

## **New Findings Uncovered in Whitmer's Contact Tracing Scandal**

New findings uncovered in Governor Whitmer's contact tracing scandal are presented in this report. As covered in extensive media reports, the Governor's scheme would have stored citizens' confidential health information in a voter database. This private health information could then be accessed by Governor Whitmer and her Democrat allies. A summary of what has been uncovered thus far is available at Commissioner Wes Nakagiri's website.<sup>1</sup>

This report focuses on information published by Crain's Detroit Business, in their April 23 article titled, "Whitmer: Procurement process 'not followed' in canceled contract for COVID-19 contact tracing."

These three excerpts from Crain's April 23 article are investigated in detail and analyzed in this report:

1. The eight-week contract for Kolehouse's Great Lakes Community Engagement was awarded as a subcontract through the Michigan Public Health Institute, an Okemos-based nonprofit established by the state to conduct public health research projects.
2. "I do know that the Department of Health and Human Services doesn't have a political bone in their theoretical body," she (Whitmer) said.
3. "There were meetings, calls and other business development conducted since April 1 to discuss the state's contact tracing needs and what a contact tracing project could entail," Sutfin said.

These three excerpts are examined with the intent of answering the following questions:

1. What is the Michigan Public Health Institute (MPHI), and what is their relationship to the Michigan Department of Health and Human Services (MDHHS)? Is MPHI subject to HIPAA?
2. Governor Whitmer said, "I do know that the Department of Health and Human Services doesn't have a political bone in their theoretical body." Is this a fair characterization?
3. When did discussions about this contact tracing scheme start? Did they start on April 1 as stated by Sutfin?

### **What is the Michigan Public Health Institute?**

The Michigan Department of Licensing and Regulatory Affairs (LARA) website<sup>2</sup> shows the Michigan Public Health Institute (MPHI) was incorporated on 07/09/1990<sup>3</sup> as a domestic non-profit.

MPHI's Articles of Incorporation states, under Article II, "The mission of the Corporation is to assist in developing and increasing the capacity of the Michigan Department of Public Health and the universities and agencies associated with the Department of Public Health to prevent disease, prolong life, and promote public health through an organized program of policy development, planning, scientific research, service demonstrations, education and training."

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<sup>1</sup> <https://www.commissionerwes.com/index.php/covid>

<sup>2</sup> [https://cofs.lara.state.mi.us/CorpWeb/CorpSearch/CorpSummary.aspx?ID=800881075&SEARCH\\_TYPE=3&CanReturn=True](https://cofs.lara.state.mi.us/CorpWeb/CorpSearch/CorpSummary.aspx?ID=800881075&SEARCH_TYPE=3&CanReturn=True)

<sup>3</sup> James Blanchard (D) was Michigan's Governor at this time

Article VI states, “The Corporation shall be operated exclusively for charitable, educational and scientific purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code.” Also included in their Articles of Incorporation, MPHI is a charity which shall not, “. . . carry on propaganda or otherwise attempt to influence legislation . . .” or “. . . participate in or intervene in any political campaign on behalf of any candidate for public office.”

Information to assess how effectively a charity utilizes donations is readily available. Two common sources of such information are Charity Navigator/Guide Star rating and IRS Form 990 tax returns.

Charity Navigator/GuideStar<sup>4</sup>, is a charity rating organization. This rating organization’s website states, “Charity Navigator’s expert insights and ratings are impartial and provided free of charge. Charity Navigator’s guidance to nonprofit organizations helps them operate efficiently, promote organizational sustainability, and inspire donor confidence.”

Charities with the highest level of financial and operational transparency receive a Platinum rating. Other ratings are Gold, Silver, Bronze, and unrated. Locally, Livingston County Catholic Charities and Livingston County United Way both have Gold ratings.

Unfortunately, MPHI is unrated by this rating organization.

IRS tax returns<sup>5</sup> also provide useful insight about charities. MPHI’s 2018 tax return showed revenues of over \$94 million, with 99.85% of that coming from public (governmental) sources. These IRS statistics show taxpayers provide virtually all of the revenue for this charitable entity.

As required by law, charities must disclose the salaries of their highest paid employees on their 990 form. In 2018 the highest paid employee earned compensation (includes base pay, bonus pay, and incentive pay) of \$236,123<sup>6</sup>. The next four highest range from \$161,248<sup>7</sup> down to \$125,706. As a point of reference, the Director overseeing the entire Michigan Department of Health and Human Services earned \$175,636 in 2018<sup>8</sup>.

### **Is MPHI subject to HIPAA?**

Concerns have been expressed regarding the Whitmer administration plans to store confidential health information, obtained during the course of contact tracing, in a Democrat-controlled voter database. Some have asked whether the Whitmer scheme violates HIPAA.

