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September 28, 2006

Benedict Kuehne
100 S.E. 2nd Street
Suite 3550
Miami, FL 33131

RE: REQUEST FOR ADVISORY OPINION RQO 06-46

Dear Mr. Kuehne:

The Commission on Ethics and Public Trust considered your request for an advisory opinion at its meeting on September 27, 2006 and rendered its opinion based on the facts stated in your letter.

You requested an opinion regarding whether physicians at the University of Miami School of Medicine are covered by any section of the Conflict of Interest and Code of Ethics ordinance.

In your letter, you advised the Commission that physicians at the University of Miami School of Medicine who work at the Public Health Trust are governed by an Annual Operating Agreement (AOA) which sets out the financial arrangement between the parties and a Basic Affiliation Agreement that sets out the legal responsibilities of the parties. The agreements basically provide that medical school personnel are not employees of the trust, but primarily for sovereign immunity purposes, are agents of the Public Health Trust. The Board of Trustees of the Medical School performs all employment functions for UM doctors including hiring, pay, evaluation and the like. The agreements provide that the Trust provides facilities and patients and

sets all standards related to patient care and treatment. The Trust also reserves the right to make final determinations regarding the type and extent of clinical privileges provided to physicians.

The physicians also enter into a Memorandum of Understanding with the Public Health Trust that mirrors the language of the AOA and affiliation agreements and provides that "practitioners shall not be deemed an employee of the Trust nor shall the physician be entitled to employment benefits from the Trust." The memorandum further provides that the Practitioner shall be an agent of the Trust for purposes of Section 768.28, Florida Statutes (2005).

All medical staff personnel, including physicians from the University of Miami School of Medicine, are governed by the Trust's conflict of interest policy. The conflict of interest policy generally provides that Trust employees are not permitted to make decisions when financial interests are involved such as any type of employment or consulting agreement with a Trust vendor or contractor, where the Trust employee's relative¹ is employed by the vendor or where the vendor has provided funding for research conducted by the employee. The Trust's procurement policy requires each employee to complete a conflict of interest certification when the physician does not follow normal procurement policy but indicates a clinical preference for a particular product or service

The Commission found the Conflict of Interest and Code of Ethics ordinance does not apply to physicians from the University of Miami School of Medicine except in limited circumstances. Under the terms of the Basic

¹ The Trust's definition of relative follows the statutory definition and is broader than the Conflict of Interest ordinance. For the Trust's purposes, "relative" includes siblings, aunts, uncles, nieces, nephews, brothers and sisters-in-law, first cousins, fiancées and all members of an employee's household.

Affiliation Agreement and the Annual Operating Agreement, the physicians are not county employees. Therefore, the physicians are not employees for purposes of Section 2-11.1(b)(6). Further, the physicians do not fall within the category of contractors and vendors for purposes of 2-11.1(y). As agents of the Public Health Trust, the Conflict of Interest ordinance governs physicians to the extent that they perform roles that are usually assigned to county personnel. Therefore, for example, physicians are covered by Section 2-11.1(t) (Cone of Silence) if they sit on selection committees and 2-11.1(e) (gifts) if they give or accept gifts. Physicians are also governed by the Conflict of Interest ordinance to the extent that provisions are incorporated into Trust rules and policies (i.e. actions prohibited when financial interests involved). Accordingly, the Conflict of Interest and Code of Ethics ordinance does not generally apply to physicians from the University of Miami School of Medicine.

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 Ardyth Walker, Staff General Counsel at (305) 350-0616 or the undersigned at (305) 579-2594.

Sincerely Yours,

ROBERT MEYERS
Executive Director

cc: Eugene Shy, Assistant County Attorney

