

COMMONWEALTH OF MASSACHUSETTS
STATE ETHICS COMMISSION

SUFFOLK, ss.

COMMISSION ADJUDICATORY
DOCKET NO. 13-0007

IN THE MATTER

OF

PHILIP POLEY

DISPOSITION AGREEMENT

The State Ethics Commission and Philip Poley enter into this Disposition Agreement pursuant to Section 5 of the Commission's *Enforcement Procedures*. This Agreement constitutes a consented-to final order enforceable in the Superior Court, pursuant to G.L. c. 268B, § 4(j).

On May 18, 2012, the Commission initiated, pursuant to G.L. c. 268B, § 4(a), a preliminary inquiry into possible violations of the conflict of interest law, G.L. c. 268A, by Poley. The Commission has concluded its inquiry and, on September 21, 2012, found reasonable cause to believe that Poley violated G.L. c. 268A.

The Commission and Poley now agree to the following findings of fact and conclusions of law:

Findings of Fact

1. Poley, a former resident of Brookline, no longer resides in Massachusetts.
2. MassHealth, the Massachusetts Medicaid program, is a department of the Executive Office of Health and Human Services ("EOHHS").

3. Poley was the chief operating officer (“COO”) for MassHealth from October 2007 until August 2010. Poley’s appointing authority was the EOHHS undersecretary.

4. Accenture is an international technology and business strategy consulting firm.

5. On August 17, 2009, Poley circulated a document within EOHHS entitled “MassHealth Analytics Unit.” The document (the “Analytics Proposal”) described Poley’s vision for the creation of a MassHealth Analytics Unit (the “Analytics Unit”) for analyzing and managing Medicaid data.

6. On October 19, 2009, Poley shared a copy of his Analytics Proposal with Accenture’s Boston-based managing director (hereafter referred to as “Accenture Employee A”).¹

7. Accenture Employee A agreed to review the Analytics Proposal, and in turn forwarded the proposal to several Accenture colleagues.

8. At Poley’s request, on November 2, 2009, a colleague of Poley’s at MassHealth who had formerly worked for Accenture, emailed an Accenture executive in the firm’s health and public service practice (hereafter referred to as “Accenture Employee B”). In the email, Poley’s MassHealth colleague said that Poley was interested in having “a confidential conversation” with Accenture Employee B “to explore career alternatives.” Poley’s MassHealth colleague’s email stated, “I don’t want to facilitate

¹ The names of Accenture employees have not been included as they are not parties to this action.

[Poley's] departure, but ... of all the folks I work with here, he would be the one I would pick for best potential fit for consulting.”

9. On November 17, 2009, at Poley's request, Accenture representatives met with Poley at MassHealth to discuss analytics.

10. On November 21, 2009, Accenture Employee B replied to Poley's MassHealth colleague saying that he would be glad to talk to Poley but would want to be “sensitive to talking about Accenture if he [Poley] is involved in any of our current/future work.” Poley's MassHealth colleague forwarded Accenture Employee B's email to Poley on November 23, 2009.

11. On November 23, 2009, a manager in Accenture's public service strategy practice (hereafter referred to as “Accenture Employee C”) sent an email to several Accenture colleagues regarding the November 17, 2009 meeting with MassHealth. In the email, Accenture Employee C stated that MassHealth wanted to outsource the creation of the proposed Analytics Unit to the UMass Medical School (“UMass”). In the email, Accenture Employee C stated that UMass would then “contract directly with Accenture” on how to create the organization.

12. In December 2009, UMass appointed a project manager to oversee its role in the planning of the Analytics Unit.

13. On December 10, 2009, using his personal email account, Poley sent Accenture Employee B a copy of his resume. In the email, Poley stated, “I am mindful of the points you raise regarding conflict of interest.” Poley further stated that he was involved in “a project [the Analytics Unit] that may result in work for Accenture” and

thus it would not be appropriate “to discuss specific opportunities at Accenture” since Poley was, as he stated in the email, “a key player in the project.”

14. Poley and Accenture Employee B spoke by telephone on February 1, 2010. Poley stated under oath that, during the conversation, he did not express a desire to pursue employment with Accenture, nor did the two discuss business opportunities for Accenture with the Commonwealth. Poley characterized the conversation, which lasted about 15 minutes, as a “general conversation” about the consulting field.

15. Over the following months, Poley continued to be involved in creating the Analytics Unit and was in periodic contact with Accenture executives regarding the project.

16. On February 26, 2010, the UMass project manager for the Analytics Unit emailed Accenture Employee C. The UMass project manager said that Poley had suggested contacting Accenture Employee C to see “what if any resources Accenture might provide” as UMass produces project scoping documents” for the Analytics Unit.

