

**UNITED STATES OF AMERICA**  
**Before the**  
**SECURITIES AND EXCHANGE COMMISSION**

**SECURITIES ACT OF 1933**  
**Release No. 8580 / June 7, 2005**

**SECURITIES EXCHANGE ACT OF 1934**  
**Release No. 51797 / June 7, 2005**

**ACCOUNTING AND AUDITING ENFORCEMENT**  
**Release No. 2254 / June 7, 2005**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-11944**

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<b>In the Matter of</b>	:	
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	:	<b>ORDER INSTITUTING CEASE-AND-DESIST</b>
<b>MOUNT SINAI MEDICAL</b>	:	<b>PROCEEDINGS, MAKING FINDINGS, AND</b>
<b>CENTER OF FLORIDA, INC.,</b>	:	<b>IMPOSING CEASE-AND-DESIST ORDER</b>
<b>M. BROOKS TURKEL and</b>	:	<b>PURSUANT TO SECTION 8A OF THE</b>
<b>HARVEY W. SMITH</b>	:	<b>SECURITIES ACT OF 1933 AND SECTION</b>
	:	<b>21C OF THE SECURITIES EXCHANGE ACT</b>
	:	<b>OF 1934</b>
<b>Respondents.</b>	:	
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**I.**

The Securities and Exchange Commission (“Commission”) deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 8A of the Securities Act of 1933 (“Securities Act”) and Section 21C of the Securities Exchange Act of 1934 (“Exchange Act”), against Mount Sinai Medical Center of Florida, Inc. (“Mount Sinai”), M. Brooks Turkel (“Turkel”) and Harvey W. Smith (“Smith”) (collectively, “Respondents”).

**II.**

In anticipation of the institution of these proceedings, Respondents have submitted Offers of Settlement (the “Offers”) 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 them and the subject matter of these proceedings, which are admitted, Respondents consent to the entry of this Order Instituting Cease-and-Desist Proceedings, Making Findings, and Imposing a Cease-and-Desist Order

Pursuant to Section 8A of the Securities Act of 1933 and Section 21C of the Securities Exchange Act of 1934 (“Order”), as set forth below.

### **III.**

On the basis of this Order and Respondents’ Offers, the Commission finds<sup>1</sup> that:

#### **Respondents**

1. Respondent Mount Sinai is a not-for-profit corporation located in Miami Beach, Florida, which operates a multi-campus hospital, including a 701 bed teaching and research hospital and various satellite outpatient facilities and physician offices.

2. Respondent Turkel, age 40, was Chief Financial Officer (“CFO”) of Mount Sinai from January 1999 through mid-July 2001, and served as Mount Sinai’s chief planning officer from mid-July 2001 until he was terminated in October 2001.

3. Respondent Smith, age 58, served as chief operating officer (“COO”) of Mount Sinai from May 2000 until he was administratively suspended in December 2001 by Mount Sinai and officially terminated in January 2002. Smith, as COO, was responsible for oversight of the CFO in Mt. Sinai’s administrative line of authority.

#### **Mount Sinai’s 2001 Bond Offering**

4. On May 24, 2001, Mount Sinai, through the City of Miami Beach Health Facilities Authority (the “Authority”), issued three series of municipal bonds (Series 2001A, Series 2001B and Series 2001C) totaling approximately \$184 million (the “2001 bonds”). The purpose of the issuance was primarily to re-finance Mount Sinai’s acquisition of the Miami Heart Institute and Medical Center, purchased by Mount Sinai in June 2000. The 2001 bonds were limited obligations of the Authority payable solely from payments made by Mount Sinai pursuant to a loan agreement between Mount Sinai and the Authority. The bonds were rated “BBB,” “Baa3,” and “BBB+” by Standard & Poor’s (“S&P”), Moody’s Investors Service, Inc. (“Moody’s”) and Fitch, Inc. (“Fitch”), respectively.

5. The Official Statements to the bond offerings contained Mount Sinai’s audited financial statements for the years 1999 and 2000. The Official Statements also included Mount Sinai’s forecasted financial statements, as of March 30, 2001, for the years 2001 through 2003. The forecasted financial statements projected operating losses totaling \$7.5 million for fiscal year 2001, losses totaling \$2.6 million for fiscal year 2002, and operating income of \$2.5 million for fiscal year 2003.

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<sup>1</sup> The findings herein are made pursuant to Respondents’ Offers and are not binding on any other person or entity in this or any other proceeding.

