



STATE OF MAINE  
COMMISSION ON GOVERNMENTAL ETHICS  
AND ELECTION PRACTICES  
135 STATE HOUSE STATION  
AUGUSTA, MAINE  
04333-0135

To: Commissioners  
From: Jonathan Wayne, Executive Director  
Benjamin Dyer, Political Committee and Lobbyist Registrar  
Date: December 3, 2015  
Re: Complaint Filed against Joel Allumbaugh

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When testifying before a legislative committee, a lobbyist is required by law to disclose the name of the organization that the lobbyist is representing. (3 M.R.S.A. § 319-A) Joel Allumbaugh is a business owner who performed some lobbying in Maine this year on a health care finance bill (LD 1305) for the Foundation for Government Accountability (FGA), a public policy advocacy organization based in Florida.

On May 5, 2015, Mr. Allumbaugh testified in support of LD 1305 at a public hearing of the Joint Standing Committee on Insurance and Financial Services (IFS). During his May 5 testimony to the committee, Mr. Allumbaugh apparently did not disclose his relationship with FGA. Rep. Ralph Tucker and Sen. Geoffrey Gratwick (members of the IFS Committee) filed a complaint with the Commission requesting that you determine whether Mr. Allumbaugh violated Maine law by not disclosing his client and set an appropriate penalty.

This is the first complaint received by the Commission under 3 M.R.S.A. § 319-A, which was enacted in 2006. The submissions from the Legislators and Mr. Allumbaugh are attached for your consideration. This memo sets out the applicable law and highlights some of the factual circumstances that the Commission staff views as relevant.

## **LEGAL REQUIREMENTS**

Maine law requires lobbyists to identify their clients when interacting with elected officials in the State House. Under 3 M.R.S.A. § 319-A (attached), when lobbyists testify before a committee of the Maine Legislature, they must disclose to the committee as part of their testimony the name of the person or organization that they represent.<sup>1</sup> A member of the Legislature may file a complaint with the Commission alleging a violation of § 319-A, and a lobbyist found by the Commission in violation may be suspended from further lobbying and fined up to \$5,000.

Lobbying is defined in Maine law as direct communication with certain covered officials for the purpose of influencing legislative action, when compensated by another. (3 M.R.S.A. § 312-A(9)) Individuals who are communicating with officials as volunteers or to express their own views are not “lobbying,” as that term is defined.

## **DISCUSSION**

Mr. Allumbaugh is the owner of the Allumbaugh Agency, an Augusta firm that designs and administers health insurance and other employee benefits programs for small

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<sup>1</sup> Lobbyists are also required to wear name tags that display certain affiliations. (3 M.R.S.A. § 327) Under Joint Rule 307 of the Maine Legislature (governing testimony to the Legislature), written materials must state the affiliation of the presenter. The Commission does not have the authority to investigate violations of the name tag requirement or the legislative rules.

businesses in Maine. In his response to the complaint, he states that he does not make his living as a lobbyist. He says that he first began testifying on legislation as the volunteer president of the Maine Association of Health Underwriters.

Mr. Allumbaugh describes himself as a member of the private sector with a background of contributing toward good public policy based on his practical experience working with small businesses and their employees. For example, he is promoting LD 1305, which is intended to incentivize Maine health care consumers to shop around for medical services at a low cost.

Mr. Allumbaugh first registered as a lobbyist for FGA on February 18, 2015. He describes his work for FGA as follows:

I have tried to maintain some connection to the health policy world over the years. Most recently I have enjoyed the opportunity to work with Tarren Bragdon and the team at FGAA to develop and promote positive health care reform initiatives around the country. One recent initiative is what we refer to as the “right to shop,” which is now LD 1305 in Maine. My contribution again stems from my practical experiences in my primary business.

(Allumbaugh response, second page) Mr. Bragdon is a former Maine Legislator who now is the President and Chief Executive Officer of FGA.

Mr. Allumbaugh was formerly listed as staff on the website of the Maine Heritage Policy Center (MHPC), a Maine-based public policy organization. He registered as a lobbyist for the MHPC in 2012, filing reports for two months and terminating thereafter. Mr. Allumbaugh did not register with the Commission as a lobbyist during 2013 or 2014.

Complaint by Rep. Tucker and Sen. Gratwick

LD 1305 is designed to encourage comparison-shopping by health care consumers.

According to Rep. Tucker, Mr. Allumbagh “is the principal expert and advocate” for the bill. (Tucker 11/14/2015 letter, third page) The chief sponsor of LD 1305 is Senator Rodney Whittemore, who is the Senate Chair of the IFS Committee. The bill has been carried over to the Second Regular Session in 2016.

On May 5, 2015, the IFS Committee held a public hearing on LD 1305. Mr. Allumbaugh testified in support of the bill. According to Rep. Tucker and Sen. Gratwick, Mr. Allumbaugh did not disclose at the public hearing that he was lobbying for FGA.

Mr. Allumbaugh submitted written testimony printed on letterhead of his company. The written testimony does not mention FGA. Mr. Allumbaugh was the first witness to fill out the testimony sign-in sheet. In the column for “Town/Affiliation Sponsor,” he wrote “Pittsfield” and did not refer to FGA or to the Allumbaugh Agency.

Mr. Allumbaugh also attended work sessions on the bill on May 14 and May 28, 2015. According to the Legislators, Mr. Allumbaugh did not disclose FGA at those two work sessions. They state that at a September 16 work session, they asked Mr. Allumbaugh if he was representing any group. He equivocated and then acknowledged being an occasional advisor to FGA. (Complaint, first page)

### Response by Joel Allumbaugh

In his written response, Mr. Allumbaugh appears to accept that he did not disclose his affiliation with FGA in his May 5, 2015 testimony to the committee, which he describes as an oversight. Mr. Allumbaugh states that he had no intention to conceal his paid relationship with FGA. He says that he disclosed that he was working with FGA to Sen. Rodney Whitemore (the bill's sponsor and IFS Committee Chair) and to other members of a stakeholder group over a period of months.

