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June 10, 2015

The Honorable Fred S. Silverman
Superior Court of the State of Delaware
New Castle County Courthouse
500 North King Street, Suite 10400
Wilmington, Delaware 19801

Re: State of Delaware v. Richard Callery: 1505007228

Dear Judge Silverman:

The State respectfully submits this correspondence in advance of the plea hearing scheduled to be held before Your Honor on Thursday, June 11, 2015 at 2:30 p.m. Dr. Richard Callery, former Chief Medical Examiner for the State of Delaware, will enter a plea of *nolo contendere* to two counts of official misconduct. A copy of this agreement and the associated charging document are attached to this correspondence; the charges will be digitally "loaded" into JIC prior to the appointed time. As this is a "no contest" plea, the State respectfully submits the below factual background for the Court's consideration.

The Office of the Chief Medical Examiner ("OCME") was one of twelve divisions that constituted the Department of Health and Social Services ("DHSS"). Callery served as the Chief Medical Examiner/OCME Director, and was responsible for the oversight of the OCME. He was hired as an Assistant Medical Examiner in 1989 and worked in that position until 1991 when he left to work at a local hospital. However, while in private practice, from 1991 to 1994, Callery continued to work for OCME as a part time assistant medical examiner. In April 1994, Callery was appointed Acting Chief Medical Examiner for the State of Delaware, and served in this capacity until he was appointed Chief Medical Examiner -- a ten year appointment -- on August 16, 1997. On August 17, 2007, Callery was reappointed as Chief Medical Examiner to serve a second ten year term. This employment background, Callery's continued and open private employment, and the allowance of compensatory ("comp") time by DHSS, provided a foundation for Callery's expanded practice and, ultimately, led to the misuse of State resources identified in this investigation.

In late 2013, an investigation was launched into Callery's use of State resources while employed as Chief Medical Examiner. The Delaware Department of Justice was alerted to this investigation in early 2014 and, shortly thereafter, the Delaware State Police initiated a criminal

investigation. The investigation focused on the allegations of misuse of State resources and time in connection with Callery's private consulting business. During the course of this investigation, Callery acknowledged, and independent records established, that he maintained a private consulting business while serving as Chief Medical Examiner. In fact, he reported his various other endeavors to the Public Integrity Commission contemporaneously. Moreover, while he admitted using OCME facilities to conduct autopsies, he claimed that DHSS administrators allowed him to use the secondary autopsy room in OCME to conduct this private work. He further acknowledged using State e-mail to answer and address issues related to his private consulting business and explained that, if he performed any duties related to his private consulting business during the regular work day (8:30 – 5:00, Monday through Friday), he would instruct his secretary to deduct these hours from his accrued comp time. DHSS administrators approved Callery's accrual of comp time; however, the records of accrual and usage of this time were not well maintained. The evidence established that Callery failed to properly segregate his personal and professional business.

Delaware State Police investigators thoroughly reviewed Callery's "Deposition and Trial List" to determine the scope of his private business and assess his misuse of State resources. In addition to the "Deposition and Trial List," billing invoices, private autopsy reports, emails, and other records were reviewed to identify this work. The DSP investigation revealed that Callery engaged in a pattern of activity while Chief Medical Examiner of the State of Delaware which constituted the criminal misuse of State personnel and resources. Callery operated a robust private consulting business from within the OCME. He utilized his State of Delaware email account, phone number, and fax line to conduct this private business. Documents, specimens, and case files from Callery's private clients were mailed to and from OCME. The OCME conference room was used for meetings with clients and attorneys and as a location for private depositions; meanwhile, the autopsy rooms were regularly used to conduct private autopsies, the histology lab was used to prepare private specimens, and the storage facility was used as a repository for private case files. State of Delaware equipment and materials were used to further his business ventures; these materials included paper, histology slides, and histological equipment. Additionally, Callery used his assigned State of Delaware vehicle for private travel. Callery also utilized State of Delaware personnel to conduct functions of his private consulting business, including an administrative assistant, a histologist, a medical transcriptionist, and at least one morgue assistant.

The investigation confirmed that Callery performed work for private gain during what otherwise would have been considered State working hours. However, the investigation also revealed that Dr. Callery had informed his supervisors in general terms of his intention to engage in these private endeavors. Moreover, there is some question as to whether Dr. Callery accurately accounted for the amount of his time that he dedicated to non-State matters, but express restrictions were not established concerning the amount of time that he was permitted to spend on such matters; establishing the misuse of time was further hampered by the record-keeping practices with respect to time at the Medical Examiner's Office. Thus, while the evidence establishes that Callery engaged in Official Misconduct,¹ there is insufficient evidence to support additional charges. To be sure, the State cannot allege criminal activity when it is known in advance that available evidence is insufficient to meet the State's heavy burden of

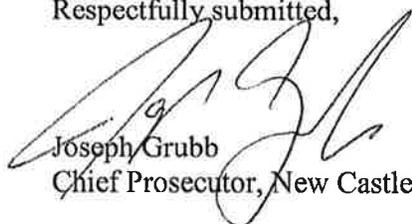
¹ 11 Del. C. § 1211.

proof at trial. Ultimately, it was determined that Callery's misuse of State resources was such that criminal charges were warranted.

Pursuant to the agreement that will be presented to the Court on June 11, Callery agrees that sufficient evidence exists to establish that, as a public servant and while intending to obtain a personal benefit, he performed official functions in a way intended to benefit his own property or financial interests under circumstances in which his actions would not have been reasonably justified in consideration of the factors which ought to have been taken into account in performing official functions by: (1) directing employees of the Office of the Chief Medical Examiner to perform duties related to his private business; and (2) diverting equipment, materials and other resources provided by the State of Delaware to the Office of the Chief Medical Examiner to support his private business.² This investigation further determined that the scope of Callery's misconduct caused direct, calculable losses to the State in the amount of at least \$100,000; this sum shall be reimbursed prior to sentencing. Finally, Callery has agreed that his Delaware medical license shall be suspended for two years.

The State respectfully submits that the factual background provided herein supports the elements of Official Misconduct. Moreover, the State respectfully submits that the continuing course of conduct,³ committed by a public officer,⁴ provides this Court the ability to accept this plea agreement and to sentence Callery, following a presentence investigation, for the identified conduct occurring between January 1, 2010 through December 31, 2013.⁵

Respectfully submitted,



Joseph Grubb
Chief Prosecutor, New Castle County

cc: Sean P. Lugg, Deputy Attorney General
Edmund D. Lyons, Jr., Esquire
Laurence V. Cronin, Esquire
Criminal Prothonotary

² *Id.* It is important to note here that Official Misconduct, Section 1211 of Title 11 of the Delaware Code, an A Misdemeanor, is not elevated based upon the position of the offender or the financial scope of the misconduct. As such, to best address the financial impact of these offenses, Callery shall reimburse the State for its sustained losses prior to sentencing. Moreover, the parties understand that the nature and scope of the conduct are factors the Court will consider when crafting a sentence.

³ 11 *Del. C.* § 205(f).

⁴ 11 *Del. C.* § 205(d).

⁵ Callery was officially terminated from his position as Chief Medical Examiner on July 4, 2014.