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**COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
BEFORE THE SECRETARY OF THE COMMONWEALTH**

PROCLAMATORY
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Department of State

**Commonwealth of Pennsylvania,
Bureau of Charitable Organizations**

vs.

**Jake Gittlen Memorial Golf Tournament,
Warren Gittlen, individually, and as
president of Jake Gittlen Memorial Golf
Tournament,
Respondents**

Docket No. **0019-98-06**

File Nos. **04-98-06032
04-98-06037**

CONSENT AGREEMENT AND ORDER

The Commonwealth of Pennsylvania, Bureau of Charitable Organizations ("Bureau") and Jake Gittlen Memorial Golf Tournament ("Tournament") and Warren Gittlen ("Gittlen"), individually, and as president of Jake Gittlen Memorial Golf Tournament, ("Respondents") stipulate as follows in settlement of the above-captioned case:

JURISDICTION

1. This matter is before the Secretary of the Commonwealth ("Secretary") pursuant to the Solicitation of Funds for Charitable Purposes Act (the "Act"), Act of December 19, 1990, P.L. 1200, No. 202, *as amended*, 10 P.S. §§162.1-162.24.

2. At all relevant and material times, the Tournament was registered with the Bureau as a charitable organization, registration number 1093.

3. At all relevant and material times, Gittlen was the president of the Tournament and was the sole person identified by the Tournament as being responsible for the custody and/or distribution of contributions and the solicitation activities of the Tournament.

STIPULATED FACTS

4. Respondent admits that the follow allegations are true:
 - a. The Tournament's last known business address on file with the Department of State is 4331 S. Victoria Way, Harrisburg, PA 17112.
 - b. Gittlen's last known address is 4331 S. Victoria Way, Harrisburg, PA 17112.
 - c. At all relevant and material times, Gittlen was the president of the Tournament.
 - d. At all relevant and material times, the office location of the Tournament was in care of Gittlen at his home address, which is the same as the Tournament's address.
 - e. At all relevant and material times, Gittlen was responsible for the custody and/or distribution of contributions, solicitation activities and custody of financial records of the Tournament.
 - f. At all relevant and material times, the Jake Gittlen Cancer Research Institute ("Institute") was established as an institute to support cancer research at the Pennsylvania State University ("PSU"), College of Medicine, in Hershey, PA.
 - g. On or about September 28, 2000, the necessary documents to register the fictitious name of the Institute were filed with the Department of State Corporation Bureau; the owner of the fictitious name is the Tournament.
 - h. At all relevant and material times, PSU acted as, among other things, a charitable organization subject to the provisions of the Act.

Net Asset or Fund Balance Retained by Tournament

i. The Tournament, as a charitable organization registered in Pennsylvania, is required to file annually with the Bureau, among other things, the Bureau's Charitable Organization Registration Statement -- Form BCO - 10 ("BCO - 10").

j. The Tournament filed the BCO - 10 for all years relevant and material to this matter.

k. The Tournament, as a charitable organization registered in Pennsylvania, is required to file annually with the Bureau a copy of its Internal Revenue Service ("IRS") Form 990 -- Return of Organization Exempt from Income Tax ("Form 990").

l. The Tournament filed the Form 990 for all years relevant and material to this matter.

m. The BCO - 10 and the Form 990 are available for public inspection.

n. Question number 11¹ on the BCO - 10, asks the Tournament to identify the "[p]urposes and programs for which contributions are, or will be used."

o. For each fiscal year ending 12/31/97 through 12/31/03, the Tournament stated that "[c]ontributions are used to develop and maintain the [Institute]. The Institute employs research physicians and lab technicians. The facility is located at the Hershey Medical Center, Hershey, PA."

p. Part III of the Form 990 asks the organization to state its primary exempt purpose.

¹ Question number 7 for fiscal year end 12/31/97.

q. For each fiscal year ending 12/31/97 through 12/31/03, in Part III, the Tournament identified its primary purpose as "provide funds – cancer research."

r. In the Tournament's solicitation and other program materials used during each fiscal year ending 12/31/97 through 12/31/04, the Tournament represented that contributions and/or donations made to the Tournament would go to the Institute.

s. During each fiscal year ending 12/31/97 through 12/31/04, the Tournament represented to sponsors of Tournament events that contributions and/or donations made to the Tournament would go to the Institute.

t. For fiscal years ending 12/31/97 through 12/31/04, the Tournament reported total fundraising revenue on lines 1(a) and 9(a) of Form 990 in the total amount of \$9,367,138.

u. As of fiscal year ending 12/31/04, the Tournament reported a net asset or fund balance on line 21 of Form 990 in the amount of \$5,482,981.

