

EXECUTIVE BRANCH ETHICS COMMISSION

ADVISORY OPINION 02-9

January 25, 2002

RE: May a contract physicians group that provides the only primary care physician services to a state correctional institution refer inmate patients to the closest local hospital where the same physicians group is the sole emergency physician provider?

DECISION: Yes, but an appearance of a conflict may exist.

This opinion is in response to your January 11, 2002, request for an opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the January 25, 2002, meeting of the Commission and the following opinion is issued.

You state the relevant facts as follows. The Department of Corrections (the "Department") contracts with a physicians group that is the sole provider of primary care physician services, through a personal service contract, to a state correctional institution. This same physicians group is also the sole emergency physician provider at the hospital closest to the institution in question. You ask whether physicians at the institution, in their role of providing primary care to inmate patients, may refer these inmate patients to this hospital.

Individuals subject to the Executive Branch Code of Ethics (the "Code") are set forth in KRS 11A.010(7) and (9). Under (9), any person who holds a personal service contract for not less than six (6) months and is filling a "major management" role is subject to the Code. However, not all persons holding a personal service contract for not less than six (6) months are filling what would be considered "major management" roles. Those persons are not subject to the Code.

In this instance, the physicians group that is holding this personal service contract, which is for a period of time greater than six (6) months, is not fulfilling a "major management" position. As such, these physicians are not public servants subject to the Code, and thus may

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refer patients to the nearest local hospital in which the same physicians group is the sole emergency physician provider. However, although the physicians group is not subject to the Code, such action by the physicians may give the appearance of a conflict of interest.

Furthermore, were the physicians subject to the Code, the Commission would advise them to refrain from any action that would violate KRS 11A.020(1), reprinted below:

- (1) No public servant, by himself or through others, shall knowingly:
 - (a) Use or attempt to use his influence in any matter which involves a substantial conflict between his personal or private interest and his duties in the public interest;
 - (b) Use or attempt to use any means to influence a public agency in derogation of the state at large;
 - (c) Use his official position or office to obtain financial gain for himself or any members of the public servant's family; or
 - (d) Use or attempt to use his official position to secure or create privileges, exemptions, advantages, or treatment for himself or others in derogation of the public interest at large.

Thus, were the physicians subject to the Code, they should avoid referring inmate patients for emergency services to a hospital where other members of the same physicians group would treat the inmate patients and receive remuneration for such treatment. However, in such cases, physicians should be allowed to exercise independent medical judgment in referring an inmate patient for emergency services.

Sincerely,

EXECUTIVE BRANCH ETHICS COMMISSION

BY CHAIR: Cynthia C. Stone, Esq.