EXECUTIVE SUMMARY

Introduction

Andrew J. Karpinski submitted his resignation as New Jersey Insurance Commissioner on September 13, 1995, the same day the Attorney General, through the Division of Criminal Justice ("DCJ"), issued a report of an investigation into his divestiture of a private insurance agency and the altering of Department of Insurance ("DOI" or "Department") records pertaining to his individual license. The DCJ investigation focused on potential criminal misconduct and did not purport to examine ethics violations or the system of ethics oversight and enforcement. The Attorney General concluded that Karpinski's actions did not warrant criminal charges.

Urged to examine the matter, the State Commission of Investigation ("SCI") determined that apparent failures of ethics protections justified a separate and distinct probe. The goal was to discover the extent of any ethics deficiencies arising from the Karpinski matter and to discern any systemic changes that might be necessary or desirable. The SCI did not intend to review the conclusions of the criminal investigation.

The SCI began its investigation on September 20, 1995. Thirty-three individuals provided statements or testimony, and thousands of pages of documents from the DOI, the Executive Commission on Ethical Standards ("ECES") and various corporations were examined. In addition, the

SCI successfully defended legal challenges to its investigation and its subpoena powers brought by Karpinski and his spouse in the trial and appellate courts.

On September 28, 1995, at its first meeting following the issuance of the DCJ report, the ECES reinstituted its own investigation, which it had begun on May 26, 1995 but suspended in deference to the DCJ investigation. On May 24, 1996, the ECES released a report based upon its own investigation and information it had received from the SCI.

This report and that of the ECES reach significantly different conclusions on a number of important issues regarding the real and intended operation of New Jersey's current ethics compliance system for Executive Branch officials. The differences are specified where those issues are discussed in the text below. In addition, this report makes a number of substantive recommendations for extensive revisions of the ethics oversight and enforcement process.

The Key Findings

Ethics Oversight System

***** The Commission found that Karpinski's repeated personal failure over many months to comply with mandated ethics requirements was facilitated by an oversight and enforcement process so weakened by flaws as to become virtually meaningless. In essence, the system failed to prevent the top official of an important regulatory agency from deciding unilaterally that specific laws, regulations and department policies did not apply to him.

***** Until the SCI began its investigation, officials responsible for ethics oversight at various levels collectively failed to recognize the prohibitive impact of a controlling insurance statute which forbids a Commissioner of Insurance from holding any interest in a licensee of the Department from the beginning of his tenure. Instead, Karpinski was treated as though he were an official in an agency

without any special statute, rather than the head of a department overseeing a highly regulated industry and controlled by a special statute.

* Responsible officials failed at vital junctures to ask basic and appropriate questions concerning apparent ethical violations and conflicts of interest, questions that may have led to proper decisions about the timing of Karpinski's state employment, as well as other matters. No one, for example, discovered or questioned the improper use of Karpinski's individual insurance license by one of his agencies during the period of his public service.

* An effective and timely ethics review of Karpinski's actions was hampered by lack of coordination between the ECES and the DOI.

Executive Commission on Ethical Standards

* As the Executive Branch's primary ethics enforcement mechanism, the ECES is responsible for overseeing conflict of interest laws, ensuring compliance with departmental codes of ethics and enforcing financial disclosure requirements. In the Karpinski matter, however, the ECES did not do its job.

* The ECES failed repeatedly to make Karpinski adhere to a variety of ethics obligations, yet readily granted him months-long compliance extensions without a full appreciation of his actions.

* Even when it should have been evident that early decisions concerning Karpinski's ownership of insurance agencies needed to be made, the ECES did not focus on his actions relative to the divestiture of his insurance business until more than three and a half months after he took office.

Department of Insurance

* Interviews with DOI personnel and a thorough examination of internal procedures revealed a double standard in which ethics requirements applicable to rank-and-file employees were overlooked

for the Commissioner by his subordinates. As a result, Karpinski, whose conduct as the head of the Department was more likely than that of any other to influence the public interest, became the one DOI employee most likely to slip through the cracks of the existing ethics enforcement system.

* The DOI Code of Ethics was routinely ignored at the Commissioner's level throughout Karpinski's term. Although the insurance statute prohibits the Commissioner from having an interest in a DOI licensee, for example, Karpinski was nonetheless permitted to continue to own two licensed insurance agencies until approximately 10 months after becoming Acting Commissioner on March 3, 1994. Further, although it should have been rendered unusable by the Department, Karpinski's individual insurance producer license served as authority for insurance transactions arranged by one of his agencies.

Even after Karpinski had sold the agency and ceased to be an officer there, DOI records were altered with the Commissioner's complicity to change the deactivation date of his individual license. This enabled Karpinski's former agency -- then headed by his wife -- to sell or renew certain policies under his license for the two additional weeks which it took for Karpinski's wife to obtain sufficient license authority.

Financial Disclosure

* Karpinski's financial disclosure statements revealed that he provided incomplete and inaccurate information concerning his income and liabilities and his and his wife's positions. A lack of clarity in the current requirements for financial disclosure by Executive Branch officials contributed to these disclosure lapses. Karpinski's failure to disclose important information deprived the public and ethics enforcement officials of the opportunity to realize the extent to which his decisions as Commissioner might have impacted his private interests.

***** Karpinski was among those Executive Branch officials whose 1994 financial dis- closures were delayed when he took advantage of a blanket extension of filing deadlines, issued by the Attorney General, which altered the terms of Governor Whitman's Executive Order No. 2.

KEY EVENTS IN THE KARPINSKI CHRONOLOGY

1994

JANUARY	18	Governor Whitman's Executive Order No. 2, regarding ethics and financial disclosures by Executive Branch officials is issued and takes effect.
FEBRUARY	2	Governor appoints seven members of the Executive Commission on Ethical Standards (ECES), but one does not qualify and must be replaced.
	23	Prospective Insurance Commissioner nominee Andrew Karpinski informs Rita Strmensky, Executive Director of the ECES, that he intends to sell his interest in an insurance agency, Burkar Associates. Strmensky, in turn, grants Karpinski a 120-day period in which to accomplish the divestiture. The period is scheduled to expire on June 24, 120 days after Strmensky's confirmatory letter to Karpinski.
MARCH	3	Karpinski is formally named Acting Insurance Commissioner and nominated to be Commissioner. Shortly thereafter, he receives a copy of the Department of Insurance (DOI) Ethics Code.
	7	Attorney General Deborah Poritz issues memorandum setting forth a procedure for obtaining extensions of time to file financial disclosures on a case-by-case basis.
	11	Karpinski informs Governor by letter that he has "ceased involvement in the management or operation" of Burkar.
	23	Attorney General issues memorandum granting a blanket delay, until May 18, in the deadline for Executive Branch personnel to file financial disclosures. Recipients are advised to disregard the March 7 memorandum.
APRIL	27	Governor appoints the last member of the ECES and designates a Chair and Vice Chair.

MAY	2	Original deadline for filing Karpinski's first financial disclosure statement (if the Attorney General had granted both extensions authorized by Executive Order No. 2).
	12	Karpinski confirmed by State Senate as Insurance Commissioner.
MAY	18	Letter from Karpinski notifies DOI that Caroline J. Conboy has become Burkar's Vice President and Chief Operating Officer.
	18	Karpinski files his first financial disclosure statement.
	26	First ECES meeting of the new Administration; Karpinski matter not on the agenda.
JUNE	23	ECES holds its second meeting and for the first time discusses the Karpinski divestiture, four months after Strmensky's unilateral decision to grant Karpinski 120 days to divest. The ECES decides to grant an extension of the divestiture period until October 14.
	27	Karpinski revises his financial disclosure statement and forwards his original license to the ECES (retaining a copy at Burkar's office).
JULY	6	Karpinski is sworn in as Insurance Commissioner.
SEPTEMBER	10	Karpinski marries Conboy, the Vice President and Chief Operating Officer of Burkar. They had shared the same household since before Karpinski became Acting Commissioner.
OCTOBER	3	Strmensky asks Karpinski by letter to advise her on the status of the Burkar divestiture.
	14	Karpinski asks for an additional 90-days to conclude the divestiture.
	27	At Karpinski's request, the ECES grants a second extension of the divestiture deadline until January 12, 1995.
1995		
JANUARY	9	Burkar enters into an employment agreement with Conboy.
	9	Karpinski resigns as President of Burkar, but no one notifies the DOI that Burkar now lacks an officer with surplus lines authority.

	11	Karpinski and American Phoenix Insurance Agency, Inc. close the purchase of Burkar, effective January 1. The date of the purchase agreement is January 9.
JANUARY	12	At his request, Karpinski's license is cancelled in DOI computer records.
	17	Conboy and DOI employee Ruth Cunningham talk on the telephone about the need for Burkar to have an officer with surplus lines authority. After a conversation with Karpinski, Cunningham arranges to have Karpinski's license reinstated in DOI computer records.
	23	Letter from Karpinski and Conboy notifies the DOI that Karpinski has officially resigned as President of Burkar and that Conboy has been appointed President of the firm. An initial computer entry indicates January 12 as date of Karpinski's termination as an officer.
	26	Conboy passes licensing examination and obtains authority to sell surplus lines insurance.
FEBRUARY	3	DOI records are altered to show that Karpinski's license was cancelled on January 26, 1995, rather than on January 12, and that he was no longer an officer of Burkar as of January 26, rather than January 12.
MAY	12	Karpinski files a second financial disclosure statement.
SEPTEMBER	13	Karpinski announces he will resign effective October 12.

TEXT OF REPORT

SYSTEM FAILURE BEGAN WITH FORBIDDEN OWNERSHIP

For many years prior to becoming Insurance Commissioner, Karpinski owned all the stock of Burkar Associates, Inc. ("Burkar") and 50 percent of the shares of Apple Insurance Associates, Inc. ("Apple"). Both were insurance agencies operating under organization insurance producer licenses issued by the DOI. Effective January 1, 1995, about 10 months after he became Acting Insurance Commissioner, Karpinski transferred all stock in Burkar to American Phoenix Insurance Agency, Inc.

("American Phoenix"). He also sold all of the assets of Apple to American Phoenix and subsequently dissolved the corporation.

One must look, in part, to insurance law to determine the ethical obligations that accompany public service in the DOI. The controlling insurance statute, which at the time of these events was N.J.S.A. 17:1C-5,[1] forbids the Commissioner from having an interest in any licensee of the Department:

> Neither the commissioner nor any officer or employee of the department shall have any interest in or any dealings or transactions in any capacity with, any insurance company or other licensee under the jurisdiction of the department ....
>
> Any violation of this section shall be cause for the dismissal of the violator by the appointing authority having the power to remove the person involved.

Under the plain meaning of this law, Karpinski could not continue to own Burkar or Apple, both licensees of the DOI, after becoming Acting Commissioner and later Commissioner. The Commission encountered no state official who had questioned whether Karpinski complied with the statute.

Ethical responsibilities of public servants are, in general, determined substantially by the New Jersey Conflicts of Interest Law, N.J.S.A. 52:13D-12 to 27. That law is enforced for Executive Branch officials by the ECES. N.J.S.A. 52:13D-21. The ECES approves codes of ethics for each

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[1]The Department of Banking and Insurance Act of 1996, P.L. 1996, c. 45, effective July 1, 1996, repealed N.J.S.A. 17:1C-5; however, the repealed statute's salient provisions were incorporated into N.J.S.A. 17:1-2, which now reads as follows:

> [Underlined portions are provisions taken largely from N.J.S.A. 17:1C-5 and added to N.J.S.A. 17:1-2 by the new law.]
>
> a. ... No person shall be appointed commissioner who is in any way connected with the management or control of any corporation ... or licensee affected by [insurance laws], and the commissioner shall immediately be dismissed from office if at any time the commissioner becomes so interested. ...
>
> The commissioner shall devote full time to the performance of the duties of commissioner.
>
> b. Neither the commissioner nor any officer or employee of the department shall have any ownership of, interest in, or any dealings or transactions in any capacity with any ... insurance company or other entity ... licensed or regulated by the department ....
>
> Any violation of this section shall be cause for dismissal of the violator by the appointing authority.

department that must be promulgated by the commissioners in charge of those departments. N.J.S.A. 52:13D-23. An ethics code setting standards for officers and employees of a given agency is required to be "formulated with respect to the particular needs and problems of the agency ...." N.J.S.A. 52:13D-23(a).

Upon referral by or with the approval of the ECES, violations of an agency's code of ethics "shall be cause for removal, suspension, demotion or other disciplinary action by the State officer or agency having the power of removal or discipline." N.J.S.A. 52:13D-23(d). The ECES itself can initiate and hear complaints regarding violations of codes of ethics and the Conflicts of Interest Law, suspend guilty officials for up to a year, assess monetary penalties, and, in the case of "willful and continuous disregard" of statutory or ethics code provisions, bar a person from public office or employment for up to five years. N.J.S.A. 52:13D-21(h) and (i).

The DOI Code of Ethics that existed during Karpinski's tenure was promulgated by his predecessor.[2] In keeping with the statutory charge that each agency's code of ethics be "formulated with respect to [its] particular needs and problems," the DOI Code added to the general standards found in the Conflicts of Interest Law the prohibition of conflicts contained in insurance law at N.J.S.A. 17:1C-5.

The DOI Ethics Code stated at page 1:

> Moreover, N.J.S.A. 17:1C-5 further restricts the activities of Department officers and employees by prohibiting such persons from having any interest in or transactions with insurance companies or licensees regulated by the Department except for those transactions involving the performance of official duties or relating to a personal claim.

[2] That code was signed by the then-Insurance Commissioner on October 15, 1991. On October 24, 1991, a deputy attorney general advised the ECES that the code had been reviewed and found to be "in compliance with the Conflicts of Interest Law and other laws." Such an opinion must by law accompany any proposed ethics code submitted to the ECES for its approval. N.J.S.A. 52:13D-23(b). The code became effective when approved by the ECES on December 12, 1991. Id. A new DOI Code of Ethics, revised in February 1996 by Karpinski's successor, became effective with the ECES's approval on March 28, 1996. Unless otherwise stated, references in this report to the DOI's Ethics Code pertain to the code in effect during the time of Karpinski's public service.

In a further reference to the insurance law's special conflicts provision, the Ethics Code stated on page 2, "Questions concerning the application of N.J.S.A. 17:1C-5 and the Conflicts of Interest Law shall be addressed to the Department's Ethics Officer."[3] By way of additional emphasis, a separate, one-paragraph section at page 10 of the Code, entitled "OWNERSHIP OF AND TRANSACTIONS WITH INSURANCE COMPANIES AND LICENSEES," repeated: "No employee or officer shall have any interest in or engage in any transactions with any insurance company or other licensee which is regulated by the Department except in the performance of his duties."

Karpinski signed a form certifying that he had received a copy of the DOI Code of Ethics and understood that he was "responsible for reading" it and "subject to its provisions and restrictions." Although Karpinski did not fill in the date blank under his signature, David W. Hopkins, the Department's Manager of Human Resources, stated that he gave a blank form to Karpinski shortly after he became Acting Commissioner, and a signed form was returned to the Personnel Office.

In keeping with DOI routine, Hopkins said, he also gave Karpinski a blank Conflict of Interest Questionnaire when he first became Acting Commissioner.[4] Under the category "Outside Employment," the questionnaire asked DOI employees to provide information about businesses they owned or served as a corporate officer. The questionnaire also contained a place for the employee to certify that he had read the DOI Code of Ethics and that the statements in the questionnaire were "true, complete and correct to the best of my knowledge." According to Hopkins, Karpinski never returned a completed questionnaire to the Personnel Office.

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[3] The March 28, 1996 DOI Code of Ethics provides, "Questions arising under N.J.S.A. 17:1C-5 shall be referred to and resolved in consultation with the Attorney General's Office."

[4] The questionnaire, which became effective in July of 1990, contained no question asking if the new employee, or any member of his immediate family residing with him, owned an interest in any licensee subject to the DOI's jurisdiction. A questionnaire attached to the DOI's new Code of Ethics, which took effect on March 28, 1996, does contain such a question.

