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8 BEFORE THE FAIR POLITICAL PRACTICES COMMISSION
9 STATE OF CALIFORNIA
10
11

12 In the Matter of) FPPC No. 13/543
13)
14 CLAYTON CHAU,) STIPULATION, DECISION and
15) ORDER
16 Respondent.)
17

18 Complainant the Enforcement Division of the Fair Political Practices Commission, and
19 Respondent Clayton Chau agree that this Stipulation will be submitted for consideration by the Fair
20 Political Practices Commission at its next regularly scheduled meeting.

21 The parties agree to enter into this Stipulation to resolve all factual and legal issues raised in this
22 matter and to reach a final disposition without the necessity of holding an administrative hearing to
23 determine the liability of Respondent, pursuant to Section 83116 of the Government Code.

24 Respondent understands, and hereby knowingly and voluntarily waives, any and all procedural
25 rights set forth in Sections 83115.5, 11503 and 11523 of the Government Code, and in Sections 18361.1
26 through 18361.9 of Title 2 of the California Code of Regulations. This includes, but is not limited to,
27 the right to personally appear at any administrative hearing held in this matter, to be represented by an
28 attorney at Respondent's own expense, to confront and cross-examine all witnesses testifying at the

1 hearing, to subpoena witnesses to testify at the hearing, to have an impartial administrative law judge
2 preside over the hearing as a hearing officer, and to have the matter judicially reviewed. It is further
3 stipulated and agreed that Respondent violated the Political Reform Act by failing to disclose a
4 reportable source of income on an assuming office statement of economic interests, in violation of
5 Sections 87300 and 87302 of the Government Code (1 count). All counts are described in Exhibit 1,
6 which is attached hereto and incorporated by reference as though fully set forth herein. Exhibit 1 is a
7 true and accurate summary of the facts in this matter.

8 Respondent agrees to the issuance of the Decision and Order, which is attached hereto.
9 Respondent also agrees to the Commission imposing upon him an administrative penalty in the amount
10 of Two Thousand Dollars (\$2,000). A cashier's check from Respondent in said amount, made payable
11 to the "General Fund of the State of California," is submitted with this Stipulation as full payment of the
12 administrative penalty, to be held by the State of California until the Commission issues its decision and
13 order regarding this matter. The parties agree that in the event the Commission refuses to accept this
14 Stipulation, it shall become null and void, and within fifteen (15) business days after the Commission
15 meeting at which the Stipulation is rejected, all payments tendered by Respondent in connection with
16 this Stipulation shall be reimbursed to Respondent. Respondent further stipulates and agrees that in the
17 event the Commission rejects the Stipulation, and a full evidentiary hearing before the Commission
18 becomes necessary, neither any member of the Commission, nor the Executive Director, shall be
19 disqualified because of prior consideration of this Stipulation.

20
21 Dated: _____

22 Gary Winuk, Enforcement Chief,
23 on behalf of the
24 Fair Political Practices Commission

25 Dated: _____

26 Clayton Chau,
27 Respondent

1 **DECISION AND ORDER**

2 The foregoing Stipulation of the parties “In the Matter of Clayton Chau,” FPPC No. 13/543,
3 including all attached exhibits, is hereby accepted as the final decision and order of the Fair Political
4 Practices Commission, effective upon execution below by the Chair.

5
6 IT IS SO ORDERED.

7
8 Dated: _____

Joann Remke, Chair
Fair Political Practices Commission

1 **EXHIBIT 1**

2 **INTRODUCTION**

3 Respondent Clayton Chau (“Respondent”) was employed by CalOptima, a county health agency,
4 as the Manager of its Behavior Health Program from December 10, 2012 to September 27, 2013. In
5 addition to his position with CalOptima, Respondent operated a private medical practice through the
6 corporation Chau MD, Inc. Chau MD, Inc. also received revenue in return for educational speeches
7 made by Respondent at corporate events. At all times relevant to this matter, Chau MD, Inc. was fully
8 owned and operated by Respondent.

9 As a designated employee, Respondent was required to file an assuming office statement of
10 economic interests (“SEI”) disclosing his reportable economic interests from the twelve months prior to
11 his hiring at CalOptima. On December 19, 2012, Respondent filed his assuming office SEI, but failed to
12 report \$12,033 in income he received from the pharmaceutical company AstraZenca via Chau MD, Inc.

