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December 20, 1990

Ms. Maureen Lopes
Vice President, NJBIA
Co-Chair, HEAL
102 West State Street
Trenton, New Jersey 08608-7371

Advisory Opinion No. 12-1990

Dear Ms. Lopes:

The Commission has directed me to issue this response to your request for an advisory opinion received November 21, 1990, concerning a lobbying coalition under the name "HEAL" (Help Establish Affordable Health Care Laws). You have asked several questions concerning the applicability of the Legislative Activities Disclosure Act, N.J.S.A. 52:13C-18 et seq., (hereafter, the Act) to the activities of HEAL, and the Commission responses are set forth below in the order presented in your request:

Question #1

Since no HEAL funds are used for political contribution purposes, is HEAL, in fact, required to file the Annual Lobbying Report of Activities to the Election Law Enforcement Commission?

Response: The fact that none of the funds of HEAL are to be used for political contributions has no relevance to the question of whether or not HEAL is required to file annual financial disclosure reports of lobbying contributions and expenditures pursuant to N.J.S.A. 52:13C-22.1. Political contributions are subject to the reporting requirements of the Campaign Contributions and Expenditures Reporting Act, N.J.S.A. 19:44A-1. What determines whether or not HEAL has an obligation to file an annual lobbying report (Form L-1) is whether this associational entity can be viewed as a lobbyist receiving contributions or making expenditures for the purpose of direct, express or intentional communication with legislators or their staffs or the Governor or his staff undertaken for the specific purpose of effecting legislation, and whether those expenditures in the aggregate exceed \$2,500 in any calendar year; see N.J.S.A. 52:13C-22.1. In calculating whether the contributions received or expenditures made by HEAL exceed

\$2,500 in a calendar year, amounts raised and spent for the purpose of making political contributions subject to disclosure under the Campaign Reporting Act need not be included.

Question #2

If HEAL is subject to reporting, is each individual member association required to file or would one report from HEAL (completed by Alan Marcus) be satisfactory?

Response: The individual member associations that comprise HEAL are each subject to the requirement to file lobbying disclosure reports if any such member association is conducting lobbying activity that is not reflected in the lobbying reports filed on behalf of HEAL, and if that unreflected activity exceeds the \$2,500 calendar year threshold described above. Most of the organizations that you list in your letter as members of HEAL are currently filing annual reports with the Commission.

Question #3

If each member association and/or HEAL is required to file a report, is it important to identify the member companies that contributed to its association's payment to the Marcus Group?

Response: A lobbyist who receives contributions to influence legislation is required to report the source of any such contribution if the major purpose of the lobbyist is to engage in direct, express and intentional communication with legislators or the Governor or his staff for the specific purpose of effecting legislation; see N.J.A.C. 19:25-20.2 defining "Direct Communication," and see N.J.A.C. 19:25-20.6(a)(2) (copies enclosed). From the facts you have submitted, it appears that HEAL has retained a legislative agent, the Marcus Group, Inc., and that the member associations are providing contributions to HEAL to pay for the legislative agent services. To the extent these revenues are attributable to lobbying activities of HEAL's legislative agent, they are subject to disclosure on Form L-1 (1991), Part C: Summary of Lobbying Receipts. HEAL must determine what percentage of the amounts it collects are attributable specifically to lobbying, and the aggregate total must be reported on line 16. Further, if any member association's payment attributable to lobbying exceeds \$100.00 for the calendar year, the name, address and date of receipt of the payment must be reported on the schedule provided at line 18.

Very truly yours,

ELECTION LAW ENFORCEMENT
COMMISSION

BY: GREGORY E. NAGY
Legal Director

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Enclosures