6. The Official Statements contained an anti-fraud certificate, signed by Mount Sinai's former Chief Executive Officer ("CEO"), wherein the CEO certified on behalf of Mount Sinai that: (i) the statements and information contained in the Official Statement were true, correct and complete in all material respects; (ii) the Official Statement did not contain any untrue or incorrect statements or omissions of material fact; and (iii) Mount Sinai's financial condition had not materially or adversely changed since December 31, 2000.

7. In addition, the Official Statements contained another certificate, executed by Turkel, in which he certified to Mount Sinai's bond counsel that the Official Statements did not contain any untrue statements or omissions of a material fact.

8. The terms of the bond covenants required Mount Sinai to file quarterly reports with various repositories, which would then be available for review by current and prospective investors. Accordingly, on August 24, 2001, Mount Sinai filed its second quarter report for the quarter ended June 30, 2001. The second quarter report was signed by Turkel.

#### **Misrepresentations and Omissions in the Official Statement**

9. Mount Sinai, through Turkel, Smith and other former senior management, failed to disclose the hospital's deteriorating financial condition at the time of the offering. Specifically, Mount Sinai failed to disclose in the Official Statements that the hospital was experiencing a significant deterioration in its cash position and was in the midst of a severe liquidity problem. Indeed, Mount Sinai's financial condition began to materially decline after it underwent a computer conversion in December 2000 to update its patient accounting system within its business office. The computer conversion gave rise to major problems that substantially impacted Mount Sinai's billing and collection process. For example, Mount Sinai experienced substantial delays in billings and a significant rise in failed billings to third party payors. In addition, the hospital's patient accounts receivable grew substantially -- increasing from approximately \$70 million at the end of December 2000 to over \$90 million by June 30, 2001. As a direct result of its billing and collections problems, Mount Sinai's cash position began to materially worsen after December 2000 and continued to worsen through at least the time of the issuance of the 2001 bonds in May.

10. In addition, Mount Sinai, at the direction of Turkel and other former senior management, falsely represented in the Official Statements that eight of its high volume managed care contracts had been renegotiated, and that the renegotiated contracts were expected to contribute approximately \$10 million of additional revenue for the hospital on an annual basis beginning in 2001. In fact, at the time of the issuance of the 2001 bonds, only three of the eight major contracts had actually been renegotiated as claimed.

11. Moreover, the financial statements forecasting the hospital's anticipated revenue through the end of 2003, which were included in the Official Statements, were fraudulent. The forecasted financial statements projected operating losses for 2001 and 2002

totaling \$7.5 million and \$2.6 million, respectively, and a relatively small surplus in 2003. The forecasted financials included net patient service revenue and accounts receivable projections that were calculated using Mount Sinai's 2001 contractual deduction rate.<sup>2</sup> That contractual deduction rate, however, was fraudulent because it was partly based on the false notion that Mount Sinai had renegotiated all of its eight largest managed care contracts.

12. Given the facts known by Mount Sinai's former senior management, the representations made by its CEO and Turkel in the anti-fraud certificates accompanying the Official Statements were false and misleading. The representations in the anti-fraud certificates that the Official Statements did not contain any untrue statements or omissions of a material fact, and that Mount Sinai's financial condition had not materially or adversely changed since fiscal year 2000, were clearly contradicted by Mount Sinai's deteriorating financial situation, the false statements made regarding the renegotiation of the managed care contracts and the false projections included in the forecasted financial statements.

### **False and Misleading Statements to Institutional Investors and Bond Rating Agencies**

13. Mount Sinai, through Turkel, Smith and other former senior management, made materially false and misleading statements during a presentation given to prospective institutional bond investors on April 30, 2001. During that presentation, Mount Sinai represented that it had been successful in renegotiating all eight of its largest managed care contracts and that the renegotiated rates would result in a \$10 million improvement to revenue beginning in 2001. In fact, as mentioned above, only three of the contracts had been renegotiated. Mount Sinai, also provided institutional investors with baseless projections concerning the hospital's net patient service revenue and accounts receivable.

14. In March and April 2001, Mount Sinai, through Turkel, Smith and other former senior management, gave similar presentations to certain bond rating agencies during which Mount Sinai again falsely represented that it had renegotiated all eight of its largest managed care contracts resulting in an annual improvement in revenues of \$10 million.