Mr. Allumbaugh explains that when testifying before the Maine Legislature his regular custom has been to introduce himself as a business owner with practical experience administering health insurance programs for small businesses and their employees. His presentation to the IFS Committee on May 5, 2015 was in keeping with that past practice. He argues that suspending him as a lobbyist would send the wrong message to individuals like him who are not full-time lobbyists and who contribute their time and expertise from the private sector to improve public policy.

In response to a question from Commission staff, Joel Allumbaugh explains that he wrote only his town of residence on the May 5 testimony sign-in sheet because the sheet asked for "Town/Affiliation." He was the first person to sign in that day and did not see how other lobbyists completed the form.

Additional comments from Rep. Tucker and Sen. Gratwick. The Commission staff invited the Legislators to submit additional comments for your consideration, particularly on the issues of the harm to the legislative process from the lack of disclosure and the

appropriate penalty. Among his comments, Rep. Tucker urges you to consider the purpose behind requiring lobbyists to disclose their clients as part of committee testimony:

The origin and source of legislation – where it is coming from – may be a critical clue to following up on the real merits of the proposal: the philosophy behind it, the social impact, how it functions and what groups or individuals may have an interest in the proposal and why.

(Tucker 11/14/2015 letter) He views FGA's role in lobbying for LD 1305 as a classic example of why disclosure is important. At the time of the public hearing for LD 1305, Legislators and the public deserved to know that LD 1305 was part of a national initiative of FGA, a public policy advocacy group. Rep. Tucker also urges you to consider other factors such as Mr. Allumbaugh's experience and skill in public policy and in lobbying, and to hold him to a high standard. Rep. Tucker argues that suspension from lobbying on LD 1305 would be a fair penalty, along with a modest fine. Senator Gratwick also emphasizes how important it is for Legislators to know the source of funding paid to experts who provide information during the legislative process.

Actions available to Commission. Title 3, section 319-A is intended to ensure that lobbyists disclose their clients to Legislators in a very direct way – as part of committee testimony. In the Commission staff's opinion, sufficient evidence has been presented to the Commission from which you could conclude that Mr. Allumbaugh violated 3 M.R.S.A. § 319-A by not disclosing that he represented FGA at the May 5, 2015 public hearing. Under this statute, the Commission may suspend Mr. Allumbaugh from further lobbying for FGA and/or assess a penalty of up to \$5,000. If you believe any further investigation is necessary prior to making a determination, the Commission staff would be pleased to take any actions you would like. Thank you.

### **3 MRSA § 319-A. TESTIMONY BEFORE LEGISLATURE; LOBBYIST**

**1. Disclosure of compensation.** A lobbyist or lobbyist associate who testifies before a joint select or joint standing committee of the Legislature shall disclose to the committee as part of the testimony the name of the person or organization that the lobbyist or lobbyist associate is representing. A lobbyist or lobbyist associate shall disclose to the committee orally or in written form the name of any person who is being compensated by the lobbyist or lobbyist associate or by the person or organization that the lobbyist or lobbyist associate is representing to testify before that committee.

**2. Report of violation.** A member of the Legislature may file a complaint with the commission alleging a violation of this section in accordance with the Joint Rules of the Legislature. The commission shall notify all interested parties and shall investigate any apparent violations of this section.

**3. Penalty.** If a lobbyist or lobbyist associate fails to disclose information required in subsection 1, the commission may:

- A. Suspend the lobbyist or lobbyist associate from further lobbying by written notice of the commission; and
- B. Assess a penalty of up to \$5,000 against the lobbyist or lobbyist associate.



Commission on Governmental Ethics and Election Practices  
Mail: 135 State House Station, Augusta, Maine 04333  
Office: 45 Memorial Circle, Augusta, Maine  
Website: [www.maine.gov/ethics](http://www.maine.gov/ethics)  
Phone: 207-287-4179  
Fax: 207-287-6775

## 2015 REGISTRATION: LOBBYIST

LOBBYIST INFORMATION	
JOEL ALLUMBAUGH  15275 COLLIER BLVD STE 201-322 NAPLES, FL 34119	Phone: (850) 792-4704 Fax: Email: JOEL@THEFGA.ORG
CLIENT INFORMATION	
FGA ACTION PRINCIPAL CONTACT: JONATHAN BECHTLE 12575 COLLIER BLVD STE 201-322 NAPLES, FL 34119	Phone: (850) 792-4704 Fax: Email: JBECHTLE@FGAACTION.ORG
LOBBYIST ASSOCIATES	
	Phone: Email:
COMMENCEMENT OF LOBBYING ACTIVITIES	
Date when lobbying commenced or is expected to commence: 2/2/2015	Date when lobbying first exceeded 8 hours in a calendar month: 2/13/2015
COMPENSATION	
The amount of compensation or the basis upon which the lobbyist will charge for those services. HOURLY RATE PER CONTRACT.	
CLIENT'S BUSINESS DESCRIPTION, LEGISLATIVE INTERESTS, AND LEGISLATIVE COMMITTEES	
<u>Primary Nature of Business:</u>	PUBLIC INTEREST
<u>Description of Business/Mission:</u>	MISSION OF FGA ACTION IS TO IMPROVE THE LIVES OF FAMILIES AND TAXPAYERS BY ADVOCATING FOR PUBLIC POLICIES BASED ON THE PRINCIPLES OF FREE ENTERPRISE, INDIVIDUAL LIBERTY, AND A LIMITED, ACCOUNTABLE GOVERNMENT.
<u>Legislative Interests:</u>	MEDICAID ELIGIBILITY AND PROGRAM DESIGN; HEALTH INSURANCE MARKETPLACE, WELFARE PROGRAM ELIGIBILITY
<u>Legislative Committees:</u>	

Filed: 2/18/2015  
Last Modified: 3/12/2015  
Printed: 10/1/2015

Lobbyist Registration



Commission on Governmental Ethics and Election Practices  
Mail: 135 State House Station, Augusta, Maine 04333  
Office: 45 Memorial Circle, Augusta, Maine  
Website: [www.maine.gov/ethics](http://www.maine.gov/ethics)  
Phone: 207-287-4179  
Fax: 207-287-6775

