

**OFFICE OF THE MISSISSIPPI SECRETARY OF STATE
BUSINESS REGULATION AND ENFORCEMENT DIVISION**

IN THE MATTER OF:)	
)	
)	Administrative Proceeding
Pan American Health and Education)	Number C-07-0114
Foundation)	
525 23rd Street, NW)	
Washington, DC 20037)	
)	
Respondent)	

**FINAL ORDER DENYING REGISTRATION AND
IMPOSING ADMINISTRATIVE PENALTY**

The SECRETARY OF STATE OF MISSISSIPPI, by and through Patricia Melvin, Senior Attorney for the Business Regulation and Enforcement Division (hereinafter “Division”), hereby issues this Final Order Denying Registration and Imposing Administrative Penalty to Pan American Health and Education Foundation (hereinafter “Respondent”) and in support hereof, states the following.

I. JURISDICTION

The Mississippi Charitable Solicitations Act, codified at Miss. Code Ann. §79-11-501, *et. seq.* (2001) (hereinafter “Act”), gives the authority to the Secretary of State to regulate “charitable organizations” that solicit donations in the State of Mississippi.

Section 79-11-501(a)(i) of the Act provides the following:

(a)(i) “Charitable organization” means either of the following:

- (A) Any person determined by the Internal Revenue Service to be a tax exempt organization pursuant to Section 501(c)(3) of the Internal Revenue Code; or
- (B) Any person actually or purporting to be established for any voluntary health and welfare, benevolent, philanthropic, patriotic, educational, humane, scientific, public health, environmental conservation, civic, or other eleemosynary purpose or for the benefit of law enforcement personnel, fire fighters, or other public safety organizations,

or any person employing in any manner a charitable appeal as the basis of any solicitation or an appeal that suggests that there is a charitable purpose to any solicitation and includes each local, county or area division within this state of such charitable organization, provided such local, county or area division has authority and discretion to disburse funds or property otherwise than by transfer to any parent organization.

Respondent is a humane organization whose mission is to improve the health of people, primarily in Latin America and the Caribbean. Respondent has previously registered with the Division and attempted to renew its registration with the Division on January 24, 2007. For these reasons, the entity falls within the Act's definition of "charitable organization." Thus, Respondent is subject to the Secretary of State's regulatory authority.

II. FINDINGS OF FACT

1. The following individual may be served with this Final Order Denying Registration and Imposing Administrative Penalty:

Mr. Jess Gersky
Pan American Health and Education Foundation
525 23rd Street, NW
Washington, DC 20037

2. Prior to November 19, 2006, Respondent was a registered charity with the Mississippi Secretary of State.

3. That registration lapsed on November 19, 2006, due to Respondent's failure to file the necessary registration renewal application prior to the expiration of its registration.

4. On January 24, 2007, the Division received an incomplete Charitable Organization Registration Statement. The registration packet contained the following deficiencies: (1) The attachment to Respondent's application showed Respondent

currently registered in Mississippi, when in fact Respondent's registration expired on November 19, 2006; (2) A notarized statement of solicitation was not included per Mississippi Charities Act Rule 205; and (3) The audited financial statement provided by Respondent contained language limiting the opinion of the certified public accountant.

5. Pursuant to Miss. Code Ann. § 79-11-503(6), solicitations made by a charitable organization during a period of non-registration are illegal. Therefore, the Division requires certain information about solicitation activity during any periods of non-registration.

6. On February 21, 2007, the Division mailed a letter to Respondent explaining that the Charitable Organization Registration Statement sent to our office on January 24, 2007, was incomplete; the Division also notified Respondent of the information required before the Division could renew the registration. The Division's letter further advised Respondent the Division would take formal administrative action in the event Respondent failed to respond to the Division's letter within fifteen (15) days. A copy of the Division's February 21, 2007, letter from Patricia Melvin was attached to the Notice of Intent to Deny Registration and Impose Administrative Penalty.

