

**ADOPTED BY THE COMMITTEE ON ETHICS ON DECEMBER 20, 2012**

**112TH CONGRESS, 2ND SESSION  
U.S. HOUSE OF REPRESENTATIVES  
COMMITTEE ON ETHICS**

**IN THE MATTER OF ALLEGATIONS RELATING TO REPRESENTATIVE  
SHELLEY BERKLEY**

**DECEMBER 20, 2012**



Mr. BONNER from the Committee on Ethics submitted the following

**REPORT**

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ONE HUNDRED TWELFTH CONGRESS

**U.S. House of Representatives**

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December 20, 2012

The Honorable Karen L. Haas  
Clerk, U.S. House of Representatives  
Washington, DC 20515

Dear Ms. Haas:

Pursuant to clauses 3(a)(2) and 3(b) of rule XI of the Rules of the House of Representatives, we herewith transmit the attached Report, "In the Matter of Allegations Related to Representative Shelley Berkley."

Jo Bonner  
Chairman

Sincerely,

Linda T. Sánchez  
Ranking Member



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**R E P O R T**

In accordance with House Rule XI, clauses 3(a)(2) and 3(b), the Committee hereby submits the following Report to the House of Representatives:

**I. INTRODUCTION**

On December 20, 2012, the Committee convened for the purpose of considering the Report of the Investigative Subcommittee (ISC) in this matter, which the ISC adopted on Thursday, December 13, 2012. This Report memorializes the Committee's conclusions based on the ISC Report.

The Committee agrees with the findings and the conclusions of the Investigative Subcommittee, which were reached following a thorough five-month investigation. Specifically, the Committee finds that Representative Berkley violated House rules and other laws, rules, and standards of conduct by improperly using her official position for her beneficial interest by permitting her office to take official action specifically on behalf of her husband's medical practice. The Committee also finds that Representative Berkley did not, however, violate House rules and other laws, rules, and standards of conduct by dispensing special favors or privileges to her husband, Dr. Lawrence Lehrner, or with respect to her husband's contact with her office on behalf of third parties. Finally, the Committee agrees with the ISC that the evidence did not sufficiently demonstrate a violation of House Rules or other laws, rules, and standards of conduct related to Representative Berkley's activities on behalf of the kidney transplant center at University Medical Center in Las Vegas, Nevada (UMC).

Accordingly, the Committee hereby adopts the ISC's Report, which we have transmitted as an appendix hereto. The Committee has concluded that no further action is warranted in this matter and considers it closed.

## II. PROCEDURAL BACKGROUND

In early 2012, following media reports alleging that Representative Berkley had improperly used her position in a manner that benefited her husband's financial interest, the Committee authorized an inquiry into the allegations pursuant to Committee Rule 18(a). On February 9, 2012, after that inquiry had already begun, the Committee received a referral from the Office of Congressional Ethics (OCE), specifically recommending further review of allegations that Representative Berkley had violated House rules and standards regarding conflicts of interest by taking official action on behalf of UMC to prevent the United States Centers for Medicare and Medicaid Services (CMS) from revoking UMC's kidney transplant program's Medicare approval.

Based on the results of the Committee's 18(a) investigation, it voted unanimously on June 29, 2012, to empanel an ISC. The ISC met on 16 occasions and interviewed nine witnesses, including current and former staff of Representative Berkley, current and former officials at executive branch agencies including the Department of Veterans Affairs (VA) and CMS, the former CEO of UMC, and Representative Berkley's husband. The ISC issued three subpoenas for the collection of documents, resulting in the production of over 108,000 pages of materials. On December 4, 2012, Representative Berkley voluntarily appeared before the ISC and answered questions under oath. In advance of her appearance, Representative Berkley, through counsel, submitted a letter and additional documentation relevant to the ISC's inquiry.

On December 13, 2012, the ISC voted to issue its Report, finding that Representative Berkley had violated House Rules and other laws, rules, and standards of conduct with respect to some, but not all, of the allegations it had investigated. The ISC did not believe that a sanction requiring the action of the House of Representatives was warranted in this case.

Pursuant to House Rule XI, clause 3(a)(2), which provides that the Committee may report to the House its findings and conclusions for final disposition of investigative matters only after "notice and hearing," the Committee provided Representative Berkley with a copy of the ISC Report on December 18, 2012, and invited her to appear at a Committee hearing on December 20, 2012. After informal discussions with Committee staff in which Representative Berkley shared her perspective, she declined the Committee's invitation to appear at the hearing.

## III. FINDINGS AND CONCLUSIONS

The Committee voted unanimously to release this public Report finding that Representative Berkley violated House Rules and other laws, rules and standards of conduct governing conflicts of interest where she permitted her office to take official action specifically on behalf of her husband's practice pertaining to monetary collections by her husband's practice from government agencies. Specifically, in four instances from April 2008 through December 2010, Dr. Lehrner contacted Representative Berkley's office on behalf of his practice, Kidney Specialists of Southern Nevada (KSSN), regarding issues KSSN was having with claims filed with VA, Medicare, or Medicaid. Dr. Lehrner often referenced specific dollar amounts in question that he believed those agencies owed to KSSN, and had not paid either through delays in the billing process or other problems with the agencies. Representative Berkley and her staff

took actions in response to these issues to assist in KSSN obtaining payment. Because such actions caused “compensation to accrue to the beneficial interest” of Representative Berkley, the Committee finds that they violated House Rule XXIII, clause 3; and because such actions resulted in a benefit to Representative Berkley “under circumstances which might be construed by reasonable persons as influencing the performance of [her] governmental duties,” the Committee finds that they violated Section 5 of the Code of Ethics for Government Service. The ISC, in Part V.B of its Report, engaged in a fulsome discussion of these rules and the applicable precedent, and meticulously applied those standards to the facts in question.