Karpinski also did not sign and return to Personnel a check list which required each employee to certify completion and return to Personnel of the Conflict of Interest Questionnaire. The check list in effect at the time contained, according to Hopkins, the following form of acknowledgement above the place for an employee's signature:

> I understand that I am responsible for reading the [DOI] Code of Ethics and that I am subject to its provisions and restrictions.

DOI personnel who may have been in a position to remind Karpinski of his obligation to come to the Department free of prohibited interests took no such responsibility upon themselves. Instead, they deferred to the ECES, thus opening a crack for Karpinski to slip through. Similarly, no member of the ECES, its staff or the Attorney General's Office closed the ethical breach by researching or consulting with DOI personnel concerning Karpinski's obligations and then bringing the issue to the fore. The deputy attorney general who advised the ECES when Karpinski took office told the SCI that he was never asked by the ECES or its staff to answer relevant questions or to conduct independent research.

Karpinski testified before the Commission that he believed he did read the DOI Ethics Code. He acknowledged that the Ethics Code contained three references to either the citation for or the actual language of N.J.S.A. 17:1C-5. But he nonetheless never asked the ECES, the DOI or the Attorney General for any written or verbal assurances that this key statute, which by its plain terms precluded his ownership of licensed agencies, would not govern his situation. Karpinski testified that he did not seek any private legal advice about the impact of the statute on his situation, nor did he address any questions concerning the statute to the Department's Ethics Officer, as provided by the Ethics Code.

Karpinski testified that, since he was active in the industry he was going to regulate, he looked to Rita L. Strmensky, Executive Director of the ECES, for direction regarding his ethical obligations. She was the sole person with whom he had such conversations. A note written by Strmensky during telephone conversations with Karpinski on April 21 and 22, 1994, reads:

> 17:1C-5 - Is your company in any way a licensee under the jurisdiction of the Dept.? Yes[.]

Karpinski claimed he did not recall a conversation in which the statute was raised. However, Strmensky recalled that in connection with a discussion of whether Karpinski could receive a payroll check from Burkar:

> I asked [Karpinski] if Burkar was licensed or under the jurisdiction of the Department, and he told me that it was. As I recall, he gave me the cite, "17:1C-5." I told him that he could not take salary checks from a business under the jurisdiction of the Department.

Despite having discussed N.J.S.A. 17:1C-5 relative to continuing compensation of Karpinski by Burkar, neither Strmensky nor Karpinski raised or dealt with the overall prohibition of the statute.

On page 5 of its May 24, 1996 report, the ECES minimizes the significance of N.J.S.A. 17:1C-5:

> It should be noted that Karpinski's business interests were not reviewed under each and every provision of the Conflicts of Interest Law and/or the DOI Code of Ethics as it was undisputed that his continued ownership of the insurance agencies represented a conflict of interest. The focus of all parties at that time was that divestiture would take place as soon as possible and that, in the interim, Karpinski would follow specific guidelines to avoid conflict situations.

As pointed out in detail below, the ECES itself never focused on anything relating to Karpinski until more than three and a half months after he had become Acting Insurance Commissioner. Anyone giving adequate consideration to his situation would have realized immediately that N.J.S.A. 17:1C-5

and the DOI Code of Ethics permit no leeway regarding possession of an interest in a licensee of the Department. Even a superficial reading of the Ethics Code would have revealed the existence of the statute controlling Karpinski's case. By its plain meaning, that statute prohibits an Insurance Commissioner from ever having an offending interest. It permits no transition period during which the possession of a prohibited interest may continue under "guidelines" of any sort.

ECES COULD NOT AND DID NOT DO ITS JOB PROPERLY

Each of the ECES's seven members is appointed by the Governor "from among State officers and employees serving in the Executive Branch." Each member serves "at the pleasure of the Governor during the term of office of the Governor appointing him ...." N.J.S.A. 52:13D-21(b). Thus, when the administration of a governor ends, the terms of all of that governor's appointees to the ECES end with it, and their service is concluded.

In determining how a controlling statute, as well as other requirements, could be overlooked, one need look no farther than the structure and functioning of the ECES, including the turnover of its entire membership at the beginning of each new administration. All the members joining the ECES in the early months of the Whitman Administration lacked experience in ECES tasks and were distracted by extremely difficult jobs elsewhere. They relied almost entirely, therefore, on the advice given to them by ECES staff. The members all served at the pleasure of a single appointing authority, the Governor, and they believed that she wanted to complete the staffing of her cabinet as soon as possible. These factors might help to explain why ECES members failed to raise some rather obvious questions, whose answers could have led to an understanding of how Karpinski's situation violated ethical constraints.

The ECES did not meet for the first time until more than four months after the beginning of the new administration. In Karpinski's case, consequently, the initial decisions on the divestiture of his agencies were made solely by the ECES's Executive Director, rather than by the members of the ECES as required by the ethics system.

Governor Whitman reconstituted the ECES with five cabinet officers and two subordinate officials from two other departments as follows:

Name & Title	Appointment Date	ECES Position
Linda M. Anselmini Commissioner of Personnel	February 2, 1994	Chair (as of 4-27-94)
Elizabeth E. Randall[5] then-Commissioner of Banking (now Commissioner of Banking & Insurance)	April 27, 1994	Vice Chair (as of 4-27-94)
Lonna R. Hooks Secretary of State	February 2, 1994	Member
Leo F. Klagholz Commissioner of Education	February 2, 1994	Member
Gualberto Medina Commissioner of Commerce & Economic Development	February 2, 1994	Member
Arthur Jay Eisdorfer Manager, Department of Transportation	February 2, 1994	Member
Alisha A. Griffin Assistant Administrator, Department of Human Services	February 2, 1994	Member

[5] Randall replaced Margaret E.L. Howard, who had been appointed on February 2, 1994. Howard never served because it was learned that she was a special state officer -- a member of the Merit System Board in the Department of Personnel -- rather than a state officer or employee as required by the Conflicts of Interest Law.

The five cabinet members had only recently assumed full-time positions of enormous responsibility when they were appointed to the ECES. Two of these, Klagholz and Medina, soon came to believe that the workloads in their departments would demand all of their attention, and they communicated that perception to the Governor's Office. Klagholz attended no more meetings after the ECES's second meeting in June 1994. He was replaced by Fred Lopez, an Assistant Commissioner in the Department of Labor, on November 9, 1994. Medina was replaced by Alan J. Steinberg, an Assistant Commissioner in Medina's department, on October 20, 1994. Eisdorfer, Griffin, Lopez and Steinberg also had to fulfill important responsibilities in their daily jobs.

On February 23, 1994, prior to his March 3, 1994 nomination to be Insurance Commissioner and simultaneous appointment to be Acting Commissioner,[6] Karpinski advised ECES Executive Director Strmensky over the telephone that he intended to sell his ownership interests in Burkar and Apple in accordance with the provisions of section III of Executive Order No. 2 (Whitman, January 18, 1994). Strmensky memorialized their conversation in a letter to Karpinski dated February 24, 1994. Although the letter noted that the ECES must determine whether a prospective state employee may retain a questionable interest, it effectively decided the issue for the ECES by failing to preclude Karpinski's public employment until the ECES could render a determination:

> Finally, we discussed the time period for divestiture. The [Executive] Order specifies that no State agency shall employ or appoint any person who holds an interest in a covered asset to a covered position unless the Executive Commission determines that the person may hold such an interest. As I explained to you, the Executive Commission has, under the Order that preceded Executive Order No. 2, granted reasonable extensions of the time period when circumstances have warranted such an extension. I would expect such a result in your situation if good faith efforts to dispose of the affected assets are in progress.

[6] Karpinski was confirmed by the Senate on May 12, 1994 and sworn on July 6, 1994.

The ECES did not, as a body, consider any aspect of Karpinski's situation until June 23, 1994, when it decided solely whether to extend the deadline for divestiture of Burkar and Apple beyond the initial 120-day period that had been granted by Strmensky without the ECES's endorsement. Strmensky had advised the ECES commissioners of Karpinski's obligation to divest and the fact that he had indicated he was making progress in selling the agencies. She had also pointed out to the commissioners that Karpinski "had in place a system of handing off to his Deputy Commissioner any matters that come up that might involve either of the agencies." Randall, Hooks, Klagholz, Eisdorfer and Griffin voted to extend the time for divestiture to October 14, 1994. Anselmini and Medina were not present. Although his "vote" was not official because of his absence, Medina stated in a July 6, 1994 memorandum to Strmensky:

> While I will vote in favor of extending the divestiture period to October 14, 1994, I would also be amenable to considering a reasonable extension after October 14 if [Karpinski] cannot complete the sale by then.
>
> If we wish to attract persons with Commissioner Karpinski's credentials to State Government, we must allow them a smooth transition from private to public life.

On October 3, 1994, Strmensky wrote to Karpinski, "Because I expect to receive inquiries from the press on or about October 14, I would appreciate your advising me as to the status of the sales of the two insurance agencies." After speaking to Strmensky on the telephone, Karpinski confirmed in writing on October 14, 1994 that he would require an additional 90 days to conclude the divestiture. Advised by Strmensky that the sale of the agencies was actively proceeding, the ECES granted a second extension of the divestiture period at its October 27, 1994 monthly meeting. Thus, the final divestiture target date became January 12, 1995. The vote had again been unanimous, with

Anselmini, Randall, Eisdorfer, Griffin and Steinberg present and voting and Klagholz and Hooks absent.

In making its decisions about Karpinski, the ECES did not consider the impact of the New Jersey Conflicts of Interest Law on this situation. Only the departments of Insurance and Banking were regulated by N.J.S.A. 17:1C-5. That statute prohibited the Commissioner from retaining an interest in any department licensee. The other departments, therefore, did not have to incorporate provisions consistent with that law into their ethics codes. Nonetheless, all ethics codes promulgated under the Conflicts of Interest Law must conform to certain "general standards" listed at N.J.S.A. 52:13D-23(e)(1) to (8).

The general standard most pertinent to Karpinski's ownership of Burkar and Apple while simultaneously heading the DOI is N.J.S.A. 52:13D-23(e)(1), which reads:

> No State officer or employee ... should have any interest, financial or otherwise, direct or indirect, or engage in any business or transaction or professional activity, which is ***in substantial conflict with the proper discharge of his duties in the public interest***. [Emphasis added.]

The DOI Code of Ethics expanded on this general standard at IIIc on page 5, under the heading "OUTSIDE EMPLOYMENT AND INTERESTS":

> No officer or employee shall have any direct or indirect interest, financial or otherwise, which is in substantial conflict with the proper discharge of his duties or interferes with the operation of the Department.

The ECES never, as a body, deliberated or decided whether Karpinski's continuing ownership of Burkar and Apple after becoming Acting Commissioner was "in substantial conflict with the proper discharge of his duties." Instead, the conditions imposed on Karpinski to ensure that his ownership of

agencies as Commissioner would not entangle him in conflicts of interest were decided unilaterally by ECES Executive Director Strmensky.

In her February 23, 1994 telephone conversation with Karpinski, Strmensky made the decision to allow him to continue to own Burkar and Apple for up to 120 days, provided he would not involve himself in their management or operation and would delegate to other departmental officials any decisions on matters affecting the agencies. This arrangement was embodied in the February 24, 1994 letter from Strmensky to Karpinski. Four months later, the ECES met to consider whether to extend the divestiture period; but it had never officially decided that the arrangement, in all its particulars, was acceptable in the first place. A ruling or determination by the ECES takes place at a scheduled meeting only after its members have considered the pertinent facts and circumstances, had an opportunity to ask questions and make comments, and voted.

By focusing only on the time frame for continuation of the arrangement, the ECES acted as though it had concluded that Karpinski's continued ownership of Burkar and Apple would not constitute a "substantial conflict with the proper discharge of his duties." But the ECES never deliberated that issue and never expressly held that Karpinski was entitled to such a conclusion de jure. The arrangement had been presented to the ECES as fait accompli, and no member of the ECES had questioned whether it might violate any general standard of the Conflicts Law, the DOI Ethics Code, insurance law or the pertinent executive order.

The ECES was responsible for ensuring, in accordance with Executive Order No. 2, that Karpinski's assumption of office would not result in forbidden conflicting interests. Building on the ethics orders of the previous administration, Order No. 2 was issued and made effective by Governor Whitman on January 18, 1994, a month and a half before Karpinski became Acting Commissioner and

more than four months before the ECES's first meeting. The Order, at Section I5, expressly gives to the ECES the "primary responsibility for assuring [its] proper administration and implementation ...."

As a prospective state employee who would have been required by Executive Order No. 2 to submit a financial disclosure statement to the ECES, as well as the holder of "any interest in any closely-held corporation," Karpinski could not have been employed by the DOI unless the ECES had first reviewed that interest and determined that he could retain it. Executive Order No. 2 at IIIB2. The ECES never made an official ruling, however, on the initial question of whether Karpinski could retain his ownership interests in Burkar and Apple after becoming Acting Commissioner. Instead, it adopted Strmensky's de facto approval of continued ownership by failing to question it. By allowing Karpinski to retain during some portion of his tenure as Commissioner the interests which it ultimately required him to divest, the ECES granted to him more than the Executive Order permitted.

Commission investigators asked Secretary of State Lonna Hooks, a member of the ECES, whether she ever considered that under Executive Order No. 2 different standards might apply to Karpinski as a prospective state employee rather than an existing employee. She acknowledged that the order applied to cabinet officials but observed that it was "not practical to concentrate on [its] technical requirements" because the ECES members "were concerned about meeting the Governor's need to have [Karpinski] on board soon." She added that it "was not practical to let the technical requirements dictate what could be done."

As a deliberative body, the ECES was in no position to render a decision on Karpinski's situation -- or anyone else's -- until its first meeting on May 26, 1994. By that time, Karpinski had been in office for nearly three months, and the initial 120-day divestiture period that had been granted to him by Strmensky had not yet expired. Under Executive Order No. 2 (IIIB2), after a person seeking

employment or appointment discloses a questionable interest, the ECES "shall render a determination no later than 30 days after receiving such disclosure, or at its next regularly scheduled meeting."[7] However, instead of calling upon the ECES to ratify at its first meeting Strmensky's arrangement with Karpinski, the staff scheduled the first opportunity for the ECES to consider the Karpinski situation for its second monthly meeting on June 23, 1994. This roughly coincided with the expiration of the 120-day period, which Strmensky measured from February 24, 1994, the date she first confirmed for Karpinski in writing his divestiture obligation.

In its May 24, 1996 report, the ECES concludes at page 4 that it did not need to determine whether Karpinski could retain his interests in Burkar and Apple "because there was never any question that Karpinski must divest himself of the insurance agencies." Under the express terms of IIIB2 of Executive Order No. 2, however, Karpinski could not enter into employment with the DOI if he retained the Burkar and Apple interests without the ECES's permission.

Although the ECES concluded at page 4 of its report that there is "ambiguity with respect to whether a prospective employee is required only to disclose a business interest before employment or must wait for the [ECES's] decision before employment begins," in fact, no such ambiguity is apparent. No one with such an interest may be employed unless the ECES decides he may retain the interest. Obviously, this process gives the ECES itself -- not its staff -- a pre-employment opportunity to impose conditions on the retention of any interest.

Furthermore, Executive Order No. 2 does not permit the ECES to delegate the ability to grant permission to retain an interest to its staff. Instead of following the procedure called for by the

[7] Although this provision does not expressly state that it means "whichever occurs earlier -- 30 days or the next meeting," it is clear that its purpose is to require expeditious decisions by the ECES so as to allow timely employment of those without conflicted interests and to give expeditious guidance to those with conflicted interests, as well as to those who would employ them.

Executive Order, the ECES, in effect, ratified by acquiescence Strmensky's decision to allow Karpinski to retain his ownership of Burkar and Apple.

In its May 24, 1996 report, the ECES notes at page 4 that after receiving staff summaries and recommendations for several hundred business interest disclosures under Executive Order No. 95 (issued on June 10, 1993 during the Florio Administration), the ECES as then constituted decided on July 28, 1993 to delegate "to the staff all decision-making regarding whether a business interest could be retained or must be divested." But the vast majority, if not all, of such interests were held by employees already on the payroll, rather than by prospective employees. In the case of existing employees, constitutional considerations would compel the State to refrain from requiring divestiture forthwith. Thus, in those cases the ECES simply recognized that it would be bound to permit at least the 120-day period for divestiture set forth in the Executive Order. Such considerations would not permit, however, delegation to the staff of decisions involving prospective employees for whom Executive Order No. 2 specifies no divestiture period. Rather, if a future state employee were to be allowed to retain a questionable interest for any period because his presence in government were deemed essential, it would be up to the ECES itself, not its staff, to weigh competing concerns and to decide what conditions might lessen or eliminate any conflict.

