

Executive Branch Ethics Commission
ADVISORY OPINION 08-16
September 26, 2008

RE: May an officer for the Kentucky Board of Respiratory Care (hereinafter “Board”) also serve as an officer for a professional organization for respiratory therapists?

DECISION: Yes, but the Board member would be precluded from participating in practically all matters that come before the Board.

This opinion is issued in response to your June 16, 2008 request for an advisory opinion from the Executive Branch Ethics Commission (the “Commission”). This matter was reviewed at the July 11, 2008 and September 26, 2008 meetings of the Commission and the following opinion is issued.

You provide the relevant facts as follows:

You serve as the Executive Director and ethics officer for the Board. You have been asked to determine whether an officer for the Board may also serve as an officer for a professional organization for respiratory therapists.

The mission of the Board is stated on the agency’s website as follows: “The Kentucky Board of Respiratory Care is a government agency that regulates respiratory care practitioners and their services. The KBRC was established in 1990 to protect the citizens of the Commonwealth of Kentucky from unsafe practitioners and practices.” Pursuant to KRS 314A.200 (1), the Board consists of seven voting members appointed by the Governor; four members shall be practicing respiratory care practitioners, two members shall be practicing pulmonologists, and one member shall be a citizen at large.

In Advisory Opinion 02-41, the Commission determined that pursuant to KRS 11A.005 and KRS 11A.020, an administrator and/or executive director for the Board is precluded from also serving as an officer for a national or state professional organization for respiratory therapists. The Commission was concerned in Advisory Opinion 02-41 that the professional

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may be opposed to the public interest that the Board is serving, and that the Board regulates the members of the professional organization.

KRS Chapter 11A applies to public servants and members of the Board are not public servants as that term is defined in KRS 11A.010(9). However, members of the Board are subject to Executive Order 2008-454. Paragraph seven (7) of Executive Order 2008-454 provides:

- (7) A state policy-making or regulatory board or commission member shall disclose to the other members of the board, commission, authority, council or committee of which he or she is a member, any direct or indirect interest in any undertaking that puts the member's personal interest in conflict with that of the agency. This disclosure shall be made in writing or shall be recorded in the minutes of a formal meeting. A member who is required to publicly disclose a direct or indirect interest shall abstain from all decisions concerning his or her interest if the decision should affect him or her as a member of a business, profession, occupation, or group in a manner different from other members of the business, profession, occupation, or group.

There is no provision in Executive Order 2008-454 that specifically precludes an officer of the professional organization from serving concurrently as a member of the Board. However, pursuant to Executive Order 2008-454, such a Board member would have a conflict of interest every time a matter affecting the professional organization or the regulation of its members is before the Board. Since the Board regulates the members of the professional organization, almost all matters before the Board would constitute a conflict of interest for the Board member. Executive Order 2008-454 would require the Board member to publicly disclose each and every conflict in writing or in the minutes of the meeting, and the Board member would be required to abstain from all decisions in the matter. In effect, the Board member would not be allowed to participate in the decisions of the Board.

In order to avoid this situation, the Governor may want to refrain from appointing members who are officers in a professional organization to the Board that regulates the same profession. Further, at the time of appointment the Governor may want to consider requesting that the individual appointed to a regulatory Board not become an officer of a professional organization for the profession regulated by the Board during his or her tenure as a Board member.

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Sincerely,

EXECUTIVE BRANCH ETHICS COMMISSION

By Chair: Gwen R. Pinson

Enc. Advisory Opinion 02-41

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