13 For the purposes of this Stipulation, Respondent’s violations of the Act are stated as follows:

14 **COUNT 1:** Respondent Clayton Chau, a designated employee of CalOptima, failed to report
15 AstraZenca as a source of income on his assuming office SEI, in violation of Sections
16 87300 and 87302 of the Government Code.

17 **SUMMARY OF THE LAW**

18 **Duty to File Statements of Economic Interests**

19 An express purpose of the Act, as set forth in Section 81002, subdivision (c), is to ensure that the
20 assets and income of public officials that may be materially affected by their official actions be
21 disclosed, so that conflicts of interests may be avoided. In furtherance of this purpose, Section 87300
22 requires every agency to adopt and promulgate a conflict of interest code. Under Section 87300, the
23 requirements of an agency’s conflict of interest code have the force of law, and any violation of a
24 conflict of interest code by a designated employee shall be deemed a violation of this chapter.

25 **Disclosure Provisions**

26 Section 87302, subdivision (a), provides that an agency’s conflict of interest code must
27 specifically designate the positions within the agency that are required to file statements of economic
28 interests disclosing their reportable economic interests. Under Section 82019, subdivision (a), and

1 Section 87302, the persons who are to be designated in an agency’s conflict of interest code are the
2 officers, employees, members, and consultants of the agency whose position with the agency entails
3 making, or participating in making, governmental decisions that may foreseeably have a material effect
4 on one or more of the person’s economic interests.

5 Under Section 87302, subdivision (b), an agency’s conflict of interest code must require, among
6 other things, every designated employee of the agency to file a statement of economic interests (“SEI”)
7 within thirty days of assuming a position designated in the agency’s conflict of interest code. The
8 assuming office SEI must disclose the designated employee’s reportable economic interests, including
9 their investments held and income received, during the twelve months prior to assuming the position.
10 “Income” is defined, in part, as a payment received, including but not limited to any salary, wage, or
11 gift. (Section 82030, subd. (a).) “Income” also includes an individual’s pro rata share of any payments
12 made to a business entity in which the individual or spouse owns a ten percent interest or greater. *Id.*

13 The applicable conflict of interest code used by CalOptima (the “Code”) lists the position of
14 “Manager, Behavior Health Programs” as a designated employee who makes or participates in making
15 governmental decisions which may foreseeably have a material effect on their financial interests. The
16 position is subject the disclosure category OC-01. According to the Code, those subject to disclosure
17 category OC-01 must disclose the following on their statements of economic interests: “All interests in
18 real property in Orange County, the authority or the District as applicable, as well as investments,
19 business positions and sources of income (including gifts, loans and travel payments.)”

20 Section 87207, subdivision (b), states that when a designated employee is required to disclose his
21 or her pro-rata share of income to a business entity in which they have a ownership interest, the
22 employee’s SEI must disclose the name of every person from whom the business entity received
23 payments of which the filer’s pro rata share of gross receipts from that person was equal to or greater
24 than ten thousand (\$10,000) during a calendar year. (Section 87207, subd. (b).)

25 **SUMMARY OF THE FACTS**

26 Respondent Clayton Chau (“Respondent”) was employed by CalOptima as the Manager of its
27 Behavior Health Program from December 10, 2012 to September 27, 2013. CalOptima is a county
28 organized health system that administers health insurance programs for low-income families, children,

1 seniors and persons with disabilities in Orange County. In addition to his position with CalOptima,
2 Respondent operated a private medical practice through the corporation Chau MD, Inc. Chau MD, Inc.
3 also received revenue in return for educational speeches made by Respondent at corporate events. At all
4 times relevant to this matter, Chau MD, Inc. was fully owned and operated by Respondent. Respondent
5 dissolved Chau MD, Inc. in December 2012.

6 Prior to its dissolution, the pharmaceutical company Astrazenca provided Chau MD, Inc. with
7 payments totaling \$12,033 in return for speaking engagements Respondent performed at events
8 organized by Astrazenca. The speeches made by Respondent concerned various topics related to his
9 practice of medicine.

10 On December 10, 2012, CalOptima hired Respondent to serve as the Manager of its Behavior
11 Health Program, a designated position under CalOptima's conflict of interest code. As a newly hired
12 designated employee, Respondent was required to file an assuming office statement of economic interest
13 ("SEI") disclosing his reportable economic interests from the twelve months prior to his hiring.

