



MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

Overtown Transit Village North
701 Northwest 1st Court · 8th Floor · Miami, Florida 33136
Phone: (305) 579-2594 · Facsimile: (305) 579-0273
Website: ethics.miamidade.gov

MEMORANDUM

TO: Douglas Houghton
Associate Chief of Clinical Operations, Jackson Memorial Hospital
Jackson Health System/Public Health Trust

FROM: Nolen Andrew Bunker, Staff Attorney
Commission on Ethics

SUBJECT: INQ 2022-02, Section 2-11.1(j), Conflicting employment prohibited.

DATE: January 7, 2022

CC: All COE Legal Staff

Thank you for contacting the Miami-Dade Commission on Ethics and Public Trust and requesting our guidance regarding possible conflicts of interest in your proposed outside employment.

Facts

An inquiry has been submitted concerning whether a conflict of interest would exist were Mr. Douglas Houghton, an employee of the Jackson Health System (“JHS”),¹ to engage in outside employment as a consultant for Koninklijke Philips N.V. (“Philips”).

Regarding his current employment, Mr. Houghton is the Associate Chief of Clinical Operations at Jackson Memorial Hospital (“JMH”). He leads the department of advanced practice providers, meaning physicians assistants, advanced practice registered nurses, and certified registered nurse anesthetists; he also works closely with the Chief Medical Officer at JMH to improve the delivery of clinical services.

Mr. Houghton would like to engage in outside employment as a consultant for Philips, a multinational conglomerate corporation that, among other things, manufactures intensive-care

¹ Code of Miami-Dade County § 25A-1 establishes the Public Health Trust of Miami-Dade County (“PHT”) as an agency and instrumentality of Miami-Dade County. The PHT governs JHS.

monitoring equipment. Mr. Houghton’s outside employment would consist of participation in two-hour focus groups that meet approximately six times a year to provide Philips with expert advice regarding the clinical applications of monitoring, such as how best to monitor patients, how to lessen “nuisance” alarms, and whether there are any needed changes to monitoring parameters. Participation in these focus groups results in hourly monetary compensation.

Philips is a JHS vendor that supplies intensive-care monitoring equipment to all JHS intensive care units (“ICUs”).

Mr. Houghton advises that he has no role or responsibility related to Phillips’ contract with JHS for intensive-care monitoring equipment. Furthermore, his County position does not have, nor will have, any authority or input regarding the brand or manufacturer of intensive-care monitoring equipment used by JHS. Mr. Houghton further advises that the focus groups occur during the workday, but that he will take leave out of his daily schedule to participate. He will not use any JHS resources in relation to his proposed outside employment, nor will he access any clinical information with relation to the proposed outside employment because the consulting is based on his thirty-year clinical practice and experience as a critical care practitioner.

Issue

Whether any prohibited conflict of interest may exist between Mr. Houghton’s JHS employment and his proposed outside employment as a consultant for Philips.

Analysis

JHS employees are covered by the Miami-Dade County Conflict of Interest and Code of Ethics Ordinance (“County Ethics Code”) and considered County employees for purposes of the Ethics Code. *See* Section 25A-3 of the Miami-Dade County Code. “Jackson employees are required to adhere to the conflict of interest regulations as outlined in Florida Statute Chapter 112.313, Section 2-11.1 of the [County Ethics Code] . . . , and JHS Policy and Procedure Manual Code No. 158 ‘Conflict of Interest.’” JHS Employee Code of Conduct, p. 13, <https://storage.googleapis.com/jackson-library/compliance/2016-JHS-Code-of-Conduct.pdf>, (last visited Jan. 6, 2022).

The County Ethics Code prohibits County employees from accepting outside employment, “which would impair his or her independence of judgment in the performance of his or her public duties.” Section 2-11.1(j). Additionally, Miami-Dade County Administrative Order 7-1 provides that, “[u]nder no circumstances shall a County employee accept outside employment . . . where a real or apparent conflict of interest with one’s official or public duties is possible.” County department directors and their subordinate supervisors have the discretion to deny a request for outside employment if they determine that, at any time, the proposed outside employment would be contrary, detrimental, or adverse to the interests of the County or the employee’s department. *See* AO 7-1; RQO 16-02; RQO 00-10; INQ 13-28.

