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ONE HUNDRED TWELFTH CONGRESS

U.S. House of Representatives

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STATEMENT OF THE CHAIRMAN AND RANKING MEMBER OF THE COMMITTEE ON ETHICS REGARDING REPRESENTATIVE SHELLEY BERKLEY

Pursuant to Committee Rule 7(g), the Chairman and Ranking Member of the Committee on Ethics (Committee) determined on December 20, 2012, to release the following statement:

In early 2012, the Chairman and Ranking Member of the Committee for the 112th Congress authorized Committee staff to conduct an inquiry pursuant to Committee Rule 18(a) into allegations that Representative Shelley Berkley improperly used her official position for her financial interest, dispensed special favors or privileges to her husband, and allowed her husband to contact her or members of her staff on behalf of a third party. On February 9, 2012, during the course of the Committee's independent investigation into the allegations, the Committee received a referral from the Office of Congressional Ethics (OCE) regarding allegations that Representative Berkley violated House rules and standards regarding conflicts of interest by taking official action on behalf of the University Medical Center of Southern Nevada (UMC) to prevent the Centers for Medicare and Medicaid Services (CMS) from revoking UMC's kidney transplant program's Medicare approval.

On June 29, 2012, based on information obtained during the Committee's initial investigation of this matter, the Committee unanimously voted to empanel an Investigative Subcommittee (ISC) to investigate the allegations. During the course of its investigation, the ISC met on 16 occasions and interviewed ten witnesses, including Representative Berkley and her husband, Dr. Lawrence Lehrner. The ISC also issued three subpoenas for the collection of documents resulting in the production of over 108,000 pages of materials.

On December 13, 2012, the ISC voted to issue its Report to the full Committee, 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. Specifically, the ISC found that that the evidence did not 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 UMC, which was the subject of the OCE referral.

The ISC found, however, 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 practice. Finally, the ISC concluded that the evidence indicated that Representative Berkley did not 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.

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 ISC 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. 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 ISC noted for the record that Representative Berkley was entirely cooperative with the investigation, and credited 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.

Finally, the ISC noted in its Report the need for clearer guidance regarding conflict of interest rules to be provided to the House community. The ISC recommended that the conflict of interest rules be committed to a task force for review, and that the task force issue clear, thorough, and comprehensive rules pertaining to conflicts of interest that the House community can readily understand and abide by.

The Committee agreed with the ISC's Findings and Conclusions. Accordingly, on December 20, 2012, pursuant to Committee Rule 21(a) and 17A(c)(2), the Committee voted unanimously to adopt the ISC's Report and issue its own Report, along with OCE's Report and Findings regarding Representative Berkley, as well as Representative Berkley's response to the OCE referral.

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 its Report to the House, the Committee considers this matter closed.

The Committee wishes to thank the members of the Investigative Subcommittee for their hard work, dedication, and service to the Committee and to the House. Representative K. Michael Conaway served as the Chair of the Investigative Subcommittee, and Representative Donna F. Edwards served as the Ranking Member. Representatives Robert E. Latta and Adam B. Schiff also served on the Subcommittee. Each of these Members devoted substantial time and effort to this matter, and the Committee thanks each of them for their service.

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