## LOBBYIST DISCLOSURE REPORT FOR MAY 2015

LOBBYIST INFORMATION		
JOEL ALLUMBAUGH	Telephone: (850) 792-4704	
15275 COLLIER BLVD STE 201-322 NAPLES, FL 34119	JOEL@THEFGA.ORG	
		ID: 8471
CLIENT INFORMATION		
FGA ACTION	Telephone: (850) 792-4704	
Principal Contact: JONATHAN BECHTLE		
12575 COLLIER BLVD STE 201-322 NAPLES, FL 34119	JBECHTLE@FGAACTION.ORG	
LOBBYIST ASSOCIATES		
TOTAL COMPENSATION FOR LOBBYING		
\$1,474.00 Legislative Branch Officials	\$0.00 Executive Branch Officials	\$0.00 Constitutional Officials
TOTAL EXPENDITURES MADE FOR LOBBYING ACTIVITIES		
\$0.00 Legislative Branch Officials	\$0.00 Executive Branch Officials	\$0.00 Constitutional Officials
TOTAL EXPENDITURES MADE TO OR ON BEHALF OF OFFICIALS AND FAMILY MEMBERS		
\$0.00 Legislative Branch Officials	\$0.00 Executive Branch Officials	\$0.00 Constitutional Officials
EXPENDITURES OF \$25 OR MORE FOR OFFICIALS AND FAMILY MEMBERS		
LIST OF EVENTS AND ATTENDEES IF \$250 OR MORE WAS SPENT ON OFFICIALS		
LEGISLATIVE ACTIONS THAT WERE THE SUBJECT OF LOBBYING		
Bills	LD 1305	
Issues		
LEGISLATIVE ACTIONS FOR WHICH COMPENSATION/EXPENDITURES EXCEEDED \$1,000		
Bills	LD 1305	
Issues		
ORIGINAL SOURCES OF CONTRIBUTIONS/PAYMENTS OF \$1,000 OR MORE TO CLIENT		
FGA ACTION GENERAL FUND		
LEGISLATIVE ACTIONS THAT WERE THE SUBJECT OF INDIRECT LOBBYING (OVER \$15,000)		
CERTIFICATION		

I, JONATHAN BECHTLE, affirm that the information contained in this report is true and complete and that no information is knowingly withheld to the best of my knowledge.

Report Filed by: JONATHAN BECHTLE

Report Filed on: June 02, 2015

If this report is filed by an authorized agent of the Principal Lobbyist, the Principal Lobbyist and the agent are liable for any violations of the Lobbyist Disclosure Law (3 M.R.S.A Chapter 15) that may result from the filing of a false or inaccurate report

Unsworn falsification is a Class D crime (17-A M.R.S.A. § 453).



# HOUSE OF REPRESENTATIVES

2 STATE HOUSE STATION  
AUGUSTA, MAINE 04333-0002  
(207) 287-1400  
TTY: (207) 287-4469

Received

OCT 01 2015

Maine Ethics Commission

**Ralph L. Tucker**

15 McKeen Street  
Brunswick, ME 04011  
Residence: (207) 725-7639  
Ralph.Tucker@legislature.maine.gov

September 29, 2015

Mr. Jonathan Wayne  
Executive Director  
Maine Commission on Governmental Ethics and Election Practices  
135 State House Station  
Augusta, ME 04333

Re: Violation of Title 3 M.R.S. Sec. 319-A. Testimony before Legislature;  
Lobbyist

Dear Mr. Wayne:

On May 5, 2015, in testimony before the Legislative Joint Standing Committee on Insurance and Financial Services, Mr. Joel Allumbaugh failed to disclose his status as a paid Maine lobbyist representing the Foundation for Government Accountability (FGA Action) of Naples, Florida.

On the above date, during the IFS public hearing for LD 1305, Mr. Allumbaugh did not disclose his paid lobbyist status nor his affiliation with FGA Action either orally or in writing. Mr. Allumbaugh signed the Testimony Sign-in Sheet but did not indicate his affiliation nor announce his affiliation as required by Committee Rule 7(A). In addition, Mr. Allumbaugh's 2-page written testimony did not indicate his affiliation with FGA Action as required by Joint Rule 307 and IFS Committee Rule 7(C). A copy of his testimony is attached, along with a copy of the Testimony Sign-in Sheet.

Work sessions on LD 1305 were held on May 14, May 28 and September 16, 2015.

At the September 16, 2015, work session Mr. Allumbaugh was asked if he was representing any group. He equivocated, and, on follow-up questioning, stated that he was an occasional advisor to FGA. He still did not disclose he was a registered

lobbyist on behalf of FGA Action. A check of the Ethics Commission website then revealed the lobbyist registration and reports of monthly payments by FGA Action to Mr. Allumbaugh.

Review of the Ethics Commission website revealed the following. FGA Action filed a 2015 lobbyist registration with the Ethics Commission on February 18, 2015, naming Mr. Allumbaugh as their lobbyist, using a Naples, Florida address for Mr. Allumbaugh. Compensation was listed as "Hourly rate per contract."

Monthly reports by FGA Action showing compensation paid to Mr. Allumbaugh were filed as follows:

April 2015 Report: \$636.50 for lobbying legislative branch officials.

May 2015 Report: \$1,474.00 for lobbying legislative branch officials, with LD 1305 listed as the subject of lobbying exceeding \$1,000.

June 2015 Report: \$201.00 for lobbying legislative branch officials.

July 2015 Report: \$268.00 for lobbying legislative branch officials.

August 2015 Report: \$268.00 for lobbying legislative branch officials.

