

October 2, 2006

Lillian Mends
Mends Compassionate Nursing Care Registry,
Inc.
1201 N.E. 40th Road
Homestead, FL 33033

RE: REQUEST FOR ADVISORY OPINION RQO 06-49

Dear Mrs. Mends:

The Ethics Commission reviewed your request for an advisory opinion at its meeting on September 27, 2006. You requested an opinion regarding whether Mends Compassionate Nursing Care Registry (MCNCR) can receive community based-organization(CBO) funding from the Public Health Trust.

In your letter, you advised the Ethics Commission that MCNCR provides aftercare to uninsured, underinsured and indigent patients of the Public Health Trust. MCNCR provides nursing care, nutritional counseling, help with daily activities and health monitoring. MCNCR also provides health information at assisted living facilities, nursing homes community health fairs. Although you do not receive a salary, some of your family members do receive a salary for MCNCR work. You have been an employee of the Public Health Trust for 25 years.

The Conflict of Interest and Code of Ethics ordinance permits MCNCR to receive CBO funds from the Public Health Trust. However, you may not appear before the PHT or any PHT or county board or committee on behalf of MCNCR. Section 2-11.1(d) provides that no

employee " shall enter into any contract or transact any business through a firm, corporation, partnership or business entity in which he or she or any member of his or her immediate family has a controlling financial interest, direct or indirect, with Miami-Dade County or any person or agency acting for Miami-Dade County, and any such contract, agreement or business engagement entered in violation of this subsection shall render the transaction voidable. The ordinance defines controlling financial interest as ten percent or more of the capital stock in a business entity. Immediate family is defined as spouse, parents and children. The Ethics Commission has opined that a person does not have a controlling financial interest in a non-profit corporation. Therefore, MCNCR may contract with the PHT to receive CBO funds. Further, family members may receive salary as MCNCR employees.

Section 2-11.1(m)(1) prohibits you from appearing before any county board or committee on behalf of the agency. Therefore, another representative from MCNCR should make any appearances before the PHT. Section 2-11.1(m)(1) provides that no employee "shall appear before any County board or agency and make a presentation on behalf of any third person with respect to any license, contract, certificate, ruling, decision, opinion, rate schedule, franchise or other benefit sought by a third person. Nor shall such person receive compensation, directly or indirectly or in any form for services rendered to a third person in connection with the particular benefit sought by a third person." A corporation is considered a third person. Accordingly, you may not appear before the board on behalf of MCNCR.

However, the Ethics Commission found that you are permitted to receive a salary from Trust funds as long as neither you or the

Trust department where you work is involved with the contract in any way, including but not limited to, developing specifications or requirements, selection or recommendation of award, enforcement, oversight, administration, amendment, extension, termination or forbearance.

Lastly, you must report your MCNCR work as outside employment and file the required consent and disclosure forms.

Accordingly, MCNCR may receive CBO funding from the Public Health Trust and pay salaries to any members of your family who provide services to the corporation from PHT funds. Further, you may receive a salary from Trust funds as long as neither you or your Trust department are involved in any aspect of the contract. Finally, you are prohibited from appearing before the PHT or any county board or committee on behalf of MCNCR.

This opinion construes the Miami-Dade County Conflict of Interest and Code of Ethics ordinance only. Please contact the State of Florida Commission on Ethics if you have any questions about state law.

Please contact the undersigned at (305) 579-2594 or Ardyth Walker, Staff General Counsel at (305) 350-0616 if you have any questions or I can provide any further assistance.

SINCERELY YOURS,

ROBERT MEYERS
Executive Director