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January 27, 2006

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Theodore Lucas
Vice-President of Logistics and Distribution
Jackson Memorial Hospital
1611 N.W. 12th Avenue
Miami, FL 33136

RE: REQUEST FOR ADVISORY OPINION RQO 06-04

Dear Mr. Lucas:

The Commission on Ethics and Public Trust considered your request for an advisory opinion at its meeting on January 26, 2006 and rendered its opinion based on the facts stated in your request.

You requested an opinion regarding the application of the lobbying ordinance in the hospital instructional setting. Specifically, you are seeking an opinion regarding whether vendors must register to demonstrate or assist physicians and other medical staff in the use of new medical/surgical products.

In your request, you advised the Commission that The Public Health Trust frequently receives requests from vendors seeking to market new medical/surgical equipment to PHT staff. Under the Trust's procedures, all medical equipment must be reviewed and approved by the Product Review and Analysis Committee (PRAC) prior to being used in the facility. Subsequently, if the product is approved for clinical trial, a vendor may demonstrate the product in a clinical

recommendation of County personnel during the time period of the entire decision-making process on such action, decision or recommendation which forseably will be heard or reviewed by the County Commission or a County board or committee. "Lobbyist" specifically includes the principal as well as any employee whose normal scope of employment includes lobbying activities."

Since the Public Health Trust and the relevant personnel and committees have already taken action regarding the product and service, the vendor is not lobbying when the vendor provides technical assistance to clinical personnel after the PHT has approved purchase of a product. Therefore, whether or not the specific agreement between the PHT or the vendor provide for training or technical assistance, the vendor is not engaged in lobbying when he or she assists the hospital's clinical staff with use of a product that has already been approved and purchased by the trust.

The vendor would also be exempt from registration requirements when he or she provides technical assistance to clinical staff during an emergency procurement where the Trust will subsequently ratify the purchase of a device. Since the "decision-making" regarding the use of the product has taken place prior to its use, the technical assistance would also fall outside of the definition of lobbying and the vendor would not have to register.

Accordingly, a vendor does not have to register as a lobbyist to provide technical assistance and inservice training to clinical staff regarding a medical/surgical product that has already been purchased by the trust or a medical/surgical product that has been procured under the PHT's emergency guidelines.

Demonstration of Products during a PHT approved Trial

Section 2-11.1(s) does require vendors to register as lobbyists to seek approval from the PRAC for a clinical trial of a medical/surgical product or service. Since the vendor will be seeking action from a county board during the decision-making process, the vendor is a lobbyist. However, if the vendor's representative who provides technical assistance to the clinical staff is not a part of the sales team, then the employee would not be considered a lobbyist under the ordinance. Section 2-11.1(s) (1)(b) provides that expert witnesses who provide only scientific, technical or other specialized information or testimony in public meetings and employees of the principal whose normal scope of employment does not include lobbying are exempt from the definition of lobbyist.

An employee may fall under the exemption for employees whose normal scope of employment does not include lobbying if the employee only provides technical assistance and advice to clinical staff during the trial of the product. This exemption would not apply to medical personnel who meet with doctors to persuade them to recommend a product to PHT and would only apply to personnel whose function is limited to training and technical assistance during the actual use of the medical/surgical product in a clinical setting. Accordingly, a vendor must register as a lobbyist unless the vendor's representative only provides training and technical assistance to medical staff.

Accordingly, the Conflict of Interest and Code of Ethics ordinance does not require vendors to register as lobbyists to provide technical assistance, instruction and advice to clinical personnel after a medical/surgical process has been purchased by the PHT during the regular or emergency

procurement process. However, a vendor is required to register as a lobbyist to present a product before the PRAC or during a clinical trial unless the employee's sole function is to provide technical assistance and instruction to clinical staff. If the employee only serves a training and technical support function and does not perform any sales function, the person would fall within the exemption for employees of the principal whose normal scope of employment does not include lobbying activities and would not have to register.

This opinion construes the Miami-Dade Conflict of Interest and Code of Ethics ordinance only and is not applicable to any conflict under state law. Please contact the State of Florida Commission on Ethics if you have any questions regarding possible conflicts under state law.

If you have any questions regarding this opinion, please call the undersigned at (305) 579-2594 or Ardyth Walker, Staff General Counsel at (305) 350-0616.

Sincerely Yours,

A handwritten signature in black ink, appearing to read 'Robert Meyers', with a long horizontal flourish extending to the right.

ROBERT MEYERS
Executive Director