14 Respondent filed his assuming office SEI on December 19, 2012. The assuming office SEI
15 submitted by Respondent indicated that Respondent had no reportable interest. However, in the twelve
16 months prior to assuming his position, Respondent received \$12,033 in reportable income from
17 Astrazenca via payments made to Chau MD, Inc.

18 During Respondent's tenure as Manager of the Behavior Health Program, CalOptima's drug
19 formulary made available for prescription a drug produced by Respondent's source of income
20 Astrazenca.

21 **COUNT 1**

22 On December 10, 2012, CalOptima, a county health agency, hired Respondent to serve as the
23 Manager of its Behavior Health Program. As a newly hired designated employee, Respondent was
24 required to disclose on his assuming office SEI, among other things, his reportable sources of income in
25 the twelve months preceding his hiring. On December 19, 2012, Respondent filed his assuming office
26 SEI, but failed to report Astrazenca as a source of income after receiving \$12,033 in income from the
27 company in the twelve months prior to his hiring at CalOptima, in violation of Sections 87300 and
28 87302 of the Government Code.

1 **CONCLUSION**

2 This matter consists of one count, which carries a maximum possible administrative penalty of
3 Five Thousand Dollars (\$5,000).

4 In determining the appropriate penalty for a particular violation of the Act, the Enforcement
5 Division considers the typical treatment of a violation in the overall statutory scheme of the Act, with an
6 emphasis on serving the purposes and intent of the Act. Additionally, the Enforcement Division
7 considers the facts and circumstances of the violation in context of the factors set forth in Regulation
8 18361.5, subdivision (d)(1)-(6): 1) the seriousness of the violations; 2) the presence or lack of intent to
9 deceive the voting public; 3) whether the violation was deliberate, negligent, or inadvertent; 4) whether
10 the Respondent demonstrated good faith in consulting with Commission staff; 5) whether there was a
11 pattern of violations; and 6) whether the Respondent, upon learning of a reporting violation, voluntarily
12 filed amendments to provide full disclosure.

13 Disclosure of economic interests is important to provide transparency and prevent conflicts of
14 interest. Failure to report all required information on an SEI deprives the public of important
15 information about a public official's economic interests and it has the potential to conceal conflicts of
16 interest. Recent penalties for failure to disclose reportable sources of income on a SEI have been in the
17 middle to low ranges for fines depending upon the circumstances of each case:

- 18 • ***In the Matter of Percy McGee***, FPPC No. 09/637. Respondent Percy McGee, a member of the
19 Pittsburg Unified School District Board of Trustees, failed to list Merrill Lynch as a source of
20 income on his 2008 and 2009 annual SEIs, in violation of Government Code Sections 87200,
21 87203, and 87207. On December 13, 2012, the Commission approved a total fine of \$2,000 for
22 the two SEI non-disclosure violations.
- 23 • ***In the Matter of Sean MacNeil***, FPPC No. 09/645. Respondent Sean MacNeil, a former Chief
24 of Staff in the California State Senate, failed to list the campaign committee *Friends of Pat*
25 *Wiggins for State Senate 2010* as a source of income on his 2007 annual SEI, in violation of
26 Government Code Sections 87300 and 87302. Respondent MacNeil had a prior history of
27 violating the Act. On February 10, 2011, the Commission approved a fine of \$2,000 for the SEI
28 non-disclosure violation.

1 In this matter, Respondent failed to list AstraZenca as a source of income on his assuming office
2 SEI after receiving payments totaling \$12,033 from the pharmaceutical company. Although no conflicts
3 of interest were identified, accepting income from a business entity that does business with your
4 governmental entity creates a high potential for conflicts of interest, and failing to report that income
5 creates, at the very least, the appearance of impropriety.

6 Based on the above prior cases and the circumstances present in this case, imposition of a two
7 thousand dollar (\$2,000) penalty for the one count is recommended. A higher penalty amount is not
8 being sought for this violation because Respondent has no prior history of violating the Act and fully
9 cooperated with the Enforcement Division's investigation.

10 **PROPOSED PENALTY**

11 After consideration of the factors of Regulation 18361.5, including whether the behavior in
12 question was inadvertent, negligent or deliberate and the Respondent's pattern of behavior, as well as
13 consideration of penalties in prior enforcement actions, the imposition of a penalty of Two Thousand
14 Dollars (\$2,000) is recommended.