

ADVISORY OPINION 94 - 61

November 10, 1994

RE: May physician's spouse accept position with Kentucky Health Policy Board?

DECISION: Yes, with certain restrictions.

This opinion is in response to your October 31, 1994, request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the November 10, 1994, meeting of the Commission, and the following opinion is issued.

You state the relevant facts as follows. You have been offered a position with the Kentucky Health Policy Board as a senior health policy specialist. Your spouse is a physician employed as the medical director of a managed health care organization doing business in Kentucky. The managed health care organization provides health benefits under prepaid arrangements by contracting with various health care providers and offering their services to employers and other health care purchasers. Your spouse's responsibilities include quality assurance, provider credentials review, and acting as a provider liaison. Neither you or your spouse have an ownership interest in the health care organization and your spouse is paid a regular salary.

Several issues are involved in the consideration of this request regarding potential conflicts of interest if you accept this new position: 1) Whether the Health Policy Board regulates or does business with your spouse's employer, 2) Whether your spouse is a practicing physician such that he is, on a limited basis, regulated by the Health Policy Board, 3) Whether you or your spouse have any ownership interest in your spouse's employer, and 4) The type of employment responsibilities you will have if you accept the position with the Health Policy Board.

The third and fourth considerations are important only if either your spouse's employer or your spouse is regulated by, or does business with, the Health Policy Board. Therefore, we will first address whether the Health Policy Board regulates or does business with your spouse's employer.

The Kentucky Health Policy Board is responsible for approval or disapproval of certificate of need applications and licensure appeals for health care providers which may have contracts with the organization for which your spouse works. Currently, there is no other regulatory or business relationship between your spouse's employer and the Health Policy Board. The Commission believes, based on these facts, that the Health Policy Board does not currently regulate or do business with your spouse's employer.

The second issue is whether your prospective agency regulates your spouse, a licensed physician who is not involved in direct patient care. The Health Policy Board may recommend to the Kentucky Board of Medical Licensure that disciplinary proceedings be initiated against certain health care providers, including practicing physicians. In Advisory Opinion 94-55, the Commission concluded the Health Policy Board regulates physicians. However, based on the definition of health care providers under the Board's jurisdiction in KRS Chapter 216, the Commission amends that interpretation to conclude that only practicing physicians are regulated by the Board. Since your spouse is not currently in practice, the Health Policy Board would not recommend that disciplinary proceedings be initiated against him, and so does not regulate him.

As there is currently no regulatory or business relationship between the Health Policy Board and your spouse or his employer, you may accept employment with the Health Policy Board. However, a managed health care organization doing business in our state, like your spouse's employer, may, in the future, seek to do business with the Health Purchasing Alliance, an organization of the Board. If this situation occurs, neither you or your spouse should have any ownership interest in your spouse's employer. An ownership interest would create a conflict of interest between your employment responsibilities and your personal financial interests which could result in a violation of KRS 11A.005(1)(c), which states:

11A.005 Statement of public policy.

(1) It is the public policy of this Commonwealth that a public servant shall work for the benefit of the people of the Commonwealth. The principles of ethical behavior contained in this chapter recognize that public office is a public trust and that the proper operation of democratic government requires that:

....

(c) A public servant not use public office to obtain private benefits;

An interest of 5% or more is prohibited by KRS 11A.040(4) (cited below) if the entity does business with any state agency, not only the Health Policy Board.

11A.040 Acts prohibited for public servant.

(4) No public servant shall knowingly himself or through any business in which he owns or controls an interest of more than five percent (5%), or by any other person for his use or benefit or on his account, undertake, execute, hold, or enjoy, in whole or in part, any contract, agreement, lease, sale, or purchase made, entered into, awarded, or granted by any state agency. This provision shall not apply to a contract, purchase, or good faith negotiation made pursuant to KRS Chapter 416 relating to eminent domain or to agreements which may directly or indirectly involve public funds disbursed through entitlement programs.

If your spouse begins direct patient care in the future, or his employer becomes regulated by the Board, you should examine whether the responsibilities of your employment position involve direct regulatory control of managed health care organizations or physicians. If you find that your actions in the Board's employ may involve a conflict with the interests of your husband or yourself, you should consider abstaining from such actions, using the guidelines listed in KRS 11A.030.