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STAFF GENERAL COUNSEL**

October 29, 2010

Lizette Torrico  
Hill Dermaceuticals  
2650 South Melonville Avenue  
Sanford, FL 32773

**RE: REQUEST FOR ADVISORY OPINION 10-28**

Dear Ms. Torrico:

The Commission on Ethics and Public Trust considered your request for an advisory opinion at its meeting on October 28, 2010 and rendered its opinion based on the facts stated in your letter.

You requested an opinion regarding the application of Section 2-11.1(s) (Lobbying) to pharmaceutical representatives at the Public Health Trust. You are seeking a refund of your lobbyist registration.

In your letter, you advised the Commission that you are Sales Manager for Hill Dermaceuticals. In your capacity as Sales Manager, you meet with doctors and other health care professionals to provide them with information regarding the company's product lines and its use in treating various ailments. You have also provided samples in the past. You also hold luncheons with Trust residents and other PHT staff to educate the staff about the treatment of illness through the use of the company's products.

The Ethics Commission found that the Conflict of Interest and Code of Ethics ordinance requires you to register as a lobbyist when you seek to influence PHT staff to use your

company's products. Section 2-11.1(s) (1) (b) defines a lobbyist as "any person, firm or corporation employed or retained by a principal that seeks to encourage the passage, defeat or modification of 1) any ordinance, resolution, action or decision of the County Commission; 2) any action, decision, or 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. "Lobbyist" specifically includes the principal as well as any employee whose normal scope of employment includes lobbying activities."

Salespeople who meet with county staff or officials and seek to influence decisions fall within the definition of lobbyist. A "salesperson" for the purposes of Section 2-11.1(s), is a person whose duties ordinarily involve covering assigned territory for a particular principal on a regular basis, visiting potential customers on these routes and attempting to interest the customers in corporate products or services. The principal, governmental affairs personnel, contract lobbyists and individuals involved in corporate policy-making would not fall within this definition. See RQOs 09-24, 06-34, 06-04, 05-134

The Ethics Commission has created two exemptions for salespeople under the lobbying section of the ordinance. The Ethics Commission has opined that representatives of pharmaceutical companies who provide in-service training to PHT staff or support during a clinical trial do not have to register as lobbyists because the Public Health Trust has already purchased the product. The Ethics Commission has also opined that salespeople may be paid on a

commission basis despite the ban on contingency fees.


Your activities do not fall under the in-service exception because the doctors and the trust have not already decided to purchase the company's products. Therefore, you are still trying to influence staff during the decision-making process and are a lobbyist.

However, since you will not conduct any lobbying activity at the Public Health Trust during 2010, the Ethics Commission is recommending that the Clerk of the Board apply any lobbyist fees paid in 2010 to 2011.

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: Keith Knowles, Clerk of the Board

