

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934

Release No. 79856 / January 23, 2017

ACCOUNTING AND AUDITING ENFORCEMENT

Release No. 3854 / January 23, 2017

ADMINISTRATIVE PROCEEDING

File No. 3-17806

In the Matter of

DONALD P. JONES, CPA

Respondent.

**CORRECTED ORDER INSTITUTING
PUBLIC ADMINISTRATIVE AND CEASE-
AND-DESIST PROCEEDINGS PURSUANT
TO SECTIONS 4C AND 21C OF THE
SECURITIES EXCHANGE ACT OF 1934
AND RULE 102(e) OF THE COMMISSION'S
RULES OF PRACTICE, MAKING
FINDINGS, AND IMPOSING REMEDIAL
SANCTIONS AND A CEASE-AND-DESIST
ORDER**

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate that public administrative and cease-and-desist proceedings be, and hereby are, instituted against Donald P. Jones, CPA (“Respondent” or “Jones”) pursuant to Sections 4C¹ and 21C of the Securities Exchange Act of 1934 (“Exchange Act”) and Rule 102(e)(1)(iii) of the Commission’s Rules of Practice.²

¹ Section 4C provides, in relevant part, that:

The Commission may censure any person, or deny, temporarily or permanently, to any person the privilege of appearing or practicing before the Commission in any way, if that person is found . . . (1) not to possess the requisite qualifications to represent others . . . (2) to be lacking in character or integrity, or to have engaged in unethical or improper professional conduct; or (3) to have willfully violated, or willfully aided and abetted the violation of, any provision of the securities laws or the rules and regulations thereunder.

² Rule 102(e)(1)(iii) provides, in pertinent part, that:

The Commission may . . . deny, temporarily or permanently, the privilege of appearing or practicing before it . . . to any person who is found . . . to have willfully violated, or

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the “Offer”) which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission’s jurisdiction over him and the subject matter of these proceedings, which are admitted, and except as provided herein in Section V, Respondent consents to the entry of this Order Instituting Public Administrative and Cease-and-Desist Proceedings Pursuant to Sections 4C and 21C of the Securities Exchange Act of 1934 and Rule 102(e) of the Commission’s Rules of Practice, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order (“Order”), as set forth below.

III.

On the basis of this Order and Respondent’s Offer, the Commission finds³ that:

Summary

1. This matter involves insider trading and tipping by Donald P. Jones, a certified public accountant, in advance of the June 20, 2012 public announcement that Sun Healthcare Group, Inc. (“Sun Healthcare”) had entered into a definitive agreement to be acquired by Genesis Healthcare, Inc. (“Genesis”) for approximately \$275 million, or \$8.50 per share. In early April 2012, Jones was told material nonpublic information about the proposed acquisition by Shelly R. McGuire, a certified public accountant who was providing professional accounting services to Sun Healthcare during the time of the merger negotiations. McGuire told Jones the information in confidence while seeking his advice about a tax issue impacting the merger.

2. Jones and McGuire had a history, pattern, and practice of sharing confidences with each other and McGuire expected that Jones would maintain the confidentiality of the information. Jones understood that the information was conveyed to him in confidence and that he should not trade on it or otherwise tip the information to others. However, in breach of a duty of trust or confidence owed to McGuire, Jones misappropriated the information by purchasing shares of Sun Healthcare in advance of the public announcement of the merger, and by tipping the information to a friend, who also traded. Jones realized illegal profits of \$27,675 and his tippee realized illegal profits of \$11,407. By engaging in this conduct Jones violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

willfully aided and abetted the violation of any provision of the Federal securities laws or the rules and regulations thereunder.

³ The findings herein are made pursuant to Respondent’s Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

Respondent

3. **Donald P. Jones**, age 49, is a resident of Alhambra, California, and is a certified public accountant licensed in California and was a certified public account licensed in Michigan until December 31, 2015.

Other Relevant Entities and Individual

4. **Genesis Healthcare, Inc.** is a privately-held corporation headquartered in Kennett Square, Pennsylvania, that operates nursing, long-term care and assisted living facilities across the United States.

5. **Sun Healthcare Group, Inc.** formerly headquartered in Irvine, California, operated nursing, long-term care and assisted living facilities in the United States. The company's stock was registered under Section 12(b) of the Exchange Act and was traded on the NASDAQ Stock Market under the ticker symbol "SUNH" until December 1, 2012, when it was acquired by Genesis.

6. **Shelly R. McGuire** was, at all relevant times, an accountant employed by an accounting firm that was retained by Sun Healthcare to advise on the transaction with Genesis.

Facts

7. In September 2011, Genesis and Sun Healthcare entered into a confidentiality agreement and began preliminary discussions concerning a potential business combination.

8. In February 2012, Genesis offered to acquire Sun Healthcare for \$8.00 per share. Genesis increased its offer to \$9.50 per share days before the companies entered into an exclusivity agreement on March 25, 2012.

9. After additional due diligence and negotiations occurred during the ensuing weeks, Genesis notified Sun Healthcare on May 18, 2012 that it was decreasing its offer to \$8.50 per share.

10. On June 20, 2012, Sun Healthcare's board of directors voted to accept the revised Genesis offer. After the close of the market that same day, Genesis and Sun Healthcare issued a joint press release announcing the merger agreement.

