

Via Email and U.S. Postal Mail

September 18, 2013

Ann Ravel, Commission Chair
Erin Peth, Executive Director
Fair Political Practices Commission
428 J Street, Suite 620
Sacramento, CA 95814

RE: COMPLAINT VS. MARCY GALLAGHER AND KAISER PERMANENTE FOR VIOLATING THE POLITICAL REFORM ACT INCLUDING BANS ON “SWITCHING SIDES BY STATE OFFICIALS” AND “INFLUENCING PROSPECTIVE EMPLOYMENT”

Dear Commissioner Ravel and Ms. Peth:

We are writing to request that the Fair Political Practices Commission (“FPPC”) investigate apparent violations of the California Political Reform Act committed by Marcy Gallagher, a former official at California’s Department of Managed Health Care (“DMHC” or “Department”), and Kaiser Permanente (“Kaiser”), an HMO that is licensed and regulated by the DMHC. Evidence indicates that Ms. Gallagher and Kaiser have violated multiple provisions of the Political Reform Act including its “Permanent Ban on Switching Sides by State Officials” and its “Ban on Influencing Prospective Employment.”

We believe the FPPC must act urgently on this matter. Ms. Gallagher and Kaiser appear to be actively violating California’s laws in a manner that compromises the DMHC’s ongoing investigation into Kaiser’s substandard health care. We request that the FPPC compel Ms. Gallagher and Kaiser to cease and desist from committing additional violations of California’s laws so as to prevent further damage to the DMHC’s investigation of Kaiser, which is now in an intensive phase including site visits by DMHC inspectors scheduled for October of 2013.

Our complaint centers on Ms. Gallagher’s “switching sides” during the course of the DMHC’s investigation of Kaiser. NUHW represents approximately 2,500 mental health clinicians who care for Kaiser’s patients at dozens of clinics, emergency rooms, hospitals and other sites across California. On November 29, 2011, NUHW filed a complaint with the DMHC regarding

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Kaiser's substandard practices that deny patients access to timely and appropriate mental health care.

Ms. Gallagher, who then served as a "Staff Counsel III" at the DMHC, was responsible for leading the DMHC's investigation in response to NUHW's complaint. On December 15, 2011, Ms. Gallagher initiated the DMHC's investigation via a letter to Kaiser. During the subsequent investigation, Ms. Gallagher personally met with representatives of Kaiser and NUHW, interviewed witnesses, collected and reviewed evidence, conducted site visits, directed a consultant whom the DMHC hired to assist with the investigation, authored correspondence to the parties, and crafted investigatory notes and findings, among other activities.

On July 23, 2012, Ms. Gallagher resigned from the DMHC after leading the Department's investigation of Kaiser for more than eight months. Within a matter of weeks, she began working for Kaiser in the precise department that is responsible for defending Kaiser against the DMHC's investigation: namely, Kaiser's "Health Plan Regulatory Services" ("HPRS"). By the fall of 2012, Ms. Gallagher was serving as a member of the "Leadership Team" of the HPRS which is headed by Kaiser Vice President Lisa Koltun. Records indicate that Ms. Gallagher also began serving as a "Practice Leader" at Kaiser's "Regulatory Response Business Unit," where she reportedly serves as a close advisor and aide to the unit's Executive Director, Patricia Taylor. Ms. Gallagher reportedly continues to serve in these capacities to the present day.

Thus, within several months, Ms. Gallagher went from directing the DMHC's investigation of Kaiser to assisting Kaiser to defend itself from this same investigation.

On March 18, 2013, the DMHC issued a 23-page report that cited Kaiser for committing multiple violations that harm the care of its mental health patients. On June 24, 2013, the DMHC levied a \$4 million fine against Kaiser and ordered it to "cease and desist" from committing further violations of California's patient-care laws and regulations. Due to the severity of Kaiser's violations, the DMHC instructed its investigators to conduct a follow-up survey of Kaiser in October of 2013.