Contributions to the Institute

v. For fiscal years ending 12/31/97 through 12/31/04, solicitation and other program materials used by the Tournament made claims as to the amounts paid by the Tournament to the Institute.

w. Contrary to the claims made by the Tournament, the Tournament did not pay over to the Institute the amounts claimed in the solicitation and other program materials.

x. For fiscal years ending 12/31/97 through 12/31/04, the Tournament claimed in its solicitation and other program materials that it made contributions to the Institute in the total amount of \$5,405,000

y. For fiscal years ending 12/31/97 through 12/31/04, the Institute's records show that the Tournament actually made payments to the Institute in the total amount of \$4,061,274.

z. The difference between the Tournament's stated contributions and the amount actually received by the Institute from the Tournament is \$1,343,726.

aa. The Bureau has not alleged any misuse, abuse or misappropriation of any of the funds donated to the Tournament or the Institute.

Compensation to Gittlen

bb. For fiscal years ending 12/31/97 through 12/31/03, the Tournament reported that Gittlen was not compensated by the Tournament.

cc. For each fiscal year ending 12/31/97 through 12/31/03, Gittlen was compensated as an independent contractor by PSU, pursuant to an Agreement between Gittlen and PSU, for the purpose of "performing all services as a consultant in organizing and conducting fund raising activities for the benefit of the UNIVERSITY, the Jake Gittlen Laboratory of the MEDICAL CENTER, and/or the MEDICAL CENTER, as may, from time to time, be mutually agreed upon" ("Gittlen/PSU Agreement").

dd. For the years 1997 through 2003, Gittlen was compensated pursuant to the Gittlen/PSU Agreement in the total amount of \$354,576.80.

ee. For the years 1997 through 2003, the fundraising services for which Gittlen was compensated pursuant to the Gittlen/PSU Agreement, included events for the Institute, PSU, and the Tournament.

ff. Question 24² of the BCO – 10 asks the Tournament to identify whether any officers, directors, trustees or employees are related by blood, marriage or adoption to any supplier or vendor providing goods or services.

gg. For each fiscal year ending 12/31/97 through 12/31/03, the Tournament answered “No” to question 24.

hh. Schedule A, Part III, Line 2(c) of Form 990 asks the Tournament whether the Tournament, either directly or indirectly, engaged in the furnishing of services with, among others, any officer, director, creator or key employee of the Tournament.

ii. For each fiscal year ending 12/31/97 through 12/31/03, the Tournament answered “No.”

VIOLATIONS

5. The Commonwealth alleges that the Secretary is authorized, among other things, to impose an administrative fine upon the Tournament and Gittlen, individually, and as president of the Tournament, under Section 17(b)(3) of the Act, 10 P.S. § 162.17(b)(3), because the Tournament and Gittlen, individually, and as president of the Tournament, committed multiple violations of the Act as follows:

a. 10 P.S. § 162.15(a)(2), in that by representing that contributions and/or donations made to the Tournament would go to the Institute, when, in fact, not all contributions went to the Institute, the Tournament failed to comply with Section 15(a)(2) of the Act.

b. 10 P.S. § 162.15(a)(2), in that by representing that specific contribution amounts were made to the Institute for years 1998 through 2004, when, in fact, they were

² Question number 22 for fiscal year end 12/31/98 and number 25 for fiscal year end 12/31/97.

not, the Tournament and Gittlen, individually, and as president of the Tournament, failed to comply with Section 15(a)(2) of the Act.

c. 10 P.S. § 162.17(a)(3), in that failing to disclose in the BCO – 10 and/or the Form 990, for fiscal years ending 12/31/97 through 12/31/03, that Gittlen conducted and received compensation for fundraising activities on behalf of the Tournament, was a violation of Section 17(a)(3) of the Act.