Generally, there is not a conflict of interest when a JHS employee engages in outside employment with an entity that has a contractual relationship with JHS so long as the JHS employee is not involved in the negotiation, approval, renewal, supervision, administration, or monitoring of said

contract, and does not have the discretion to recommend or prescribe the use of the outside employer's product over that of another. *See* INQ 21-135 (JHS' Vice President and Chief Marketing Officer may engage in outside employment as a part-time lecturer for the University of Miami ("UM"), despite multi-million-dollar contracts between JHS/PHT and UM, because he does not approve, oversee, administer, or monitor the contract(s) between UM and JHS); INQ 15-115 (a surgical technician may engage in outside employment as a consultant for Ethicon, a JHS vendor that manufactures surgical equipment and products, because she is not involved with the contract and otherwise makes no decisions regarding the procurement of surgical equipment); INQ 15-49 (a staff physician employed as the Associate Medical Director at Jackson South Community Hospital may engage in outside employment as a speaker and/or consultant for four companies that sell medicines and/or medical devices to JHS, provided that he has no decision-making authority to approve the use of the medicines or devices by JHS providers and he is not in a position to make a discretionary decision to prescribe a particular medicine or use a particular device sold by his outside employers).

Based on the information provided at this time, it appears to be unlikely that Mr. Houghton's proposed outside employment would impair his independence of judgment in the performance of his duties as Associate Chief of Clinical Operations at JMH with JHS. His public duties and responsibilities do not overlap with his outside employment: he does not, and will not, have any role or responsibility related to Philips' contract with JHS; he does not have the discretion to recommend the use of Philips' equipment over other brands/manufacturers because Philips provides intensive-care monitoring equipment to all JHS ICUs; he will not use the same resources in his outside employment as he uses in his work for JHS, and he will perform his outside employment outside of the hours of his work for JHS.

Opinion

Based on the facts presented here and discussed above, Mr. Houghton would not have a conflict of interest in his proposed outside employment as a consultant for Philips.

However, the Commission on Ethics strongly recommends that the following limitations be imposed on Mr. Houghton's permission to engage in his proposed outside employment:

- He may not engage in activities that relate in any way to his outside employment during his scheduled work hours (including phone calls, text messages, e-mails, or other communications) and he may not use JHS resources (including, but not limited to, phones, copiers, computers, fax machines, and County vehicles) in connection with his outside employment, even after work. *See* County Ethics Code § 2-11.1(g); AO 5-5, AO 7-1; INQ 20-43; INQ 19-123; INQ 15-240.
- He may not exploit his position with JHS to secure special privileges or exemptions for himself or Philips. *See* County Ethics Code § 2-11.1(g).
- He may not disclose and/or use any confidential and/or proprietary information acquired because of his employment with JHS to derive a personal benefit, or for the benefit of Philips. *See* County Ethics Code § 2-11.1(h).

- He may not serve on any selection, evaluation, or negotiation committee where Philips is a proposed vendor. *See* County Ethics Code § 2-11.1(j); RQO 16-02.
- He may not represent Philips before JHS, the PHT, or any County board or agency. *See* County Ethics Code § 2-11.1(m)(1); RQO 04-173. While it does not appear that lobbying activities are a part of his potential activities with Philips, it is important to note that he would be prohibited from doing any such activities on behalf of Philips or its clients.
- He may not accept, directly or indirectly, travel or travel-related expenses from Philips, a JHS vendor, unless the PHT were to grant him a waiver from this restriction imposed by section (w) of the County Ethics Code. *See* County Ethics Code § 2-11.1(w).
- He must obtain permission to engage in outside employment on an annual basis by filing a Request for Outside Employment with his department director, and he must file an Outside Employment Statement with the County's Elections Department by noon on July 1st of each year. *See* County Ethics Code § 2-11.1(k)(2).

This opinion is based on the facts presented. If these facts change, or if there are any further questions, please contact the above-named Staff Attorney.

Other conflicts may apply based on directives from JHS/PHT or under state law. Questions regarding possible conflicts based on JHS/PHT directives should be directed to JHS or the PHT. For an opinion regarding Florida ethics law, please contact the Florida Commission on Ethics, P.O. Drawer 15709, Tallahassee, FL 32317, phone number (850) 488-7864, <http://www.ethics.state.fl.us/>.

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 Commission on Ethics 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.