17. On February 26, 2010, using his MassHealth email account, Poley sent his resume to Accenture Employee C, along with a note: “In case you are interested.”

18. According to Accenture Employee C, he (Accenture Employee C) did not have the authority to make a hiring decision involving someone at Poley’s experience level. Accenture Employee C’s role, as he saw it, was to “orchestrate the process.”

19. On February 26, 2010, Accenture Employee C forwarded Poley’s email to an executive in Accenture’s public health practice (hereafter referred to as “Accenture

Employee D”) with the words, “See attached.” Accenture Employee D did not immediately follow up with Poley.

20. On March 4, 2010, Poley emailed UMass and MassHealth staff involved in the planning and creation of the Analytics Unit (the “Analytics Project”), asking their opinion regarding the Analytics Project planning document entitled the “Draft Project Statement.” Poley was listed in the document as the executive sponsor of the Analytics Project.

21. On March 23, 2010, Accenture Employee C forwarded Poley’s resume to other Accenture executives, noting that Poley was a “prospective hire from Massachusetts.”

22. On April 9, 2010, Accenture made a presentation to MassHealth and UMass about “best practices” in the field of analytics. Poley attended this presentation.

23. On the morning of Saturday, April 24, 2010, Accenture Employee C emailed several Accenture colleagues to provide “an update on where things stand with MassHealth Analytics.” According to the email, Poley and the EOHHS undersecretary would soon be meeting to “decide on procurement, approach, budget, etc. [regarding the Analytics Project.] ”

24. On April 24, 2010, Accenture Employee C received an email from Poley asking Accenture Employee C to call. “I’d like to continue our conversation from yesterday,” wrote Poley, using his MassHealth email account.

25. Neither Poley nor Accenture Employee C could recall the substance of the Friday, April 23, 2010 “conversation” referred to in Poley’s email. Both, however,

confirmed that they spoke by phone the next day on Saturday, April 24, 2010. During that conversation, Poley indicated that he was looking for a job. Poley and Accenture Employee C discussed issues such as Poley's potential title at Accenture, as well as work assignments and compensation. Accenture Employee C explained to Poley that if Accenture were interested in further pursuing Poley as a potential hire, the next discussions would be with people more senior than Accenture Employee C.

26. In the early afternoon of April 24, 2010, using his MassHealth email account, Poley emailed Accenture Employee C to thank him for that morning's conversation, saying to Accenture Employee C that Poley was "looking forward to taking it to the next level."

27. At a health information technology conference held in Boston from April 29-30, 2010, Poley and Accenture Employee D (the executive in Accenture's public health practice) had an approximately 15-minute conversation that had been suggested by Accenture Employee C. During the meeting, Poley asked Employee D questions about her experience working at Accenture. Employee D described the conversation as networking.

28. On May 4, 2010, Poley used his MassHealth email account to contact Accenture Employee D and thank her for her time at the conference. "It is clear that you find the work rewarding and engaging and it is good to know that you have not become bored in your years with Accenture—a great commentary on both you and your employer," wrote Poley.

29. In the first week of May 2010, Poley asked the UMass project manager for the Analytics Project to set up a meeting with Poley and the EOHHS undersecretary to report on the status of the Analytics Project. The meeting, which was the first of three so-called “proof of concept” meetings, was held May 7, 2010.² As the Analytics Project executive sponsor, Poley was substantially involved at the meeting, as well as the follow-up meetings held May 12, 2010 and May 26, 2010. At the conclusion of the series of meetings, the participants decided that, to move forward with the Analytics Project, they would need the assistance of a consulting firm.

30. On June 2, 2010, Accenture Employee C emailed Poley and asked him to complete Accenture’s conflict of interest form, entitled “Current or Former U.S. Government Employees Checklist.” Poley returned the completed form to Accenture Employee on June 4, 2010. Among the questions on the checklist was whether Accenture had any “interests that may be affected by your actions or by your agency.” Poley responded that Accenture does not have any “active contracts” with MassHealth, but that Poley was “executive sponsor” of an initiative between MassHealth and UMass in which UMass would be the contracting agency and Accenture was a potential consultant.

31. On June 24, 2010, Accenture Employee D (the executive in Accenture’s public health practice) informed Poley that Poley had cleared the checklist and would begin the interview process.

² The purpose of the “proof of concept” meetings was to address questions raised by the EOHHS undersecretary as well as to provide him with a status report on the project.

32. On June 25, 2010, Poley emailed Accenture Employee D from his MassHealth account, thanking her for the conversation they had the day before. In the email, Poley asked Accenture Employee D to “commit to an interview process with Accenture that can be concluded and brought to the offer stage within 10-14 days.”

