules . . . Many state, local and foreign governments also have special rules for contracting. Employees who perform work in both the government and commercial sectors must clearly understand the different rules, regulations and procedures that apply in each sector. Any employee with questions or concerns should contact the General Counsel.

Christopher Haley stated that he was aware that the Public Officers Law existed and that he was subject to his company's Code of Conduct, but stated that he was unaware that either of them barred him from buying meals and cocktails for Flora. Even though Haley is an HMS Albany-based employee who dealt only with the OMIG account, he testified that he never reviewed the contract between HMS and OMIG. Haley further testified that he never sought guidance from anyone at HMS regarding New York State's ethical obligations, and that Flora never informed him that any ethics laws existed proscribing the purchase of food and alcohol for state employees.

HMS Senior Vice President Glenn testified that she knew that different ethical obligations existed for providing meals or giving gifts to government employees depending on the locale. However, even though OMIG was her second largest account, she testified that she never familiarized herself with New York State law and conceded, "I presume – most of my states if the client can't – many can. If the client can't, they say something."

²⁰ HMS employees claimed ignorance of their obligations outlined in HMS's contract with OMIG.

²¹ HMS also may have violated State Lobbying Act, Article 1-A, Section 1-m, which imposes certain restrictions on registered lobbyists and their clients in providing gifts and rewards to public officials. The Lobbying Act also imposes penalties for violation of these prohibitions.

Lucia admitted that he never inquired of HMS's counsel or compliance officer regarding the proper protocols for hiring Flora, a government employee. Indeed, Lucia stated that HMS did not even contact OMIG for a reference for Flora, although he admitted that such a reference check would have put OMIG on notice that Flora was seeking employment elsewhere. Lucia also admitted that he was aware of both the testimonials given by Flora for HMS and the gifts Flora received, but that he never inquired as to their propriety and thought they were acceptable.

FINDINGS AND RECOMMENDATIONS

In April 2013, the New York State Inspector General commenced an investigation into possible ethics violations by then Office of the Medicaid Inspector General Director of the Bureau of Third Party Liability Joseph Flora. Specifically, it was alleged that Flora had accepted a paid trip to Texas and an offer of employment from Health Management Systems, a company then under contract with OMIG to provide services to identify and recover Medicaid overpayments, while he was the senior staff manager at OMIG overseeing the HMS contract.

This investigation substantiated that allegation and further established a longtime pattern of ethical misconduct by Flora in his dealings with HMS, all of which appear to have violated the New York State Public Officers Law, which prohibits state employees from accepting gifts of more than "nominal value" from companies doing business with the state. The Inspector General determined that from at least 2011 until his conduct became public knowledge in spring of 2013, Flora routinely received gifts from HMS employees. From at least 2011 until April 2013, the gifts that Flora received from HMS included cocktails and meals and culminated in a flight to Texas and an offer of employment.

Based on data received from HMS, the Inspector General determined that in 2011, Flora received over \$850 in food and beverages from HMS; in 2012, Flora received almost \$600 in food and beverages from HMS; and in January 2013 alone, HMS paid for over \$180 in food and beverages for Flora. Because Flora accepted employment with HMS, OMIG placed Flora on administrative leave on April 2, 2013. The Inspector General advised OMIG of her preliminary findings on August 28, 2013, and on October 11, 2013, OMIG served Flora with a Notice of

Discipline. On December 31, 2013, OMIG and Flora entered into a Stipulation of Settlement whereby Flora agreed to forfeit 15 vacation days and in return would be permitted to retire with full benefits. After the agreement was executed, however, OMIG failed to deduct the 15 days from Flora's accrued vacation balance. As a result, when Flora retired from state service on January 29, 2014, he essentially went undisciplined by OMIG.

In February 2013, HMS paid for a round trip flight to Texas at a cost of \$1034.60 for Flora to participate in an employment interview. Thomas Meyer testified to the Inspector General that Flora had informed him about the trip, but had claimed he was taking a vacation to Texas, and that he "may" visit HMS's offices while in the area. Although Meyer recalled telling Flora he should not do so, he did not follow up with Flora or HMS to see if he had in fact visited HMS's Texas offices. On March 14, 2013, HMS offered Flora employment at a salary of \$135,000 per year and an \$18,000 signing bonus. Flora signed the contract on March 18, 2013, and on the same day, he advised OMIG that he was accepting employment with HMS with a commencement date of April 15, 2013.

In addition, for the entire period that Flora was receiving these gifts and rewards, he also provided HMS with testimonials touting its services on blogs with and in response to email inquiries from Medicaid collection entities across the United States. Specifically, he advised other entities that OMIG, a state agency, used HMS's services and identified himself as an OMIG employee. Sometimes Flora drafted the recommendation for HMS; on other occasions HMS personnel wrote Flora's testimonial for him, which Flora either posted to a blog or forwarded by email to the inquirer.

HMS also appears to have violated the Public Officers Law. The Public Officers Law imposes similar restrictions on companies and their employees doing business with a state agency regarding gifts to state employees. Further, HMS's contract with OMIG specifically cites to the Public Officers Law and requires HMS employees to be aware of and comply with its requirements. Finally, HMS employees also disregarded their own code of conduct which requires them to abide by the ethical obligations of government employees.

The Inspector General has referred these findings to the Joint Commission on Public Ethics.²²

In addition, the Inspector General recommends that OMIG receive training from JCOPE on its new regulations regarding gifts from vendors.

The Inspector General further recommends that OMIG take any and all action to calculate and recoup all excess vacation accrual payments made to Flora. OMIG should also review its disciplinary processes, determine which employees were responsible for this oversight and take administrative action it deems appropriate.

The Inspector General further recommends that OMIG conduct a “responsibility meeting” in accordance with the April 3, 2013 Directive from the Governor’s Office and/or under the State Finance Law §163(9)(f) to determine if HMS is a responsible contractor/bidder, or whether it should be barred from other state contracts.

CORRECTIVE ACTION TAKEN BY OMIG IN RESPONSE TO THE INSPECTOR GENERAL’S FINDINGS AND RECOMMENDATIONS

On February 2, 2015, OMIG responded to the Inspector General’s findings and recommendations.

OMIG noted that it has amended its current contract with HMS, as well as its standard contract that it utilized with all contractors moving forward, to include language that specifically requires contractors to have a policy against giving or attempting to give gifts, as defined in the Public Officers Law, to OMIG employees. A contractor must provide the policy to OMIG for review and comment. Contractors are also required to train their employees annually on their responsibilities under the Public Officers Law, and OMIG must approve the contents of the training.

²² HMS also may have violated State Lobbying Act, Article 1-A, Section 1-m, which imposes certain restrictions on registered lobbyists and their clients in providing gifts and rewards to public officials. The Lobbying Act also imposes penalties for violation of these prohibitions.

With regard to the Stipulation of Settlement between OMIG and Flora, OMIG informed the Inspector General that both the Director of the Bureau of Human Resources Management and the Director of Employee Relations were counseled regarding their failure to deduct 15 days from Flora's accrued vacation balance. Furthermore, OMIG has amended its Disciplinary Penalty Imposition Procedure to include additional procedures and the creation of a "Disciplinary Penalty Form" to ensure that imposed penalties are perfected.

In addition, with respect to the error in calculating Flora's accrued vacation balance, OMIG successfully recovered the \$1,060.98 it overpaid to Flora.

OMIG extended HMS's contract to ensure no disruption in service, and is also in the process of issuing a Request for Proposal (RFP) for the next contract.