

December 27, 2006

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

RE: REQUEST FOR ADVISORY OPINION RQO 06-63

Dear Mr. Lucas:

The Commission on Ethics and Public Trust considered your request for an advisory opinion at its meeting on December 21, 2006 and rendered its opinion based on the facts stated in your request.

You requested an opinion regarding whether vendors who sell products to UM doctors are required to register as lobbyists.

In your request, you advised the Commission that the Public Health Trust permits UM physicians to order certain medical products under a "physicians preference". The physician's preference purchasing decisions of UM doctors often determine the specific clinical products and brands purchased by the Jackson Health System/Public Health Trust for use by UM doctors in Jackson clinics and operating rooms.

Under the Public Health Trust's procurement regulations, the PHT may issue a non-competitive contract where the physician requests a specific item or service without which the clinician cannot successfully and safely render patient care. The appropriate

Public Health Trust Vice-President must approve all procurements under \$100,00 and the Chief Procurement Officer must approve all procurements between \$100,000 and 1 million dollars. The Board of Trustees must approve all contracts over one million dollars and they must review all sole source contracts over \$100,000. A physician requesting a particular item must provide a written justification and a Conflict of Interest certification form.

A physician may also select a particular product from a variety of items available under a particular category that has been pre-selected by the PHT. (i.e. a physician can prescribe aspirin, Tylenol, Motrin etc.) A physician's preference for a particular product or service under this category does not require any approval by a board or committee.

The Ethics Commission found the Conflict of Interest and Code of Ethics ordinance requires vendors to register if they approach UM doctors to purchase a particular product because doctors function as county personnel to the extent they make decisions regarding products or services in Jackson clinics and operating rooms.

Section 2-11.1(s) requires all persons or firms to register who seek to encourage the passage, defeat or modifications of (1) ordinance, resolution, action or decision of the County Commission; (2) any action, decision, recommendation of the County Manager or any County board or committee; or (3) any action, decision or recommendation of County personnel during the time period of the entire decision-making process on such action, decision or recommendation which foreseeably will be heard or reviewed by the County Commission or a County board or committee. Section 24A-3(c) provides that "wherever in the Conflict of Interest ordinance reference is made to the Board of

County Commissioners, that reference shall be deemed and construed to be a reference to the Board of Trustees of the Public Health Trust." Similarly, a reference to the President and CEO of the Public Health Trust is deemed to be equivalent to a reference to the County Manager.

In RQO 06- 46, the Ethics Commission opined that UM physicians are not generally governed by the Conflict of Interest ordinance unless they perform roles generally assigned to county personnel. However, UM doctors are governed by the Conflict of Interest policy contained in UM procurement policies and may not select a physician's preference if they have any of the conflicts contained on the Conflict of Interest certification form.

Under the lobbying section of the Conflict of Interest ordinance, a vendor who approaches a UM doctor for a physician's preference must register if the physician serves on a procurement review or selection committee and falls under the standard listed in Section 2 which requires registration for seeking to influence the actions of the County Commission, a county board or committee. A vendor would also have to register for seeking to influence the action, recommendation or decision of County personnel section because UM physicians are functioning as County personnel when they make decisions regarding particular products and services for use in Jackson facilities. Therefore, lobbyist registration is required for meeting with UM physicians regarding particular products or services.

Accordingly, the Conflict of Interest ordinance requires vendors to register as lobbyists if they approach UM doctors regarding the purchase of products or services which foreseeably will be reviewed by the PHT Board of Trustees or a PHT board or committee.

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,

ROBERT MEYERS
Executive Director

cc: Eugene Shy, Assistant County Attorney