In concentrating solely on determining how much time it should allow Karpinski to end his ownership of Burkar and Apple, the ECES also failed to consider other important issues that it was required to decide under Executive Order No. 2. For example, in determining the divestiture period the ECES used the 120 days applicable solely to existing employees possessing prohibited outside interests (IIIB1). But no divestiture period is specified for prospective employees, such as Karpinski. Executive Order No. 2 defines prospective employees as those who take office after the issuance of the

Order -- January 18, 1994. Since he took office one and a half months after the Order was issued, Karpinski was clearly a prospective employee.

In its May 24, 1996 report, the ECES concludes at page 4, "It is also unclear as to how and when the divestiture time frame fits." But no period of divestiture is stated for prospective employees holding forbidden interests. Even if one were to assume that the Executive Order implicitly allows conditions to be imposed that would sufficiently divorce a new employee from a private interest to permit him to retain it for some period, those conditions would have to be imposed solely by the ECES in exercising its responsibility to review an interest and to decide whether it might be retained.

Although it never cited an official basis for permitting Karpinski to continue his ownership of Burkar and Apple after commencement of his state employment, the ECES's eventual acquiescence in **some** period of ownership pending divestiture was consistent with the spirit of the following provisions that partially explain the intent behind the Conflicts of Interest Law and Executive Order No. 2. The Legislature declared in the Conflicts Law that it "recognized that under a free government it is both necessary and desirable that all citizens, public officials included, should have certain specific interests in the decisions of government, and that the activities and conduct of public officials should not, therefore, be unduly circumscribed." N.J.S.A. 52:13D-12(c). Moreover, Executive Order No. 2 states in its preamble that:

> [I]t has been previously recognized by the [ECES] that members of the Executive Branch of State Government are often selected to act in policy making capacities because of the experience and expertise they have acquired in certain areas, but that such experience may cause these persons to have financial interests that would constitute an actual or potential conflict of interest or the appearance of such a conflict.

Thus, the ECES rationalized allowing Karpinski to retain for **some** period his ownership interests, so long as satisfactory conditions protected the public interest in conflict-free decisions. The

minutes of the ECES's June 23, 1994 meeting note that Karpinski "has had in place a system of handing off to his Deputy Commissioner any matters that come up that might involve either" Burkar or Apple. Furthermore, in a March 11, 1994 letter Karpinski also assured Governor Whitman, "Beginning on March 3, 1994, I ceased involvement in the management or operation of" Burkar and Apple.

Nonetheless, any rationale justifying the hiring of an experienced person, despite industry entanglements, would still have contradicted the unconditional statutory prohibition against an Insurance Commissioner having an interest in a DOI licensee. But the ECES commissioners never focused on this absolute prohibition, and no one called it to their attention when they were asked to make decisions pertaining to the time period for Karpinski's divestiture.

By the end of the process, the ECES had allowed Karpinski 315 days (from March 3, 1994 to January 12, 1995) in which to achieve divestiture.[8] The ECES did not address the threshold issue of whether it could allow **any** post-employment period of divestiture for prospective employees, such as Karpinski. That is, it did not consider whether Karpinski, who was not already a state employee as of the effective date of the Order, should be treated as an existing employee entitled to 120 days to divest (IIIB1) or as a prospective employee, who could not enjoy any postponement of divestiture under Executive Order No. 2 (IIIB2).

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[8] Seven more days were allowed if the period is measured from "the date of notification," as called for by Executive Order No. 2 at IIIB1. Strmensky's February 24, 1994 letter to Karpinski served as notification from the ECES that he could not retain his ownership of Burkar or Apple "consistent with the standards set forth in the Conflicts of Interest Law" and Executive Order No. 2. In his March 11, 1994 letter to Governor Whitman, Karpinski stated that he expected his ownership interests to terminate "within 120 days of confirmation by the Senate," which occurred on May 12, 1994. In her June 23, 1994 memorandum to the ECES, Strmensky advised, "Commissioner Karpinski has been under the impression that the 120-day divestiture period began on May 12 even though his notification in writing of the application of the Executive Order to his situation was dated February 24." Strmensky also pointed out that Karpinski was seeking an extension of the divestiture period because of "complicated details surrounding the sale ...." Since the ECES granted Karpinski's initial request for an extension -- to October 14, 1994 -- the question of the beginning date of the initial 120-day period became moot.

Even if the 120-day period of IIIB1 had applied, the Executive Order precludes extensions such as those granted to Karpinski. The Order states at IIIF1, "All required divestitures ... must occur within the time periods prescribed" in the Executive Order. Nonetheless, the ECES approved two extensions for Karpinski and regularly grants more time than 120 days for other state employees who have been required to divest themselves of interests.

The ECES maintains that in granting such extensions it has merely recognized that ownership transfers are often difficult and time-consuming. It has also followed precedent established by the ECES which operated during the Florio Administration and heeded its Counsel's advice that it could exercise such discretion. But extensions should have been allowed by the ECES only if permitted by executive order. In any case, no other instance of either such an extended divestiture period or any extension being granted to a prospective employee, other than Karpinski, has been discovered.

IMPROPER USE OF KARPINSKI'S LICENSE

In order to sell insurance policies in New Jersey, an insurance producer organization must have its own license with authority for each type of insurance sold and at least one active officer with like authority under an individual producer license. N.J.S.A. 17:22A-2, 3, 4 and 6e. The five authorities -- each with its own testing and educational requirements -- available to insurance producer licensees are life, health, property/casualty, surplus lines and title. N.J.S.A. 17:22A-10a.[9]

Karpinski held an insurance producer license with authority to sell health, life, property/casualty and surplus lines insurance. During the period that Karpinski served as an active officer, Burkar could

[9] "No person shall act as an insurance producer or maintain or operate any office in this State for the transaction of the business of an insurance producer, or receive any commission, brokerage fee, compensation or other consideration for services rendered as an insurance producer without first obtaining a license from the commissioner granting authority for the kind of insurance transacted. No insurance company or licensee shall pay any commission, brokerage fee, compensation or other consideration to any unlicensed person for services rendered in this State as an insurance producer except for services rendered while licensed." N.J.S.A. 17:22A-3. A "person" is defined by the law as including a "corporation ... or other legal entity" as well as "any individual." N.J.S.A. 17:22A-2o.

thus sell all types of insurance for which he held individual licensing authority, so long as its organization license had the same authorities. If Karpinski were to depart from Burkar and become "inactive," the organization could not sell a particular type of insurance unless it had another officer with individual authority for that type. Burkar's organization insurance producer license had health, life, property/casualty and surplus lines authorities, and Burkar sold all of those types of insurance, although its life insurance transactions were nominal.

The only officers of Burkar were Karpinski and Caroline J. Conboy, who married Karpinski after he became Commissioner. Conboy's individual insurance producer license had health and property/casualty authorities but not surplus lines or life, when Karpinski became Acting Commissioner. Karpinski and Conboy both testified that Karpinski had appointed Conboy Vice President of Burkar well before he became Acting Commissioner; but neither produced documents, such as minutes of a director's meeting, that would clearly establish the time Conboy formally became an officer. Also, no designation of Conboy as Vice President of Burkar was filed with the Secretary of State until an annual report dated July 13, 1994, which was signed by Conboy.

Karpinski and Conboy denied that Conboy's designation as Vice President was initiated to accommodate the fact that Karpinski had withdrawn as an active officer and to permit another officer to be in a position to take the surplus lines examination so as to provide Burkar with the requisite authority for surplus lines sales. Karpinski said the "driving factor" behind the appointment was Conboy's competence. She had served more than a dozen years with Burkar.

She first obtained a producer license on August 29, 1991, with health and property/casualty authorities, and eventually served as second-in-command to Karpinski at the agency.

Even if Conboy had for some time acted as an officer of Burkar, her assumption of the position of Vice President was not reported officially to the DOI until after Karpinski became Acting Commissioner. By regulation, licensed organizations must notify the DOI within 30 days of the addition of an officer. N.J.A.C. 11:17-2.12(d). A May 18, 1994[10] letter from Conboy and Karpinski to Ruth J. Cunningham, DOI's Director of License Processing, asked Cunningham to amend Burkar's "corporate license to reflect Caroline J. Conboy as Vice President and Chief Operating Officer."

The filed letter contains handwritten notations of DOI staff indicating that the DOI's records were changed on June 7, 1994, to show Conboy becoming an officer. If Karpinski did wait until after his appointment as Acting Commissioner to designate Conboy an officer officially, such action would have violated his promise to the Governor and the ECES not to have anything to do with the management or operation of Burkar.

Regardless of the precise time when Conboy became an officer, her individual license did not have surplus lines authority; Karpinski's license was the only one that Burkar could utilize for that purpose.[11] Until January 26, 1995, when Conboy passed an examination and obtained surplus lines authority, Burkar could only have depended on Karpinski's license for the sale or renewal of surplus lines insurance policies, by operation of law.

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[10] This was the same day Karpinski filed his first financial disclosure statement.

[11] Surplus lines are insurance coverages that cannot be procured from "authorized insurers." This unavailability from insurers licensed in New Jersey -- or the alternative regulatory determination by the Insurance Commissioner "that there is no reasonable or adequate market among authorized insurers" -- makes such insurance coverage "eligible for export," so long as the alien (organized abroad) or foreign (domiciled in another state) "unauthorized insurer" that writes the insurance coverage is deemed by the Commissioner to be "an eligible surplus lines insurer" or meets other statutory conditions. See N.J.S.A. 17:22-6.42(a) & (b), 6.43 and 6.45. Such insurance must be placed through a licensed surplus lines agent. N.J.S.A. 17:22-6.42(c).

Burkar acted as a broker when finding surplus lines policies, mostly to provide coverage to pay claims derived from the actions of police and other municipal officials. A subbroker would find a municipal customer and bring it to Burkar. Burkar, representing the same customer, would find an acceptable insurer to meet the customer's needs.

Statutory and regulatory provisions make clear the Legislature's intent to have individual licensees assume responsibility for the conduct of insurance business by their organizations. "All licensed ... officers and directors, and all owners with an ownership interest of 5% or more in the organization shall be responsible for the conduct of the insurance business activity of the licensed organization." N.J.S.A. 17:22A-8b. N.J.A.C. 11:1-12.2(a) states, "Active officers shall be held individually responsible for all insurance related conduct of the corporate licensee." Whenever an insurance producer organization applies for or seeks to renew a license, its application to the Department "must be accompanied by a sworn statement signed by each active officer listed" on the application "that he consents to being an active officer and that he has read and is fully aware of the meaning of the departmental regulations relevant thereto." N.J.A.C. 11:1-12.2(b). "Granting an insurance producer license to an organization shall not authorize any ... officer ... or employee to engage in any activity for which a license is required by [statute] unless that individual holds an insurance producer license with the proper authority." N.J.S.A. 17:22A-8a.

The New Jersey Insurance Producer Licensing Act, effective April 26, 1988, recognizes, at N.J.S.A. 17:22A-13, limited circumstances -- death or mental or physical disability -- in which others may maintain and continue the insurance business of an individual licensee when he is no longer available to conduct or supervise the business himself. However, there must be "a written agreement with a licensed insurance producer who holds the proper authorities which would enable the insurance producer to maintain and continue the insurance business of the deceased or disabled licensee." Moreover, "[t]he agreement shall provide that the licensed insurance producer is responsible for all insurance related activity of the business ...." In providing a mechanism for a surviving spouse, estate or guardian of a licensee to receive some benefit from the business generated by a deceased or disabled

producer (by permitting the sharing of commissions with the substitute licensee), the statute ensures that an individual licensee accepts responsibility for the insurance transactions. Furthermore, the statute limits such arrangements to "a period not to exceed six months."

In Karpinski's case, although not mentally or physically disabled, he was kept from conducting the insurance business of Burkar by his March 11, 1994 representation to the Governor and the ECES that he had "ceased involvement in the management or operation" of the firm. Since Karpinski was, therefore, unable to assist or protect his customers, and since for 10 months there was no arrangement for a substitute individual licensee to continue Burkar's insurance business, Burkar's customers' interests were ostensibly more vulnerable than they would have been if Karpinski had died or become disabled and left Burkar to follow the procedures set forth in N.J.S.A. 17:22A-13.

Karpinski and Conboy maintained, nonetheless, that Karpinski was an "active" officer for purposes of enabling employees of Burkar to use the authority of his individual license for surplus lines transactions. Karpinski seemed unsure, however, about how much activity would be required to be "active" for license-use purposes. He testified at the SCI that an individual licensee whose authority is used by an organization has to provide "direction ... in the organization ...," and "responsibility exists." But he noted that if a problem arising in connection with a particular transaction could not have been resolved by responsible people in the agency and required his personal attention, "I would think that I would have sought direction as to how do I handle this."

Conboy claimed that Burkar employees "proceeded under the assumption" that there was no problem relying on Karpinski's license after he became Acting Commissioner. She elaborated:

> ... he [Karpinski] did not tell us that we could use his license, nor did he tell us we couldn't use his license. It was assumed that since he was still the president of the organization, he still had ownership in the agency, that we were able to use his license to conduct business.

Conboy testified that she could not recall telling ECES investigators that her husband had told her the agency could rely on his license since he was still the owner. However, a recording of her unsworn interview reveals that she did make such a statement.

Conboy testified that she had not discussed with Karpinski, at the time he became Acting Commissioner, what she would do if any problem arose with surplus lines transactions handled by Burkar. As the person in charge of the day-to-day operations and management decisions of Burkar, Conboy did not seek advice from anyone, or even consider, whether it would have been prudent for some officer of Burkar, besides Karpinski, to obtain individual surplus lines authority. Conboy added that she did not discuss with Karpinski whether she should obtain surplus lines authority at the time he became Acting Commissioner.

It is clear that Karpinski, as Insurance Commissioner, was precluded by law from being "active" as an individual who could exercise supervision or oversight to insure that the DOI's regulations were obeyed and customers' insurance needs were served properly. Although Burkar should not, therefore, have been allowed to use Karpinski's individual license after he became Acting Commissioner, in fact it was utilized extensively by Burkar to sell surplus lines policies. Meanwhile, since Conboy had not reported to the DOI that she was the Vice President of Burkar until May 18, 1994 (and had not reported her officer status to the Secretary of State until July 13, 1994), Burkar also relied on Conboy's individual authority for health and property/casualty sales at times when it was unable by law to do so.

DOI'S DOUBLE STANDARD

At the time Karpinski became Acting Commissioner, the DOI required every new employee to turn in to the Department any insurance license certificate in his possession, as a matter of policy, rationally derived from the previously cited statutes and regulations. Every such license was also cancelled in the Department's computer system.

The new DOI Code of Ethics, effective March 28, 1996, requires DOI employees and officers to relinquish their insurance producer licenses to the Department's Ethics Liaison Officer. The new Code adds:

> Upon surrender ..., the license shall be declared inactive and the appropriate licensing personnel in the Department shall be notified. Thereafter, such license may not be used until properly reinstated pursuant to N.J.A.C. 11:17-2.15.

It was generally known within the DOI that Karpinski owned insurance agencies at the time he became Acting Commissioner, and DOI personnel therefore assumed that he possessed an individual producer license. Nonetheless, the SCI could find no one at the Department who acknowledged raising with Karpinski his obligation to turn in his license for cancellation.

In practice, and until the new Ethics Code took effect, any new DOI employee's supervisor would collect his license and turn it over to the Office of Licensing and Insurance Education. That office's Director, Eileen Costello, advised the SCI that she "always wants to get the physical license from the new employee so that the employee has nothing to show and there are no 'sham' licenses out there." Costello would issue a form letter to the new employee advising that if he left the Department within a year, his license could be reactivated without an examination requirement. Both Costello and the DOI Director of Enforcement and Consumer Affairs, Paul DeAngelo, indicated that they had no discussions with Karpinski about his license. DeAngelo stated that he was aware of Karpinski's

situation from reading about it in newspapers, but he did not believe it was his responsibility to ask Karpinski for his license.

