

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

PROTHONOTARY
2005 SEP 29 AM 11:38
Department of State

Commonwealth of Pennsylvania, :
Bureau of Charitable Organizations, :
vs. :
National Emergency Medicine :
Association, Inc., :
Respondent. :

File No: 2005-98-07584
Docket No: 0012-98-05

CONSENT AGREEMENT AND ORDER

The Commonwealth of Pennsylvania, Bureau of Charitable Organizations (“Bureau”) and National Emergency Medicine Association, Inc. (“Respondent”) 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, an Act of December 19, 1990, P.L. 1200, No. 202, *as amended* (the “Act”), 10 P.S. §§ 162.1-162.24.
2. Respondent sent solicitations for charitable contributions to Pennsylvania residents.
3. At all relevant and material times, Respondent was registered to solicit charitable contributions within the Commonwealth of Pennsylvania.

FACTS

4. The Respondent admits to the following facts:
 - a. Respondent’s last known mailing address, as on file with the

Pennsylvania Department of State, is 306 West Joppa Road, Towson, Maryland 21204.

b. In 1999, the Bureau learned that direct mail solicitations issued by Respondent did not include the disclosure statement required by the Act.

c. Respondent represented to the Bureau that the failure to include the disclosure statement was an error and Respondent assured the Bureau that it would take all measures necessary to ensure that it did not happen again.

d. In 2001, the Bureau again learned that solicitations were being sent to Pennsylvania residents without the required disclosure statement.

e. Respondent was assessed an administrative fine of \$1,000 for the 2001 violation.

f. Respondent paid the 2001 fine and again assured the Bureau that it would take corrective measures.

g. On December 24, 2003 and December 29, 2003, the Bureau received evidence that Respondent was yet again soliciting in Pennsylvania without including the required disclosure statement.

h. As of January 26, 2005, 11,390 solicitations had been mailed to Pennsylvania without the required disclosure statement.

i. Respondent again expressed its regret for the oversight and assured the Bureau that such oversights would not occur in the future.

j. On February 4, 2005, the Bureau received two additional solicitations that did not contain the required disclosure statement.

MITIGATION

5. In mitigation of the foregoing facts, Respondent states that:

a. The omission of the required disclosure occurred as a result of an inadvertent production error by a vendor engaged by the direct mail consulting firm which provides services to Respondent;

b. The sample of the solicitation which was reviewed and approved by Respondent contained the required disclosure;

c. Respondent first learned of the omission when the Bureau informed Respondent of the omission; and

d. Respondent had no intent to violate the Act and did not cause the omission of the required disclosure.

AGREED VIOLATIONS

6. Respondent agrees that by engaging in the aforementioned activities it violated the Act 11,390 times by soliciting charitable contributions in Pennsylvania without including the disclosure statement required by Section 162.13(c).

PROPOSED ORDER

7. The parties consent to the issuance of the following Order in settlement of this matter:

a. Respondent violated the Act at 10 P.S. § 162.15(a)(1), by and through 162.13(c).

ADMINISTRATIVE FINE

b. An administrative fine of three-thousand dollars (\$3,000.00) is levied upon Respondent. Respondent shall tender the full sum of three-thousand dollars (\$3,000.00) by certified check, cashier's check, attorney's check, or U.S. Postal money

order made payable to the "Commonwealth of Pennsylvania" along with the signed copy of this Consent Agreement.

COMPLIANCE WITH THE ACT

c. Respondent shall comply with 10 P.S. § 162.13(c) and shall not solicit contributions in Pennsylvania without including the required disclosure statement on the solicitation.

VIOLATION OF THE SECRETARY'S ORDER

d. Notification of a violation of the terms or conditions of this Consent Agreement and Order shall result in the imposition of additional penalties under the following procedures:

(1) The prosecuting attorney with the Bureau shall file with the Secretary, a Petition that indicates that Respondent has violated the terms and conditions of this Consent Agreement and Order.

(2) Upon a probable cause determination that Respondent has violated the terms and conditions of this Consent Agreement and Order, the Secretary or his designee, shall, without holding a formal hearing, issue a Preliminary Order, effective thirty (30) days after its mailing, which imposes a sixty (60) day period of suspension on Respondent's registration to solicit charitable contributions.

(3) Respondent shall be notified of the Preliminary Order within three (3) days of its issuance by certified mail and by first class mail, postage prepaid, sent to the last registered address on file with the Bureau. A

copy shall also be sent to Respondent's attorney at 15915 Ventura Boulevard, Suite 201, Encino, CA 91436 by first class mail.

