

December 27, 2006

Phillip H. Oettinger
Wilson, Sonsini, Goodrich & Rosati
650 Page Mill Road
Palo Alto, CA 94304

RE: REQUEST FOR ADVISORY OPINION RQO 06-65

Dear Mr. Oettinger:

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 SurgRX sales representatives are required to register as lobbyists.

In your request, you advised the Commission that SurgRX is currently attempting to sell an Enseal device to the PHT. The Product Review Committee will do an evaluation to determine whether a trial may be conducted at the PHT. If the committee approves an evaluation, selected physicians will complete an evaluation at the end of the trial period regarding whether the product should be purchased by the PHT.

The Ethics Commission found the Conflict of Interest and Code of Ethics ordinance requires Surg RX to register when its sales representatives seek to influence the Product Review Committee regarding a possible trial or purchase of the Enseal device.

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.

SurgRX is a lobbyist because its sales representatives are seeking to influence the action or decision-making of a county board or committee when they seek to influence the decisions of the Product Review Committee. The Product Review Committee is a county committee because the PHT is a county entity. Therefore, SurgRX and its sales representatives are required to register as lobbyists.

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: Theodore Lucas, Vice-President of
Strategic Sourcing