Payments total \$2,847.50 so far. These reports are on the Maine Ethics website at: <https://secure.mainecampaignfinance.com/PublicSite/SearchPages/LobbyistClientDetail.aspx?OrgID=8471>

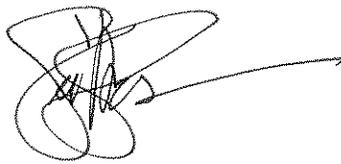
Title 3 MRS Sec. 319-A requires lobbyists who testify to disclose as part of their testimony the name of the organization they are representing. Members of the legislature may file a complaint with the Ethics Commission. After investigation, the Commission may suspend the lobbyist or assess a penalty of up to \$5,000.00. See <http://legislature.maine.gov/statutes/3/title3sec319-A.html>

This failure of disclosure may be a statutory violation of the public's right to know the sources of influence being brought to bear on important public issues. Such a violation of the disclosure rules is also unfair to other registered lobbyists, who carefully follow the rules

Respectfully,



Ralph L. Tucker  
Maine House District 50



Maine Senate District 9

Cc: Mr. Joel Allumbaugh, 47 Water Street, Suite 102, Hollowell, ME 04347  
Honorable Rodney L. Whitemore, Senator Chair of IFS Committee  
Honorable Henry Beck, House Chair of IFS Committee

Attachments:

Copy of Testimony Sign-in Sheet, IFS Committee, May 5, 2015 Public Hearing on LD 1305.

Copy of written testimony of Mr. Joel Allumbaugh, May 5, 2015 Public Hearing on LD 1305.



**THE Allumbaugh**  
AGENCY

Integrated Benefit Management

May 5, 2015

From: Joel Allumbaugh  
President  
The Allumbaugh Agency

RE: L.D. 1305

To the Distinguished Members of the Joint Standing Committee on Insurance & Financial Services:

I come before you today to urge your support of L.D. 1305.

I would like to take this opportunity to introduce The Allumbaugh Agency. We are a full service employee benefit agency specializing in the design and administration of employee benefit plans. Our customers are Maine small businesses and their employees. We have experienced firsthand the challenge of rising health care costs and burden that places on patients and consumers. We have taken the calls from employees and their families trying to understand the cost of their health care. We have witnessed deductibles rise while premiums continue to increase.

We also work with companies that self-fund their health insurance plans. This provides a clear view of health care expenditures, a view that is both concerning and infuriating. We have seen cost variation that is difficult to understand.

- A colonoscopy at \$750 in one facility and north of \$7,000 at another
- An MRI at a single facility that costs \$700 in the morning and over \$2,000 in the afternoon
- A medication picked up at a pharmacy on one end of town cost less than \$30 and at the same pharmacy chain on the other end of town cost over \$100
- An arthroscopy (a scope in this case to assess damage to a joint) vary from approximately \$1,500 to over \$11,000
- A knee replacement near \$25,000 at an nationally renowned Center of Excellence and the same surgery over \$80,000 at a facility with less distinction
- A standard lipid panel (common lab test associated with an annual physical) vary in cost by a multiple of 20

In what other industry does this kind of cost variation persist?

L.D. 1305 is a simple concept based on real world experience. Large self-funded employers have seen these cost variations for years. Many have started



doing something about it by providing patients with information and incenting them to shop for certain health care services.

What have they found?

- 1- Consumers are starving for information to inform their health care spending, especially as deductibles are rising.
- 2- Transparency alone is not enough, incentives drive shopping behavior.
- 3- It doesn't take a lot of patients shopping to impact the health care market to consumers benefit.

Consumers quite simply have a right to shop for their health care services and we should not just enable but encourage them to do so. L.D. 1305 does just that. It ensures patients will have access to cost estimates from health care providers and insurers. It also enables patients to compare to the average cost paid for a given service by county in Maine. Patients are then rewarded when savings produced from their shopping are shared between they and their insurer.

L.D. 1305 levels the playing field for high value health care practitioners. If a consumers receives care from a physician that is providing quality service at a below average cost, the patient's payments are counted toward their in-network out-of-pocket limits by their insurer regardless of the physicians network status. Patients should not be punished when they seek high value care.

I understand that there are always logistical challenges to consider when giving rights to patients. L.D. 1305 approaches this responsibly by including reasonable accommodations for insurers and health care providers to account for unknowns and complications in health care services and by including appropriate limits on payments to patients. It also includes reporting requirements to allow the Bureau of Insurance and legislature to monitor the impact of this legislation over time to ensure it reaches its objectives.

It is important that we remind ourselves that the status quo is not serving consumers interests. Business as usual is producing the cost variations outlined at the start of my testimony and burdening consumers with high premiums and unaffordable deductibles. L.D. 1305 is an important step toward putting consumers' interest first and addressing health care costs head on.

Respectfully Submitted,

Joel Allumbaugh  
President  
The Allumbaugh Agency

## TESTIMONY SIGN IN SHEET

Joint Standing Committee on: Insurance and Financial Services

LD #: 1305

Title:

Date: 5-5-15

Name	Town/Affiliation Sponsor	Proponent	Opponent	Neither	Written Testimony Provided
Joel Almonberg	Attston	✓			✓
Steven Sincere		✓			
Jeff Bush	MHA		✗		
Margie Morse	Aetna		✗		
Joe Noddy	Cigna		✗		
Sara Vanderveed	TPHC		✗		
Kris Esserent	Anchor		✗		
Michelle	MetLife		✗		✓
Kris Carl	MetLife		✗		
Don Morin	Maine Health		✗		
Gregory Fox	Clean Sciences		-	✓	✓

Andy McLean  
Et Pincan

Vassalob

OPDR

NFM





STATE OF MAINE  
COMMISSION ON GOVERNMENTAL ETHICS  
AND ELECTION PRACTICES  
135 STATE HOUSE STATION  
AUGUSTA, MAINE  
04333-0135

October 2, 2015

**By Email and Regular Mail**

Mr. Joel Allumbaugh  
The Allumbaugh Agency  
47 Water Street, Suite 102  
Hallowell, ME 04347

Dear Mr. Allumbaugh,

The Maine Commission on Governmental Ethics and Election Practices received the attached complaint from Rep. Ralph L. Tucker. Rep. Tucker requests that the Commission determine whether you violated 3 M.R.S.A. § 319-A at the May 5, 2015 public hearing of the Joint Standing Committee on Insurance and Financial Services concerning L.D. 1305 by not disclosing during your testimony that you were representing the Foundation for Government Accountability (FGA). State Senator Geoffrey Gratwick has joined in the complaint.