(4) Within fifteen (15) days of mailing of the notification of the Preliminary Order, Respondent may answer the Commonwealth's Petition, request that a formal hearing be convened concerning the Respondent's alleged violation of the Consent Agreement and Order, and move that the period of suspension be stayed until the Secretary or his designee issues a final order. Respondent shall file all answers and subsequent filings with the Prothonotary for the Bureau of Charitable Organizations at 2601 North Third Street, Harrisburg, Pennsylvania 17110. Respondent shall serve the prosecuting attorney for the Bureau with a copy of the answer and all subsequent filings at 301 North Office Building, Harrisburg, Pennsylvania 17120.

(5) If the Respondent moves for a stay of the period of suspension, Respondent shall set forth properly verified facts and/or state concisely the matter of law which the Respondent believes justifies a stay of the period of suspension. The Secretary or his designee shall issue a ruling on the Respondent's motion within fifteen (15) days from the date of the mailing of the notification of the Preliminary Order. If the Secretary or his designee makes no ruling within fifteen (15) days of the Preliminary Order, the Respondent's motion shall be deemed denied.

(6) If a request from a formal hearing is received from Respondent, a formal hearing shall be convened within forty-five (45) days from the date of filing of Respondent's request for a formal hearing.

(7) The facts and averments in this Consent Agreement and Order shall be deemed admitted and uncontested at this hearing.

(8) If the Secretary or his designee, after such hearing, makes a determination adverse to Respondent, the Secretary or his designee will issue a Final Order imposing any disciplinary measures he deems appropriate. The Secretary or his designee may, but is not required to, take into account any period of active suspension already served by the Respondent pursuant to the Preliminary Order.

(9) If a request for a formal hearing is not received from Respondent within the prescribed fifteen (15) day period, the Preliminary Order shall become a Final Order.

ACTION ON OTHER VIOLATIONS NOT PRECLUDED

e. Nothing in this Consent Agreement and Order shall preclude the Prosecuting Attorney for the Bureau from filing charges or the Secretary from imposing disciplinary or corrective measures for violations or facts not contained in this Consent Agreement and Order.

CASE SETTLED AND DISCONTINUED

f. This case shall be deemed settled and discontinued upon the Secretary issuing an Order adopting this Consent Agreement and the Respondent's successful completion of any ordered discipline or remedial measures and payment of any administrative fines.

ACKNOWLEDGEMENT OF NOTICE AND WAIVER OF HEARING

8. Respondent waives the filing of an Order to Show Cause in this matter.

parties. The paragraph headings are for identification purposes 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 of any kind whatsoever concerning this Agreement.

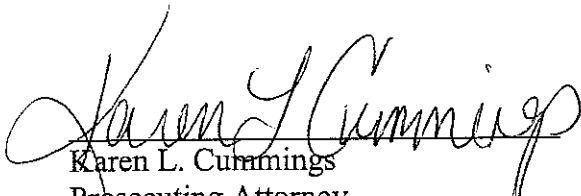
AGREEMENT DOES NOT PREVENT REFERRAL TO OTHER AGENCIES


12. The parties acknowledge that other federal, state and/or local agencies or governmental units may have jurisdiction over the activities of or representations made by Respondent and its officers, directors, agents, employees, or independent contractors. Noting in this Consent Agreement and Order shall preclude representatives of the Bureau from referring any information or data produced as a result of this matter to any federal, state, and/or local agency or governmental unit having jurisdiction over the activities of Respondent or any officers, directors, agents, employees, or independent contractor of the Respondent.

VERIFICATION OF FACTS AND STATEMENTS

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

NATIONAL EMERGENCY
MEDICINE ASSOCIATION, INC.


Karen L. Cummings
Prosecuting Attorney
Bureau of Charitable Organizations

By: 
Title: Executive Director
Respondent

Date: 9/26/05

Date: 9/22/05



IN THE MATTER OF
NATIONAL EMERGENCY MEDICINE ASSOCIATION, INC.
FILE NO. 2005-98-07584

ORDER

AND NOW, this 28th day of Sept., 2005, 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. The Order shall take effect immediately.

BY ORDER

A handwritten signature in black ink, appearing to read "K. Rapp", written over a horizontal line.

Kenneth A. Rapp, Deputy Secretary
for Regulatory Programs
on behalf of the
Secretary of the Commonwealth