The DOI Conflict of Interest Questionnaire in effect when Karpinski joined the Department,[12] called for new employees to provide information about insurance licenses they possessed. Karpinski never filled out or returned the questionnaire to the DOI's Personnel Office, headed by David Hopkins, the Manager of Human Resources. Karpinski also never signed a check list, developed by Hopkins, which the Personnel Office used to ensure that all new employees received necessary forms and information, including the Conflict of Interest Questionnaire.

Hopkins stated that neither he nor anyone working for him required new DOI employees to surrender their insurance licenses to Personnel. He added that if a prospective employee indicated on the questionnaire that he had a license, the questionnaire was forwarded to the Ethics Liaison Officer, who would determine what should be done with the license.

At the time Karpinski was with the DOI, the Department's Ethics Liaison Officer was Edward J. Troy, whose primary position was Assistant Commissioner for Management and Budget.[13] Troy confirmed that if a new employee acknowledged on the questionnaire that he held a license in a business regulated by the DOI, he would be expected to surrender the license. Troy noted that "it many times could come out as part of an interview question" that a prospective or new employee had a license. Troy observed, "[I]f anybody at all was working in what I call the operational units of the Department, they certainly could not have an insurance license." He added:

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[12] As indicated above, a new Conflict of Interest Questionnaire is attached to the DOI's new Code of Ethics.

[13] Karpinski's successor as Commissioner appointed a new Ethics Liaison Officer in October 1995, who serves full time in that capacity.

> Again, the DOI is a small department. We only bring in maybe five to six new people a year, so it's very easy to deal with these type of instances on a one-on-one individual basis.

In Karpinski's case, however, Troy deferred to the ECES. When he learned from newspaper reports that Karpinski had to sell insurance agencies and had an insurance license because he was "in the system" at DOI, Troy did not communicate with Karpinski in any way regarding his obligation to turn any individual license over to the Department. He said he did not do so "because I knew [Karpinski] was dealing directly with the [ECES]...." Troy stated that he did not contact anyone at the ECES to determine whether Karpinski had turned his license in to them "because I was not completely versed in exactly the communications going between him and the [ECES]." He added:

> I presumed that [Karpinski] turned [his license] over to the [ECES], but, again, Mr. Karpinski did not communicate with me on this issue, and I respected that. As long as I knew he was dealing with the [ECES], I in my capacity was satisfying my obligations as Ethics Officer.

Two people in the Payroll Office usually did the orientations in the Personnel Office for new DOI employees. Orientations included giving the new employees personnel packages containing everything on the check list and checking those items off. Hopkins, as Human Resources Manager, said he personally conducted Karpinski's orientation, in the Commissioner's office, within two weeks of the time Karpinski had joined the Department. Hopkins recalled giving Karpinski everything on the check list. Nonetheless, Hopkins said he did not believe Karpinski filled out a questionnaire and could not recall Karpinski returning a blank questionnaire. Although he recalled using a check list for Karpinski's orientation, Hopkins did not recall Karpinski's signing it.

Explaining why no check list could be found in Karpinski's personnel file, Hopkins described how Karpinski's orientation deviated from the usual practice:

Well, the orientation with a Commissioner is not a standard orientation, as far as he or she is not a regular employee. I mean, they're not coming into our office. They, and they have to basically to set aside time for us to go through all this. We have to fit this kind of thing into the Commissioner's schedule. And it is the Commissioner. I went through the things as best I could. But I believe at the time he kept most of the items and didn't return them immediately. ...

Q. Was there any method of keeping track of the return of the items that were checked off on the check list?

A. Well, again, it's usually, they're returned pretty much immediately on a regular orientation. And we're not a large -- these orientations are done one-on-one. So they're given to the employee, and, if they need to sign or check off or fill in, they do it pretty much immediately and give it back to us right away.

Q. But that didn't happen in Mr. Karpinski's case.

A. No. ...

Q. Did you have any means of determining that all those things that had been checked off as received by Mr. Karpinski were indeed returned to Personnel?

A. No, I didn't. ...

Q. Do you recall checking to make sure that the Conflicts of Interest Questionnaire had been filled out?

A. No, I didn't.

Q. You don't recall checking it, or you can say for sure you did not?

A. I don't recall checking that.

Karpinski also completed a financial disclosure statement ("FDS") and filed it with the ECES on May 18, 1994. The form asks covered employees to list "any occupation, trade, business or profession presently engaged in by you, your spouse, or your dependent children that is subject to licensing or regulation by a State agency." Even if Karpinski was in the process of selling the two agencies he owned, it seems clear that he was presently "engaged in" a business "subject to licensing or

regulation by" the department that he headed. Nonetheless, and despite an admitted professed understanding that his license was being used by Burkar and that he thus considered himself to be an "active" officer, Karpinski entered "None" as his response.

Toward the end of June 1994, a newspaper reporter contacted ECES Executive Director Strmensky to inquire why Karpinski's financial disclosure failed to indicate that he held an insurance producer license. Strmensky has maintained consistently and emphatically that this was the first time she learned that Karpinski held a license. She summarized a resulting conversation with Karpinski in a June 27 letter to him as follows:

> As we discussed, I am returning page 1 of your Financial Disclosure Statement so that you can modify section b. While you are not, as you indicated, "presently engaged" in the activities of Burkar ... or Apple ..., it would be prudent to list the license that you hold from the [DOI] in section b.

Karpinski revised his answer by crossing out the word "None" and stating, "While I am not 'presently engaged' in the activities of [Burkar] or [Apple], please be advised that I do hold an Insurance Producer License from the N.J. [DOI]."

Karpinski enclosed his original license certificate with a June 27, 1994 letter to Strmensky, with which he also forwarded the revised page from the financial disclosure. Karpinski's letter stated he was "surrendering [the license] to the [ECES] for safekeeping pending the sale of the agencies." In a July 13, 1995 letter to the Attorney General commenting on a draft Division of Criminal Justice report, Karpinski stated, "... I sent the original copy of my license to ECES for safekeeping so as to demonstrate that I did not have any active role in the operations of the agencies."

Karpinski testified before the SCI that the surrender was his idea, because the press had been asking questions and it concerned him that there might be "the appearance that in some way, shape or form" he was using his insurance license. He insisted, however:

> I was not utilizing my license actively, me, personally, in any way.
>
> The only reason the license was [not cancelled] was ... it needed to be there while the agencies were being sold, and I was of the opinion that that kind of activity might be good in demonstrating my good faith in that regard, and Ms. Strmensky concurred, and I consequently sent the original of the license to her.

Despite the fact that no earlier letters contain any reference to his license -- even those purporting to memorialize his understandings with Strmensky -- Karpinski testified that as early as February or March of 1994, Strmensky and he had discussed "maintaining" his insurance license, "which ... would be needed for the agency to continue to operate while ... going through the sale process."

Strmensky, however, has stated that she did not even know about the existence of Karpinski's license or discuss it with him until they talked about the incomplete financial disclosure on June 26, 1994. Relying on Strmensky's understanding of the facts, on October 13, 1995 the ECES issued a public statement containing the following conclusion:

> It should be noted that at no time did the [ECES], directly or by implication, grant Commissioner Karpinski any authority to do business under his Insurance Producer License. In fact, the contrary was true [based on the surrender of his license to the ECES and his representation to the Governor that he had ceased involvement in the management or operation of his agencies].

Strmensky told the SCI that when she spoke to Karpinski about his failure to note his license on his FDS, she asked him whether he could surrender his license to the DOI. Strmensky has stated adamantly that Karpinski told her that he could not turn his license over to the DOI because he needed

to have an active license in order to legally maintain his ownership of Burkar and Apple until they could be sold. Strmensky stated that she relied on Karpinski's representation on that technical point.

Karpinski's recollections of his actions and thought processes regarding Burkar's use of his license are enigmatic. While Karpinski testified that he knew that he communicated to Strmensky that he needed to keep his license in effect, he did not know if their conversation "got ... specific" as to whether he told her that others at Burkar would be utilizing his license. On the question of whether he told Strmensky that he needed to keep his license in effect in order to be able to continue as an owner of the agency, Karpinski testified, "I don't know exactly what I said to her in that regard."

Although Strmensky stated that she and Karpinski never discussed surplus lines, Karpinski testified, "We had the discussion that no one else in the agency had the surplus lines agency authority, yes." Regarding whether Strmensky told him that it would be acceptable for other people to use his surplus lines authority for the sale of surplus lines policies, Karpinski testified:

> I don't believe she ever indicated -- I don't believe we ever got into the discussion that got that far down the path from the standpoint of her making a statement like that. I can't recollect that she did or didn't.

When asked at another point whether he told Strmensky that Burkar or its employees would be using his individual license as authority for insurance sales while he was Commissioner, Karpinski testified, "That specifically, I don't believe so." Later in his testimony, Karpinski added, "I believe, during our discussion, I alluded to the fact that it would be necessary for me to continue my license and alluded to the fact that I was the only person in the agency with the surplus lines authority." Strmensky, however, told the SCI that Karpinski "never disclosed to me that Burkar was relying on his personal surplus lines license and would continue to do so." She added, "We didn't discuss the license

being used by other parties." She maintained that she first learned of Burkar's use of Karpinski's surplus lines authority when the Attorney General's investigation began in May 1995.

Strmensky described to the SCI her understanding of the consequences of Karpinski's turning his license over to the ECES:

> It couldn't be used because I had it in his file. He surrendered it to the [ECES], voluntarily. That took it out of the realm of active use.

A DOI regulation provides that "an insurance producer shall maintain his or her license at the business address on file with the Department and shall display the license to an insured or prospective insured upon their request." N.J.A.C. 11:17A-2.6(b). When asked how he reconciled turning his license over to the ECES with that regulation, Karpinski testified that he had made a photocopy of the license and kept the photocopy "in the file on the premises ...." When asked whether he told Strmensky that he was going to make a photocopy and retain it at Burkar, Karpinski replied, "I don't believe I did."

Of course, having a photocopy available for inspection by agency customers would have totally defeated anything that Strmensky might have hoped to accomplish by receiving the original license certificate. Strmensky stated:

> The purpose of [Karpinski's] good faith surrender of his license to the [ECES] was to show that the license was not being used. He certainly never disclosed that he kept a copy of the license on file at the agency, an action that clearly obliterated the purpose of the symbolic surrender of the license.
>
> * * *
>
> ... [H]ow could anybody think they could use a license that wasn't there, when the regulations require that the license be there?

Conboy, as the person in charge of day-to-day operations at Burkar during Karpinski's absence, claimed that she never became aware after Karpinski became Acting Commissioner that his original license certificate was no longer at Burkar's offices. She stated that Karpinski never told her that he had made a photocopy of the license to be kept at Burkar's offices in case a customer asked to see it.

There would never have been any confusion over who could have used Karpinski's license if the DOI's policy to collect licenses from its new employees had been followed. As summarized by the DOI's former Ethics Liaison Officer, Edward Troy, the process that had worked well for subordinate DOI employees was never applied to Karpinski:

> There's a process established that we follow very closely. I think what has happened here is not the norm. It's an aberration, because it's a cabinet officer and an appointed individual.

When Karpinski gave his license certificate to Strmensky, it was unavailable for Burkar to display to prospective insureds (although Karpinski kept a copy for that purpose), but was not cancelled in the Department's computer system. Had the license been turned in to the DOI as required, Burkar would then have been notified immediately by DOI personnel that it lacked an officer with surplus lines authority. Conboy would have had to either take the surplus lines examination over 10 months earlier than she did or Burkar would have had to hire another officer who held the requisite authority, in order for the organization to legally conduct that type of business.

Karpinski acknowledged to the SCI that Burkar could have hired another officer, besides his wife, who held an individual license with surplus lines authority. He acknowledged, however, that such an action might have entailed some expense for Burkar.

IMPROPER ALTERATION OF RECORDS

After he sold Burkar, Karpinski, on January 12, 1995, asked Ruth Cunningham, the DOI's Director of License Processing, to deactivate (called "cancel" or "inactivate" by some DOI officials) his individual insurance producer license within the Department's computer system. However, according to Cunningham, Karpinski did not tell her that he had sold his agencies or departed as an officer. When he had his license cancelled, Karpinski did not simultaneously ask ECES Executive Director Strmensky to turn his original license certificate over to the DOI, as required by N.J.S.A. 17:22A-19a.

Karpinski testified he did not discuss the cancellation of his license with anyone at Burkar before he gave the task to Cunningham. He said he did not at that time consider whether the deactivation of his license would leave Burkar without licensing authority for surplus lines sales. Nonetheless, a January 12, 1995 letter to Robert A. Feiner, the attorney for American Phoenix, from Charles V. Bonin, the attorney for Karpinski and Conboy, which had been copied to Karpinski, states:

> I spoke to Mr. Karpinski today and he has arranged to cancel the Apple ... license and he has put his own license on hold. He has once again asked me to reiterate to you the importance of the necessity of immediately completing the licensing process by your client. You, or the appropriate employee of your client, may call Ruth Cunningham at the [DOI] ... for assistance in the licensing procedure.

After that letter was drawn to his attention, Karpinski testified that he told Bonin "on several occasions to communicate with the new owners this matter of the importance of" making sure they had all their licensing in order. He testified the letter confirmed his "direction" and "concern" regarding the licensure.

Conboy testified that with the sale of Burkar she "knew that as the officer in New Jersey" she "had to obtain my surplus lines license." She claimed, however, that she did not know that after Burkar was sold Karpinski had DOI employees cancel his individual license. Conboy further testified that she

could not recall any representative of American Phoenix telling her that something would have to be done to acquire the necessary individual license authority for Burkar. American Phoenix representatives indicated that they thought obtaining proper licensure was Conboy's responsibility, since she was the top manager at Burkar.

After Karpinski told Cunningham to deactivate his license, Cunningham had Anita Smith, the Supervisor of Licensing, cancel the license in the computer system. According to Smith, she asked Cunningham for the original license, since the process of deactivating a license requires surrender of the original certificate. Cunningham replied that another organization -- the ECES -- had Karpinski's original license. Smith asked if there was a memorandum or other document authorizing or requesting the cancellation, and Cunningham indicated there was not.

Smith told the SCI that, in order to have a written record of the authority for the cancellation, she waited for the transaction to be processed at the computer center and then printed out the computer screen for Karpinski's license, which then reflected the January 12 deactivation date. Smith said she wrote a note on the single printout page, "Per Commissioner, license was cancelled." She recalled that when she came to work one morning in January 1995, she found the papers on her desk in disarray. She did not notice then that anything had been taken, but near the end of January or beginning of February, she discovered that the printout sheet with the note pertaining to the authorization for the deactivation of Karpinski's license was missing from an alphabetical file where she kept such documents. The missing document has not been found.

Smith cancelled Karpinski's license in the computer system on Thursday, January 12, 1995. Smith also noted in the computer file, "Dept employ may reinstate w/i 1yr of leav.," a reference to N.J.A.C. 11:17-3.2(e) and 3.3(e), which allow state employees in insurance-related fields who have

turned in their licenses to reactivate them within a year of leaving state service without having to repeat prelicensing courses or retake an examination. Cunningham said she brought the notation to Karpinski's attention, and he told her to remove it. Karpinski testified that he did not want his license record to refer to possible reinstatement. Cunningham had Smith remove the notation on January 13.

During his appearance before the SCI, Karpinski was shown copies of two memoranda addressed to him from Cunningham and informing him that his license was "inactivated as of January 12, 1995." Although identical in every other way, one memorandum is dated January 12, 1995 (Thursday) and the other is dated January 17, 1995 (the Tuesday after a state government holiday and the first business day after the batch run on January 13). Although Karpinski could not recall receiving such a writing contemporaneously with the time that he had his license deactivated, he gave a copy of the January 12 memorandum to Jaynee LaVecchia, Director of the Division of Law, when she and the Attorney General interviewed him about conflict of interest and records tampering allegations on May 10, 1995.