33. On June 29, 2010, Poley and Accenture Employee D traded emails to set up phone interviews of Poley with four Accenture executives. The interviews took place between July 1, 2010 and July 8, 2010.

34. Also on June 29, 2010, Poley submitted a letter to the EOHHS undersecretary (with a copy to the State Ethics Commission) disclosing Poley’s and Accenture’s “mutual desire to explore a substantive conversation regarding employment prospects.” In the letter, Poley wrote that he was making the disclosure because of his past role as “MassHealth executive sponsor” of the Analytics Project. Poley’s letter stated that Poley would suspend his involvement in the Analytics Project until the EOHHS undersecretary made a determination regarding Poley’s ongoing involvement.

35. Upon receiving Poley’s disclosure, the EOHHS undersecretary ended Poley’s involvement in the Analytics Project.

36. On July 5, 2010, UMass emailed a solicitation to Accenture Employee C for a proposal to provide management consultant services on the “MassHealth Analytics Unit Construction, Governance, Process” project. The consultant services contemplated (the “Analytics Contract”) were essential to the creation of the Analytics Unit. No other company was solicited for a proposal for the Analytics Contract. On July 15, 2010, Poley accepted an offer of employment with Accenture as Senior Manager, Health and Public

Service Operating Group. Poley's starting salary at Accenture was: \$185,000, with the possibility of earning additional pay through performance bonuses.

37. On July 20, 2010, Accenture Employee C submitted Accenture's consulting services proposal in response to the UMass solicitation regarding the Analytics Project. Accenture estimated that the cost of its services for the six-month project would be \$961,570.

38. Between July 2010 and October 2010, UMass and Accenture negotiated the terms of the Analytics Contract.

39. On November 2, 2010, Accenture signed a \$420,000 consulting services contract with UMass regarding the Analytics Contract.

40. Poley's last day of employment with MassHealth was August 12, 2010.

41. Poley began working for Accenture on September 16, 2010.

42. Poley's primary responsibilities as an Accenture employee did not include performing work regarding the Analytics Contract. However, on a number of occasions between September 2010 and November 15, 2010, Poley provided insight and advice to his Accenture colleagues in connection with the contemplated Analytics Contract, and after November 2, 2010, the Analytics Contract that was awarded. These actions included reviewing in October 2010 Accenture's "draft scope of work" for the Analytics Contract; providing coaching and guidance on a "MassHealth Kick Off" presentation in October 2010 for the Analytics Contract; emailing comments to Accenture Employee C on October 14, 2010, regarding a survey prepared by Accenture for the Analytics Project; emailing Accenture Employee C on October 25, 2010, with advice regarding

communications with MassHealth; and, on November 15, 2010, reviewing and providing comments on a planned presentation called “MassHealth Analytics Midterm Workshop.”

Conclusions of Law

43. As the COO for MassHealth, Poley was at all times relevant to this matter a “state employee” as defined in G.L. c. 268A, § 1.

Section 23(b)(3)

44. Section 23(b)(3) of G.L. c. 268A prohibits a state employee from, knowingly, or with reason to know, acting in a manner which would cause a reasonable person, having knowledge of the relevant circumstances, to conclude that any person can improperly influence or unduly enjoy his favor in the performance of his official duties, or that he is likely to act or fail to act as a result of kinship, rank, position or undue influence of any party or person. The section further provides that it shall be unreasonable to so conclude if such employee has disclosed in writing to his appointing authority the facts which would otherwise lead to such a conclusion.

45. From November 2009 to June 29, 2010, by taking the above-described actions in his capacity as the MassHealth COO in connection with the Analytics Project, a matter of interest to Accenture, while actively seeking future private employment with Accenture, Poley knowingly, or with reason to know, acted in a manner which would cause a reasonable person, having knowledge of all the relevant circumstances, to conclude that Accenture could unduly enjoy Poley’s favor in the performance of his official duties. Poley did not timely file any § 23(b)(3) disclosures to dispel this appearance of impropriety. Therefore, in so acting, Poley repeatedly violated § 23(b)(3).

Section 6

46. Except as the section otherwise permits, G.L. c. 268A, § 6 prohibits in relevant part a state employee from participating in a particular matter in which to his knowledge an organization with which he is negotiating or has any arrangement concerning prospective employment, has a financial interest.

47. The ongoing determination as to whether to create an Analytics Unit was a particular matter.

48. Accenture had a reasonably foreseeable financial interest in this particular matter in that as early as October 2009 it was interested in seeking and did subsequently secure the consulting contract which would be needed to create the Analytics Unit.