The ISC also noted a number of facts that, in the opinion of the Committee, provide context for the disposition of these violations. First, the Committee noted that there was no evidence that Representative Berkley acted with the intent to unduly enrich herself. Representative Berkley had a legitimate concern, raised at the time that these issues were ongoing, that failures on the part of government insurers to reimburse providers in a timely fashion might result in the providers opting not to see patients insured by those programs. During a House Committee on Veterans’ Affairs hearing in which Representative Berkley raised the issue of delayed payments to her husband’s practice, Representative Berkley noted, “talk about people not enlisting and volunteering to serve this Nation. If these doctors don’t get paid...[y]ou are not going to get any doctors treating these veterans when they get home, especially those that are contracting with the VA.”<sup>1</sup> In fact, Representative Berkley herself noted in her testimony, “I got the earmark and the land for a new VA hospital, first new facility the VA built in 20 years.... My concern was my constituents, my veterans, and giving them the best possible services that we could.”<sup>2</sup> Representative Berkley noted that the opening of this facility, which included a full-time nephrology department, would result in her husband’s practice losing patients. In sum, Representative Berkley’s activities in the healthcare policy realm appear to have been motivated by factors wholly divorced from her family’s financial wellbeing.

Second, Representative Berkley testified credibly that she provided her husband with no assistance in seeking future benefits (as opposed to assisting with claims for services already rendered), and that the level of assistance was not unusual when compared to the assistance her office provided to other physicians. Ultimately, she was mistaken when she applied these facts to the ethics rules and determined that her course of action was proper, but the Committee takes note of the lack of any corrupt intent and believes that this mitigates the severity of the violations in question.

The Committee also agrees with the conclusion of the ISC that there is insufficient evidence to determine that Representative Berkley violated House Rules or other laws, rules, and standards of conflict governing conflicts of interest with respect to the UMC kidney transplant center. In late October 2008, Representative Berkley received a telephone call from Kathy Silver, then-CEO of UMC, a county hospital in Representative Berkley’s district. This sort of call is unremarkable in Member offices, and would have been unremarkable in this case as well, were it not for a contract between UMC and KSSN to provide services, some of which were related to the program in question. Once Ms. Silver made this telephone call to Representative

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<sup>1</sup> *Legislative Hearing on H.R. 2818, H.R. 5554, H.R. 5595, H.R. 5622, H.R. 5729, and H.R. 5730*, 110<sup>th</sup> Congress (2008) (statement of Representative Shelley Berkley, from Nevada’s 1<sup>st</sup> district).

<sup>2</sup> ISC Interview of Representative Shelley Berkley.



Berkley, the Nevada delegation engaged on the issue for approximately eight days, writing a letter to former CMS Acting Administrator Kerry Weems and making telephone calls (including one call between Mr. Weems and Representative Berkley). The Committee could not determine the precise consequences of the kidney transplant center's continued operations on KSSN's existing contract, and concluded that whatever those consequences, they did not factor into Representative Berkley's decision making at the time. In another case, with a different set of facts, the Committee might have reached a different conclusion on this matter, but ultimately it was unable to conclude that such contact constituted a violation. As stated by the ISC:

While the ISC has concerns about the appearance created by the renewal of KSSN's contract with UMC, and the fact that KSSN's bid proposal mentioned the intercession of the congressional delegation as a reason why its contract should be renewed, the ISC was simply unable to establish that Representative Berkley, when she participated in a delegation-wide effort to save a program which had a connection to her husband she did not fully understand, violated the conflict of interest rules. None of the above factors was in itself dispositive to the ISC's conclusion, and the ISC limits its findings to the facts of this case.<sup>3</sup>

The ISC recommended that the issuance of its Report should serve as a reproof of Representative Berkley for the violations described herein. The ISC was unable, however, to reach a consensus as to whether a formal letter of reproof should be issued to Representative Berkley. The ISC noted for the record that Representative Berkley was entirely cooperative with the investigation, and credits her testimony both in terms of candor, and in terms of her objective lack of malicious intent in violating the rules. The Committee, having reviewed the transcript of her testimony, concurs in that positive assessment of Representative Berkley's candor and cooperative nature. The Committee wishes to thank Representative Berkley for her forthright and proactive participation in this process.

The Committee accepts the recommendations of the ISC and adopts its report. In no small part based upon Representative Berkley's cooperative approach to this process and her candor, the Committee finds that no further action is necessary. Therefore, upon the submission of this report and the attachments thereto, the Committee considers this matter closed.

The ISC highlighted its own view, concurring in the view of the Committee in resolving the recent *Waters*<sup>4</sup> case, that the House should create much clearer guidance for the community and the public on conflicts of interest rules. The Committee certainly agrees with the ISC's recommendation, and believes the time has come to engage in comprehensive review of the House's conflicts standards so that they are clearer and more easily digested by the House community.

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<sup>3</sup> ISC Report at 45.

<sup>4</sup> See Comm. on Ethics, *In the Matter of Allegations Related to Representative Maxine Waters*, H.Rep. 112-690, 112<sup>th</sup> Cong. 2d Sess. (2012).

**IV. STATEMENT UNDER RULE XIII, CLAUSE 3(c) OF THE RULES OF THE HOUSE OF REPRESENTATIVES**

The Committee made no special oversight findings in this report. No budget statement is submitted. No funding is authorized by any measure in this report.