Cunningham told the SCI that she never wrote the January 12 memorandum and never saw it before the Division of Criminal Justice investigation. She said she wrote the January 17 memorandum and hand delivered it to Karpinski to confirm that his license had been cancelled. When DOI officials gathered documents from Cunningham in order to answer press inquiries during the spring of 1995, Cunningham initially did not provide the January 17 memorandum. She eventually did show a copy of it to the DOI's Director of Communications on May 15, 1995 and gave a copy to DOI Deputy Director Robert F. Pellecchia on May 24, 1995.

In accordance with standard practice following deactivation of an individual license, Anita Smith checked Burkar's organization file in the computer so that she could determine whether the

organization still had at least one officer with each of the authorities listed on Burkar's license. Smith told the SCI that she reported to Cunningham that, with Karpinski's license cancelled, no officer at Burkar held surplus lines or life authority and that the Department needed Burkar's license so that it could be reissued with those authorities deleted. Although Conboy testified at the SCI that Burkar did not sell life policies during the relevant period, Burkar never obtained an officer with life authority, nor did it have its license reissued with the life authority deleted, up to late 1995 when it merged into American Phoenix.

Cunningham stated that after Smith informed her of the situation, Cunningham telephoned Conboy and told her "that we had to delete [from Burkar's license] the surplus lines authority." They also talked about the need for Burkar to obtain an officer with life authority to sell life policies. State telephone usage records show a January 17, 1995 telephone call for 13 minutes to Burkar's office from Cunningham's telephone. Cunningham stated that Conboy told her that Conboy "was taking the exam [for surplus lines authority] on January 26th." Cunningham added, "[S]he told me that she needed the surplus lines authority. ... [S]he said she had a business deal that she had done." Cunningham said that Conboy also told her that she would talk to the Commissioner.

Smith stated that she was present when Cunningham spoke on the telephone with Conboy. According to Smith, Cunningham told Conboy "that they're either going to have to return [Burkar's] license and cancel the life authority and the surplus lines or add an officer to cover those lines."

Cunningham stated that after her telephone conversation with Conboy, she "went upstairs and talked to the Commissioner." She elaborated:

> I said, "What are you going to do?" I said, "Because we have [your license] already cancelled out as of January 12th." And he told me that [Conboy] was going to take the exam and to make [his license cancellation] effective as [of] the date that she takes the exam, the date of his cancellation.

The questioning continued:

A. ... [I]t wasn't up to me to tell him to change his records.

Q. *So you offered no suggestion to him as to how the problem could be dealt with?*

A. No, I did not. No, I told him what his wife said, that she needed the authority for surplus lines, because she had to complete this deal.

Q. *And then he told you what? ...*

A. I don't remember what he told me. All I know, he told me to change it, that she wanted, that she said she needed the authority. And he said, "Well, go ahead and change it, and make it effective the 26th, the date she's taking the exam." And he made a little statement like, "I hope she passes" or something like that. That was the end of our conversation.

Q. *When you say "change it," you understand that to be* --

A. To reinstate it, reinstate the date.

Q. -- *to change the records* --

A. I wasn't changing the records. It was reinstating, which is what you can do. There's nothing illegal about reinstating a license.

Q. -- *which is to reinstate a license.*

A. A license, right.

Q. *By doing what?*

A. Reinstating, put it on the terminal.

* * *

Q. *Did you suggest to him or say to him that this should not be done, or anything* --

A. Why would I suggest what should be done? To reinstate a license it wouldn't make sense for me to say it shouldn't be done. We're reinstating a license. There was no reason for it not to be done, as far as we're concerned. I don't know, I didn't know what arrangement he had with the Ethics Commission. You see what I'm saying. I

wouldn't know, I didn't know he didn't own it. So there was no reason for me, I didn't see anything wrong with it because you can, we reinstate licenses every day.

* * *

Q. You had no reason to question --

A. Am I going to question the Commissioner? I mean, I wanted the license [Karpinski's license certificate, then in the possession of the ECES], but I wasn't going to, you know, ask him for it. That's normally required, but, I mean, he's the Commissioner.

Karpinski testified that Cunningham approached him as he was about to leave his office for a meeting. He stated that in a brief conversation just inside the door of his office Cunningham told him about a "circumstance" respecting surplus lines authority, the sale of Burkar and the termination of his license. He added, "and what she suggested was the continuation of my license authority for another two weeks that would resolve that problem." Karpinski continued:

> ... [I]t sounded to me like it was just a matter of administrative cleanup, and [I] essentially told Ruth that, look, you're the expert in this area. Take care of the matter and resolve it, and left it in her hands.

Q. You didn't see any problem with having her go ahead and proceed as she had recommended?

A. No. I assumed that given the very brief conversation that we had, I assumed that Ruth knows what she's doing in this area. You know, this is her area of expertise, and I asked her to proceed with taking care of the matter as she suggested.

Q. Now, she's indicated that you directed her to take that action.

A. I'm aware of the fact that she ... has said that, and I absolutely disagree with her recollection.

* * *

> Basically, she said, "We have a problem -- we have a situation with a licensing authority where ... there's a gap in licensing authority. What I propose to do is just extend your licensing authority another two weeks ...." My license in the agency was the license with the surplus lines authority, and you need an individual license with

> surplus lines authority to write surplus lines business. So my license was sitting there with that authority.
>
> When the agency was sold, apparently the new -- the agency that bought my business did not have that licensing authority, that surplus lines licensing authority. They subsequently resolved that situation by getting that licensing authority on January 26. In that interim period of time, that two-week period of time, there was the absence of a licensing authority.

Smith told the SCI that, at Cunningham's direction, she changed the DOI computer records to show deactivation of Karpinski's license authorities on January 26, 1995, instead of January 12, 1995. Smith accomplished this on Friday, February 3, 1995 and wrote a note on the printout, "Per commissioner & R.C. chg. canc. date to 1-26-95." Cunningham and Smith considered the reinstatement of Karpinski's license to be a "fix" transaction that would not be reflected on his personal history file. Since it was a "fix," they also did not require him to fill out an application or pay the $20 processing fee called for by the regulations in order to reinstate a cancelled license prior to its stated expiration date. See N.J.A.C. 11:17-2.13(a)4 and 2.15(b). A January 26, 1995 memorandum to Karpinski from Cunningham informed him "that your insurance producer's license was inactivated as of January 26, 1995."

It is clear that by the time Cunningham had Karpinski's license reinstated, she knew that he was no longer an officer of Burkar. Therefore, she would have realized that his license reinstatement alone would not have been sufficient to provide Burkar with an officer with the requisite authority. Although she had no indication that his officer status had been reinstated, she had DOI records changed to reflect Karpinski's continuation as an officer of Burkar until January 26, 1995. Thus, the final computer files would show no gap in Burkar's authority on account of either Karpinski's departure as an officer or the inactivation of his license.

In a January 9, 1995 letter to Burkar Associates, Karpinski resigned "as President, C.E.O., Director, Employee, and Registered Agent of Burkar Associates," effective the date of the letter (also the date of the purchase agreement). In his SCI testimony Karpinski stated his belief that "the actual signing of the papers ... might have been a day or two later." This would comport with his January 11, 1995 letter to the ECES's Strmensky advising of the sale of Burkar and the dissolution of Apple.

Compliance with the applicable regulation immediately following Karpinski's resignation would have led to earlier discovery of the gap in Burkar's surplus lines authority by those in charge of Burkar as well as DOI employees. N.J.A.C. 11:17-2.12(e) states:

> Departure ... of licensee officers ..., which leaves an organization insurance producer with ... officers ... who do not have like authorities as the organization producer, shall make the organization producer license inactive. Under these circumstances, the organization license shall be returned immediately to the Commissioner.

If this regulation had been obeyed, Burkar would have returned its organization license to the DOI on January 9 or 11, 1995.[14] By January 12, when Karpinski asked Cunningham to deactivate his license, she would have understood then that Burkar lacked a license with surplus lines authority, instead of having to learn of it later from Smith. Cunningham would have known, therefore, that Burkar needed officers with the requisite authority as early as Karpinski knew it -- January 12, when he spoke to his lawyer about the urgent need for Burkar to contact Cunningham "for assistance in the licensing procedure."

Karpinski testified he could not recall specifically telling Cunningham on January 12 that Burkar had been sold and that he was no longer an officer. He added, "I can't tell you for sure one way

[14] This regulation also raises a question as to whether Karpinski's withdrawal from the management and operation of Burkar to become Acting Insurance Commissioner on March 3, 1994 constituted a "departure" that left Burkar with staff inadequately licensed to support the organization's license authority.

or the other, but I don't think so." Obviously, if he had told Cunningham that he was no longer an officer of Burkar as of January 9, 1995, Cunningham would have realized immediately that merely changing the deactivation date for his license would not have legitimated Burkar's surplus lines transactions. The computer records available to Cunningham do not identify current owners of organization licensees that have been in existence more than seven years -- as was the case with Burkar.

Cunningham did not officially learn that Karpinski was no longer an officer of Burkar until she received a January 23, 1995 letter from Karpinski and Conboy. The letter advised that Karpinski had "officially resigned as the President" of Burkar "and should be removed from the agency's license records as an officer of the corporation." The letter continued, "Caroline J. Conboy has been appointed as the President of Burkar ... and the agency's records should also be amended to include this change." The letter was apparently submitted to comply with the DOI regulation requiring notification of the Department within 30 days of any change of officers, N.J.A.C. 11:17-2.12(d).

Conboy testified that the January 23 letter was in response to a communication from someone in the DOI who had requested the letter. She said she could not recall who that person was. Cunningham recalled that she received the letter after one of her telephone calls to Conboy regarding the need to have an officer with the license authority that Burkar had lost when Karpinski had his license deactivated. Through her attorney, Conboy forwarded to the SCI a copy of a January 20, 1995 list of the officers of Burkar, which included her name as President.[15] DOI computer records reflect

[15] Conboy became President of American Phoenix (trading as C & C Associates) in late July 1995. According to Conboy, Burkar merged into American Phoenix on November 1, 1995, and the latter filed with the Secretary of State to use Burkar Associates as a trade name for governmental business. Conboy continued as President of the merged agencies. Soon after Burkar was purchased, American Phoenix's offices were moved to Burkar's office in Parsippany.

that Anita Smith removed Karpinski's designation as an officer of Burkar on January 23, 1995, effective January 12.

On Friday, February 3, 1995, the computer records were changed to show January 26, 1995 as the date that Karpinski was deleted as an officer of Burkar, instead of January 12, 1995. A January 26, 1995 memorandum to Karpinski from Cunningham (mistitled as "Insurance Producer License Status") confirmed "that our records have been amended to indicate you were deleted as an officer of Burkar Associates effective January 26, 1995." An attached printout of a computer screen, dated Tuesday, February 7, 1995, the date the screen was printed on Cunningham's printer, showed the deletion date as "1/26/95." It appears, therefore, that, despite its January 26 date, the memorandum was not delivered to Karpinski (Cunningham said she hand carried it) until at least February 7.

Cunningham explained that the computer printout attached to the memorandum could not have been made until February 7 since, "We had to wait because of Fiscal." The Fiscal Office had to process Conboy's check accompanying her surplus lines application before Cunningham would authorize Smith to make the computer record changes on February 3. Cunningham did not get around to making a printout of those transactions until February 7.

It is apparent, therefore, that after Conboy passed her surplus lines examination on January 26, 1995, Cunningham made sure that DOI computer records and confirming memoranda reflected that Karpinski was a Burkar officer with an active license until January 26, instead of the January 12 date that had been entered on January 23. She did this despite the fact that no notification received after the January 23, 1995 officer status letter from Karpinski and Conboy informed her that Karpinski had again become an officer of Burkar.

Conboy testified that she learned from Cunningham of a problem with Burkar's authority only on February 3, 1995. Although Conboy recalled the discussion of a brief gap in authority as relating to licensure, circumstances clearly indicate that it dealt with officer status. Conboy elaborated:

> Ruth Cunningham asked me whether she should amend the Commissioner's license to coincide with the effective date of my licensure so that there would not be any gap. And I told her that it's not a decision that I should make, this is something that the DOI should handle. And she debated with herself back and forth as to what she should do. And the conversation concluded with her saying, "Okay, I'll take care of it," and that was the last conversation that I ever had with her relative to that subject.

Gloria Jean Ricca, a customer service representative at Burkar, confirmed that she spoke to Conboy in early February about a telephone conversation that Conboy had just had with Cunningham pertaining to the absence of surplus lines authority. Ricca stated that Conboy seemed surprised and indicated that she thought there was only a three-day gap in authority (a fact consistent with the gap between the January 23 notification letter and the January 26 examination date).

Participants in this situation -- some not aware of key information as to the confirmed dates of various events -- may have misconstrued the length of Burkar's authority gap. This was certainly the case with Conboy and Cunningham. They seemingly did not know that the actual gap in Burkar's surplus lines authority extended from January 9, 1995, the date of Karpinski's resignation, to January 26, 1995, the day Conboy passed her surplus lines examination.

Conboy did understand, however, that, regardless of the status of Karpinski's license, Burkar could rely on Karpinski's surplus lines authority only if he remained an officer. Assuming Conboy acted in good faith, she either had not realized that Karpinski had resigned as an officer on the January 9 date that documents reflect the purchase of Burkar by American Phoenix, or she believed that the

January 23 act of notification was the operative date for determining compliance with insurance laws and regulations regarding officer status.

Karpinski acknowledged that when Cunningham first raised the subject of a problem with Burkar's license, he did not immediately refer her to a Deputy Commissioner for a response. Karpinski noted:

> There didn't seem to be anything to refer to a Deputy Commissioner. ... I had no reason to believe that she wouldn't act properly in that circumstance and do the right thing. So I really had no reason to defer it to anyone else. It was in the hands of the proper department person to handle that matter.

In the case of property and casualty joint insurance funds ("JIFs"), Karpinski had determined that since Burkar had been the administrator for some JIFS, he would recuse himself from any participation in any matters connected with JIFs and would delegate total authority to a Deputy Commissioner. Karpinski and top DOI officials were aware of the JIF delegation; therefore, he was not called upon to make decisions regarding them. Karpinski had not ensured, however, that all matters affecting his agencies or license similarly would be presented to a designated Deputy Commissioner for any decision.

Because of the insufficiently specific and ad hoc delegation of decisions regarding Karpinski's agencies and license, Cunningham did not turn to any clearly-designated Deputy Commissioner for guidance as to how to proceed on Burkar's licensure problem. Instead, she turned to Karpinski himself. Even if we accept that Karpinski made an ad hoc delegation of decision making responsibility to Cunningham, he was too connected to the process. Cunningham was extremely deferential to the Commissioner's authority -- as were others in the Department who were in a position to influence Karpinski's compliance with his ethical obligations but chose not to get involved.

Cunningham told the SCI that she advised the DOI's Ethics Liaison Officer, Edward Troy, of each conversation that she had with Karpinski and Conboy about their licensing situation. Troy, the Assistant Commissioner for Management and Budget, was in charge of a division that included the License Processing unit directed by Cunningham. Troy acknowledged that Cunningham had talked to him about "overriding edits" (what Cunningham called "fix" transactions) pertaining to Karpinski's license. However, Troy claimed that he received fewer details from Cunningham than she contended. Troy said he told Cunningham that he would not authorize her to override edits pertaining to Karpinski's license. Troy added that if Karpinski chose to deal directly with Cunningham regarding Karpinski's license, Troy would not question that.

Karpinski testified that he did not understand that Burkar would use his licensing authority after the agency was sold to American Phoenix. Circumstances strongly suggest, however, that there could have been no other purpose for the change in the deactivation date for his license.

An insurance producer's failure to maintain proper license authority for a brief period ordinarily has very limited consequences. According to DOI officials and records, compliance failures similar to those found in Karpinski's case typically result in fines of no more than $1,000 or even merely a letter of censure for the licensee's file. Several factors may shed light on Karpinski's possible willingness to risk graver consequences by engaging in improper conduct vis-à-vis his license.

