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March 8, 2011

Barry Ginsburg, Esq.
Executive Director
Commission on Public Integrity
540 Broadway
Albany, New York 12207
VIA FACSIMILE: (518) 474-8322; (518) 408-3975

Re: Investigation of the Medicaid Redesign Team

The Center for Justice & Democracy hereby submits this verified complaint requesting that the Commission on Public Integrity (the “Commission”) undertake an investigation into certain Medicaid Redesign Team (“MRT”) members whose employers will receive a substantial financial benefit from MRT Proposal 131, a proposal that limits the liability of negligent hospitals and health care providers and which has been made part of the Governor’s Budget. These individuals are: Jeffrey A. Sachs, paid consultant to large hospitals and health care systems; Michael Dowling, President and CEO of North Shore LIJ Health System; Kenneth E. Raske, President of the Greater New York Hospital Association; and Dan Sisto, President of the Healthcare Association of New York State. These members of the Medicaid Redesign Team have a direct conflict of interest as their employers stand to directly benefit from Proposal 131.

We believe this matter of a great urgency as the Governor has included in his budget MRT Proposal 131 and these measures will directly benefit the employers of Team members, in violation of state law. We ask the Commission to use all investigatory tools necessary to investigate this matter as quickly as possible.

The Medicaid Redesign Team Falls Within the Definition of “State Agency”

Section 74, the Code of Ethics, defines state agency as “any state department, or division, board, commission, or bureau of any state department or any public benefit corporation or public authority at least one of whose members is appointed by the governor or corporations closely affiliated with specific state agencies as defined by paragraph (d) of subdivision five of section fifty-three-a of the state finance law or their successors.”

On January 5, 2011, Governor Andrew M. Cuomo issued Executive Order No. 5, <http://www.governor.ny.gov/executiveorder/5> which established the Medicaid Redesign Team, to provide the Governor with Medicaid reform “findings and recommendations for consideration

in the budget process of New York State Fiscal Year 2011-12.” Members of the 27-member Team were appointed by the Governor.

Pursuant to the Executive Order, the Governor also appointed the New York State Medicaid Director as Executive Director of the Team, who was given responsibility to “provide parameters for the submission of proposals and recommendations by stakeholders and other interested parties. After consultation with the Division of the Budget, the Executive Director shall evaluate whether such proposals can be feasibly implemented and if so, the savings that may be realized therefrom.”

The Executive Order also states:

Every agency or authority of New York State shall provide to the Team every assistance and cooperation, including use of New York State facilities, which may be necessary or desirable to fulfill the purposes of this Executive Order.

Staff support necessary for the conduct of the Team’s work may be furnished by agencies and authorities (subject to the approval of the boards of directors of such authorities).

On February 24, 2011, the MRT held a public meeting to vote on its final list of recommendations. No public comment was allowed. No amendments were allowed. The Governor held a press conference later that day, where he announced, “We now have to take the proposal ... we send it to the legislature, we say to the Assembly and we say to the Senate, ‘pass this budget,’” confirming the Team’s considerable influence regarding the Governor’s budget responsibilities and legislative agenda.

Further, the Governor called the Team a “commission.” He said, for example,

“This was a unique undertaking that this commission set out to do.”

“I want to thank them and all members of the commission.”

In sum, as the Governor himself noted, the Team is a commission, or a “state agency” under Sec. 74, Code of Ethics.

Moreover, while many members of the Commission were unpaid, according to the New York State Ethics Commission Advisory Opinion No. 98-07, “Application of Public Officers Law §74 to members of New York State advisory boards,” conflicts of interest rules apply to all Team members. Specifically, “any individual who serves on a body and has been designated as a policymaker or who serves on a body with a gubernatorial appointee falls within the ambit of the Commission. There is no statutory exception for a board or commission that is advisory only.” Also, “[u]nder the Code of Ethics, as contained in §74, State officers and employees, including those who serve in unpaid or per diem status, must avoid a conflict between their private interests and their public duties.”

The law’s conflict of interest prohibitions include the following:

No officer or employee of a state agency . . . 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.

No officer or employee of a state agency, member of the legislature or legislative employee should engage in any transaction as representative or agent of the state with any business entity in which he has a direct or indirect financial interest that might reasonably tend to conflict with the proper discharge of his official duties.

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.