7. To date, Respondent has not contacted the Division in response to the February 21, 2007 letter.

8. To date, Respondent has not requested an administrative hearing as provided for in paragraph of the Notice of Intent to Deny Registration and Impose Administrative Hearing.

III. APPLICABLE LAW

9. Miss. Code Ann. § 79-11-509(1)(e) states:

(1) The Secretary of State shall deny, suspend or revoke a registration or an exemption for the following reasons:

* * *

(e) The applicant or registrant has violated or failed to comply with any provisions of this chapter or any rule or order thereunder.

10. Pursuant to Miss. Code Ann. § 79-11-503(4)(6), solicitations made during a period of non-registration are illegal. It states as follows:

(4) Such registration shall remain in effect for one (1) year, unless renewed by the filing of forms as prescribed by the Secretary of State and upon payment of the Fifty Dollars (\$50.00) renewal fee.

* * *

(6) In no event shall a registered charitable organization continue to solicit contributions in or from this state after the date such organization should have filed, but failed to file, a renewal and the financial report in accordance with the requirements of Section 79-11-501 through 79-11-529.

11. According to Mississippi Charities Act Rule 205(E), a charity must submit a notarized statement of solicitation when its renewal is late. It states as follows:

(e) A notarized statement of solicitations **must** be submitted with the Registration Statement (Form URS) if the renewal is late. When the renewal is received after the expiration of the Certificate of Registration, a statement detailing the solicitations made during the period of non-registration must be submitted. **The statement must contain the donations pledged and donations received from Mississippi residents.** If no solicitations were made, the statement must affirm that no solicitations were made during the period of non-registration. For purposes of this subsection, **the period of non-registration shall mean the date on which the Certificate of Registration expired through the date on which the Division receives the complete renewal package.** A renewal is not considered complete and will not be further processed

until the Division has received all the required documentation, including the statement of solicitations.

12. In addition to the remedies provided in Miss. Code Ann. § 79-11-509(1) set out above, Miss. Code Ann. § 79-11-509(4) provides that a charitable organization that solicits during a period of non-registration may be subject to an administrative penalty up to a maximum of Twenty-Five Thousand Dollars (\$25,000.00) for each solicitation made during a period of non-registration.

IV. CONCLUSIONS OF LAW

Respondent failed to file a registration renewal application prior to the expiration of its prior certificate of registration. The January 24, 2007, registration application did not disclose its solicitation activity in the State of Mississippi during its period of non-registration. Respondent failed to correct the deficiencies in its registration renewal application. For these reasons, the Division must deny Respondent's registration renewal application pursuant to Miss. Code Ann. 79-11-509(1)(e).

V. PUBLIC INTEREST

This Final Order Denying Registration and Imposing Administrative Penalty against Respondent is issued in the public interest and for the protection of contributors consistent with purposes of the Act.

VI. ORDER

IT IS THEREFORE ORDERED, pursuant to the authority set out in the Act, that the registration of Respondent is hereby denied.

IT IS FURTHER ORDERED, pursuant to authority set out in the Act, that an administrative penalty in the amount of Two Thousand Dollars (\$2,000.00) is imposed.

Respondent shall pay such administrative penalty prior to renewing its registration with the Mississippi Secretary of State's Business Regulation and Enforcement Division.

ISSUED, this, the 9th day of November, 2007.

ERIC CLARK
Secretary of State

BY:


PATRICIA MELVIN
Senior Attorney
Business Regulation and Enforcement

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CERTIFICATE OF SERVICE

I, Patricia Melvin, do here by certify that I have this day mailed via Certified Mail, postage pre-paid, a true and correct copy of the Final Order Denying Registration and Imposing Administrative Penalty to the following:

Mr. Jess Gersky
Pan American Health and Education Foundation
525 23rd Street, NW
Washington, DC 20037

Maureen Otis, Esquire
Pan American Health and Education Foundation
4850 Wright Road, Suite 168
Stafford, Texas 77477

This, the 9th day of November, 2007.


PATRICIA MELVIN

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