In order to avoid regulatory difficulties, American Phoenix required Karpinski to warrant in the purchase agreement that Burkar had all necessary licenses. Moreover, Conboy's employment agreement with Burkar, under its new owners, stated that Conboy could be terminated if she "fail[ed] to maintain the necessary insurance licenses for herself or for EMPLOYER in any State in which she is doing business on behalf of EMPLOYER (which licenses are to be paid for by EMPLOYER)."

Conboy testified that at the time of the sale of Burkar she considered that she was the one in charge of maintaining proper licensure. She agreed that this conclusion was in keeping with the clause in her employment agreement which would have allowed her employment with Burkar to be terminated for cause if she had failed to maintain the necessary insurance licenses for herself or for Burkar. Karpinski testified, nonetheless, that he did not consider this provision at the time he spoke to Cunningham about changing the deactivation date for his license.

Furthermore, records filed with the DOI by Burkar indicate that during the two-week period when Karpinski's license was, in essence, reactivated because of an advancement in the deactivation date, Burkar sold one new surplus lines policy under the authority of Karpinski's license and renewed two others. Burkar earned about $5,000 in commissions on these transactions. There seems to be disagreement among DOI regulators on the legal question of whether renewal policies may be sold only if individual and organization licenses both have authority for the type of insurance involved. But at the time the license usage was made, Karpinski stated that he did not know how much surplus lines business, new as well as renewal, had been conducted by Burkar before Conboy took the January 26, 1995 examination to qualify for surplus lines authority. Moreover, Karpinski could not have been sure that Conboy would pass the examination. If she had failed, even more transactions could have occurred before the next available test.

Karpinski's household stood to profit, both directly and indirectly, from the surplus lines commissions that Burkar received by relying on Karpinski's license. As the President of Burkar answerable to new owners, Conboy's position in the firm and her very livelihood depended on her ability to generate commissions.

Another provision of Conboy's employment agreement with Burkar after the sale to American Phoenix allows her to keep as incentive bonuses amounts equal to Burkar's revenues falling within certain ranges of overall volume. Thus, by giving Burkar the ability to cloak its surplus lines transactions in the appearance of legitimate licensing authority, the reactivation of Karpinski's license also set the stage for amounts equal to the commissions from those transactions to flow into the income of his household.

The significance of Karpinski's behavior does not hinge upon the volume of business that Burkar ultimately conducted during the period of improper use of his license. The important consideration is whether his conduct signaled his willingness, as head of the Department, to allow his private concerns to motivate him to manipulate the laws to his personal advantage. The SCI is concerned that the system of ethics enforcement failed to prevent the head of an important regulatory department from concluding that specific laws, regulations and department policies did not apply to him.

AGENCY SALE DID NOT ELIMINATE A POTENTIAL CONFLICT

Karpinski and Strmensky agreed that any sale price of Burkar would be fixed, rather than based on a contingency such as volume of business. In that way, Karpinski would not be in the position as Insurance Commissioner to make any decision that might result in an increase of Burkar's revenue and a corresponding increase in the amount due him from the sale.

When Karpinski became Acting Commissioner, he and Conboy shared a household and intended to marry; they married on September 10, 1994. Since Karpinski was prohibited by Executive

Order No. 2 from transferring ownership or control of Burkar to his wife (IIIF2), Karpinski did not do so. Nonetheless, Karpinski acknowledged that he had conditioned the sale of Burkar on American Phoenix's willingness to enter into an agreement with Conboy continuing her role as a key management employee. This served the purchaser's purposes as well, since American Phoenix believed in keeping within the new organization people who could help to retain customers.

Martin L. Vaughan, III, Chairman of American Phoenix, extended to Conboy, through the search firm's representative, incentive terms which Vaughan believed met industry standards. Conboy's January 9, 1995 employment agreement with Burkar, under its new owners, more than doubled her annual salary at Burkar. Vaughan told the SCI that the salary he agreed to pay Conboy was commensurate with her assuming the top management position in the agency. The employment agreement also allows Conboy to earn up to $480,000 in bonuses over the four-year life of the contract, depending on volume of business. Vaughan noted that Conboy's incentive bonuses and salary were key ingredients in determining the price paid for Burkar and Apple.

All parties maintained that Karpinski had not bargained for his wife's incentive bonuses. Vaughan said that from his point of view they were customary for the industry. Conboy testified that her attorney discussed with Vaughan and the representative of the search firm hired by Karpinski the incentive bonuses being worked out for her in the course of the sale of Burkar. The same attorney also represented Karpinski in the sale of Burkar to American Phoenix.

Bonus proposals were mentioned in two draft letters of intent, dated October 19 and 21, 1994, to Karpinski from Vaughan. The final letter of intent, dated October 26, 1994 and also addressed to Karpinski, did not specifically refer to an incentive bonus schedule; but it noted, "We would also

require the selected employee(s) of [Burkar] to execute employment/non-piracy agreements." Conboy testified that she never saw the letter of intent or its drafts.

Although Karpinski distanced himself from the employment agreement negotiations, he testified at the Commission that he was "aware of the details of those proposals ...." Nonetheless, he did not share any details with Strmensky, and she did not ask him to supply anything until she requested a copy of the Burkar-American Phoenix purchase agreement on May 26, 1995, after the ECES decided to review allegations that had surfaced in the press concerning Karpinski. The purchase agreement was not, however, supplied to the ECES until it renewed its investigation after the Division of Criminal Justice report was issued.

Karpinski claimed that in his early conversations with Strmensky he "brought up the matter ... that [Conboy's] contract could include a dollar amount that would involve the retention of the business that she's managing for the company." Karpinski testified before the SCI that:

> ... I presented it [to Strmensky] in such a way that basically what I said was that [Conboy's] compensation may include a dollar amount for the retaining of business, not the writing of new business, but for the retaining of business that she's in charge of servicing. And as I recall [Strmensky's] response, it was she didn't think that that presented a problem.

It should be noted that the terms of the incentive bonus provisions of Conboy's contract with Burkar make no distinction between business based on retained customers and that based on new business.

Strmensky described her understanding of her early conversations with Karpinski:

> His only mention of his wife and son, after our initial discussion of the terms of Executive Order No. 2, prior to the sale was in the context of what he described as an industry practice. He mentioned to me that in the course of seeking a buyer, he, and the company screening buyers for him, would advise prospective buyers that the current employees should be kept on by the new owner. He indicated that the continued employment of the current employees would be a condition of sale. Those current employees included his wife and son.

Karpinski testified that he did not show Strmensky the employment agreement that his wife signed. Strmensky added:

> I did not know that his wife had a contract with incentive bonus terms. Mr. Karpinski and I never discussed the terms of Ms. Conboy's employment with American Phoenix. After the sale, I learned that Ms. Conboy was the President of Burkar from a reporter. I remember calling Mr. Karpinski to ask if she was an employee or if she had any ownership interest. He assured me that she was an employee and an officer with no ownership interest. I have no recollection of our discussing the terms of Ms. Conboy's compensation.

Although decisions by the Commissioner that would have increased the sales volume of Burkar would not have resulted in higher payments to Karpinski under the agreement of sale, they could have resulted in an increase of up to $480,000 in the income enjoyed by his household. Thus, Conboy's employment contract accomplished indirectly what Karpinski had promised Strmensky would not be a provision of the sale to American Phoenix.

FINANCIAL DISCLOSURES

During his tenure as Insurance Commissioner, Karpinski filed two financial disclosure statements (FDSs) with the ECES and the Office of the Governor's Counsel. The first was completed and filed on May 18, 1994. The second was completed and filed on May 12, 1995, except for page 3, "income," which was originally filed blank and was later filled out by Strmensky during a telephone conversation with Karpinski. Conboy testified that she did not know that Karpinski had filled out two FDSs while employed by the DOI.

Executive Order No. 2 clearly delineates a system of financial disclosures in which key officials provide information that may reveal conflicts of interest at the earliest possible time -- ideally before those officials commit to state service and assume their positions. Prospective officials who are required to file FDSs must comply with Section I3b of Executive Order No. 2, which provides:

> Each prospective public employee and public officer shall, before assuming the office to which he or she has been appointed, satisfy the [financial] filing requirements of this Order, unless the Attorney General grants to such public employee or public officer an extension from the filing deadline. Such an extension shall not be granted more than twice and shall not be for more than 30 days each[.]

Attorney General Deborah T. Poritz granted all officials who came into the Administration between January 18, 1994 and March 18, 1994, including Karpinski, a blanket exemption from the FDS filing deadline beyond the extension limits set forth in Section I3b. Initially, on March 7, 1994, the Attorney General issued a memorandum to cabinet officers noting that it "is not always feasible" that prospective and newly appointed officers and employees file their FDSs prior to assuming office, as contemplated in Executive Order No. 2. She noted, "Therefore, the Order permits the Attorney General to grant two 30 day extensions of time. The effect of the extensions is to require filing of a financial disclosure statement no later than 60 days from the date of appointment." Poritz advised her colleagues to direct all requests for her approval of filing extensions to her Legal Affairs Director. This procedure conformed to the Executive Order.

On March 23, 1994, however, Poritz issued another memorandum to cabinet officers with new instructions:

> I am aware there is some confusion regarding the filing date for [FDSs] by newly appointed officers and employees. Accordingly, I discussed this matter with the Governor's Chief Counsel and the [ECES]. A consensus has been reached which clarifies and simplifies the obligations of newly appointed officers and employees to comply with Executive Order No. 2. Please disregard the March 7, 1994 communication.
>
> All newly appointed officers and employees should file their [FDSs] not later than 60 days from the date of their assuming office or by May 18, 1994, whichever date is later. It will not be necessary for these persons to obtain the written approval of the Attorney General for 60-day extensions to file [FDSs]. Such extensions may be considered automatic.

Strmensky told the SCI that she recalled a three-way telephone conversation with Attorney General Poritz and Governor's Chief Counsel Peter Verniero in which she related that, at least since the early years of the Kean Administration, the practice had been to extend automatically the deadline for filing FDSs to 60 days from the date of employment. She did not recall that this process had ever been formalized and also could not recall ever seeing any document in which any prior attorney general had actually granted an extension to a state employee. Strmensky did not recall any discussion of whether extensions, automatic or otherwise, could be granted for more than a total of 60 days.

Rather than clarifying and simplifying the filing deadline specified for prospective officials in the Executive Order, the March 23, 1994 memorandum changed it. The Executive Order's early filing requirement for prospective employees had the salutary purpose of encouraging the early revelation of conflicts and potential conflicts at the most fitting time: i.e., when a whole new cadre of upper-echelon officials was about to assume the highest decision-making positions in state government. The effect of the March 23, 1994 memorandum was not consistent, therefore, with one of the chief purposes of the Executive Order, as well as its specific mandate.

Karpinski filed his first FDS on May 18, 1994, 16 days after the final deadline that would have been permitted under the Executive Order. In Karpinski's case, no circumstances have been suggested that would have justified a delay in filing his first FDS.

In fact, subsequent events illustrate the desirability of requiring Karpinski to file his first FDS without any extension of the deadline. For example, it would have been more likely that questions concerning Burkar's use of Karpinski's license would have been raised if the ECES had been alerted to the issue had it been raised near the time when he first took office as Acting Commissioner. Strmensky and Karpinski might have discussed license issues more specifically, since they were having other

particular discussions at that time (such as how Karpinski might delegate decisions affecting his agencies). Strmensky and Karpinski might have raised issues surrounding limitations on the use of Karpinski's license. They did not discuss Karpinski's license at all until a reporter asked questions about Karpinski's first FDS. By that time, Burkar's use of Karpinski's license had been fait accompli for more than two months.

The SCI also found several instances where information supplied by Karpinski on his FDSs was incomplete or inaccurate. A lack of clarity in the financial disclosure requirements of Executive Order No. 2, as interpreted by Karpinski, may be at least partly responsible for his failure to supply some of the required information. In other cases, Karpinski offered no explanation for failing to comply with obvious disclosure requirements.

For example, Karpinski failed to disclose:

1. that he owed over $156,000 to Burkar while he was its sole owner;
2. that he owed $24,500 to his former Apple partner (whose new insurance company Karpinski had approved to operate in New Jersey);
3. that he had sources of income outside of Burkar and his state salary;
4. that he had married the President of his former agency; and
5. the particular local government entities with which his agency did business.

1994 Income Sources

Regarding income disclosure, Karpinski submitted his second FDS with page 3 (calling for income information) blank. Strmensky testified that she telephoned Karpinski and, based on information revealed during that telephone call, entered and initialed the income information he gave for each category on the form. Karpinski testified that the procedure "[s]ounds vaguely familiar" and "could have happened that way ...." Strmensky reported that her call to Karpinski regarding the blank page 3 was "not an unusual practice." She added:

> I and other members of the [ECES] staff frequently make such calls, particularly to cabinet and subcabinet officers when we expect the media to inspect those FDSs immediately after the filing date.

Karpinski had no explanation for not having listed Burkar as a source of income on the second FDS, although he received a salary from Burkar during January and February of 1994. He acknowledged that the second FDS (filed on May 12, 1995) called for a listing of sources of income for all of 1994 and that the first FDS (filed on May 18, 1994) required a listing of sources of income for all of 1993.

Director's Fees

Karpinski testified that well before he knew he would become Acting Commissioner, he had decided, on his accountant's advice, to have Burkar give him credit for $36,000 in director's fees by reducing the balance of a loan to him from $192,332 to $156,332. Although journal entries to reflect the director's fees and reduction in loan do not appear until June 29, 1994, the day before the end of Burkar's fiscal year, Karpinski insisted that "those monies [credits] were received by me far prior to my involvement with the" DOI.

Karpinski's claim was orally corroborated by his accountant but not substantiated by any record entries made prior to the final reconciliation of Burkar's books. Karpinski did declare the director's fees as income on his 1993 federal and state personal income tax returns, which were not filed, pursuant to filing extensions, until three and a half months after the end of Burkar's fiscal year on June 30, 1994. Conboy testified at the SCI that she had no knowledge of her husband's obtaining any director's fee from Burkar and no involvement with the decision to enter the fee on the books as a year-end reconciliation.

Despite his contention that the $36,000 in director's fees should be included in his 1993 income, Karpinski did not list director's fees income as called for by the FDS. Karpinski claimed that he considered the $36,000 to have been included within the $100,000 to $250,000 income range that he listed alongside "Burkar Associates" where the form specifies "[a]ll compensated employment of whatever nature ...." He testified that he believed the separate directorship income category specified on the form referred to "an outside director of a bank or something of that nature" as opposed to a specific type of compensation from Burkar. Karpinski testified that he did not seek any advice from Strmensky or anyone else as to how he should list the director's fees on the FDS because "I really didn't focus on it and I really didn't think ... there was anything of substance there." Karpinski testified that, aside from the $36,000, he did not "think" that he received any director's fees from Burkar at any other time.

Loan From Burkar

Financial disclosure statements require a listing of all liabilities by identifying the creditor, noting a value category and including "all liabilities that have been forgiven by any creditor within the last twelve months ...." Karpinski offered no explanation as to why he had not listed the $192,332 loan from Burkar on either FDS.

Loan From Former Apple Partner

Karpinski had incurred a liability to his former partner, William G. Vowteras, when he bought out Vowteras's interest in Apple on January 6, 1995. Karpinski agreed to pay Vowteras $24,500, plus interest, in 12 equal monthly installments commencing February 6, 1995. Again, Karpinski offered no explanation as to why he did not list the balance of that loan on the FDS that he filed in May 1995, even though he had listed the loan on documents filed in March 1996 in a private judicial proceeding.

Karpinski had paid a total of $8,645.78 in principal and interest with two checks dated March 10 and April 12, 1995. He has made no further payments, according to Vowteras.

Karpinski testified that he knew his Apple partner, Vowteras, "represented" a new insurer, Proformance Insurance Co. In fact, Vowteras owns a small share of Proformance, having invested $50,000 as one of its 27 independent insurance agent founders. On October 25, 1994, Karpinski granted Proformance a certificate of authority to conduct business in New Jersey, approving the recommendation of the DOI's Property/Casualty Committee on Admissions. Karpinski did not, however, impose a cap on Proformance's writings that the Committee had flagged for his consideration and possible discussions. Thus, he did not merely rubber stamp the Committee's recommendation.