In New York State Ethics Commission Advisory Opinion No. 98-07, “Application of Public Officers Law §74 to members of New York State advisory boards,” the Commission said, “Another example of a prohibited act is the voting by an advisory board member on a matter that directly affects his or her specific employer, as opposed to the general area of interest that the member represents. . . . [E]ach board member must be careful not to act in a manner which results in a personal benefit or a benefit to his or her specific employer or organization (as opposed to a general area of interest that the member may represent).”

Several MRT Members Are Employed by or Consult for Hospital and Health Care Industry Institutions That Will Receive a Substantial Financial Benefit From Proposal 131

Among MRT members are Jeffrey A. Sachs, which the *New York Times* reported “has quickly emerged as a leader on the governor’s 27-person Medicaid redesign team” and while “working as a paid consultant to some of the biggest players in the New York health care industry, including Mount Sinai Medical Center, NYU Langone Medical Center and the state’s largest association of nursing homes, all of which have financial interests at stake in the coming Medicaid changes.”

In addition, the MRT includes Michael Dowling, President and CEO of North Shore LIJ Health System; Kenneth E. Raske, President of the Greater New York Hospital Association and Dan Sisto, President of the Healthcare Association of New York State. These members of the Medicaid Redesign Team have a direct conflict of interest as their employers stand to directly benefit from Proposal 131.

Specifically, Proposal 131, which is now part of the Governor’s Budget, would create a financial windfall for negligent hospitals and incompetent health care providers, drastically limiting their responsibility to patients killed or injured by malpractice. This measure significantly limits the liability of all hospitals in the State of New York by imposing a \$250,000 “cap” on non-economic damages for patients after liability has been determined. It also establishes a birth injury fund that not only limits the rights of brain-damaged babies and their families to obtain the same kind of recourse as every other patient, but also would transfer the responsibility for

monetary damages away from the negligent hospital and health care provider to a Fund. The Fund would be financed by an assessment on all insurance companies, leaving hospitals off the hook for most of the damage they cause.

The Team's mission has not been served by MRT Proposal 131. Limiting compensation to victims or making access to the courts more difficult is of no benefit to Medicaid. In fact, costs may shift from the negligent hospital directly onto Medicaid. Many New York hospitals have notoriously bad safety records, especially in low-income communities. These children, who are often on Medicaid, are able to get off Medicaid because settlements or verdicts pay for their needs. But history shows that in states with non-economic damages "caps," many cases are no longer brought so settlements and verdicts never result.

Specifically, caps on non-economic damages have a disproportionate impact on low- or non-earners in our society (seniors, children, women who do not work outside the home, and the poor). Experience elsewhere shows that in states with similar caps, many cases involving those categories of plaintiffs are no longer brought because of how costly medical malpractice cases are to bring. Insurance defense attorney Robert Baker, who defended malpractice suits for more than 20 years, reportedly testified before the U.S. House Judiciary Committee in 1994, "As a result of the caps on damages, most of the exceedingly competent plaintiff's lawyers in California simply will not handle a malpractice case ... There are entire categories of cases that have been eliminated since malpractice reform was implemented in California. The victims of cases that have a value between \$50,000 and \$150,000 are basically without representation."

In sum, the employers of Jeffrey A. Sachs, Michael Dowling, Kenneth E. Raske and Dan Sisto, have a clear financial interest in MRT Proposal 131, making their participation on the MRT a violation of state law. We ask the Commission to promptly use all of its available resources to fully investigate the facts raised herein.

Sincerely,



Joanne Doroshow
Executive Director

Encs. Verification of Joanne Doroshow

VERIFICATION

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss:

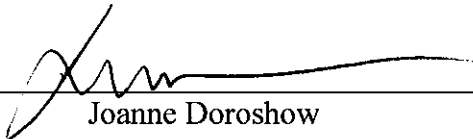
Joanne Doroshow, being duly sworn, deposes and says:

I am the President and Executive Director of the Center for Justice & Democracy, the complainant herein; my work address is 90 Broad St., Suite 401, New York, NY 10004. I have read the foregoing complaint to the New York State Commission on Public Integrity and I know the contents thereof; and I believe the facts contained therein to be true, except as those matters alleged on information and belief, and as to those matters I believe them to be true.

Sworn to me this 8th day of March, 2011.

FAZIA K. KHAN
Notary Public, State of New York
Qualified in New York County
Reg. No. 01KH6224789
My Commission Expires 07-12-2014
Fazia Khan
3/8/11

Notary Public



Joanne Doroshow

