



MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

19 West Flagler Street, Suite 820 · Miami, Florida 33130

Phone: (305) 579-2594 · Facsimile: (305) 579-0273

Website: ethics.miamidade.gov

MEMORANDUM

TO: Arturo Rodriguez, Diabetes Sales Specialist
Syneos.LifeScan

FROM: Radia Turay, Staff Attorney
Commission on Ethics

SUBJECT: INQ 20-45

DATE: May 29, 2020

CC: All COE Legal Staff

Thank you for contacting the Miami-Dade Commission on Ethics and Public Trust and requesting our guidance regarding the following proposed transaction.

Facts: You advised that you are a sales representative for Syneos.LifeScan glucose meters. You are seeking to meet with doctors at the Diabetes Research Institute (DRI), which you indicate is part of the University of Miami School of Medicine. You hope that the doctors that you meet will recommend your products to the patients that they treat at DRI.

You state that you are **not** looking to contract with Jackson Health System (JHS), nor are you looking to present your products to any JHS committee or board. However, you acknowledge that there is a possibility that the doctors that you meet with at UM might also work at Jackson and may recommend your products to the patients that they treat at Jackson as well.

Issue: Whether you are required to register to lobby in order to meet with physicians at the Diabetes Research Institute which you have identified as a University of Miami (UM) facility.

Discussion: Generally, UM physicians are not governed by the County Conflict of Interest ordinance (“Ethics Code”) unless they perform roles generally assigned to County personnel. *See* RQO 06-46. For example, physicians are covered by Section 2-11.1(t) (Cone of Silence) if they sit on selection committees. *See* RQO 06-46. Physicians are also governed by the Ethics Code to the extent that provisions are incorporated into Public Health Trust (PHT) rules and policies (i.e. actions prohibited when financial interests involved). *See* RQO 06-46.

Specifically regarding the lobbyist requirements proscribed in Section (s) of the Ethics Code, the Ethics Commission has opined that 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.¹ See RQO 06-46 and RQO 06-63.

In RQO 06-63, the Ethics Commission clarified that vendors are required 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*. See RQO 06-63; INQ 17-98, INQ 17-112, INQ 15-146, INQ 14-22, INQ 12-47, INQ 11-94 and INQ 11-181; See also RQO 06-65 (The Ethics Commission found the Conflict of Interest and Code of Ethics ordinance required Surg RX to register when its sales representatives seek to influence a JHS Product Review Committee regarding a possible trial or purchase of the company's device).

It was further explained in RQO 06-63 that, under the lobbying provision of the Ethics Code, a vendor who approaches an UM doctor for a physician's preference must register if **the physician serves on a procurement review or selection committee at JHS**. A vendor would also have to register for seeking to influence the action, recommendation or decision of County personnel because UM physicians are functioning as County personnel when they make decisions regarding particular products and services **for use in JHS facilities**. See RQO 06-63; See also RQO 10-28 (The Ethics Code required a sales manager to register as a lobbyist when he sought to influence PHT staff to use his company's products).

In your case, you indicate that DRI is a University of Miami facility. You also stated that Syneos.LifeScan is not seeking to contract with JHS/PHT. You do not intend to appear before any JHS/PHT board or committee. You also do not foresee Syneos.LifeScan glucose meters being used in JHS facilities.

Opinion: Consequently, you would not have to register to lobby provided that the physicians that you meet with at DRI do not serve on any procurement review or selection

¹ Section 2-11.1(s) of the County Ethics Code, Lobbying, 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 (PHT); (2) any action, decision, recommendation of the County [Mayor] (JHS-PHT CEO) or any County (JHS-PHT) board or committee; or (3) any action, decision or recommendation of County (JHS-PHT) 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 (PHT), or a County (JHS-PHT) board or committee." "Lobbyist" specifically includes the principal..." In other words, an attempt to influence a decision-maker on an official action or decision of the government entity is considered lobbying. See INQ 12-47.

committee at JHS; your product and services will not be used in Jackson facilities; and, the purchase of your company's products will not foreseeably be reviewed by the PHT Board of Trustees or a PHT board or committee. *See* RQO 06-46, RQO 06-63, RQO 06-65, and RQO 10-28; INQ 17-98, INQ 17-112, INQ 15-146, INQ 14-22, INQ 12-47, INQ 11-94 and INQ 11-181.

This opinion is limited to the facts as you presented them to the Commission on Ethics and is limited to an interpretation of the County Ethics Code only and is not intended to interpret state laws. Questions regarding state ethics laws should be addressed to the Florida Commission on Ethics.

INQs are informal ethics opinions provided by the legal staff after being reviewed and approved by the Executive Director. INQs deal with opinions previously addressed in public session by the Ethics Commission or within the plain meaning of the County Ethics Code. RQOs are opinions provided by the Miami-Dade Commission on Ethics and Public Trust when the subject matter is of great public importance or where there is insufficient precedent. While these are informal opinions, covered parties that act contrary to the opinion may be referred to the Advocate for preliminary review or investigation and may be subject to a formal Complaint filed with the Commission on Ethics and Public Trust.