After switching sides from a 'government regulatory agency' to a 'regulated business,' we believe that Ms. Gallagher then aided, advised, counseled and assisted Kaiser in executing its ongoing response to the same DMHC investigation that she had spearheaded. After Kaiser hired her, Ms. Gallagher apparently trained Kaiser's officials on how to answer questions posed by DMHC investigators in advance of the DMHC's upcoming site visits scheduled for October of 2013. These site visits have been scheduled to determine whether Kaiser has corrected the violations discovered during the initial phase of the investigation that was headed by Ms. Gallagher.

Ms. Gallagher's switching of sides not only causes an appearance of impropriety, it appears to constitute serious legal violations and a severe breach of the public's trust given that it undermines a regulatory enforcement matter affecting millions of California consumers enrolled in California's largest HMO. We understand that top Kaiser officials have been and continue to be fully aware of the likely illegal assistance provided by Ms. Gallagher, including Dr. Ben Chu (President of Kaiser's Southern California Region) and other top executives of Kaiser's health plan, hospital operations and physician groups.

As you know, in order to prevent private interests from corrupting our government, the Political Reform Act strictly prohibits the type of conduct allegedly undertaken by Ms. Gallagher and Kaiser. An FPPC fact sheet describes California's law as follows:

"The permanent ban on "switching sides" prohibits former state officials from working on proceedings that they participated in while working for the state. The ban prohibits appearances and communications to represent any other person, as well as aiding, advising, counseling, consulting or assisting in representing any other person, for compensation, before any state administrative agency in a proceeding involving specific parties (such as a lawsuit, a hearing before an administrative law judge, or a state contract) if the official previously participated in the proceeding." (California Government Code Sections 87400-87405; Title 2, Division 6, California Code of Regulations 18741.1.)

"The permanent ban applies to every "state administrative official," which is defined as "every member, officer, employee or consultant of a state administrative agency who as part of his or her official responsibilities engages in any judicial, quasi-judicial or other proceeding in other than a purely clerical, secretarial or ministerial capacity." (California Government Code Section 87400(b).)¹

As we noted earlier, evidence indicates that Ms. Gallagher may have used her insider knowledge obtained at the DMHC in an illegal effort to assist Kaiser in escaping further regulatory sanction from the DMHC. Given this serious alleged misconduct, we are concerned that Ms. Gallagher and Kaiser may have shared confidential details about the investigation that she formerly headed, including the identities of confidential witnesses.

In addition to the aforementioned violations, we believe that Ms. Gallagher and Kaiser may have violated other provisions of the Political Reform Act, including the Ban on Influencing Prospective Employment. This provision prohibits private businesses from 'buying' favorable

¹ FPPC, "Leaving Your State Job: Revolving Door and Other Post-Employment Issues for State Officials," August 2010. Captured from the FPPC's website on September 6, 2013 at http://www.fppc.ca.gov/factsheets/Leaving_State_Employment_08-2010.pdf

regulatory treatment by offering high-paying jobs to the government officials who are responsible for regulating them. According to the FPPC, the Political Reform Act requires the following:

“The ban of influencing prospective employment prohibits any public official from making, participating in making, or influencing a governmental decision that directly relates to a prospective employer while negotiating or after reaching an employment arrangement. (California Government Code Section 87407; Title 2, Division 6, California Code of Regulations 18747.)”²

Given the temporal proximity of Ms. Gallagher’s departure from the DMHC and her subsequent hiring by Kaiser, we are extremely concerned that she may have engaged in employment negotiations with Kaiser while she still served as the DMHC’s lead official responsible for investigating Kaiser’s substandard mental health services.

We request that the FPPC employ its full statutory authority to investigate Ms. Gallagher’s and Kaiser’s apparent violations of the Political Reform Act and other statutes and regulations. We request further that the FPPC make its findings known to the general public and that it pursue full and complete sanctions against any parties found to have violated California’s laws. With seven million members and more than \$50 billion in annual revenues, Kaiser is California’s largest HMO and has an outsized impact on Californians’ health care and political systems. Given Kaiser’s scale and resources, it is especially important that our state ensure that it refrains from corrupting the government’s oversight of our healthcare system. We remain ready to assist the FPPC’s investigation and thank you in advance for your prompt attention to this matter.

Sincerely,



Sal Rosselli, President



John Borsos, Secretary-Treasurer

² Ibid.