

Designated Ethics Supervisor

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Professional's employment
potential conflict with
Board; Executive Ethics
Act AS 39.52

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INTRODUCTION

This memorandum is provided in response to your request dated September 8, 1993 for an opinion under the Alaska Executive Branch Ethics Act, AS 39.52 (hereafter the "Ethics Act"). You have asked for an opinion as to whether Dr. A, the physician member of the Medicaid Rate Advisory Commission ("MRAC"), can participate in decisions with respect to Hospital X or whether such participation would violate the Ethics Act. We have concluded that Dr. A's participation in decisions related to the hospital would not violate the Ethics Act.

FACTS

Governor Hickel selected Dr. A to fill a vacancy on the MRAC effective January 1, 1993. The MRAC's functions include making Medicaid reimbursement rate recommendations to the Department of Health and Social Services ("DHSS"). While the MRAC's recommendations are not binding, they are among the factors considered by DHSS in establishing Medicaid reimbursement rates. Hospital X participates in the Medicaid program and accordingly, the MRAC makes rate recommendations with respect to the hospital.

Thus far, Dr. A has abstained from participation in decisions related to the hospital.

Dr. A is a salaried physician with the Medical Center. Neither Dr. A nor the Medical Center has any financial or other relationship with Hospital X. Dr. A and the Medical Center are not employed by nor do they contract with Hospital X. Dr. A is, however, a member of Hospital X's medical staff and is permitted to practice at the hospital. As a member of the medical staff, Dr. A may sit on voluntary peer review committees. In addition, pursuant to the medical staff bylaws all members of the medical staff are required to see patients in the emergency department. With respect to emergency department services, Dr. A bills patients directly for services and receives no direct or indirect

compensation from the hospital.

As a member of the medical community, Dr. A is naturally interested in assuring that the community has a healthy community hospital.

DISCUSSION

Pursuant to AS 39.52.910, the Ethics Act applies to all public officers, including members of boards or commissions. No exception is made for members of boards or commissions who act in an advisory capacity. Accordingly, the Ethics Act applies to members of the MRAC, including Dr. A.

The Ethics Act describes certain matters which do not constitute an ethical violation when undertaken by a public officer:

(b) Unethical conduct is prohibited, but there is no substantial impropriety if, as to a specific matter, a public officer's

(1) personal or financial interest in the matter is insignificant, or of a type that is possessed generally by the public or a large class of persons to which the public officer belongs; or

(2) action or influence would have insignificant or conjectural effect on the matter.

AS 39.52.110(b).

It is clear that Dr. A has no financial interest in the MRAC's rate recommendations with respect to Hospital X. Further, Dr. A's interest in assuring that the town has a viable community hospital is of "a type possessed generally by the public."

It would be pure conjecture to conclude that Dr. A's participation in rendering advisory Medicaid rate recommendations might result in some sort of retaliation by the hospital which could affect Dr. A's membership on the medical staff. Further, one could only speculate as to whether any such retaliation would affect Dr. A's personal or financial interest. Accordingly, Dr. A's participation in rendering advisory Medicaid rate recommendations with respect to the hospital could only have an "insignifi-

cant or conjectural" effect on Dr. A's personal or financial interests.

For the reasons set forth above, we believe there would be no ethical violation if Dr. A were to participate in MRAC Medicaid rate recommendations with respect to Hospital X. Of course, if Dr. A's relationship with the hospital were to be altered in any significant manner, that change could affect this determination.

KAL:tg