

ADVISORY OPINION 01-26

August 10, 2001

RE: May a state-employed physician accept gifts, including meals, from a pharmaceutical company?

DECISION: Yes, but only up to a value of \$25 per year.

This opinion is in response to your June 18, 2001, request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the August 10, 2001, meeting of the Commission and the following opinion is issued.

You state the relevant facts as follows. You are employed as the Personnel Director for the Department of Corrections. You have been asked to request an advisory opinion concerning interactions between state employees, pharmaceutical companies/pharmaceutical company representatives, and/or hospitals. You ask for an opinion based on the following questions.

- 1) *May a physician who is a state employee and who also is a member of a county medical society attend a county medical society meeting where the speaker is paid by a pharmaceutical company, and where the meal for the physician and the physician's spouse are paid by the pharmaceutical company?*
- 2) *May a physician who is a state employee attend a meeting at a hospital, or at a public or private restaurant, where the meal and the speaker are paid by a pharmaceutical company?*
- 3) *May a pharmaceutical company sponsor a continuing medical education program on state property at a state owned facility; may state employed physicians attend during their working hours; may a pharmaceutical company pay for the meal for all who attend?*

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- 4) *If a physician, who is a state employee, has oversight responsibility for the formulary of a state medical department, does that in any way modify or alter the answers to any of the questions listed above?*
- 5) *May a pharmaceutical company representative communicate with a physician who is a state employee by telephone, fax, e-mail or by written correspondence at work or home?*
- 6) *May a pharmaceutical company representative make a visit on behalf of his company by visiting a physician who is a state employee at the physician's work site or at any state owned facility during state business hours?*
- 7) *May a physician and physician's spouse attend a gathering where the meal and entertainment are paid for by a pharmaceutical company?*
- 8) *Would the answers to any of the above be any different if you substituted "hospital" for "pharmaceutical company?"*
- 9) *What about any other health professionals? How does any of the above apply to state employed nurse practitioners, nurses, licensed practical nurses, physician assistants, medical assistants, dentists, dental technicians, optometrists, physical therapists, pharmacists, or health care administrators?*

The responses to each question, unless otherwise noted, take the various possibilities into question within the response. Also, for convenience, KRS 11A.045(1) is reprinted below:

(1) No public servant, his spouse, or dependent child knowingly shall accept any gifts or gratuities, including travel expenses, meals, alcoholic beverages, and honoraria, totaling a value greater than twenty-five dollars (\$25) in a single calendar year from any person or business that does business with, is regulated by, is seeking grants from, is involved in litigation against, or is lobbying or attempting to influence the actions of the agency in which the public servant is employed or which he supervises, or from any group or association which has as its primary purpose the representation of those persons or businesses. Nothing contained in this subsection shall prohibit the commission from authorizing exceptions to this subsection where such exemption would not create an appearance of impropriety.

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A state-employed physician may attend a county medical society meeting, a meeting at a hospital, public restaurant or private restaurant, or any other gathering where the speaker is paid by a pharmaceutical company. However, if the pharmaceutical company does business with, is regulated by, is lobbying, or is attempting to influence the actions of the executive branch state agency employing either the physician or his spouse, then the physician and his spouse should not accept meals totaling more than \$25 in a single calendar year from the pharmaceutical company.

The Commission believes that state agencies should take great care not to endorse or promote a specific company or product. Thus, the Commission believes that a state facility should not allow a specific pharmaceutical company to provide continuing professional education ("CPE") for physicians at a state facility. The decision as to whether a state-employed physician may attend CPE during his working hours is one that should be addressed by management. If management believes that such training is beneficial to the physicians' positions, then the Commission believes that the physicians may attend during working hours. Additionally, state-employed physicians attending CPE sponsored by a pharmaceutical company must comply with KRS 11A.045(1) above in accepting CPE from pharmaceutical companies and may accept a meal only if its value is less than \$25 and the physician has not accepted any other gratuities from the pharmaceutical company totaling a value of over \$25 for the year.

Furthermore, responsibility for the formulary of a state-owned health care facility would clearly place a state employee physician in a position where not only the gift prohibition applies with respect to his interactions with pharmaceutical companies, it also should alert the physician to avoid even the "appearance of impropriety," so that his judgment will not be questioned at a later date. By that, the Commission believes he should question acceptance of ANY gift or gratuity from a pharmaceutical company, though it may, under the letter of the law, be allowed.

Regarding contacts between a pharmaceutical company representative and state physicians, the answer depends on the purpose behind the contacts. If the contact is intended to influence the physician as to purchases of a drug, or placement of a drug on a formulary over which the state employee physician has input or responsibility, this may constitute executive agency lobbying, and the pharmaceutical company representative should be registered as an Executive Agency Lobbyist pursuant to KRS 11A.201. If the contact is not intended to influence the physician in purchasing decisions or the like, but is either personal or informational in nature, such contact would not be prohibited, except for any restrictions on such contact imposed by the employing agency.

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The answers above also would apply if you substituted “private hospital” for “pharmaceutical company”; specifically if the agency by which the physician is employed is making decisions about which hospital to refer patients under his care, or is involved in regulating the hospital.

Finally, the responses above are equally applicable to such other professionals. Of course, each agency may have more restrictive standards regarding such contacts with potential or actual vendors, and each health professional may have his own professional standards which impose a different standard from KRS 11A which should be considered.

Sincerely,

EXECUTIVE BRANCH ETHICS COMMISSION

/s/

BY CHAIR: Cynthia Stone, J.D.