You had registered as a lobbyist for FGA Action on February 18, 2015. In the monthly lobbyist report for May 2015, you stated that you were lobbying on L.D. 1305. Rep. Tucker states that you did not disclose your relationship with FGA when testifying at the May 5, 2015 public hearing, and notes that you did not mention the affiliation on the testimony sign in sheet for the hearing or your written testimony.

**Applicable Law**

The Maine Legislature requires paid lobbyists to identify their clients when interacting with elected officials in the State House. Under 3 M.R.S.A. § 319-A (enclosed), when lobbyists testify before a committee of the Maine Legislature, they must disclose whom they represent. Under Joint Rule 307 of the Maine Legislature (governing testimony to the Legislature), written materials must state the affiliation of the presenter. Lobbyists are also required to wear name tags that display certain affiliations. (3 M.R.S.A. § 327)

The Commission is directed to investigate apparent violations of 3 M.R.S.A. § 319-A. The Commission may assess a penalty of up to \$5,000 and suspend a lobbyist found to have violated

Mr. Joel Allumbaugh  
Page 2  
October 2, 2015

the statute. (The Commission does not have any authority to investigate violations of legislative rules or the name tag requirement.)

**Requested Response**

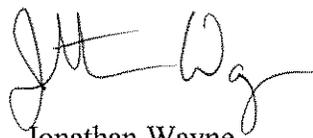
This matter will be considered by the members of the Commission at a public meeting on Wednesday, November 18, 2015 at 2:00 p.m. The meeting will be held at the Commission's office at 45 Memorial Circle in Augusta. Please be present to respond to Rep. Tucker's complaint. I expect that the Commissioners will decide at the meeting whether a violation occurred or whether to conduct any further investigation into this matter.

Please submit a written response to this request by Monday, October 19, 2015. In the response, we suggest that you

- verify whether you disclosed to the committee at the May 5, 2015 hearing that you were representing FGA,
- explain why you did not identify on the sign in sheet and in your written testimony that you had an affiliation with FGA or were representing FGA,
- confirm whether you communicated with officials concerning L.D. 1305 during the months of April, June-August or prepared written testimony or materials concerning the bill for submission to the Legislature (the reports for those months indicate that you were paid for lobbying but do not specify any legislative matters), and
- provide any other information that you believe the Commission should know concerning this matter.

If you have any questions about this request or the Commission's procedures, please call me at (207) 287-4179.

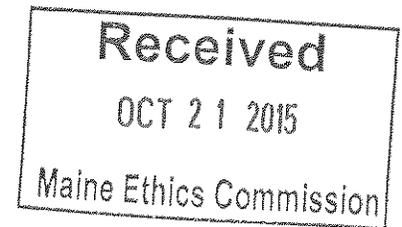
Sincerely,



Jonathan Wayne  
Executive Director

cc: Hon. Ralph L. Tucker  
Hon. Geoffrey Gratwick  
Jonathan Bechtle, General Counsel, FGA

Mr. Jonathan Wayne  
Executive Director  
Maine Commission on Governmental Ethics and Election Practices  
135 State House Station  
Augusta, Maine 04333-0135



Dear Mr. Wayne,

This letter is in response to your request for a written response to the complaint filed with the Maine Ethics Commission by Representative Tucker, dated September 29, 2015. Representative Tucker's complaint alleges that I did not properly disclose my relationship with FGA Action when testifying before the IFS Committee at the public hearing for LD 1305 on May 5<sup>th</sup>, 2015.

I would like to start by acknowledging Representative Tucker's complaint. Though I do not recall all that I said verbally, in my written testimony I failed to indicate the FGAA relationship and assume I did not reference it in my verbal testimony as well. In all honesty, I must admit that I was not familiar with Joint Rule 307 and Committee Rules 7(A) and 7(C) referenced in Representative Tucker's complaint, nor did I think to reference the FGAA affiliation during the public hearing, so the oversight was clearly mine.

This oversight was not due to any intent to hide facts from the public. I discussed my work with FGAA at length with the committee sponsor and a number of the stakeholders, both those in support and those who oppose LD 1305, over a period of months. I had no incentive to hide my affiliation, and I did not hide it in the course of introducing and educating various individuals about the concepts and intent of LD 1305.

I think it will be helpful to further explain my history with the legislature to provide better context. I own and operate an employee benefit insurance agency founded in 2004. Our clients are primarily Maine-based small businesses ranging from sole proprietors to companies with hundreds of employees spanning the states of Maine and New Hampshire. We provide health insurance and other employee benefit programs like life and dental insurance plans, as well as administrative services and compliance support.

In the course of my career I have served in many voluntary positions, such as the Board of the Maine Association of Health Underwriters where I served as President from 2007 to 2011, the Board of the Maine Guarantee Access Reinsurance Association, and the Advisory Committee on Maine's Health Insurance Exchange. I have consistently seen the impact of new laws and regulations on my customers and have tried to apply my knowledge and experience to improve the health insurance industry.

My first visits to the Maine legislature were made when serving as the President of the Maine Association of Health Underwriters. I was not a paid lobbyist nor did I have any experience testifying before a committee. I simply paid attention to proposed bills and offered my opinion or perspective on occasion in an attempt to better inform the committee members on the relevant subject matter. I always made a point to explain what I do for work as it seems the most relevant point of introduction. I have always thought it was important for the committee to understand that I work every day with small businesses and their employees and that my experience relates to practical situations and real people.

I have tried to maintain some connection to the health policy world over the years. Most recently I have enjoyed the opportunity to work with Tarren Bragdon and the team at FGAA to develop and promote positive health care reform initiatives around the country. One recent initiative is what we refer to as the "right to shop", what is now LD 1305 in Maine. My contribution again stems from my practical experiences in my primary business.

