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July 17, 2009

William Hobbs
Deputy Secretary of State
Colorado Department of State
1700 Broadway, Suite 250
Denver CO 80290

Re: July 22, 2009 Rulemaking Concerning Proposed Amendments to Campaign
and Political Finance Rules, 8 CCR 1505-6

Dear Mr. Hobbs,

This firm represents the Colorado Medical Society. We write to request that the Department use the above referenced rulemaking to clarify that the definition of a “sole source contract” as used in Colorado Const., Art. XXVIII, §2(14.4), does not include contracts for disaster preparedness with statewide professional organizations.

The Colorado Medical Society is a not-for-profit organization whose nearly 7,000 members include the majority of physicians practicing in Colorado. As the largest organization of physicians, residents, and medical students in Colorado, the Society’s mission is to promote the science and art of medicine, the betterment of public health, and the welfare of the medical profession and the patients it serves.

In December 2006, consistent with its mission of promoting public health and patient welfare, the Colorado Medical Society entered a contract with the Department of Public Health and Environment for disaster preparedness. The contract, which is in excess of \$100,000, is funded completely by federal dollars. The contract was extended by amendment and is set to end August 8, 2009. The Medical Society is considering whether to renew the contract for another term. Unfortunately, confusion about the applicability of Amendment 54 to the Medical Society and its leadership has called into question the propriety of extending the contract.

Under the contract, the Medical Society is tasked with educating Colorado physicians on protocols in case of a pandemic and implementing plans for themselves, their families, and their patients. The contract contemplates physicians to be part of the community response and surge capacity preparedness, including volunteering, in response to an event. As part of its performance under its contract, the Medical Society has established local, regional, and statewide partnerships and coalitions; conducted education; and disaster drills.

Plainly, the work of the Medical Society and other organizations in disaster preparedness is essential to the continued security and health of Coloradans. Nonetheless, the implications of the Agreement in light of Amendment 54 cause concern for the organization, its leadership, and their immediate family members.

We are aware of the June 23, 2009 Denver District Court ruling by Judge Lemon in *Dallman et. al v. Ritter and Gonzales* (09CV1188)(consolidated with *Ritchie et. al. v. Ritter and Gonzales* (09CV1200)) granting a preliminary injunction and suspending enforcement of Amendment 54. Absent a permanent injunction, however, uncertainty for the future remains. Accordingly, the Medical Society requests that the Department clarify that disaster preparedness contracts with statewide professional organizations are not "sole source contracts." To effect this clarification, we propose the following addition to the proposed rule contained in 8 CCR 1505-6:

1.16 A "SOLE SOURCE GOVERNMENT CONTRACT", AS DEFINED IN ARTICLE XXVIII, SECTION 2(14.4), DOES NOT INCLUDE A CONTRACT FOR WHICH THERE IS NO LEGAL REQUIREMENT OR AUTHORITY FOR A COMPETITIVE BIDDING PROCESS, SUCH AS (BUT NOT BY WAY OF LIMITATION) THE FOLLOWING:

1.16.1 A CONTRACT AWARDED TO A UTILITY THAT HAS BEEN GRANTED AN EXCLUSIVE RETAIL SERVICE TERRITORY BY THE COLORADO PUBLIC UTILITIES COMMISSION THROUGH A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY.

1.16.2 A PROVIDER PARTICIPATION AGREEMENT ENTERED INTO BY AND BETWEEN A PROVIDER WITH A CURRENT COLORADO MEDICAL ASSISTANCE PROGRAM PROVIDER ID NUMBER AND THE COLORADO DEPARTMENT OF HEALTH CARE POLICY AND FINANCING.

1.16.3 A DISATER PREPAREDNESS AGREEMENT ENTERED INTO BY AND BETWEEN A STATEWIDE PROFESSIONAL ORGANIZATION AND THE COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT.

Because statewide disaster preparedness planning requires involvement of statewide organizations, competitive bidding by three entities is not always feasible. This is because there is typically only one or two statewide organization for the majority of health care professions and facility types. Although the state may solicit competitive bids, if fewer than three organizations qualify, application of Amendment 54 prohibitions is unclear. Additionally, the implications of federal funding are also unclear. Such ambiguity is

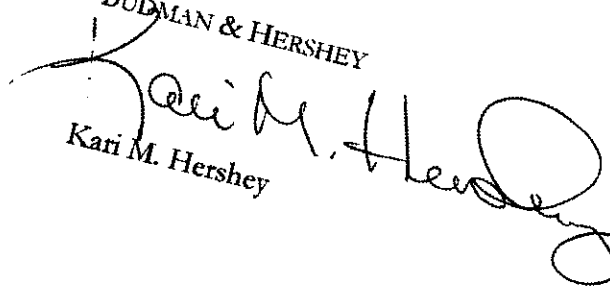
concerning in light of Amendment 54 provisions for civil lawsuits and administrative sanctions.

While the recent District Court ruling by Judge Lemon temporarily enjoining enforcement of Amendment 54 offers the Medical Society and its leadership some comfort, the long term outcome of the case may not be known for years. Accordingly, clarifying this issue as part of the upcoming rulemaking is vital.

Please let me know if I can provide any additional information that may be helpful to the Department's evaluation of this issue.

Sincerely,

BUDMAN & HERSHEY

A handwritten signature in black ink, appearing to read "Kari M. Hershey". The signature is fluid and cursive, with a large loop at the end of the last name.

Kari M. Hershey