
ADVISORY OPINION 94 - 55

October 13, 1994

- RE:
- 1) Does the Health Policy Board regulate physicians?
 - 2) Upon resignation, may a Board member serve patients in another state?
 - 3) Is purchase agreement in compliance with KRS 11A?
- DECISION:
- 1) Yes
 - 2) Yes
 - 3) No opinion given.

This opinion is in response to your September 11, 1994, request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the October 13, 1994, meeting of the Commission, and the following opinion is issued.

You provide the relevant facts as follows. You have recently been appointed to the Kentucky Health Policy Board and would like some issues resolved concerning your new employment.

- 1) Does the Health Policy Board regulate physicians, and if so, may you serve on the board of the National Medical Association? In addition, may you accept gifts and gratuities from physicians with whom you may personally associate?
- 2) Upon your resignation from the Health Policy Board and state employment, may you immediately serve patients in another state who receive health care funds from the Commonwealth of Kentucky?
- 3) Is the attached purchase agreement for the sale of your practice in compliance with KRS Chapter 11A?

In answering your request, the Commission takes note of provisions in House Bill 250 passed during the 1994 session of the General Assembly. Section (3) (1) (m) (codified as KRS 216.2905) of the bill provides:

- (1) The Board may:
 - (m) Recommend the initiation of disciplinary proceedings for health care providers before the State Board of Medical Licensure created pursuant to KRS Chapter 311,for any violations of any provisions of KRS Chapter 164, 205, 216, 216B, 304, or 314;

Section 15 of the bill (codified as KRS 216.2947) provides:

Any Health care provider who willfully violates any of the provisions of Sections 11 to 15 of this Act shall be fined no less than one hundred dollars (\$100) per day for failure to post or distribute the required list of fees charged and one thousand dollars (\$1000) per month for failure to submit the required data to the board.

The Health Policy Board appears to have control over providers in some matters. Thus, the Commission believes the Kentucky Health Policy Board regulates physicians, as well as other health care providers, who practice in the Commonwealth of Kentucky. As such, the Commission believes you may serve on the board of the National Medical Association in an ex-officio capacity only. In the interest of strict neutrality, you should not be a voting or paid member on a board which is composed of members over which your agency has some regulatory

control. In addition, as provided in Advisory Opinion 93-81 (a copy of which is enclosed), you should not accept gratuities from a physician unless the physician is a member of your family.

KRS 11A.040 (6), (7), and (8) detail prohibitions upon separation from state employment:

(6) No present or former officer or public servant listed in KRS 11A.010(9)(a) to (i) shall, within six (6) months following termination of his office or employment, accept employment, compensation, or other economic benefit from any person or business that contracts or does business with the state in matters in which he was directly involved during the last 36 months of his tenure. This provision shall not prohibit an individual from returning to the same business, firm, occupation, or profession in which he was involved prior to taking office or beginning his term of employment, provided that, for a period of six (6) months, he personally refrains from working on any matter in which he was directly involved during the last 36 months of his tenure in state government. This subsection shall not prohibit the performance of ministerial functions including, but not limited to, filing tax returns, filing applications for permits or licenses, or filing incorporation papers.

(7) A former public servant shall not act as a lobbyist or lobbyist's principal for a period of one (1) year after the latter of:

- (a) The date of leaving office or termination of employment; or
- (b) The date the term of office expires to which the public servant was elected.

(8) A former public servant shall not represent a person in a matter before a state agency in which the former public servant was directly involved, for a period of one (1) year after the latter of:

- (a) The date of leaving office or termination of employment; or
- (b) The date the term of office expires to which the public servant was elected.

In addition, HB 250, Section 2 (2) (codified as KRS 216.2903) states:

No member of the board shall accept employment or compensation from any facility or provider, or become a practicing provider within the Commonwealth of Kentucky for two (2) years, following the end of the member's term.

Upon your resignation from state employment, you are not prohibited from serving patients in another state. However, you must refrain for one year from acting as a lobbyist or from representing any patients before the Health Policy Board of the Commonwealth of Kentucky.

The Commission declines to issue an opinion on the acceptability of your sale agreement because we believe it is subject to House Bill Section 2(2) (codified as KRS 216.2903), which is not part of the Executive Branch Code of Ethics (KRS 11A).