I continue to watch businesses and individuals struggle with health insurance and health care costs. I am seeing larger and larger deductibles and out-of-pocket exposure for many of our clients. I also have the unique perspective of seeing claims data showing incredible cost variation for the same services with no apparent correlation to quality. I have seen common procedures like MRI's vary in price by hundreds and thousands of dollars at the same facility with the same equipment based on the time of day the procedure was performed. I have seen the same medication delivered by infusion at one hospital cost \$28,000 for a single shot and half that price just a couple miles away at another hospital in the same town. I have listened to the challenges and frustrations of employees and employers who have no information to inform their purchasing decisions yet are suffering the consequences of the blind choices they are making.

I have a great deal of passion for LD 1305 because it gets at this very issue and empowers individuals with information and incentive to shop both to their and their insurance companies' benefit. This initiative was originally contemplated with no intention of first introducing in Maine, but I was encouraged at the thought of working with stakeholders in Maine knowing this was a concept that could generate bipartisan support.

When I spoke before the committee on May 5<sup>th</sup>, this is where I was coming from. I instinctively followed my past practice of helping the committee to understand where my motivation stemmed from and the practical challenges I saw daily that this bill could help address. I had no thoughts of subterfuge or obfuscation.

It's also important to underscore that I have no financial motivation for my work on LD 1305. The lobbying reports cited by Representative Tucker identify \$2,847.50 paid to date, which is accurate. That total represents well below one half of one percent of the annual revenue I am responsible for at my agency. Any compensation I do receive is not impacted by success or failure in passing any bill. There is no business opportunity for me or my agency should LD 1305 pass. The amount I do earn lobbying is substantially below my earning power applying the same time to the core activities in my primary business. My work in the health policy arena is and has always been a commitment I have made to invest my time and expertise, not profit from it.

In response to the direct points raised in your letter:

- As indicated, I don't recall disclosing my affiliation with FGAA during my testimony on May 5<sup>th</sup> as Representative Tucker charges.
- Looking at the sign in sheet- I was first to sign in and the sheet asks for "Town/Affiliation". I simply wrote down town of residence. Had I signed in later in the morning and seen how others filled in this section, I would have thought to indicate FGAA.
- Any communication with officials in April and June-August would have been in reference to LD 1305. Your letter indicates that some of the lobbying reports do not indicate a specific bill or

legislative matter, this was related to errors in the electronic filing done by the staff at FGAA. They have been informed of this, and have filed amended reports to correct the errors.

In reflecting on this situation I understand the intent of the rules around disclosure. I admit that the oversight was mine on May 5<sup>th</sup> and though I was not aware of the specific requirements, I recognize that is no excuse. It was my responsibility when I took the step to register to understand those rules. For that I offer a sincere apology to Representative Tucker for my oversight and will not make the same mistake in the future.

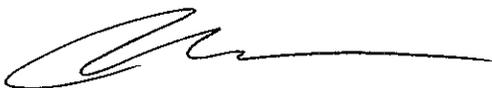
Representative Tucker points out the Commission may suspend a lobbyist in addition to assessing a financial penalty for the failure to disclose identified. In his objection to my request that the Ethics Commission hearing be pushed to December due to a scheduling conflict he states "this is a significant case of first impression and the lobbyist community will be watching." I would point out that beyond the community that make their living lobbying, this will also be a case of first impression for people like me that invest their time, energy and expertise to improve the legislative process and bring ideas to our elected officials.

From a strictly personal perspective, the legislative process is incredibly frustrating. Outside the State House people of good will and intentions have conversations. If someone demonstrates an oversight, others pull them aside, educate them and move on. It is incredibly discouraging that an elected official focuses not on the merits of an idea and bill before them, but instead capitalizes on a technical infraction to discourage participation in the process entirely.

I don't need to spend my time at the legislature. I don't make my living as a lobbyist. I can make much better use of my time and dramatically improve my earning power outside of the State House. I participate in the legislative process not for personal gain but because I think it is the right thing to do and that I can make a positive contribution. I talk with business owners and community leaders frequently, many that are my seniors on the other end of their careers. Many times I have heard someone tell me they used to spend time at the legislature but no longer do out of frustration and the perception that it is a waste of their time and talent. That is a travesty we all suffer the consequences of.

If Representative Tucker gets what he appears to want from this Commission, I will simply be one more person that used to spend time at the legislature trying to contribute to the process. I can't believe that is the intent of this rule or in any way beneficial to our system of representative government.

Sincerely,

A handwritten signature in black ink, appearing to read "Joel Allumbaugh". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Joel Allumbaugh



STATE OF MAINE  
COMMISSION ON GOVERNMENTAL ETHICS  
AND ELECTION PRACTICES  
135 STATE HOUSE STATION  
AUGUSTA, MAINE  
04333-0135

October 28, 2015

**By Email and Regular Mail**

Honorable Ralph L. Tucker  
15 McKeen Street  
Brunswick, ME 04011

Honorable Geoffrey M. Gratwick  
1230 Kenduskeag Avenue  
Bangor, ME 04401

**OPPORTUNITY TO PROVIDE  
ADDITIONAL INFORMATION OR ARGUMENT**

Dear Representative Tucker and Senator Gratwick:

Enclosed is a copy of Mr. Allumbaugh's response to your complaint. In the response, he acknowledges that he may not have identified the Foundation for Governmental Accountability as his client at the May 5, 2015 public hearing. Mr. Allumbaugh characterizes the omission as an oversight and provides additional contextual information.

As you are aware, the complaint will be considered by the Commission at its meeting on December 16, 2015 at 9:00 a.m. At the meeting, the Commissioners may:

- make a final determination whether or not a violation occurred and (if so) take punitive action against Mr. Allumbaugh, or
- request that the staff conduct further investigation.

In case the Commissioners would like to reach a final determination at the December 16 meeting, you are invited to provide any additional information or argument in writing that you would like for the Commissioners' consideration prior to the meeting. In particular, you may wish to address:

- the harm to the legislative process or to the public resulting from Mr. Allumbaugh's failure to disclose his client, and/or
- any penalty or other outcome that you believe would be appropriate.

Please submit any response within three weeks by November 18. If you need additional time, please let me know.

Hon. Ralph L. Tucker & Hon. Geoffrey M. Gratwick

Page 2

October 28, 2015

I confirmed with the Chair that you would be welcome to make comments in person at the December 16, 2015 meeting, if you would like.

Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read "Jonathan Wayne". The signature is fluid and cursive, with the first name "Jonathan" and the last name "Wayne" clearly distinguishable.

Jonathan Wayne  
Executive Director

Enclosure

JW/lb

cc: Joel Allumbaugh (by email and regular mail)



# HOUSE OF REPRESENTATIVES

2 STATE HOUSE STATION  
AUGUSTA, MAINE 04333-0002

(207) 287-1400

TTY: (207) 287-4469

Received

NOV 16 2015

Maine Ethics Commission

## Ralph L. Tucker

15 McKeen Street

Brunswick, ME 04011

Residence: (207) 725-7639

Ralph.Tucker@legislature.maine.gov

Jonathan Wayne, Executive Director  
Commission on Governmental Ethics  
135 State House Station  
Augusta, ME 04333-0135

November 14, 2015

Executive Director Wayne:

Your letter of 10/28 invited further comment on our complaint pursuant to 3 MRS Section 319-A. The complaint arose from Respondent Allumbaugh's failure to disclose at hearing that he was acting as a paid lobbyist for the Foundation for Governmental Accountability of Naples, Florida (FGA).

The statutory violation is admitted. So the question is to set a fair penalty. A serious penalty is called for because this disclosure law undergirds open and honest public debate.

### Policy Reasons for Disclosure Law

Why is the Section 319-A disclosure statute so important?

Public hearings are the key (and sometimes only) time and place when the public and the legislators can learn the origin and source of lobbying efforts on myriad bills being rushed through committees. This is the critical time and place where citizens and interest groups openly line up to be identified for and against proposed legislation. The origin and source of legislation – where it is coming from – may be a critical clue to following up on the real merits of a proposal: the philosophy behind it, the social impact, how it functions and what groups or individuals may have an interest in the proposal and why. This is the reason for transparency in government affairs.

Legislators do not have the time or staff to rummage through the filings of the Ethics Commission to find out who is behind the lobbyists working dozens of bills for various clients. In Maine we have a parliamentary rule that every bill gets a public hearing, a rule that does not exist everywhere. We are also proud to have a unique system of joint Senate-House public hearings, which promotes collegiality between the houses, but also unites and streamlines the legislative committee process.

In the hurly-burly of a legislative session, in a small state, with a part-time citizen legislature, Senators and Representatives must pay special attention at public hearings. That is why disclosure of affiliation is necessary at hearings, in addition to filings with the Ethics Commission.

Senator Philip Bartlett, cosponsor of the lobbyist disclosure law, then L.D. 1993, testified on February 27, 2006, and explained the reasons he authored the law as follows:

In considering legislation before our committees, many of us have struggled with trying to ascertain the true source of testimony and the motivations of individuals testifying before us. I was surprised to learn that there is no requirement under our disclosure laws that an individual, even a registered lobbyist, testifying before a committee disclose at that time who he or she is representing.

Although a lobbyist must file a statement with the Ethics Commission, that statement might include multiple clients making it impossible to determine who a lobbyist was representing on any particular bill. More fundamentally, legislators should not have to wait up to thirty days for a report to be filed before learning who financed lobbying activities on a particular piece of legislation.

#### Factors to Consider in this Violation

Given the above policy reasons for the disclosure law, the Ethics Commission should consider the following factors in fashioning a penalty for this specific violation:

1. Lobbying experience. Respondent was previously registered as an active Maine lobbyist in 2012, for the Maine Heritage Policy Center, according to Ethics Commission records. He is not a legislative novice. The lobbyist disclosure statute

was enacted in 2006, well before the Respondent first registered in 2012. Familiarity with the statute governing lobbyists is presumed of all registered lobbyists. Respondent advertises lobbying as a consulting service provided by The Allumbaugh Agency. See Attachment A.

2. Experience and skill in public policy and politics. Respondent is a renowned expert in health insurance regulations and reforms according to the Maine Heritage Policy Center, where he was Director of its Center for Health Care Initiatives. Respondent was on the Advisory Committee on Maine's Health Insurance Exchange, and on the Board of the Maine Guarantee Access Reinsurance Association. He was also on the Board and President of the Maine Association of Health Underwriters and the Maine Coalition to Protect Patient Rights. See Attachment B.

3. Key lobbyist on bill. Respondent is the principal expert and advocate for the specific bill he is now lobbying. His lobbying was not peripheral or incidental to the bill. He was appointed as a key member of the "stakeholder's sub-committee" to work the bill. His paid lobbyist affiliation was not disclosed during IFS Committee work sessions. As late as the September 16, 2015, work session, when asked about whether he had any affiliation, he equivocated.

4. FGA's lobbying role is a classic example of why disclosure is important. Such disclosure is a vital clue to tracking down and understanding the broader policy context and genesis of the bill being lobbied. According to Respondent's October 21, 2015 letter to the Ethics Commission, he is working with "the team at FGAA to develop and promote positive health care initiatives around the country." So this is not just a local initiative, but a national one. Explicit disclosure of the source of funding for lobbying this initiative, at the public hearing, would obviously invite more immediate and intense scrutiny of the merits of the bill.

5. Written testimony is deliberate. Respondent's written testimony was consciously and deliberately drafted, yet omitted any mention of affiliation or funding by FGA. Assuming Respondent was aware FGA had publically registered his name as a lobbyist and filed monthly payment reports, oversight of this information while sitting down to prepare written testimony is remarkable.

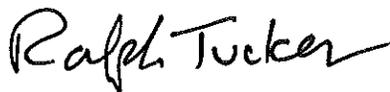
### Conclusion

This complaint does not involve a plain citizen, unsophisticated in the rules and subtleties of public policy. The Respondent is a paid legislative lobbyist, subject to

Chapter 15 of Title 3, Lobbyist Disclosure Procedures. A higher standard of behavior should be expected.

