

## MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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September 29, 2022

Via email to expedite delivery: carla.byrd@bms.com; CredentialAdmin@bms.com;  
carol.mctigue@bms.com

To: Carla Byrd, Senior Manager of Sales Administration, Bristol Myers Squibb

Re: Use of An Independent Contractor of a Lobbyist Company as its Principal; Registration  
Requirement of Pharmaceutical Representatives  
INQ 2022-140

Dear Ms. Byrd:

Thank you for contacting the Miami-Dade Commission on Ethics and Public Trust (COE) and requesting our guidance on registration requirements and parameters of lobbying activities pursuant to Section 2-11.1(s) of the Miami Dade Conflict of Interest and Code of Ethics Ordinance (Ethics Code).

### **Facts:**

You are the Senior Manager of Sales Administration for Bristol Myers Squibb (BMS), a global biopharmaceutical company, that does business with Jackson Health System (JHS). You reached out to the COE to inquire about two lobbying issues. First, the current principal contact listed for BMS has moved on to a new role, and you have inquired if QPHARMA, a BMS vendor/contractor that handles licensing for BMS, could be registered as the BMS' principal with Miami-Dade County. Second, you inquire if a pharmaceutical representative has to register as a lobbyist if they do not “call on the facility.”

### **Issues:**

First, whether a third party can be a company's principal for the purpose of lobbyist registration in Miami Dade County.

Second, what kind of lobbying activities require lobbyist registration?

## Discussion:

Regarding your first inquiry, pursuant to Section 2-11-1(s)(1)(f) of the Ethics Code, a Principal is a:

person, firm, corporation, or other entity that performs lobbying activity on behalf of itself or that has designated, employed, or retained a lobbyist to lobby on its behalf. The term "principal" also includes the person, firm, corporation, or other entity receiving the benefit of the lobbying effort and on whose behalf the lobbyist is lobbying, even if the lobbyist is retained, engaged, or employed by a third-party for such purposes.

From your description, QPHARMA is not a part of the BMS corporation or entity. Rather, QPHARMA is a vendor/contractor hired by BMS to handle licensing issues. Based on the definition of a Principal in the Ethics Code, QPHARMA cannot be BMS' principal. *See* RQO 2010-09 (Defining a principal as the president, owner, chief shareholder, or employee of a corporation designated with the apparent authority to make final decisions of the corporate entity. County ordinances continue to require principals to register as lobbyists.) *See* RQO 2008-04 (A member of the board of directors of a corporation, who is appointed to serve as the representative of the corporation in negotiations, is a principal and is required to register as a lobbyist prior to participating in contract negotiations.) *See* INQ 2015-190 (A principal is an employee, board member, or shareholder of a corporation designated to represent the corporation in lobbying.) *See* INQ 2017-47 (The following individuals are considered *principals*: the president, owner or chief shareholder of the corporation who engages in lobbying; an individual who has been designated by the corporation or who has the apparent authority to make final decisions on behalf of the corporation who engages in lobbying; or a member of the corporate board who has been appointed as the representative during lobbying activities. In these instances, the *principal* is required to complete the lobbyist registration and take the ethics course, but he or she is exempt from the registration fee).

BMS should have QPHARMA register as a lobbyist for BMS, if they are handling any portion of the solicitation or confirmation of BMS' pharmaceutical sales and/or contracts with PHT-JHS and if they have not already done so.

Regarding your second inquiry, pursuant to Section 2-11-1(s)(1)(d) of the Ethics code, lobbying activity is

*any attempt to influence or encourage the passage or defeat of, or modification to, governmental actions, including, but not limited to, ordinances, resolutions, rules, regulations, executive orders, and procurement actions or decisions of the County Commission, the Mayor, any County board or committee, or any County personnel. The term "lobbying activity" encompasses all forms of communication, whether oral, written, or electronic, during the entire decision-making process on actions, decisions, or recommendations which foreseeably will be heard or reviewed by County personnel. (Emphasis Added)*

You indicate that your pharmaceutical representatives do not call on the hospital. However, based on the definition of lobbying activity in the Ethics Code your pharmaceutical representatives who are not registered lobbyists would be prohibited from communicating with any Miami-Dade

County/PHT-JHS personnel regarding the solicitation or confirmation of sales or contracts for BMS.

This prohibition would include, but is not limited to, phone calls; text messages; instant messages; emails; mailed/delivered letters, packages, samples, gifts, and food; and in person visits in relation to any solicitation or confirmation of sales and/or contracts for BMS.

If your pharmaceutical representatives do not and will not foreseeably participate in any of the listed activities or any activities which are considered lobbying pursuant to the Ethics Code, then registration as a lobbyist is not required. *See* RQO 2006-04 (The Ethics Code does not require vendors to register as lobbyists to provide technical assistance, instruction, and advice to clinical personnel after a medical/surgical product has been purchased by the PHT during the regular or emergency procurement process. If the vendor only serves a training and technical support function and does not perform any sales function, the person will fall within the exemption for employees of the principal whose normal scope of employment does not include lobbying activities and would not have to register as a lobbyist.) *See* RQO 2008-41 (Employees whose normal scope of activities do not include lobbying do not meet the definition of “lobbyist” and are not required to register.)

If your pharmaceutical representatives’ normal scope of employment includes lobbying or they could potentially or foreseeably be called upon to engage in any of the activities listed herein or any activities which are considered lobbying pursuant to the Ethics Code, then they must register as lobbyist. *See* INQ 2017-244 (The provision in the lobbyist ordinance at Section 2-11.1(s)(1)(b), exempting from lobbyist registration individuals whose normal scope of employment does not include lobbying activities, applies only to individuals whose actions are limited to non-lobbying activities.)

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, P.O. Drawer 15709, Tallahassee, FL 32317, phone number (850) 488-7864, <http://www.ethics.state.fl.us/>.

We appreciate your consulting with the Commission in order to avoid possible prohibited conflicts of interest. If the facts associated with your inquiry change, please contact us for additional guidance.

We hope that this opinion is of assistance, and we remain available to discuss any matters addressed in this letter, if necessary, at your convenience.

Sincerely,

/s/ *Etta Akoni*

Etta Akoni, Esq.  
Staff Attorney

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.