

EXECUTIVE BRANCH ETHICS COMMISSION

ADVISORY OPINION 02-41

September 11, 2002

- RE: (1) May a Board's administrator and/or its executive director also serve on the national or state professional organization?
- (2) May the Board's administrator and/or its executive director work as a respiratory therapist in Kentucky?

DECISION: (1) No.
(2) No.

This opinion is in response to your July 1, 2002, request for an opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the September 11, 2002, meeting of the Commission and the following opinion is issued.

You state the following relevant facts. The Kentucky Board for Respiratory Care (the "Board") is actively in the process of hiring a new Board Administrator. The Board Administrator may be asked to serve in offices for the national and/or state professional respiratory organizations. These organizations lobby state officials regarding issues of concern to the respiratory care community, and these organizations also provide continuing education to respiratory professionals in Kentucky. Additionally, the state professional respiratory care organization sends a list of nominees to the Governor's office for appointment to the Board.

You ask the following:

- (1) *Is it a conflict of interest or inappropriate for our Executive Director and/or Board Administrator to also serve in offices for the National and/or State Professional Respiratory Organizations?*
- (2) *Is it appropriate for our Executive Director and/or Board Administrator to work as a Respiratory Therapist in Kentucky?*

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KRS 11A.005(1)(a) and (d) provide:

(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:

(a) A public servant be independent and impartial;

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(d) The public has confidence in the integrity of its government and public servants.

KRS 11A.020(1)(a) and (b) provide:

(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;

In Advisory Opinion 97-25 (a copy of which is enclosed), the Commission concluded the Executive Secretary of the Board of Physical Therapy should not serve as a lobbyist employed to influence agency decisions or legislation that affects private interests. Additionally, in Advisory Opinion 93-38 (a copy of which is enclosed), the Commission advised the Commissioner of the Department of Mines and Minerals that he should not serve as an officer or voting member of the board of directors of the Kentucky Mining Institute, a professional organization of predominately coal-industry operators. Similarly, the Commission believes that the Board Administrator and/or Executive Director may be a member of national and state respiratory care organizations, but

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should not serve as an officer or lobbyist for such professional organizations that may well lobby state officials on private issues of concern to the organizations. The private interests here are those that the respiratory care organizations may have on behalf of their members. These interests may well be opposed to the public interest that the Board Administrator and/or Executive Director is serving, as the Board regulates those very members of the respiratory care organizations. As such, the Board Administrator and/or the Executive Director may not serve in any sort of officer capacity for these organizations, which would include not serving as a lobbyist or in any policy-making position for the organizations.

The Commission believes that the Board Administrator and/or Executive Director may not work privately as a respiratory therapist because the Board directly regulates respiratory therapists in Kentucky. Such work would present a conflict of interest between the Board Administrator's and/or Executive Director's private interest and duties in the public interest.

Sincerely,

EXECUTIVE BRANCH ETHICS COMMISSION

BY VICE CHAIR: Joseph B. Helm, Jr.

Enclosure: Advisory Opinion 97-25
Advisory Opinion 93-38