11. During the period leading up to and during the merger negotiations, McGuire's prior accounting firm (the "Accounting Firm") was retained by Sun Healthcare to provide auditing, tax and other related accounting services. Specifically, McGuire provided tax related professional accounting services to Sun Healthcare.

12. In or around April 5, 2012, Sun Healthcare told McGuire about the ongoing merger discussions and asked McGuire to provide advice on a tax issue that could impact the terms of a

merger agreement. McGuire worked on the tax issue throughout April and May 2012 and remained informed about the ongoing merger negotiations. On June 2, 2012, Sun Healthcare informed McGuire that the announcement of the acquisition was imminent.

13. McGuire and Jones knew each other for several years, mutually owned and operated a separate business together, and had a close personal relationship. At all relevant times, McGuire and Jones had a history, pattern, and practice of sharing confidences with each other, including confidential personal and work related information. Shortly after being tasked with analyzing the tax issue for Sun Healthcare in or around April 5, 2012, McGuire told Jones about the ongoing merger negotiations while soliciting his advice on the tax issue. McGuire continued to consult with Jones on the tax issue during the period leading up to the June 20, 2012 merger announcement. McGuire expected that Jones would maintain the confidentiality of the merger discussions.

14. Jones knew that the information that McGuire disclosed to him concerning the merger negotiations was confidential and that he should not trade on the information, or otherwise tip the information to others.

15. However, based on the material nonpublic information that he received from McGuire, between April 20, 2012 and April 24, 2012, Jones purchased 8,200 shares of Sun Healthcare at an average price of \$6.75 per share, and on June 4, 2012, Jones purchased an additional 4,200 shares of Sun Healthcare at an average price of \$4.66 per share.

16. Jones also received a benefit when he tipped the merger information to a friend who then purchased 6,000 shares of Sun Healthcare common stock between April 24, 2012 and June 14, 2012.

17. By purchasing Sun Healthcare securities and tipping material nonpublic information about the merger negotiations to a friend, Jones misappropriated the information and breached a duty of trust or confidence he owed to McGuire. Others who traded in Sun Healthcare securities at the same time as Jones and his tippee were harmed by the advantageous market positions Jones and his tippee gained through Jones' use of material nonpublic information.

18. Jones knew or was reckless in not knowing that his purchases of Sun Healthcare common stock and tipping of material nonpublic information concerning the merger negotiations were in breach of the duty of trust or confidence that he owed to McGuire.

19. After the close of business on June 20, 2012, Sun Healthcare and Genesis jointly announced a definitive agreement in which Sun Healthcare agreed to be acquired by Genesis. The following day, Sun Healthcare's stock price closed at \$8.40 per share, a 36.82 percent increase from the previous day's closing price of \$6.14 per share.

20. On June 21, 2012, Jones sold all 12,400 of his Sun Healthcare shares, realizing illegal profits of \$27,675. Jones' tippee realized illegal profits of \$11,407.

Findings

21. Based on the foregoing, the Commission finds that Jones willfully violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, which prohibit fraudulent conduct in connection with the purchase or sale of securities.

22. Based on the foregoing, the Commission finds that Jones engaged in conduct within the meaning of Section 4(C)(a)(3) of the Exchange Act and Rule 102(e)(1)(iii) of the Commission's Rules of Practice.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent Jones' Offer.

Accordingly, it is hereby ORDERED, effective immediately, that:

A. Respondent Jones shall cease and desist from committing or causing any violations and any future violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

B. Respondent Jones is denied the privilege of appearing or practicing before the Commission as an accountant.

C. Respondent Jones shall, within 10 days of entry of this Order, pay disgorgement of \$39,082, prejudgment interest thereon of \$4,530, and a civil money penalty of \$39,082, for a total of \$82,694 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Exchange Act Section 21F(g)(3). If timely payment of disgorgement and prejudgment interest is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600, and if timely payment of a civil money penalty is not made, additional interest shall accrue pursuant to 31 U.S.C. §3717.

Payment must be made in one of the following ways:

- (1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or
- (3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying Donald P. Jones as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to G. Jeffrey Boujoukos, Associate Regional Director, Philadelphia Regional Office, Securities and Exchange Commission, 1617 JFK Boulevard, Suite 520, Philadelphia, Pennsylvania 19103.

D. Amounts ordered to be paid as civil money penalties pursuant to this Order shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Respondent agrees that in any Related Investor Action, he shall not argue that he is entitled to, nor shall he benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Respondent's payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondent agrees that he shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the Securities and Exchange Commission. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this proceeding. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against Respondent by or on behalf of one or more investors based on substantially the same facts as alleged in the Order instituted by the Commission in this proceeding.

V.

It is further Ordered that, solely for purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S.C. §523, the findings in this Order are true and admitted by Respondent, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Respondent under this Order or any other judgment, order, consent order, decree or settlement agreement entered in connection with this proceeding, is a debt for the violation by Respondent of the federal securities laws or any regulation or order issued under such laws, as set forth in Section 523(a)(19) of the Bankruptcy Code, 11 U.S.C. §523(a)(19).

By the Commission.

Brent J. Fields
Secretary