Regardless of whether the admitted violation was due to ignorance, negligence or deliberate intent, a fair penalty would be suspension of Respondent's lobbying privileges on L.D. 1305 plus a modest fine. The suspension penalty uniquely fits the violation: if you fail to openly disclose who you are lobbying for at legislative hearings, then your lobbying status on that bill may be suspended. A mere fine could be passed off as a cost of business.

Sincerely

A handwritten signature in black ink that reads "Ralph Tucker". The signature is written in a cursive, slightly slanted style.

Representative Ralph Tucker  
15 McKeen St.  
Brunswick, ME 04011

CC: Joel Allumbaugh  
Suite 520  
6 East Church St  
Augusta, Maine 04330

Senator Geoff Gratwick  
1230 Kenduskeag Ave.  
Bangor, Maine 04401



Integrated Benefit Management

## Consulting Services

*The Allumbaugh Agency* is a licensed life and health insurance consultant in addition to a brokerage service. This entity works on a fee for service basis to perform multiple tasks upon our client's request. Some of our consulting projects included developing benefit education programs for companies, assisting with the development of an employer association insurance program, and providing health policy analysis including lobbying.



6 East Chestnut Street  
Suite 520  
Augusta, ME 04330  
T: 207.623.1110  
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info@allumbaugh.com

Attachment A



## MEET OUR NEW HEALTH CARE POLICY DIRECTOR JOEL ALLUMBAUGH

By Maine Heritage Policy Center  
June 2, 2011

The Maine Heritage Policy Center (MHPC) is proud to announce the selection of Joel Allumbaugh of Gardiner as the new director of MHPC's Center for Health Reform Initiatives. Allumbaugh, a renowned expert in health insurance regulations and reform, has served on MHPC's Board of Advisors since 2009.

Allumbaugh assumes the role of MHPC's health policy expert after the historic passage of LD 1333, which was recently passed by the Legislature to increase competition within Maine's health insurance market, creating more options and lower premiums for Maine people and businesses. In his new role, one of Allumbaugh's chief priorities will be monitoring the implementation of the law and reporting on its progress. He will also serve as the organization's lead researcher and spokesperson on all health care related issues facing the State of Maine.

"We're thrilled to welcome Joel to our staff. We look forward to his contributions to our organization, and his leadership in directing MHPC's advocacy of proven, patient-centered health reforms that improve access to affordable, quality care," said Michael Duddy, Chairman of MHPC's Board of Directors.

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Allumbaugh will continue to serve as Chief Executive Officer of National Worksite Benefit Group, Inc., which he co-founded in 2003 to offer a full service employee benefits insurance agency specializing in consumer-driven health plan strategies. Previously, he twice served as President of the Board of Directors for the Maine Association of Health Underwriters (MAHU), from 2002 to 2003 and again from 2007 until 2011.

In 2009, Allumbaugh served as a member of the Maine Coalition to Protect Patient Rights, an organization that united legislators, health providers, health policy experts, business owners and others in opposition to ObamaCare's government takeover of health care. That year, MAHU, under his leadership, also partnered with MHPC to propose free-market alternatives to ObamaCare.

"I'm honored to have this opportunity to lead MHPC's efforts in promoting responsible, patient-centered solutions to conquer

## ABOUT THE AUTHOR

The Maine Heritage Policy Center is a research and educational organization whose mission is to formulate and promote conservative public policies based on the principles of free enterprise and limited, constitutional government for the benefit of the people of Maine.

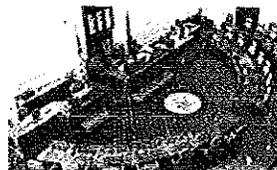


Read all of Maine Heritage Policy Center's Posts

## IN FOCUS



A Bad Deal for Maine



Compromise Budget Contains \$294 Million



RELEASE: Six conservative groups demand

Attachment B

Received

DEC 03 2015

Maine Ethics Commission

Jonathan Wayne  
Executive Director, Maine Ethics Commission  
135 SHS  
Augusta, ME 04333  
November 30, 2015

Subject: Complaint re Joel Allumbaugh, to be heard 12/16/2015

Dear Mr. Wayne

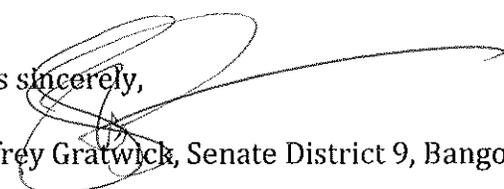
Please share the following thoughts with the commissioners. I realize that this submission is after your deadline and would be happy to present it solely in verbal form if that would be more appropriate. I have reviewed the letters of Representative Tucker as well as that of Mr. Allumbaugh.

In high school we all learned to ask questions about the sources of information. Where the information comes from has a significant influence on how we conceptualize facts or an event. It influences how we interpret data, our thinking, the conclusions we draw and our subsequent actions. For example, histories of the Second World War written by Americans, French, Russians, Germans, Chinese or Japanese are strikingly different. Whom should we believe and what conclusions should we draw? On 11/16/15 USA Today featured an article about the number of birds killed by wind turbines based on data from the National Research Council of the American Wind Energy Association. A brief search of the internet revealed a number three times higher using data from the Audubon Society. Which number should we believe and why?

In 2006 the Legislature passed LD 1993 'An Act to Make Public Information Regarding Financial Interests Affecting Legislative Testimony'. The bill was in response to the 2005 testimony of a lobbyist appearing before the Energy and Utilities Committee. Committee members were unable to determine who the lobbyist's client or clients were and the extent of their involvement. In his testimony the bill's sponsor, Representative Faircloth, stated: "Consider an expert, for example, who testifies regarding a particular policy recommendation. Most legislators would view the testimony differently if they knew the expert was paid by a particular interested party than if they thought the expert was a neutral, independent observer." This bill became Public Law in 4/10/2006.

I believe it is imperative that this LD 1993 and its Public Law continue to be upheld to preserve the integrity of our legislative process.

Yours sincerely,

  
Geoffrey Gratwick, Senate District 9, Bangor and Hermon

Please be advised that any information sent to me in my capacity as a legislator may become a matter of public record as indicated in the Maine Freedom of Access Act <http://www.maine.gov/foaa/index.htm>