MITIGATION

6. In mitigation of the Stipulated Facts, Respondents state, but the Commonwealth neither admits nor denies, the following:

a. The Tournament's 2004 brochure noted that:

The Jake Gittlen Memorial Golf Tournament is proud of its record of support for the Jake Gittlen Cancer Research Institute at the Penn State Hershey Medical Center. From 1970-1996, the Tournament gave the Institute a lump sum payment each year. Beginning in 1997, in an effort to increase its investment potential, the Tournament has pledged a monetary amount of support each year as set forth in the figures above. The Institute requests the funds they need in subsequent months, at which time the Tournament pays the requested amounts promptly.

b. The Tournament's Form 990s for fiscal years ending 1997 through 2003 correctly reflect the pledges the Tournament made to the Institute and are consistent with the amounts reported in the Tournament's brochures for those same years.

c. A small percentage of the compensation received by Mr. Gittlen from PSU was attributable to the Tournament and Mr. Gittlen was compensated for a variety of services directly attributable to PSU.

d. The term "vendor" is not defined by either the Solicitation of Funds for Charitable Purposes Act or the Form BCO-10.

e. The Tournament did not interpret the term "vendor" to include Mr. Gittlen's work as a consultant at PSU and, therefore, did not reflect the fact that he was compensated by PSU on the Form BCO-10.

f. Mr. Gittlen paid taxes on all of the compensation he received from PSU.

PROPOSED ORDER

7. Without admitting or denying any specific violation of the Act and to address concerns raised by the Commonwealth and to resolve this matter on a compromise basis, Respondents agree to not contest the issuance of the following Order in settlement of this matter:

a. The Tournament and Gittlen, individually, and on behalf of the Tournament, violated the Act at 10 P.S. § 162.15(a)(2) and § 162.17(a)(3).

ADMINISTRATIVE FINE

b. An **ADMINISTRATIVE FINE** of five thousand dollars (\$5,000.00) is levied upon Respondents, jointly and severally. The full sum of five thousand dollars (\$5,000.00) shall be tendered with this executed Consent Agreement and shall be paid by **certified check, cashier's check, attorney's check, or U.S. Postal money order made payable to the "Commonwealth of Pennsylvania."**

PAYMENTS TO THE INSTITUTE

c. Within sixty (60) days of the date of the Secretary's Order adopting this Consent Agreement, the Tournament shall pay over to PSU, for the benefit of the Institute, and under the sole control of the Institute, the amount of four million dollars (\$4,000,000). The Tournament shall submit to the Bureau a signed receipt from PSU acknowledging payment in full of the \$4,000,000.

OTHER PROVISIONS

d. The Tournament shall include the disclosure statement required by §162.13(a)(3) of the Act in all solicitations.

e. The Tournament shall not represent, either directly or indirectly, that it makes contributions to the Institute or any other organization in any amount other than those amounts actually paid by the Tournament.

f. All future contributions solicited by the Tournament for the benefit of the Institute will be paid to the Institute during the fiscal year in which such contributions are received, except for such amount that is reasonably necessary for the continued operation of the Tournament. The Tournament may retain said contributions only if the Tournament clearly represents in its solicitations that it will hold such contributions in trust for the benefit of the Institute (and that upon request, the Institute will be paid in such amounts and within such time frame as requested by the Institute).

g. For the period of one (1) year from the date of the Secretary's Order adopting this Consent Agreement, the Tournament shall submit copies of all solicitation material used by the Tournament.

h. So long as Gittlen is paid, either directly or indirectly for the fundraising activities conducted by the Tournament on behalf of the Institute, neither the Tournament nor Gittlen, or anyone acting on their behalf, shall represent that Gittlen conducts fundraising activities on behalf of the Tournament for no compensation.

i. Prior to conducting any professional solicitor activities on behalf of PSU, Gittlen shall submit to the Bureau all documents necessary to become registered as a professional solicitor, pursuant to the requirements of the Act.

j. Prior to conducting any professional solicitor activities on behalf of PSU, Gittlen shall submit to the Bureau a copy of the written contract between Gittlen and PSU, pursuant to the requirements of the Act.

k. At all times that Gittlen is conducting professional solicitor activities on behalf of PSU, he shall comply with all requirements of the Act, including but not limited to, depositing contributions into an account in the name of PSU within five days of receiving them.

l. Within sixty (60) days of the date of the Secretary's Order adopting this Consent Agreement, the Tournament's BCO -- 10 forms and Form 990s for fiscal years ending 12/31/02 through 12/31/03, as applicable, shall be amended to reflect the disclosure of the fundraising services provided by Gittlen to the Tournament and the compensation received by Gittlen, whether directly or indirectly. All future forms filed with the Bureau will accurately reflect Gittlen's fundraising services provided to the Tournament and the compensation received by Gittlen, whether directly or indirectly.

