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July 29, 2009

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Colleen Roberts  
Sr. Corporate Counsel  
APP Pharmaceuticals  
1501 E. Woodfield Road  
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**RE: REQUEST FOR ADVISORY OPINION RQO 09-24**

Dear Ms. Roberts:

The Commission on Ethics and Public Trust considered your request for an advisory opinion at its meeting on July 28, 2009 and rendered its opinion based on the facts stated in your letter.

You requested an opinion regarding whether suppliers who participate in a group purchasing organization are required to register as lobbyists.

In your letter, you advised the Commission that Jackson Memorial Hospital (JMH) is a participant in two group purchasing organizations (GPO). The GPO enrolls suppliers to provide pharmaceuticals, medical supplies and other products to hospitals and clinics across the country. The GPO frequently has more than one supplier in any given category.

JMH will generally purchase products through the GPO in one of two ways. The hospital may request prices for a particular product from various suppliers for that item (i.e. gauze pads). In a fashion similar to a small purchase order, JMH will order gauze pads from the supplier with the lowest price. Suppliers who are registered with the GPO may also solicit business from JMH for their various products.

JMH requires all salespersons to register as lobbyists prior to meeting with JMH physicians and staff. All salespersons are required to wear badges. JMH has a separate badging system for contractors who are servicing existing contracts for products and services.

APP manufactures and distributes generic intravenous drugs for use in inpatient and outpatient settings. APP representatives may call on JMH to provide information and support regarding APP products.

The Commission found that Section 2-11.1(s) requires all APP representatives whose function is to persuade JMH staff to purchase products to register as lobbyists. APP representatives do not have to register as lobbyists to service or provide support regarding existing JMH contracts.

Section 2-11.1(s) defines a lobbyist as "all persons, firms, or corporations employed or retained by a principal who seeks 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."

The Ethics Commission has consistently opined that pharmaceutical salespeople must register as lobbyists. In RQO 05-114, the Ethics Commission opined that employees of a GPO had to register to recommend products or services but did not have to register to service the existing contract. In RQO 05-134, the Ethics Commission opined that all employees of a medical and surgical supply company had to

register as lobbyists except for support staff who provided only technical information unrelated to the sales function. In RQO 06-04, the Ethics Commission opined that sales representatives who sought to provide products for clinical trials were required to register as lobbyists and only employees who provide in-service or technical medical information after purchase were exempt from the registration requirement.

Similarly, an APP pharmaceutical representative acts as a lobbyist in any situation in which he or she meets with sales staff or other hospital personnel to provide information regarding new product lines, pricing or other information regarding APP products unless the contact is initiated by JMH personnel. Only APP personnel who provide support regarding existing contracts are exempt from the registration requirement. Accordingly, all APP representatives, with the exception of those providing support on existing accounts, must register as lobbyists prior to meeting with JMH staff regarding sales of any product.

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