Given Karpinski's connections to Vowteras, ethical concerns regarding his approval of the company in which Vowteras held an interest became an issue. By failing to include his loan from Vowteras on his second FDS, Karpinski prevented the public and ethics officials from being in a position to examine or question whether, during the process of making decisions affecting Proformance, Karpinski placed loyalty to his partner and prospective creditor above the public interest.

Personal Commission Income

Karpinski agreed that some insurance sales to his personal customers occurring after he became Acting Commissioner on March 3, 1994 resulted in commissions payable personally to him as opposed to Burkar. He testified that he signed those checks over to Burkar for deposit in the corporation account, rather than taking them for himself. Work papers provided by Karpinski's accountant reflected two 1099 forms showing a total of $13,063.80 in commission income to Karpinski in 1994. When asked during his testimony before the SCI whether he felt obligated to list those sources of income on his second FDS, Karpinski responded that he "didn't think about it." But

he noted that since the money was ultimately put into Burkar, he did not think it would be necessary to report it as his income.

Regarding 1993 personal commission income, Karpinski reported $22,117 on Schedule C of his 1993 federal personal income tax return. He did not report these income sources on his first FDS, which was supposed to reflect all 1993 income sources.

Karpinski never consulted with Strmensky on whether or how to reflect his personal commission income on his FDSs. Conboy testified that she had no knowledge of the disposition of commission checks made payable to Karpinski instead of to Burkar. Conboy also stated that she did not discuss with Karpinski whether they should file a Schedule C with their joint federal income tax return for 1994 to reflect his personal commission income (they had married on September 10, 1994).

Officer Status of Karpinski and Spouse

Financial disclosure statements also require an official to list for himself and his spouse any office held in a corporation and to identify any state agency that regulates or licenses that corporation. On the first FDS, Karpinski noted that he was a director of the New Jersey Special Olympics but did not list his position as President and owner of Burkar and Apple and the fact that both were licensed and regulated by the DOI.

Since Karpinski had not yet married Conboy at the time he filed his first FDS on May 18, 1994, he was not required to report that Conboy was Vice President of Burkar. By the time Karpinski filed the second FDS on May 12, 1995, he and Conboy were married, and he was, therefore, required to list her position as President of Burkar. Nonetheless, Karpinski failed to do so, even though he listed her on another portion of the form as an "insurance producer." In his subsequent telephone conversation with Strmensky, Karpinski had designated Conboy's income "value class" as "greater than $100,000

but not more than $250,000" from "American Phoenix Corp. (from 1/12/95), previously Burkar Associates."

Karpinski again testified that he thought the form was merely seeking information about directorships or positions outside of his or his wife's employment. He added that in the case of his wife and the second FDS, he "would have interpreted it ... to be answering that question for her for the year 1994." He maintained this in spite of the fact that no reference to a period of time relative to this category is specified by the form.

Local Government Contracts

Financial disclosure forms require the listing of interests in contracts with government instrumentalities, including New Jersey local government. Karpinski admitted that Burkar provided insurance for local governments. An entry in his first FDS refers the reader to Schedule B where an "x" marks the "yes" column for "New Jersey Local Government Entity." Although the form requires that documentation be attached "regarding such business activities," no such documentation was attached, and Karpinski offered no explanation for this omission.

The ECES's May 24, 1996 report states at page 9:

> The [ECES] staff was aware that Karpinski had insurance contracts with local governments. Karpinski had advised the Governor in his letter of March 11, 1994 that "[Burkar] is the administrator for property and casualty joint insurance funds, the activities of which are regulated by the [DOI]." Karpinski was not asked to provide documentation regarding the contracts because it was understood that Karpinski's contractual relationships would terminate when the divestiture was completed. Karpinski delegated authority on matters covered by these contractual arrangements to a subordinate, beginning in March 1994.

The first FDS therefore revealed another issue that the ECES itself should have considered and decided, but never did. Whereas IIIA1 of Executive Order No. 2 allows a 120-day period for an existing employee to dispose of government contracts that conflict with public duties, IIIA2, provides:

> After the issuance of this Executive Order, no State agency shall employ any person in a covered position who at the time of employment holds any interest in any closely held corporation ... doing business with any ... local government entity ...."

An exception is permitted, under IIIA3, for local government contracts awarded after public notice and competitive bidding pursuant to the Local Government Contracts Law "provided that any such ... contract ... shall receive the prior approval of the [ECES]." Again, the ECES staff made no distinction, as required by the Executive Order, between an existing state employee and a prospective employee. Once Karpinski was incorrectly categorized as an existing employee, another ECES decision-making obligation was ignored. Nor was the ECES called upon to decide whether any of the local government contracts could be approved for the competitive bidding exception.

RECOMMENDATIONS

1. Improve Conflict of Interest and Ethics Awareness for Incoming Officials

The SCI will refer this report to the Insurance Commissioner for her determination whether any administrative action is warranted against any employee or licensee of the Department. The SCI endorses the ECES's recommendation that in the future all incoming cabinet level officers, their deputies and agency ethics liaison officers should be required to participate in a conflict of interest and ethics orientation meeting with the ECES staff. The SCI makes the following additional recommendations to the Legislature and the Governor in order to achieve more effective ethics and insurance law enforcement.

2. Change Composition of Executive Commission on Ethical Standards and Timing of Its Members' Appointments

The ECES should be reconstituted to be structured along the lines of the Joint Legislative Committee on Ethical Standards ("JLCES"), which has operated successfully since 1991. The ECES should include public members who are not selected from among full or part-time state officers or employees. A majority of the ECES should be members of the general public. The Chair should be selected from among the public members.

The ECES should be bi-partisan, like the JLCES, so that its decisions are non-partisan in concern and action. In addition, members' terms should be staggered in order to avoid disruptions in the continuity of its work at the beginning of each new administration, and to provide continuity and expertise to this important function. This change in composition should be accomplished at the earliest opportunity.

3. ECES Resources Should Be Increased

The ECES presently has a budget of $335,000 and a nominal staff to assist it in performing all of its important functions. It has positions for just three investigators, two secretaries, a Deputy Director and an Executive Director. The investigative and clerical staff of the ECES should be increased, especially if it is to perform additional functions, such as enforcing the provisions of executive orders and issuing an annual report to the Governor and Legislature -- something which it does not currently do.

4. Codify Executive Order Requirements

All provisions of Executive Order No. 2 deemed necessary to ensure or encourage ethical behavior by Executive Branch officials should be enacted into law. Most of the Executive Order No. 2

provisions have been tested by time, since it incorporates many of the same requirements that were included in executive orders deemed appropriate by the previous administration. Ethical standards should not change merely because an election has taken place.

After an election but before taking office and being in a position to issue an ethics executive order, a governor spends a good deal of time searching for people to staff the new administration. One of the important advantages of codifying ethics mandates would be to provide a clear understanding of ethical requirements to those deliberating during the gubernatorial transition whether to take a public position. Candidates for positions would then be able to consider with more certainty the ramifications of public service vis-à-vis their private interests, rather than being rushed by the pressing needs of a new administration into making career-altering decisions without a clear understanding of the consequences.

The only sanction for non-compliance expressed in Executive Order No. 2 is the harshest possible result: "removal from employment or office." Codification would permit an express range of less severe consequences, such as financial penalties and suspension. For example, an official who deliberately excluded from his FDS important sources of income indicative of significant conflicts would subject himself, under a statutory scheme, to a much broader range of sanctions than presently available under the Executive Order alone. Also, the debarment from public employment of up to five years for willful and continuous violators, parallel to that found at N.J.S.A. 52:13D-21(i), could be imposed for infractions involving executive order standards.

5. Revise ECES Jurisdiction to Include Violations of Executive Orders

Presently, the ECES may initiate and hear complaints regarding violations of the provisions of the New Jersey Conflicts of Interest Law or any code of ethics. The law should be amended to give

the ECES similar authority over violations of any executive order in which the Governor has granted the ECES jurisdiction. Also, the sanctions available under N.J.S.A. 52:13D-21(i) should apply to violations of such executive orders.

6. Give ECES Authority to Render Advisory Opinions Interpreting Executive Orders

The law should be amended to give the ECES the authority to render advisory opinions as to whether certain conduct would violate such executive orders. This would encourage more clarity and uniformity in ethical compliance. It would also diminish self-serving interpretations that contradict the public trust.

7. Make Executive Branch Sanctions Consistent With Legislative Branch Sanctions

Monetary penalties for Executive Branch officials violating any provision of the Conflicts of Interest Law are "not less than $100.00 nor more than $500.00." N.J.S.A. 52:13D-21(i). These figures were set nearly a quarter century ago when the Conflicts Law became effective on January 11, 1972. Meanwhile, the law was amended in 1991 to increase the minimum penalty for violations by Legislative Branch officials from $100 to $500, and the maximum penalty from $500 to $1,500. N.J.S.A. 52:13D-22(i) and 22(j). Penalties against Executive Branch violators should be consistent with those assessed against legislative officials and members of the Legislature. Since the last increase on the legislative side occurred in 1991, the maximum penalties for both legislative and executive officials should be increased to keep pace with inflation and the Legislature's assessment of the need for optimum deterrence.

N.J.S.A. 52:13D-22(i) also provides that a legislative official "may be reprimanded and ordered to pay restitution where appropriate ...." These sanctions also were added to the Conflicts Law in

1991. To be consistent, they should be added to N.J.S.A. 52:13D-21(i), the statutory provision dealing with executive officials.

8. Adhere Strictly to N.J.S.A. 17:1C-5 and Executive Order No. 2

In this report, we have noted instances in which provisions of the Governor's Executive Order No. 2 were neglected by the ECES, its staff, and the Attorney General's Office. In addition, N.J.S.A. 17:1C-5, although set forth conspicuously in the DOI Code of Ethics, was overlooked. As a result, although the State has appeared to maintain stringent ethical standards, actual practice has been more indulgent. It is disturbing that any high-level official might slight a written ethical mandate -- whether found in a statute, regulation or executive order -- for the sake of administrative convenience.

On the whole, the requirements set forth in Executive Order No. 2 and N.J.S.A. 17:1C-5 -- contained in N.J.S.A. 17:1-2 as of July 1, 1996 -- seem reasonable in light of the immense regulatory responsibility of the DOI. The Department's licensure system would not have been bent improperly to accommodate Karpinski's former agency (his wife's employer) if participants in the ethics compliance systems at the ECES and the DOI had required Karpinski to adhere to the mandates of the statute and the Executive Order. However, if executive officials believe that in practice those directives somehow unduly impede government operations, then, instead of ignoring or neglecting them, they should petition the Governor to amend or repeal the order, or the Legislature to amend or repeal the successor statute. In that way, there would be an opportunity to consider competing public policy concerns before a change would occur. Bureaucrats should not simply act as though the statute or Executive Order was a guideline, rather than a mandate.

9. Clarify License Disclosure Obligation

Executive Order No. 2 and the financial disclosure statement forms derived from it should be amended to clarify that all public servants who are required to complete an FDS must reveal all licenses they hold, regardless of the extent of their activity, or lack of activity, in the applicable field. When Karpinski considered whether his first FDS sought license information, he concluded that he did not have to list his individual insurance producer license because the form somewhat ambiguously asks officials to list those businesses subject to licensing in which they are "presently engaged." Karpinski reasoned that he was not "presently engaged" in the insurance business, despite the fact that he owned two licensed insurance agencies, considered himself to be the person ultimately responsible for their activities, and deemed that he was an "active" officer for purposes of use of his license by others.

A public servant covered by the Executive Order should disclose all of his licenses. The possession of a license can be a significant indicator of potential conflicts since it directs attention to an official's possible fields of endeavor. Therefore, Executive Order No. 2 and the FDS form should be amended to mandate disclosure of all licenses without regard for the amount of activity, or lack of activity, in the field for which the license is required.

Furthermore, the Executive Order and FDS help to implement a subsection of the Conflicts of Interest Law, N.J.S.A. 52:13D-23(e)(2), which reads:

> No State officer or employee ... should engage in any particular business, profession, trade or occupation which is subject to licensing or regulation by a specific agency of State Government without promptly filing notice of such activity with the [ECES] ....

The Legislature should amend the statute to add the requirement that covered individuals disclose all their licenses to the ECES (and to the JLCES in the case of individuals in the Legislative Branch). Since licenses enable people to engage in regulated professions and occupations, awareness of a license may be a necessary first step to determine whether an official is participating in a specific profession or

occupation. Thus, the suggested statutory amendment would help those concerned about an official's loyalty to the public interest by pointing out those areas where a potential conflict might arise.

10. Disclose Actual Income Figures on FDSs

Public officials should disclose on their FDSs actual amounts of income from each source of income, rather than simply indicating a broad range within which the actual figure falls. If Karpinski had been required to indicate his actual income from Burkar, for example, it would have been easy to discern whether he had included his $36,000 director's fee in the figure representing Burkar income or whether he had left it out of both the income and director's fees categories on his first FDS.

11. Strengthen Unwarranted Privileges or Advantages Subsection

Another subsection of the Conflicts of Interest Law, N.J.S.A. 52:13D-23(e)(3), provides:

> No State officer or employee ... should use or attempt to use his official position to secure unwarranted privileges or advantages for himself or others.

In its May 24, 1996 report, the ECES concluded, at page 13, that, "[b]ecause of conflicting statements and lack of dispositive records" regarding the change in the deactivation date of Karpinski's license from January 12, 1995 to January 26, 1995, "it is not possible to determine who suggested changing the license inactivation date ...." Obviously, if the ECES had been satisfied that Karpinski had directed Cunningham to change the date, it would have concluded that a potential violation of the cited statute was indicated.

Meanwhile, conduct that Karpinski admitted -- permitting Cunningham to change the license records so that Burkar could continue to rely on his surplus lines authority, even though he was no longer an officer -- should be considered just as inimical to the public interest as the conduct addressed

by the present statute. Therefore, the Commission recommends that the statute be amended to add the following underlined language and delete the bracketed words:

> No State officer or employee ... should use or attempt to use his official position, or permit another to use an official position, to secure unwarranted privileges or advantages for [himself or others] any person.

12. Sanctions for Those Who Have Departed From State Service

In its May 24, 1996 report, the ECES concluded, at pages 13 and 14, that Karpinski's conduct in permitting Burkar to rely on his individual license violated yet another subsection of the Conflicts Law, N.J.S.A. 52:13D-23(e)(7), which reads:

> No State officer or employee ... should knowingly act in any way that might reasonably be expected to create an impression or suspicion among the public having knowledge of his acts that he may be engaged in conduct violative of his trust as a State officer or employee ....

Although it did not express as much in its report, the ECES apparently concluded that Karpinski's resignation from his public office deprived it of the ability to sanction him for the violation that it found. Therefore, the ECES did not file a formal complaint against Karpinski, although it concluded that a violation had occurred.

However, the law does allow the ECES to sanction an official who has departed from state service by barring him from public office or employment for up to five years, provided the former official had demonstrated "willful and continuous disregard" of a requirement of the statute or an ethics code. N.J.S.A. 52:13D-21(i). Incongruously, although an official guilty of a violation that is not willful and continuous may be suspended for up to one year, a former official guilty of such a violation may not be barred from future office for any period. Therefore, the statute should be amended to permit the ECES (or the JLCES in the case of Legislative Branch individuals) to bar an offending former official

from public service for at least some period, regardless of whether his offense was willful and continuous.

13. Employment of a Public Official's Spouse in the Industry He or She Regulates

Continuing to own insurance agencies as Insurance Commissioner was no less a conflict of interest for Karpinski than his wife becoming President of one of the agencies at a final compensation determined by bonuses tied to the agency's business volume. In both situations, Karpinski's decisions as Insurance Commissioner could have influenced his household income. Therefore, the Legislature should consider whether employment restrictions on spouses, similar to those required in the casino industry, should be made applicable to highly-regulated industries, such as insurance. In addition, the Legislature should consider the extent to which ethics mandates should also apply to others who occupy an official's household in the same manner in which they would apply to the official's spouse.