ACKNOWLEDGEMENT OF NOTICE AND WAIVER OF HEARING

8. Respondents waive the filing of an Order to Show Cause in this matter. Respondents knowingly and voluntarily waive the right to an administrative hearing in this matter, and to the following rights related to that hearing: to be represented by counsel at the hearing; to present witnesses and testimony in defense or in mitigation of any sanction that may be imposed for a violation; to cross-examine witnesses and to challenge evidence presented by the Bureau; to present legal arguments by means of a brief; and to take an appeal from any final adverse decision.

AGREEMENT NOT BINDING ON OTHER PARTIES

9. This Consent Agreement is between the Bureau and Respondents only. It does not bind any other administrative entity of the Commonwealth of Pennsylvania, including any other bureau within the Department of State. Except as otherwise noted, this Agreement is to have no legal effect if: a) the Office of General Counsel expresses an objection to the Agreement's form or legality and/or b) unless and until the Secretary issues the stipulated Order.

EFFECT OF SECRETARY'S REJECTION

10. Should the Secretary not approve this Consent Agreement, presentation to and consideration of this Consent Agreement and other documents and matters by the Secretary shall not prejudice the Secretary from further participation in the adjudication of this matter. This paragraph is binding on the participants even if the Secretary does not approve this Consent Agreement.

ENTIRE AGREEMENT

11. This Agreement contains the whole agreement between the parties; provided, however, that the captions printed in the various provisions of this agreement are for ease of reading only and are not to be interpreted as forming any part of this agreement. There are no other terms, obligations, covenants, representations, statements or conditions, or otherwise, of any kind whatsoever, concerning this Agreement.

AGREEMENT DOES NOT PREVENT REFERRAL TO OTHER AGENCIES

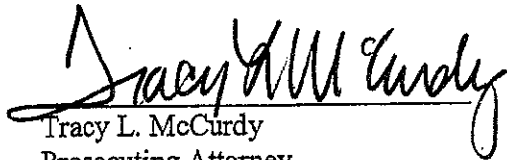
12. The parties acknowledge that other federal, state, and/or local agencies may have jurisdiction over the activities of, or representations made by, Respondents and their officers, directors, agents, employees or independent contractors. Nothing in this Consent Agreement or the Order based upon this Consent Agreement shall preclude representatives of the Bureau from

referring any information or data produced as a result of this matter to any federal, state, or local agency or governmental unit having jurisdiction over the activities of Respondents or any officer, director, agent, employee or independent contractor of Respondents.

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VERIFICATION OF FACTS AND STATEMENTS

13. Respondents verify that the facts and statements set forth in this Agreement are true and correct to the best of Respondents' knowledge, information and belief. Respondents understand that statements in this Agreement are made subject to the criminal penalties of 18 Pa.C.S. §4904 relating to unsworn falsification to authorities.



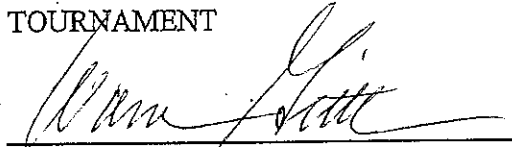
Tracy L. McCurdy
Prosecuting Attorney
Department of State

DATED: 9-14-06

Attorneys for Jake Gittlen
Memorial Golf Tournament

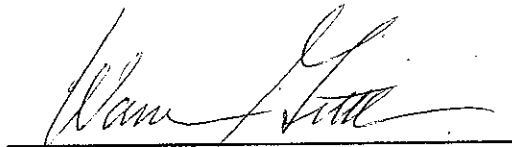
Attorney for Warren Gittlen

JAKE GITTLEN MEMORIAL GOLF
TOURNAMENT



Warren Gittlen
President
Respondent

DATED:



Warren Gittlen
Respondent

DATED:

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Camp Hill, PA 17011

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**IN THE MATTER OF
JAKE GITTLEN MEMORIAL GOLF TOURNAMENT AND
WARREN GITTLEN, INDIVIDUALLY, AND AS PRESIDENT OF
JAKE GITTLEN MEMORIAL GOLF TOURNAMENT
FILE NOS. 04-98-06032 and 04-98-06037**

ORDER

AND NOW, this 15th day of September, 2006, the terms of Paragraph 7 of the foregoing Consent Agreement are hereby adopted and incorporated as the Order of the Secretary of the Commonwealth in resolution of this matter. This Order shall take effect immediately.

BY ORDER

Pedro A. Cortés

Pedro A. Cortés
Secretary of the Commonwealth