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<sup>4</sup> <https://www.guidestar.org/profile/13-4148824>

<sup>5</sup> <https://apps.irs.gov/app/eos/displayCopyOfReturns.do?dispatchMethod=displayCORInfo&CopyOfReturnId=82293&ein=382963835&country=US&deductibility=all&dispatchMethod=searchCopyOfReturns&isDescending=false&city=&ein1=&postDateFrom=&exemptTypeCode=al&submitName=Search&sortColumn=ein&totalResults=1&names=Michigan+Public+Health+Institute&resultsPerPage=25&indexOfFirstRow=0&postDateTo=&state=All+States>

<sup>6</sup> Total compensation for the highest paid employee was \$275,948 (adds benefits and other compensation)

<sup>7</sup> Total compensation for the next four employees ranged from \$193,421 down to \$157,324.

<sup>8</sup> <https://www.mackinac.org/salaries?report=state&search=any&sort=wage2019-desc&filter=director+mdhhs>

According to documents posted on their website, MPHI has chosen to categorize itself as a Hybrid Entity<sup>9</sup>, allowing exemption from HIPAA regulations under some circumstances. One of these circumstances<sup>10</sup> is “To Avert a Serious Threat to Life or Safety.” It is not unreasonable to conclude that contact tracing is a situation where MPHI is attempting to “Avert a Serious Threat to Life or Safety.” Therefore, HIPAA protections would not apply.

Here is an excerpt taken from MPHI’s Notice of Privacy Practices posted on their website.

MPHI Notice of Privacy Practices

We May Use and Disclose PHI<sup>11</sup> without Your Permission in Special Situations

The federal privacy regulations allow us to use and disclose your PHI in a variety of special situations without obtaining your permission. Below, we provide brief examples of these special situations.

***To Avert a Serious Threat to Health or Safety. We may use or disclose information about you in order to avert a serious threat to health or safety.***

### **There is not a political bone in the MDHHS body?**

Campaign finance records<sup>12</sup> were examined to determine if leadership personnel at MDHHS and at MPHI are apolitical.

The Director, Robert M. Gordon was appointed by Governor Whitmer to fill the top spot at MDHHS<sup>13</sup>. Gordon served in the Obama Administration in the Office of Management and Budget. Campaign finance records show he has given thousands of dollars to the Obama Campaign.

Elizabeth Hertel is second in command at MDHHS. She joined MDHHS in February 2019 as the Senior Chief Deputy Director for Administration. In 2011 and 2012 Hertel gave money to the House Republican Campaign Committee, at a time she worked as a Legislative Staffer. However, more recent campaign finance records show, when it comes to direct contributions to candidates, Hertel has only given to Democrat candidates, including \$500 for Whitmer’s gubernatorial campaign.

Interestingly, in addition to being second in command at MDHHS, Hertel serves as the President of the Board of Directors for MPHI<sup>14</sup>. MPHI by-laws indicate that Director Robert Gordon would serve as in this

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<sup>9</sup> [https://www.mphi.org/wp-content/uploads/2019/08/Declaration-of-Hybrid-Entity\\_Reviewed-8.29.2019.pdf](https://www.mphi.org/wp-content/uploads/2019/08/Declaration-of-Hybrid-Entity_Reviewed-8.29.2019.pdf)

<sup>10</sup> See page 3 of document. [https://www.mphi.org/wp-content/uploads/2013/11/Notice\\_of\\_Privacy\\_Practices.pdf](https://www.mphi.org/wp-content/uploads/2013/11/Notice_of_Privacy_Practices.pdf)

<sup>11</sup> Personal Health Information

<sup>12</sup> Federal: [https://www.fec.gov/data/receipts/individual-contributions/?recipient\\_committee\\_type=P](https://www.fec.gov/data/receipts/individual-contributions/?recipient_committee_type=P), State: [https://miboecfr.nictusa.com/cgi-bin/cfr/contrib\\_anls.cgi](https://miboecfr.nictusa.com/cgi-bin/cfr/contrib_anls.cgi)

<sup>13</sup> [https://www.michigan.gov/mdhhs/0,5885,7-339-73970\\_73993---,00.html](https://www.michigan.gov/mdhhs/0,5885,7-339-73970_73993---,00.html)

<sup>14</sup> <https://www.mphi.org/>

capacity, unless he appointed someone else. Apparently, Director Gordon appointed his top lieutenant to fill this role.

An examination of political contributions made by MPHI associates shows a political bias toward Democrats.

Renee Canady is the Chief Executive Officer for MPHI. She has given exclusively to Democrats, including \$100 to Whitmer's gubernatorial campaign.

Holly Jarman and Angela Beck are on the Board of Directors for MPHI. With respect to direct candidate contributions, both have given exclusively to Democrats.

Jana Dean is the Chief Financial Officer for MPHI. She has given political contributions only to Whitmer's gubernatorial campaign. She has made 8 contributions.

These campaign finance records indicate that it is not reasonable for Governor Whitmer to assert that either MDHHS or MPHI "do not have a political bone in their theoretical body."

#### **When was Whitmer's scheme conceived?**

MDHHS Public Information Officer Lynn Sutfin stated that, "There were meetings, calls and other business development conducted since April 1 to discuss the state's contact tracing needs and what a contact tracing project could entail."