49. Poley began negotiating for prospective employment³ with Accenture as early as Friday, April 23, and Saturday, April 24, 2010, the dates on which he had discussions with a senior Accenture employee concerning Poley's title, potential work assignments and compensation at Accenture, which topics reflected the mutuality of

³ The key operating principle is mutuality of interest. Where a public employee and a person or organization have scheduled a meeting to discuss the availability of a position and the employee's qualifications for that position, the employee will be regarded as negotiating for prospective employment with that person or organization. *See EC-COI-82-8* (where an employee affirmatively responds to an inquiry from a prospective employer and meets with the employer, the employee is negotiating for future employment). Where there is a mutuality of interest between a public employee and a prospective employer for a particular position, the employee's loyalty may become divided between the public interest and personal interest when dealing with matters affecting the prospective employer's financial interests. In such situations, the employee must abstain from participating in these matters unless and until the employee receives from his or her appointing official written permission to participate. *See Advisory 90-1: Negotiating for Prospective Employment.*

interest between Poley and Accenture. Poley had previously emailed his resume to Accenture in December 2009.

50. Poley participated in the creation of the Analytics Unit after April 24, 2010, by continuing to be the executive sponsor of the Analytics Project and by his significant involvement in the May 2010 proof of concept meetings.

51. Therefore, by his actions as the COO for MassHealth as described above, Poley participated as a state employee in a particular matter in which to his knowledge Accenture, a business organization with whom he was negotiating for prospective employment, had a financial interest. Each time he did so, Poley violated G.L. c. 268A, § 6.

52. According to Poley, he believed that he could seek employment with Accenture while at MassHealth because UMass, without Poley's involvement, would award the Analytics Contract. Poley was mistaken in this belief. As discussed above, the ongoing determination as to whether to create an Analytics Unit involved various stages, but was one integrated particular matter. Consequently, once Poley began negotiating for employment with Accenture, he was precluded by § 6 from participating as a Mass Health employee in that particular matter, including being involved in any stage of the determination to create the Analytics Unit occurring prior to the award of the Analytics Contract.

Section 5(a)

53. Section 5(a) of G.L. c. 268A prohibits a former state employee from receiving compensation directly or indirectly from anyone other than the Commonwealth

or a state agency in connection with any particular matter in which the Commonwealth or a state agency is a party or has a direct and substantial interest, and in which he participated as a state employee while so employed.

54. Poley became a former state employee when he left his position as the MassHealth COO on August 12, 2010.

55. The determination as to whether to create an Analytics Unit was a particular matter.

56. The Commonwealth, as well as MassHealth, were both parties to and had a direct and substantial interest in the determination as to whether to create the Analytics Unit.

57. Poley participated as the MassHealth COO in the decision to create the Analytics Unit.

58. Between September 2010 and November 2010, Poley worked as an Accenture employee on the Analytics Contract, providing insight and advice to other Accenture employees working on the Analytics Contract. Poley received compensation for this work from Accenture.

59. Poley's work on the Analytics Contract was in connection with the same particular matter in which he had participated as a MassHealth employee, i.e., the decision to create the Analytics Unit, since the Analytics Contract was essential to the planning and ultimate construction of the Analytics Unit.

60. By receiving compensation from Accenture for his guidance and advice to the Accenture employees working on the proposed or awarded Analytics Contract,

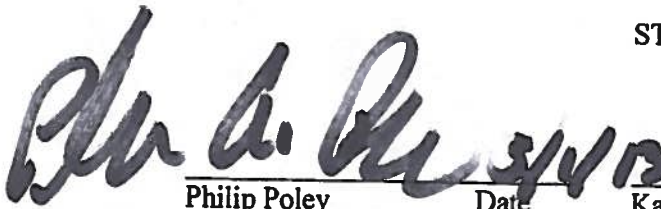
Poley received compensation from someone other than the Commonwealth in connection with a particular matter in which the Commonwealth or a state agency was a party and/or had a direct and substantial interest, and in which matter Poley had participated as a state employee. Therefore, Poley repeatedly violated § 5(a).

In view of the foregoing violations of G.L. c. 268A by Poley, the Commission has determined that the public interest would be served by the disposition of this matter without further enforcement proceedings, based on the following terms and conditions agreed to by Poley:

- (1) that Poley pay to the Commonwealth of Massachusetts, with such payment delivered to the Commission, the sum of \$25,000 as a civil penalty for repeatedly violating G.L. c. 268A, §§ 5(a), 6 and 23(b)(3); and
- (2) that Poley waive all rights to contest, in this or any other administrative or judicial proceeding to which the Commission is or may be a party, the findings of fact, conclusions of law and terms and conditions contained in this Agreement.

By signing below, Philip Poley acknowledges that he has personally read this Disposition Agreement, that it is a public document, and that he agrees to all of the terms and conditions therein.

STATE ETHICS COMMISSION


Philip Poley Date 3/1/13


Karen L. Nober Date 6/5/13
Executive Director