### **Misrepresentations and Omissions in Mount Sinai's Second Quarter Report for the Period Ended June 30, 2001**

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<sup>2</sup> Contractual deductions are an estimate of the deductions that the hospital expects will not be paid based on contracts or other arrangements with its third party payors. Mount Sinai recorded net patient service revenue based on a percentage number that reflected the average of all of the hospital's contractual deductions with its third party payors. This percentage is called the "contractual deduction rate."

15. Mount Sinai's second quarter report for the period ended June 30, 2001, reflected a \$5 million write-off in accounts receivable Mount Sinai recorded in June 2001. Although the second quarter report discussed the \$5 million write-off, Mount Sinai failed to adequately disclose in the report the circumstances requiring the write-off. By the time of the filing of the second quarter report, Turkel, Smith and other senior management at Mount Sinai knew that the managed care contracts had not been renegotiated and that Mount Sinai may have been using a contractual deduction rate for recording net patient service revenue that was too low. Mount Sinai nevertheless failed to disclose this information to investors in its second quarter report.

16. Mount Sinai also failed to disclose in the second quarter report that by the time of the filing of that report, Turkel, Smith and other senior management knew additional write-offs of accounts receivable would be necessary, and that those write-offs could be as high as \$20 million. Mount Sinai ultimately recorded a \$21 million reduction in net patient service revenue and accounts receivable in September 2001, which was mostly the result of the improper contractual deduction rate used by Mount Sinai for the first nine months of 2001.

17. Additionally, Mount Sinai failed to disclose in the second quarterly report that, at the time of its filing, Mount Sinai continued to struggle with its cash flow situation. Finally, the report failed to disclose the fact that an accounting firm began running Mount Sinai's business office because of the problems with its billing and collection process.

#### **Knowledge of Mount Sinai's Former Senior Management**

18. Turkel, Smith and other former senior management at Mount Sinai were aware that Mount Sinai's cash position had materially declined prior to the bond offering, and that the cash situation at the hospital continued to be a major concern up until the date of the bond offering. They nevertheless failed to disclose this cash crisis or update its financial information. To the contrary, Mount Sinai's CEO falsely certified that Mount Sinai's financial condition had not materially or adversely changed since December 31, 2000. As Mount Sinai's CFO, Turkel further falsely certified to bond counsel that the Official Statement did not contain any untrue statements or omissions of a material fact. In light of the severe cash crisis and growing accounts receivable problem that they knew the hospital was experiencing before the bond offering, these certifications were plainly false.

19. Additionally, Turkel, Smith and other former senior management knew, or were reckless in not knowing, that prior to the bond offering Mount Sinai had only renegotiated three of its major managed care contracts and that the hospital would not receive an additional \$10 million in revenue for fiscal year 2001. They also knew, or were reckless in not knowing, that the net patient service revenue and accounts receivable projections contained in the Official Statement and provided to investors and bond rating agencies during presentations were baseless because they were based on a false contractual deduction rate.

20. Moreover, by the time Mount Sinai's second quarter report was filed in August 2001, Turkel, Smith and other former senior management also knew, or were reckless in not knowing, that Mount Sinai was using an improper contractual deduction rate for recording net patient service revenue, and that substantial write-offs – far in excess of the \$5 million recorded in the second quarter report – would be necessary. Yet Mount Sinai failed to disclose any of this information in its second quarter report.

### **Violations**

21. As a result of the conduct described above, Mount Sinai violated Section 17(a) of the Securities Act, which prohibits fraudulent conduct in the offer or sale of securities.

22. Also as a result of the conduct described above, Mount Sinai 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.

23. As a result of the conduct described above, Turkel violated, and caused Mount Sinai's violations of, Section 17(a) of the Securities Act, which prohibits fraudulent conduct in the offer or sale of securities.

24. As a result of the conduct described above, Turkel violated, and caused Mount Sinai's violations of, 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.

25. As a result of the conduct described above, Smith violated, and caused Mount Sinai's violations of, Section 17(a) of the Securities Act, which prohibits fraudulent conduct in the offer or sale of securities.

26. As a result of the conduct described above, Smith violated, and caused Mount Sinai's violations of, 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.

#### IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondents Offers.

Accordingly, it is hereby ORDERED that:

A. Respondent Mount Sinai cease and desist from committing or causing any violations and any future violations of Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act, and Rule 10b-5 thereunder.

B. Respondent Turkel cease and desist from committing or causing any violations and any future violations of Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act, and Rule 10b-5 thereunder.

C. Respondent Smith cease and desist from committing or causing any violations and any future violations of Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act, and Rule 10b-5 thereunder.

By the Commission.

Jonathan G. Katz  
Secretary