Evidence exists that suggests this scheme was conceived prior to April 1, 2020. Two days prior, on March 30, Commissioner Nakagiri posted on Facebook<sup>15</sup> that he had signed up to be a volunteer contact tracer for the State of Michigan. Nakagiri posted a link to the webform so that others could sign up also.

The presence of this webform<sup>16</sup> indicates that planning for this scheme began sometime prior to March 30, and clearly prior to April 1 as asserted by Ms. Sutfin. Determining the exact date personnel began scheming requires further investigation.

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<sup>15</sup>[https://www.facebook.com/dontsettleforlessvoteforwes/posts/1546303612196615?\\_xts=%5B0%5D=68.ARB8Xidx7VtaT1fff4Wa6V4Hb6lhqTePRcl19j1cvfQpadrui593Oq4AeTfs43ODKSOWSrxo\\_wDxS4rWbw-wONJxhfpA3S9st8hw1cRVjzzfs6slm7QIUABLnn9M77vBiddaY30K59CTaEM0I5K2-OB\\_EgNdDR-t3\\_2qrCyOzs9I2Xj09onV-rIcDDq3f30HpQHfNzdKE9v2pWjYskK\\_dRwOznt8ZF7PFaS1y2zBaixsXip-3zI5X\\_LGUS\\_SOLC2DxMeFAApp-rajfydr07TntP2CgXC\\_3FaMZ7YHGk8fhjYWc4T6Y-cFulxxGTXCBSshiWjpE4jnXW-A7vXfpN-dRg&\\_tn=-R](https://www.facebook.com/dontsettleforlessvoteforwes/posts/1546303612196615?_xts=%5B0%5D=68.ARB8Xidx7VtaT1fff4Wa6V4Hb6lhqTePRcl19j1cvfQpadrui593Oq4AeTfs43ODKSOWSrxo_wDxS4rWbw-wONJxhfpA3S9st8hw1cRVjzzfs6slm7QIUABLnn9M77vBiddaY30K59CTaEM0I5K2-OB_EgNdDR-t3_2qrCyOzs9I2Xj09onV-rIcDDq3f30HpQHfNzdKE9v2pWjYskK_dRwOznt8ZF7PFaS1y2zBaixsXip-3zI5X_LGUS_SOLC2DxMeFAApp-rajfydr07TntP2CgXC_3FaMZ7YHGk8fhjYWc4T6Y-cFulxxGTXCBSshiWjpE4jnXW-A7vXfpN-dRg&_tn=-R)

<sup>16</sup> <https://newmibridges.michigan.gov/s/ct-public-volunteer?language=en>

## Further questions arise

As with other investigations, new questions arise along the way in the search for answers. Here are additional questions:

1. Did MPHI issue the contract to Kolehouse Strategies using their own existing funds? Or, did the State of Michigan, or some other entity provide new funds to finance the Kolehouse contract?
2. Where in the procurement policy for the Michigan State Emergency Operations Center (SEOC) does it state that an outside organization, such as MPHI, must route all of their purchase agreements/contracts through SEOC?
3. What specific State of Michigan policy did MPHI violate when it issued the contact tracing contract with Kolehouse Strategies?
4. Did the State of Michigan direct MPHI to issue the contract with Kolehouse Strategies?
5. Why didn't the State of Michigan use the existing Michigan Disease Surveillance System database to store the COVID-19 contact tracing data?
6. Who from the State of Michigan or MPHI required or suggested that Kolehouse Strategies use Every Action VAN software?
7. Which MPHI associates approved the contract with Kolehouse Strategies?
8. Which State of Michigan employee initiated the IT work necessary to place the volunteer webform on the State of Michigan website?
9. When was the work request made to the State of Michigan IT department to add the volunteer webform to the State of Michigan website?
10. Which State of Michigan IT employee performed the work necessary to add the volunteer webform?
11. When was the volunteer webform activated for use by the public?
12. When did the first volunteer sign up using the volunteer webform?
13. What State of Michigan webpages contain internal links to the volunteer webform? When were these links activated?
14. Did the State of Michigan send out any mass emails, or pay an outside firm, to solicit volunteers for contact tracing?
15. What are all of the contracts that the State of Michigan has issued to Kolehouse Strategies or any other assumed name of K2K Consulting, Every Action VAN or NGP VAN?
16. Who is evaluating new vendors for the contact tracing contract?
17. Which vendors are being considered for the new contact tracing contract?
18. Which vendors were considered for the initial contact tracing contract?
19. Was any data collected by contact tracing volunteers or state employees using outside vendors? How many such contacts were made?
20. During which years have outside firms conducted a full audit of MPHI books?
21. Why does the State of Michigan provide taxpayer funding to MPHI, an entity which largely exempts itself from HIPAA?
22. What work does MPHI perform that cannot be performed by the State of Michigan?
23. How much additional programs and services could be delivered to Michigan citizens if taxpayer funds were kept at MDHHS rather paying for the extra overhead associated with MPHI?