14. Delegation of Decision-Making Authority Should Be Clear and Express

One of the conditions for allowing Karpinski to retain his ownership of Burkar and Apple for ten months after becoming Acting Insurance Commissioner was his agreement to delegate decisions on those matters that involved his agencies to subordinates in the DOI. This worked well on decisions regarding joint insurance funds ("JIFs"), because a limited number of top officials in the Department were aware of his delegation of decisions on JIF issues. They knew that a deputy commissioner and his successor were to make those decisions. Delegation of decisions on other conflicted matters were ad hoc and uncertain, however.

If Karpinski had issued a written directive to all DOI staff that all matters connected to his agencies, their employees or their licenses should be referred to and decided by a particular DOI deputy commissioner, he might never have discussed with Ruth Cunningham the problem of the gap in

Burkar's surplus lines authority. A disinterested person deciding the issue would have been more inclined to discuss all ramifications with Cunningham and less likely to direct or acquiesce in something that would violate legal requirements.

Therefore, all delegations intended to avoid conflicted decisions should be inclusive enough to avoid the need for ad hoc delegations by the person with potential conflicts. They should specify as few decision-makers, and alternates, as possible so as to minimize confusion about who should be asked to make the decisions. Lastly, the delegations should be in writing and distributed to all members of the affected agency.

15. Additional Sanction for Selling Insurance Without Proper License Authority

N.J.S.A. 17:22A-3 provides:

> No person [including individuals or corporations] shall ... receive any commission, brokerage fee, compensation or other consideration for services rendered as an insurance producer without first obtaining a license from the commissioner granting authority for the kind of insurance transacted. No insurance company or licensee shall pay any commission, brokerage fee, compensation or other consideration to any unlicensed person for services rendered in this State as an insurance producer except for services rendered while licensed.

Burkar improperly relied on Karpinski's individual surplus lines authority for transactions involving more than two million dollars in premiums from March 3, 1994 through January 26, 1995. Under the cited statute Burkar clearly was not entitled to collect commissions on those transactions.

Among other sanctions, current law permits the Insurance Commissioner to impose a fine of up to $5,000 for the first violation of the cited statute and up to $10,000 for each subsequent violation. N.J.S.A. 17:22A-17b. The law should be amended to permit the Commissioner to bring, in addition, an action to recover from those who received commissions without proper license authority an amount equal to the commissions, plus attorney fees and costs.

16. Expand Criminal Offense of Tampering With Public Records or Information

Current law against tampering with public records or information, N.J.S.A. 2C:28-7, is too limited. A violation is merely a disorderly persons offense "unless the actor's purpose is to defraud or injure anyone, in which case the offense is a crime of the third degree." The grade of the offense also should be increased to third degree when the actor is a public official or employee. In addition, the offense should not be restricted to those who actually create, tamper with or use a false record, but it should include public officials and employees who knowingly permit or direct another public official or employee to commit a forbidden act.

* * *

This investigation was conducted by
Deputy Director Robert J. Clark and
Special Agent William Sweerus.

State of New Jersey
Commission of Investigation

INSURANCE INTERESTS AND LICENSURE OF
FORMER INSURANCE COMMISSIONER
ANDREW J. KARPINSKI

OCTOBER 1996

COMMISSION OF INVESTIGATION
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October 1996

Governor Christine Todd Whitman
The President and Members of the Senate
The Speaker and Members of the General Assembly

The State Commission of Investigation herewith formally submits, pursuant to N.J.S.A. 52:9M, a report and recommendations based on its investigation of the Insurance Interests and Licensure of Former Insurance Commissioner Andrew J. Karpinski.

Respectfully,

Leslie Z Celentano
Chair

Louis H Miller

Justin J. Dintino

M. Karen Thompson

APPENDIX

P.L. 1996, c.44, §8 permits certain individuals to review relevant portions of Commission reports prior to public release and to submit written responses. This appendix contains the responses to this report.

A-1

CHRISTINE TODD WHITMAN
Governor

EXECUTIVE COMMISSION ON ETHICAL STANDARDS
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August 9, 1996

State Commission of Investigation
c/o Leslie Z. Celentano, Chair
28 West State Street
CN 045
Trenton, New Jersey 08625

Re: Response to Proposed Report

Dear Chairperson Celentano:

This response is provided to the State Commission of Investigation ("SCI") pursuant to section 8 of P.L. 1996, c. 44.

The following individuals associated with the Executive Commission on Ethical Standards ("ECES") have received and reviewed the SCI's proposed report in the matter of former Insurance Commissioner Andrew-J. Karpinski: Linda M. Anselmini, Chairwoman; Elizabeth Randall, Vice Chair; Arthur Jay Eisdorfer, member; Alisha A. Griffin, member; Lonna R. Hooks, member; Leo F. Klagholz, former member; Gualberto Medina, former member; Alan J. Steinberg, member; and Rita L. Strmensky, Executive Director. For the purposes of this response, these individuals are collectively referred to as the ECES.

The ECES is concerned that the SCI report does not relate the actions and interactions of all of the parties in the Karpinski matter in their factual and chronological context, thus creating inaccurate impressions. An additional concern is that the SCI's interpretations of statutes, executive orders and codes of ethics are presented as the only correct interpretations. This is clearly not the case. The ECES is also troubled by the implications that the ECES acted in bad faith, and we reject such implications. Further, the ECES strongly disagrees with the SCI's conclusion that entities and individuals other than former Commissioner Karpinski had any responsibility for his own decisions and omissions.

The ECES reserves the right to comment as extensively as necessary to the SCI's report when it is issued in its final form with its recommendations. The ECES requests that the SCI include this response in its report so that all recipients are advised that the ECES will respond in full in the public forum after due consideration of the SCI's final positions and recommendations.

Very truly yours,

Linda M. Anselmini
Chairwoman

dls
sciresp.doc
c: Louis H.Miller
Justin J. Dintino
M. Karen Thompson
James J. Morley
Robert J. Clark
ECES
AAG Alfred E. Ramey, Jr.

RESPONSE OF ANDREW J. KARPINSKI AND CAROLINE J. CONBOY

The SCI Report is the third of three investigations spanning a period of about one year.

The AG's Report said there was no criminal wrongdoing. ECES was critical of the manner in which I disposed of my business and minor omissions from my financial disclosure statement, but did not take any action. This SCI Report said that ECES didn't do their job.

Thus, after one year of intense scrutiny by these three governmental bodies, I was not accused of any major wrongdoing, yet I am left with a severely damaged reputation and the taxpayers of New Jersey with what must be a very sizable legal expense.

Specific to me, this report focuses on any ethical deficiencies arising from this matter. I suggest and feel my conduct was reasonable, save a few minor oversights in the Financial Disclosure Form for 1995. Clearly nothing major.

I was asked to immediately leave my business of 25 years and join the Administration because of, in large part, an enormous State of New Jersey insurance debt of $1.326 billion needing immediate attention. My first question was can I do this, given the fact that I owned an insurance agency, my future wife was in the business, etc. The response from ECES was YES. The New Jersey Senate confirmed my nomination. Yet the SCI Report seems to suggest that this was wrong.

The AG's Report responds to the point specifically: "...based upon discussions between ECES and the Commissioner in which the Commissioner was informed that it was the intent of ECES that he be in a position to preserve the value of his business for sale, the Commissioner reasonably believed that the continued use of his license had been authorized by ECES." Whether or not ECES, the N.J. Senate and the AG are correct, or the SCI is correct, one thing is for certain: as noted above I followed the direction provided and it was reasonable to assume I had the right to do so.

With respect to the minor Financial Disclosure omissions, any errors were certainly not intentional and had no meaningful effect on any matters with respect to my term of office as-Commissioner.

The matter of my license deactivation is one that is surrounded by contradictory information, so much so that it lead ECES to conclude: "Because of conflicting statements and lack of dispositive records, any charges of unwarranted privilege by the commissioner would fail for lack of proof."

Indeed memos appeared seemingly the same, but with different dates and different attachments. I note that testimony from the Deputy Commissioner Robert Pellechia is omitted which supports the fact that the explanation from key Department personnel changed from one day to the next.

Specific to this point, the AG's report states that the key Departmental employee claims she "received a call from Caroline Conboy." Yet the SCI Report states that she claimed "she telephoned Conboy..." The point is most obvious, and I feel the ECES conclusion in this regard is conservatively correct.

ECES also noted that only one piece of business was affected by the surplus lines licensing matter. That one piece of business generated less than $200. in commission income to the new agency owners and not one penny to me or my wife. Someone finally got it right!

What is perhaps equally as important about this report, as well as the others, is what they do not say.

Nowhere is it mentioned that I suspected a covert effort by certain Departmental personnel and others (including a legislator and a former DOI person allegedly using an alias to call the DOI and get information). This was reported to the AG's Office early on.

No mention is made of the false accusations with respect to payment of Surplus Lines taxes, the illegal accessing of these records, nor the public commentary that I gained substantial amounts of money from the business while in office.

No where is the matter of my mail box being blown up, my automobile tires being flattened with similar screws on three different occasions, suspected phone taps in my office and car, mentioned in any of the reports.

Is what happened retribution for dealing with a major problem facing the State of N.J.: the JUA/MTF debt and the manner in which 'claims were being handled, most importantly by law firms of legislators who in fact created the JUA and MTF? A JUA/MTF DOI Report revealed substantial abuses of both the JUA & MTF. Was it retribution for reorganizing a Department in dire need of restructuring and downsizing? Was it triggered by people that did not want outsiders from the private sector coming into government and upsetting the political apple cart? Were certain key DOI people fearful of losing their positions?

The **bottom line is that I did** not abuse the system nor the confidence placed in me by the government and the people of New Jersey, yet my impeccable reputation spanning over 30 years has been tarnished. The bottom line is people outside of government are not welcome. If you try to change the system, those in power will stop at nothing to get you out.

I regret the decision to go into public office, to give back to a State and people who have been good to me throughout my lifetime. Yet I am proud of the unprecedented accomplishments of the DOI under my command during a 1-1/2 year period, and the resolution of many of the problems facing the Department, including the resolution of the $1.326 billion JUA/MTF deficit.

I respect and admire the administration I had the pleasure of working with, consisting of some of the most dedicated, hard working and caring people that I have ever known. I regret that this matter has cast a shadow of question on my fellow administration members, but know that time will focus on the fine work and accomplishments they and the Governor have attained for the people of New Jersey.

I am saddened by the impression that some have suggested, and communicated to the people of New Jersey. I know I acted in an honest and forthright manner and tried to do my best on their behalf.

Whenever politicians and bureaucrats attack the morality of others, you would be well advised to count the spoons.
419915

STATE OF NEW JERSEY
DEPARTMENT OF PERSONNEL

CHRISTINE TODD WHITMAN
GOVERNOR

CN 317
TRENTON, N.J. 08625-4317

LINDA M. ANSELMINI
COMMISSIONER

August 12, 1996

Mr. Robert J. Clark, Deputy Director
State of New Jersey
Commission of Investigation
28 West State Street
CN 045
Trenton, New Jersey 08625-0045

Dear Mr. Clark,

Re: SCI Report Comments

Comment is directed at the SCI statement that:

"There would never have been any confusion over who could have used Karpinski's license if the DOI 's policy to collect licenses from its new employees had been followed. As summarized by the DOI 's former Ethics Liaison Officer, Edward Troy, the process that had worked for subordinate DOI employees was never applied to Karpinski: "

The SCI directs their comments at the manual process of surrendering a paper document which they surmise would have kept Mr. Karpinski from using his license. The physical act of surrendering a license would not necessarily preclude an individual from engaging in a business or practice. For example, many individuals continue driving even while their licenses are suspended and physical possession of the license is taken by the courts or Division of Motor Vehicles.

Mr. Karpinski understood that he was prohibited from engaging in the insurance profession. He dealt with the Ethics Commission directly on all matters and it was my understanding that he did physically surrender his license to the Ethics Commission.

Sincerely,

Edward J. Troy
Assistant Commissioner

DEPARTMENT OF BANKING AND INSURANCE
CN 325
TRENTON NJ 08625-0325
(609) 292-5360

CHRISTINE TODD WHITMAN
Governor

ELIZABETH E. RANDALL
Commissioner

M E M O R A N D U M

To: Robert J. Clark
Deputy Director
State Commission of Investigation

From: Ruth Cunningham
Director
Licensing Processing

Date: August 14, 1996

I have reviewed the portion of the SCI proposed report which you provided to me. My response is as follows:

1. The title "Improper Alteration of Records" is misleading because upon written notice a producer may inactivate and activate his license at any time during his current four year licensing period. Therefore, the two week change for Commissioner Karpinski was very minor, considering that he had his license for several months while he was Acting Commissioner, and I was never advised by the Ethics ~Commission that they had his individual producer license.

2. The report refers to a letter to Robert A. Feiner, the attorney for American Phoenix from Charles V. Bovin, the attorney for Karpinski and Conboy which apparently states..."he has arranged to cancel the Apple...license and he has put his own license on hold. However, the Department has no procedure in place where a licensee can put his license on "hold". It's either active or inactive even though legally, a Department employee may activate his license within one year upon leaving the employ of State service.

3. The report says that Conboy claimed she was not aware that Commissioner Karpinski asked DOI employees to cancel his license after Burkar was sold. That is incorrect as I telephoned her immediately when Anita Smith informed me of the authority deficiency on January 17, 1995. Anita Smith testified that she was present on January 17, 1995 when I told Conboy about her licensing situation which included a gap in licensure.

4. It was incorrectly indicated that Anita Smith stated I told her on January 17, 1995 that the Ethics Commission had Commissioner Karpinski's license. I was not informed about this information until the

AG's investigation months later. Anita was mistaken about when I told her about the Ethics Commission having his license.

5. For some reason, the report refers to the bond information that was missing but neglected to indicate the license application for Caroline Conboy was also missing from my files. The license application was later found minus stapled attachments. Particularly because another employee witnessed someone trying to break into my office during the course of Commissioner Karpinski's investigation which was reported to DOI Administrative Services and is documented in the AG's report. Her testimony was not mentioned by the SCI.

6. The report omitted that I spoke with Commissioner Karpinski on more than one occasion about his licensing situation. Every time I spoke with him even though briefly (about 15 minutes), he was sitting at his desk with the door closed. When the matter first became public, he told me he could no longer speak about the agency. (At that time I told him a news reporter had called me about his license status). During each conversation before the licensing matter became public: (a) I was never told that Burkar was sold, (b) that the Ethics Commission had his license, (c) that a letter would be sent regarding his affiliation with the agency, and (d) I never suggested that he change the expiration date of his license. He knew his commitment or agreement with the Ethics Commission, I did not.

7. The license was cancelled on January 12, 1995, and remained cancelled. The cancellation date was changed on February 3, 1995, as per Commissioner Karpinski, to reflect January 26, 1995, the date Caroline Conboy passed the exam. It is noteworthy that he hand delivered the application. Therefore, after January 12, 1995, the license was never reactivated.

8. The report indicated it was clear by the time I got Karpinski's license that I knew he was no longer an officer of Burkar. That statement is not correct, as I never had his license and he could have become an inactive officer.

9. I cannot say whether it is correct that initially I did not give the January 17th memo to Deputy Commissioner Pellecchia. I only recall meeting with him one time and providing him with my file. I did not intentionally withhold my documents.

10. I had several conversations with Caroline Conboy and Commissioner Karpinski about the gap in the Burkar license. I advised the Commissioner when Caroline informed me that she needed surplus lines authority for Burkar to conduct some business. It was at that time, he advised me his license expiration date should reflect the date Caroline obtained surplus lines authority. That is why it was changed when Caroline Conboy passed the test.

11. I reported that I mentioned to my supervisor, who was also the Ethics Officer, all of the conversations concerning the license situation with the Commissioner and Caroline Conboy. I further noted that he was not familiar with the licensing rules. Further, the report indicated authorization was not given to "override edit" or fix (which is the vernacular commonly used) pertaining to Karpinski's license. A "fix" is a transaction used by the technical assistants or their supervisor in the License Processing Unit to correct or update a record. The authorization by the Assistant Commissioner is not needed unless the fix involves generating a license. Therefore, it did not require authorization by the Assistant Commissioner regarding Karpinski's license as it did not generate a license.

12. I told SCI that there was a problem in the Fiscal Section which is why the transaction could not be completed until February 7, 1995. However, the report indicated I "did not get around to" producing the printout until February 7, 1995.

I request that the SCI include this response in its report.